

Principle of adequate or sufficient deliberation

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ABSTRACT: This paper addresses the importance of deliberation in the legislative process, which should be understood as an autonomous principle of the legislative process, albeit not in an absolute sense, but only in an adequate or sufficient sense. Based on precedents in comparative law and cases judged by the Federal Supreme Court, the requirement for adequate deliberation aims to guarantee minimum conditions for the participation and influence of plural voices in debates, especially those of minorities. The idea of the “will of the legislator” is criticized and, in its place, a more realistic understanding of legislative action is proposed, where adequate deliberation becomes essential for the legitimacy of laws. Based on the premise that the principle allows for informed disagreement, its minimum content involves the verification of three main requirements: (i) exchange of arguments and ability to influence the debate; (ii) participation of the opposition or social or parliamentary minorities in the deliberation; and (iii) adequacy of the procedure to the matter under consideration and presentation of reasons or justifications (in a weak sense).

KEYWORDS: legislative process; principles; principle of adequate or sufficient deliberation; minimum content.

1. Contextualization and relevance

The development of legislative principles is especially important for definitively establishing the entire normative process as a specific field of study. Identifying principles specific to legislative work facilitates understanding of what is required of the Legislature and, especially, what can be judicially challenged or reviewed by the Judiciary. It is intimately linked to the transparency of the rules of the democratic game. The principle of adequate or sufficient deliberation, in particular, arises from the study of jurisprudence and the observation of discussions on legislative process and procedure within the Federal Supreme Court, which commonly questions legislative debates, what was discussed, what issues were raised, accepted or rejected, in search of the infamous “will of the legislator.” In this sense, debates assume their own authority and confer legitimacy on their product, the legislation¹.

1 In this same vein, when defending the principle of respect for dissent, Waldron states that “it should make a difference not only in how legislators behave, but also in how legislative outcomes are received and understood. In the United States, lawyers sometimes examine what was said in debates, in addition to the text of the law, to find evidence about how a statute should be interpreted. When legislative history is used in this way, certain interventions in debates are given authority, even if the procedural rules of the debate never placed them as the focus of deliberation” (Waldron, 2006, p. 18, our translation).

Studying deliberation and ensuring its minimum requirements helps to understand what is not covered by the principle's content and, of course, what obligations arise from its application. Furthermore, recognizing the meaning, content, and scope of the principle of sufficient or adequate deliberation successfully replaces what is currently known as the "will of the legislator," an empty formula used indiscriminately by both legal scholars and case law².

The crucial question justifying the existence of the principle of adequate or sufficient deliberation, which I endorse and attempt to shed light on, was posed by Professor Luc Wintgens in his article *The Rational Legislator Revisited: "Why Define Rules of Deliberation?"*. He himself presents the answer, and everyone can adhere to it without much effort or elaboration: because the legislator is not a rational being, as is often argued in theory³. Wintgens, myself, and anyone who has ever watched a legislative session, the programming of TV Câmara or TV Senado, or experienced the corridors, meetings, or negotiations of the Legislature, agree with the assertion that the figure "of the" legislator, or, even more commonly known, the "will of the legislator," does not exist as an autonomous and definitive criterion for interpreting the law. If there is one conclusion I can reach without any doubt, it is that the law – definitively – needs to stop repeating and perpetuating this untruth, without prejudice to non-binding assistance in parliamentary debates.

To grant legitimacy to a supposed "will of the legislator" is, at the same time, to presuppose the existence of a uniform and defined body that can be called "the legislator" (just as there is "the judge," "the appeals court judge," and "the Justice"), in addition to denying the predominantly oral form in which the legislative process unfolds in practice. That said, defining criteria for deliberation to occur in a minimally adequate manner is a requirement of the inclusive, democratic, participatory, and egalitarian constitutional project outlined by the 1988 Constitution.

In addition to redefining the authority of debates and the legitimacy that derives from them, shifting them from the "will of the legislator" to the sufficiency of deliberation, the principle of adequate deliberation aims to establish a *trade-off* between deliberation and inclusion on the one hand,

2 In defense of the "legislator's will" argument, albeit with some reservations, see Nascimento (2021).

3 "Furthermore, decision-makers are expected to act deliberately in their search for solutions, unaffected by emotions. The influence of the environment on decision-makers is, more often than not, disregarded, as is the uncertainty under which they make their decisions. Their search for information is frequently incomplete, selective, and not ideal, while the marginal cost of relevant information can become prohibitively high, since the scarce resource is not information, but attention. All this, it seems, is not surprising. The surprise, in fact, lies in the persistence of the belief in the omniscience of decision-makers, involving the belief in the optimality of their decisions" (Wintgens, 2013, p. 20, our translation).

and, on the other, the necessary speed for decision-making (Bar-Siman-Tov, 2010, pp. 816-817)⁴. Time is an extremely relevant factor in politics and cannot be disregarded, given that today's majority may not materialize tomorrow, hence the common rush to include a proposal on the agenda and ensure its vote before the end of the session's statutory deadline⁵. The time of politics, as is often said, is not the same as that of the Judiciary – especially because, in the judicial process, the principles of inertia, judicial independence, and the inalienability of jurisdiction prevail. The principle of reasonable duration of (judicial) proceedings, while interfering with and interacting with the relevance of the time factor in relation to the decision, is not to be confused with or compared to the speed of time for legislative discussions, especially when considering the *real-time nature* of social media and its impact on the formation of majorities.

Establishing this optimal point of equilibrium between the interests at stake cannot occur in an abstract way, detached from parliamentary reality, or through the mere transposition of legal institutions to the legislative sphere, but must be based on the functions and objectives of the Legislative Branch. Hence, we should not speak merely of the “principle of deliberation,” but of the principle of *adequate or sufficient deliberation*⁶. In other words: what are the minimum conditions that deliberation must observe to guarantee inclusion and confer legitimacy to the legislative process and parliamentary decisions? What is the “sufficient” point to achieve the specific objectives of

4 Furthermore, Wintgens (2013, p. 15, our translation): “Decision-makers operate within a context of time pressure. Their computational skills and attention are limited due to their restricted brain capacity. More people and more computers, for example, can help overcome this limitation, although this does not definitively solve the problem. In addition, resources, especially information and time, are scarce, and the marginal cost of additional information needed to reach optimal decisions can be prohibitively high. Decision-makers do not have a complete and comprehensive view of the values of those subject to their decisions, and may actually encounter unforeseen circumstances that affect their decisions.”

5 "The legislator of bounded rationality has been characterized as an agent authorized by the Constitution to make laws, but with limited time, skills and resources to do so. Given this limitation, he can, at most, produce 'satisfactory' rules, that is, the best possible rules (1) *rebus sic stantibus*, (2) all things considered, (3) now. This formulation suggests the importance of the temporal dimension of the legislative process" (Wintgens, 2013, p. 16, our translation).

6 In this sense, the position defended here differs from that formulated by Conrado Hübner Mendes, for whom deliberation “encompasses an intricate set of elements. Any political decision-making process that does not meet the criteria of this checklist may be a substitute, but still does not deserve to be called deliberation. Let me describe in more detail the various components of this stipulative operational definition. It brings together seven main aspects that make up the deliberative encounter: first, it presupposes the need to make a collective decision that will directly affect those who are deliberating or, indirectly, absent people; second, it considers the decision not as the end of the process, but as a provisional endpoint to be followed by new rounds of deliberation; third, it is a practice of reasoning together and justifying one's position to one's fellow deliberators; fourth, it is justification through a particular type of reason, one that is impartial or, at least, translatable to the common good; fifth, it assumes that deliberators are open to revising and transforming their opinions in light of arguments and implies an 'ethic of consensus'; sixth, it also involves an ethical element of respect; seventh, it comprises a political commitment to inclusion, empathy and receptiveness to all points of view” (Mendes, 2013, p. 14, our translation).

legislative deliberation, simultaneously prioritizing the urgency of the decision and the constitutional project?

2. The principle of adequate or sufficient deliberation

What the principle is not. Before answering the problem question, I will make some observations about what the principle is not, does not require, or what cannot be derived from it. First, it is necessary to state that (i) deliberation is not synonymous with discussion. Discussion is a stage proper to legislative procedures in which arguments can be presented and can occur in the plenary sessions of the legislative houses or in their committees⁷, that is, a stage that demands its own locus to occur. Deliberation encompasses discussion, but is not the same thing. In a deliberative democracy, speeches presented in social forums, print media, networks, academic events, etc., also count and are important for the formation and making of decisions.

Furthermore, the principle of sufficient deliberation does not aim to (ii) seek consensus, but above all to make disagreement possible⁸. In the article *The Epistemic Value of Democratic Deliberation*, David Estlund and Hélène Landemore discuss the concept of consensus in the context of democratic deliberation. For them, consensus does not refer merely to a superficial agreement or majority vote, but to a deliberative process in which opinions are discussed and evaluated based on their epistemological quality. Consensus is valued not only as an agreement, but as a result of a deliberative process that maximizes rationality, inclusion, and careful consideration of different perspectives (Estlund, 2018).

In this sense, one could even speak of seeking consensus, but this statement might generate more questions than answers. As Victor Marcel aptly states, “in the literature of deliberative democracy, ‘consensus’ usually appears with three meanings: a) an objective to be achieved in deliberation; b) the quorum of unanimity for the approval of a matter (as opposed to the rule of majority or supermajorities); and c) a result in the decision that may or may not occur” (Pinheiro, 2024, p. 165). This is not the objective we want to achieve. In fact, the principle of sufficient deliberation does not conflict with the rule of majority, that is, with decision-making mechanisms by aggregating votes with

7 The Federal Constitution refers to the discussion stage in Article 58, § 2, I; Article 60, § 2; Article 64, *main paragraph*; Article 65, *main paragraph*; and Article 11, sole paragraph, ADCT.

8 “Consensus is dispensable not only because of the temporal pressure to decide, but also because deliberators might acknowledge that, as long as their argumentative capacities are exhausted, some points may remain irreconcilable” (Mendes, 2013, p. 16).

different majority quorums. What is being defended is the possibility of a well-informed disagreement with the participation of minorities/opposition.

Thirdly, the principle of sufficient deliberation (iii) does not prevent the presentation of rhetorical or ideological arguments based on beliefs and values, which find their place in politics and in a plural democracy⁹. The 1988 Constitution accommodates projects further to the left or further to the right, although some behaviors, opinions and arguments do not find resonance in the constitutional text. That is, speeches that openly preach hatred, prejudice, manifest errors or fraud cannot be allowed and accepted during legislative deliberation, under penalty of unconstitutionality (Elster, 2013, p. 16).

Fourthly, the principle of sufficient deliberation (iv) does not authorize coercion, or the buying of votes, or even negotiations governed by market principles, in which parliamentarians directly or indirectly place their private interests on the table and exchange mutual concessions to reach an agreement. Negotiation is in the nature of politics, bargaining is not. Finally, as will be seen below, the principle of sufficient deliberation does not require “inflexible obedience to all the rules of procedure for legislative drafting”, nor “effective deliberation on, necessarily, each article of the proposals under discussion” (Nascimento, 2025, p. 161). It does not refer to the content of the discussion, the degree or depth of the debate, nor the effective time of deliberation, but rather to the minimum conditions for the deliberation required by the 1988 Constitution to occur.

Content of the principle. Having established the hypotheses not covered by the principle of sufficient deliberation, it is then necessary to identify its minimum content, which involves verifying three main requirements: (i) exchange of arguments and capacity to influence the debate; (ii) participation of the opposition or social or parliamentary minorities in the deliberation; and (iii) adequacy of the procedure to the matter under consideration and presentation of reasons or justifications (in a weak sense). Moving on to the analysis of each of the requirements of sufficient deliberation, the exchange of arguments refers to the need for parliamentarians to collect, process, and publicly present the greatest possible number of arguments, originating from the broadest and most diverse discussion forums: academia, civil society,

9 “Decisions are never a mere rational-instrumental evaluation of pros and cons, because [...] the actors are not neutral or passive recipients of ideas, but elaborators with a more or less profound persuasion that their position is good or correct. This gives deliberation an inevitable rhetorical and ideological character, which discourse theory has unfortunately dispelled, but political representation creates and implies. This does not mean that representative politics excludes rational arguments based on impartial premises. Although it is important that people believe in the ideas that their representatives represent and symbolize, democratic representation implies not only acceptance, but critical acceptance” (Urbinate, 2006, pp. 119-120, our translation).

professional entities, workers, companies, governmental and corporate associations, etc.

It should be noted that presenting reasons is not merely about creating a list of arguments, something formal and uncritical, designed only to mask the fulfillment of the requirement. On the contrary, the arguments and reasons must be able to resonate in the legislative debate, regardless of intermediation or the “baptism” of a parliamentarian in relation to a cause or institution – currently, for example, the participation of bodies or entities in public hearings and consultations in legislative committees requires a parliamentarian to “adopt” the indication of the entity or a specific individual to present it via a request to the committee, which, when voted on and approved, will cause the argument to finally be deliberated before the body of discussion and voting. In matters of adequate or sufficient deliberation, the Legislature needs to learn from the Judiciary: whenever possible, in the ordinary course of parliamentary life, publish notices and organize the most diverse opinions and arguments of society to take them into consideration – or disregard them – always in a transparent and justified manner, even if orally.

The exchange of arguments requires, at the same time, some degree of influence in the debate. Deliberation cannot be a rigged game, where the outcome has already been predetermined and the deliberation serves only as a veneer to (pseudo)legitimize what has already been agreed upon or desired. For the exchange of arguments and reasons to be sufficient, these same arguments and reasons must be capable, at least in theory, of altering the course of negotiations, affecting in some way their outcome, the way they are processed, or the time spent on discussions¹⁰. Indeed, there is much

10 “It is not enough to give voice to a variety of conflicting viewpoints. The legislature is a place for debate, not just for display, and, as recent theories of ‘deliberative democracy’ emphasize, debate requires openness to the opinions of others and a willingness to be persuaded. Therefore, it is important that opinions expressed in the legislature are not held as rigid positions, without the possibility of change or compromise. Opinions should be held as opinions and therefore open to elaboration, argumentation, correction, and modification. If (as I have argued) the basic justification for the legitimacy of an enacted statute is that all alternatives have had the opportunity to present their case and have failed to gain majority support, then we are presupposing, at least in principle, the possibility that people may change their minds through argument. This does not mean that people must be willing to change their interests or abandon their principles. They may be persuaded to adopt a different view of the respect required by their interests in relation to the interests of others, or a different view from what stems from their fundamental principles with regard to legislative proposals.” specific. [...] The point is that opinions should be held and defended in a spirit of openness to argument and consideration. [...] Certainly, it is reasonable for voters to expect their representative to communicate important facts about their interests to the legislative body, especially if those facts would otherwise be ignored. And it is also important that, if there are opinions peculiar to a particular constituency, the system of representation should be such that they are heard. But Burke is also right in saying that the aim of these demands is to allow a process of deliberation in which opinions can be formed on the merits of legislative proposals that would not have been formed if it were not for the gathering of all this peculiar information and all these distinct voices in the legislature” (Waldron, 2006, pp. 27-28, our translation).

debate about parliamentary behavior, but deputies and senators must be willing to be persuaded, to yield, to withdraw points of disagreement, to make reciprocal concessions regarding the text of the proposal, to present future projects for specific discussions at the appropriate time, to amend other related proposals in progress, to extend the debate phase, to propose public hearings, or even to assume the political burden of refuting and not accepting arguments and reasons put on the negotiating table, or to decide that the topic is not mature enough for a vote.

Secondly, adequate or sufficient deliberation demands the participation of the opposition, parliamentary minority, and social minorities in the debates, with calls for and broad publicity of dates, times, methods of participation or submission of documents, analyses, statistics, or any other information that society deems relevant, including providing an electronic address for the most relevant proposals and using technology and artificial intelligence tools for collecting and organizing arguments and information. The participation of the parliamentary minority or the opposition is not merely a procedural requirement, but a deliberative one in the truest sense of the word. The opposition should participate in the debates with the aim of reaching the best consensus text, without abusing the procedural resources of “obstruction,” using them as mere obstacles to the smooth progress of the work¹¹.

11 The mechanisms of "obstruction" are provided for in the standing rules and constitute, initially and in theory, legitimate forms of expression contrary to the topic under discussion, which can be presented by parliamentarians of any political spectrum. However, this group of procedural requests became pejoratively known as the "obstruction kit," something like an affront to the will of the elected majority. Federal deputy Bia Kicis (PSL-DF), while presiding over the Constitution, Justice and Citizenship Committee of the Chamber of Deputies (CCJC), stated in an interview that she would put to a vote measures restricting the exercise of opposition: "The left has always obstructed. In fact, this is something we want to change in the regulations, so that the House is truly governed by the majority, giving space to the minority. But, in a democracy, it is the majority that wins. Today, our regulations allow the minority to always end up winning. This ends up being very bad for the country" (Cappelli; Góes; Portinari, 2021).

Incidentally, the right of loyal opposition¹², or “obstruction,” represents a fundamental mechanism for the legislative process for two main reasons¹³: (i) it slows down the pace of discussion so that the matter has a chance to be known by society and scholars of the subject, generating greater participation and receipt of information and subsidies necessary for the best outcome; and (ii) it pressures the government to negotiate agreements and form consensus, resulting in legislative proposals with greater acceptance – or less resistance¹⁴. Although such powers of veto and obstruction of minorities must be properly allocated and calibrated, reducing the discussion to the need for the prevalence, without further qualifications, of majorities over minorities, reveals an authoritarian understanding of the legislative process and parliamentary action (Melo; Hubner, 2022).

From this perspective, it is necessary to understand that an opposition “victory” is not strictly due to the number of deputies who voted for or against a particular proposal. Opposition achievements are usually qualitative, de-

12 “Real-world legislatures differ in the extent to which disagreement is expressed in their debates. Whenever a large group of people gathers to perform a civic function, there will be pressures of various kinds to conform, avoid causing problems, and show solidarity with widely accepted ideas. For example, American legislatures are often dominated by an enthusiastic consensus of one kind or another, and dissenting opinions are often informally suppressed so that the law can be made quickly before public consensus dissolves. My fourth principle, the principle of respect for dissent, aims to combat these tendencies. It conceives of legislatures as institutions specifically created to allow rival viewpoints to meet and confront each other in debate, so that all involved in lawmaking hear everything that should be said against, as well as everything that should be said in favor of, the legislative proposals before them. Several things can facilitate the expression of dissent. In some circumstances, strong party structures can help, giving dissenting opinions a solid presence in politics that does not simply identify itself.” with the conscience or opinion of particular individuals. Even with minority status, a socialist party is far less vulnerable to the pressures of national consensus than one or two members who happen to hold socialist views. (On the other hand, where there are few parties – for example, where there is a simple two-party system [or worse, a single-party system] – then some other basis needs to be found so that dissenting members can express their opinions without fear of intra-party retaliation.) Above all, what is indicated under this fourth principle is the need for a pervasive doctrine of loyal opposition. A person should not be considered subversive or disloyal to society simply for publicly disagreeing with some social consensus. A party should not necessarily be seen as a threat because it establishes and solidifies in society views on public policies that most people consider undesirable. Loyal opposition is not limited to guarantees of freedom of expression. There are several ways in which legislative structures can give real embodiment to the principle, including the establishment of an officially recognized ‘Opposition’ (for example, in a system like Westminster) with established and paid positions such as ‘Leader of the Opposition’ and ‘Shadow Justice,’ as well as the official majority/minority arrangements associated with American legislatures. These are structural concretizations of the principle I have been discussing, establishing the legislature as a place where dissenting voices should be heard and have the opportunity to test their persuasiveness and the scope of their support” (Waldron, 2006, pp. 27-28, our translation).

13 Regarding the content of the right to fair opposition, see the in-depth work by Gomes (2016).

14 The practice of obstruction is non-partisan, corresponding to a procedural prerogative of parties across the political spectrum. Parties like the NOVO Party, which is not suspected of belonging to the left, use obstruction whenever they want to establish a position with the electorate, seek the inclusion of projects of interest to them on the agenda, or express disagreement with the legislative proposal under discussion and voting. In this regard, see NOVO in the Chamber (2019). See also Frey (2020).

rived from the power of negotiation and persuasion, through the renunciation or strategic use of instruments and requirements legitimately provided for in the standing rules of the Chamber of Deputies or the Federal Senate for the legislative process. In this sense, what is usually called “obstruction” consists, at least in theory, of the legitimate exercise of the right of parliamentarians to oppose the majority of the moment, based on a set of democratically established rules enshrined in the Standing Rules of the respective Houses¹⁵, the exercise of which can be negotiated with the majority or government in exchange for what is usually called “damage control” or the least harmful text possible from the opposition’s point of view.

Finally, and thirdly, for the current culture of authority to gradually transform into a culture of justification, with adequate deliberation and informed decision-making, it is necessary to present reasons and justifications throughout the legislative process and parliamentary activity, in addition to designating the appropriate procedure for legislative discussion. On the other hand, even though it is a matter of sufficient deliberation, as previously explained, this factor of legitimizing the process should be understood in its weak sense, without this tarnishing or offending the discursive process or the representative principle. Let me explain.

As is generally known, the nature of the legislative process is different from the judicial process, but this distinction is often not taken into account when defending theses and ideas for the Legislature, as if the formal requirements of the judicial process should simply be transposed to the legislative process, under the argument of the authority of the Constitution. The normative elaboration process is quite different from legal discourse, admitting negotiations, rhetorical and ideological arguments, as is inherent in the very nature of politics. On this point, João Trindade Cavalcante Filho reminds us that some “contamination” of merit arguments is common during the analysis

15 In summary, the infamous “obstruction kit” includes: (i) requirements regarding quorum and session duration checks; (ii) raising points of order; (iii) using leadership time during committee and plenary sessions (to publicize controversial points and disagreements); (iv) conducting party orientations for all matters under vote (base text, amendments to the base text, requests, etc.); (v) submitting requests such as roll-call voting on removing items from the agenda, removing items from the agenda itself, postponing discussions for up to ten sessions, voting on the discussion method (by titles, chapters, sections, or groups of articles), waiving the waiting period, etc.; and finally, (vi) the requirement for the effective completion of all phases of the legislative proposal, including the reading of the session minutes, reading of the rapporteur's opinion, rebuttal, discussion, and voting. As can be deduced, the faithful compliance with all the provisions of the standing rules leads to an exponential increase in the time for voting and discussion of legislative matters. Taking the Pension Reform as an example, if the opposition had used all the formally foreseen requests, probably not even the base text of PEC 6/2019 would have been voted on. Therefore, the defense of “obstruction for obstruction's sake” or “the worse, the better” is unacceptable; limits to its use must be considered, for the benefit of society itself. The abusive exercise of any right must be rejected.

of proposals by the Constitution and Justice Committee, that is, during the preventive control of constitutionality (Cavalcante Filho, 2021, p. 185). Thus, “establishing a rigid rule for the presentation of certain legal arguments during the legislative process, under penalty of formal unconstitutionality of the norm to be enacted, could end up reducing its discursive openness, even though, *prima facie*, the presentation of these legal arguments is necessary. The same can be said for economic arguments” (Pinheiro, 2024, pp. 171-172).

In other words, although the presentation of reasons and justifications is undoubtedly a requirement of the principle of sufficient deliberation, even as a requirement for the legitimization of the result and the observance of the representative and democratic principles, its application does not operate in a strong, but flexible manner. It cannot be overlooked that the legislator is an agent of limited rationality, that is, he makes decisions within limitations different from the judge or the judicial decision model. Such limitations may include, for example: (i) incomplete or imperfect information, that is, the lack of access to all the information necessary for making the optimal decision; (ii) limited cognitive capacity, meaning the legislator’s inability to process all available information perfectly or efficiently, whether due to cognitive limitations or time constraints for decision-making, and, more importantly, (iii) limited time, since policy time is scarce and generally shorter, which must be considered at the time of control – because generally the urgency or need for a quick response to a given situation prevents the legislator from exploring all possibilities or considering all alternatives. In short, “instead of seeking the absolutely optimal solution, an agent of limited rationality seeks a ‘satisfactory’ or ‘sufficient’ solution that is good enough given its limitations” (Wintgens, 2013, pp. 8-9, our translation). The principle of sufficient deliberation, therefore, does not require the presentation of specific legal or economic justifications in detail at the time of filing the proposal¹⁶, unless there is a constitutional rule to the contrary, such as that provided for in Article 113 of the ADCT¹⁷.

16 The position defended here, therefore, does not align with the fundamental right to due process in normative drafting, as defended by Ana Paula de Barcellos. According to the author, the fundamental right in question has as its minimum content the “duty of the proponent of the norm to present, publicly, the reasons why they consider that such a norm should be enacted and the information that justifies them,” further defending the need to carry out the subtests of the principle of proportionality of the proposed measure at the time of the presentation of the legislative proposal, it being “natural and expected that there be some explicit articulation” of its three subtests of adequacy, necessity, and proportionality in the strict sense. See Barcellos (2016, pp. 74 and 117-118).

17 Article 113 of the Act of Transitory Constitutional Provisions: “Legislative proposals that create or alter mandatory expenditure or revenue waivers must be accompanied by an estimate of their budgetary and financial impact.”

One final requirement of the principle of adequate deliberation, in its third sub-principle, concerns the adequacy of the procedure applied to the legislative proposal. A sensitive and divisive matter in society, or one that is complex from an economic or financial point of view, or that involves commitments for future generations, among other things, should generally be discussed under the ordinary or abbreviated common procedure. This means that the recognition of extreme urgency should be the exception, not the rule. During the Covid-19 pandemic, due to the exceptional conditions experienced in the most diverse areas of knowledge and human interaction, the procedural urgency was valid and widely used.

The problem is that the practice of applying the urgency procedure, which is much more convenient for the government and the majority – since it eliminates the need for voting on reports in committees, but only requires the presentation of an oral report in plenary – has persisted long after the pandemic. With the return of the permanent committees, voting on proposals only in plenary constitutes a true abuse of the urgency procedure. For us, structured within legal frameworks, it seems a contradiction to claim that there is abuse in voting on proposals only in plenary, the larger collegiate body, while advocating for the prioritization of votes and discussions in fractional bodies (committees). But parliamentary debates have their proper and primary venue in the committees.

Constitutional basis. Although the study regarding the sufficiency of deliberation is incipient, the principle of adequate deliberation is usually derived from the joint application of (i) Article 58, § 2, items I and II, of the Federal Constitution (competence of committees to discuss and vote on bills and to hold public hearings with civil society entities); (ii) Article 60, § 2, of the Federal Constitution (procedure for discussion and voting on amendments to the Constitution); (iii) and Articles 64 (prevalence of the Chamber of Deputies as the initiating house) and 65 (bicameralism and legislative review between the houses of the National Congress), all of the 1988 Constitution. Note that all the cited articles deal directly or indirectly with the discussion phase of legislative proposals, which has already been shown not to be synonymous with deliberation. Discussion is a very important stage of deliberation, but it should not be confused with it. That being said, the articles already used by legal scholars as a basis for sufficient deliberation can be validly invoked. But there's more.

The strongest foundation for the existence of this principle lies in the constitutional option for a republic, a democratic regime, and popular representation. It therefore stems from Article 1, *main paragraph V* and sole paragraph of the Federal Constitution. Power emanates from the people, who exercise it through their representatives or directly. For the exercise of power by its true holder, or their elected representatives, to occur in the real world, it is necessary to guarantee a minimum set of conditions, defined here as (i) exchange of arguments and capacity for influence in the debate; (ii) participation of the opposition or social or parliamentary minorities in the deliberation; and (iii) adequacy of the procedure to the matter under consideration and presentation of reasons or justifications (in a weak sense). The parameter of control is always constitutional and is not limited to provisions on the legislative process. This does not correspond to defending a control of procedural rules. Rules of procedure should be interpreted with greater flexibility, allowing for agreements, but they do not supersede the Constitution.

3. Criticisms

In an article on the subject, Roberta Simões criticizes the existence of the principle and its use as a basis for the control of parliamentary activity by the Federal Supreme Court (Nascimento, 2025). According to her, although it is an ideal, the requirement of adequate deliberation can stifle the legislative process, making it incompatible with parliamentary reality. Other objections listed by the author include: (i) lack of a clear constitutional basis; (ii) risk of interference with the principle of separation of powers; (iii) lack of objective criteria to assess the sufficiency of the deliberation; (iv) contradiction with the jurisprudence of the STF that restricts the control of standing rules; and (v) possible increase in the costs and rigidity of the legislative process¹⁸.

In truth, proper deliberation is inherent to parliamentary activity and a set of minimum conditions to uphold the dignity of legislation itself. It is an attempt to make Parliament perform its function in the best way and thus avoid

18 To recognize the principle and define its content, Roberta Simões Nascimento argues for the need to answer questions such as: “1) what would, concretely, constitute sufficient deliberation? 2) would it require inflexible obedience to all the procedural rules of legislative drafting (without the possibility of agreements among leaders to alter procedures and approve special schedules)? 3) would it necessarily mean effective deliberation on each article of the proposals under discussion? 4) what would be the appropriate level of depth? 5) and the duration of the discussions? 6) would this ideal model be applicable to all bills (regardless of the subject matter or their impact on constitutional values)? 7) if so, would its adoption be feasible, considering real parliamentary practices (and, above all, their institutional constraints)? 8) if not, what criteria would define sufficient deliberation in each case?” (Nascimento, 2025, p. 161).

future judicial challenges, with less intervention from the Federal Supreme Court. Incompatible with parliamentary reality is allowing deliberations that are merely *pro forma*, prioritizing formality over constitutional principles. Furthermore, the principle stems from the 1988 Constitution, in a true constitutional inference¹⁹, not requiring a specific article or provision for its application. The Constitution is a living document, and its interpretation and respect are the task of all branches of government, including the Legislative branch.

In this sense, the principle of separation of powers cannot be used as a trump card to avoid any and all judicial control over Parliament. The Federal Supreme Court has its attributions listed in the Constitution, as does the Legislative branch. The exercise of constitutional attributions by each of the branches implies the need for harmonization and reciprocal control, of the Judiciary over the Legislative branch and, in the cases also outlined by the Constitution, of the Legislative branch over the Judiciary. The principle of separation does not, *a priori*, prevent the requirement of adequate deliberation. Furthermore, adequate deliberation does not require the definition of criteria to determine the sufficiency of the deliberation, but rather a *minimum set* of conditions for a deliberation to receive the stamp of constitutionality, that is, for it to be considered adequate using the 1988 Constitution as a parameter. This is not a matter of controlling the merits of the deliberation, but of anticipating minimum criteria for the deliberation to be in accordance with the constitutional project.

Finally, this is not about controlling procedural rules or norms contained in the standing rules of the Legislative Houses, but about an attempt to signal what can and cannot be done by Parliament during the deliberation of a proposal; I repeat, guided by principles and rules contained in the Constitution itself. Of course, the constitutional principles and rules applicable to the Legislature and legislation are often detailed or specified in the standing rules. This is because, simultaneously, (i) the regulations must comply with the 1988 Constitution and (ii) it is not up to the Constitution to detail and provide minutiae about parliamentary procedure and behavior. In any case, such regulations have ample room for legitimate negotiation, which is not precluded by the principle of adequate or sufficient deliberation.

19 Regarding the technique of constitutional inference, see Melo (2022, p. 163 *et seq.*).

4. Application by courts and tribunals

In comparative law, there are precedents regarding the control of parliamentary deliberative deficits, or procedural flaws that lead to insufficient deliberation, in countries such as Peru, Colombia, the United States, and Israel. In Peru, the issue was debated within the framework of Sentencia 0006-2018-PI/TC, known as *the “cuestión de confianza y crisis total del gabinete” case* (Peru, 2018). In this case, more than a quarter of Peruvian congressmen challenged before the Constitutional Court Legislative Resolution 007-2017-2018-CR, which, by modifying a provision of the Congressional Regulations, allegedly unconstitutionally altered the rule of Article 133 of the Peruvian Constitution, which governs the “total cabinet crisis²⁰.” According to the initial petition, the bill was approved with formal flaws of unconstitutionality, since it had not been submitted to debate in the Constitution and Regulations Committee, failing to receive technical analysis and expert opinions, which would lead to a direct violation of the provisions of Article 105 of the Peruvian Constitution²¹. In response, Congress stated that the debate had taken place, albeit in a reduced form, and that the committee’s opinion had been dispensed with by agreement of the leaders (*junta de portavoces*).

In its decision, although also addressing issues of merit, the Constitutional Court recognized a violation of Article 105 of the Peruvian Constitution due to a lack of deliberation, in violation of the principle of democracy. The Court ruled that the absence of a second round of voting, by agreement of leaders, even if authorized by the rules of procedure, unconstitutionally limited legislative debate and public deliberation, which is why the agreement should be disregarded.

It is important to remember that in the jurisprudence of this Court, on different occasions, different actions of the Junta de Portavoces have been validated to exonerate from the report of the respective commission, and this has been the case for the important margin of deference that, in a constitutional State, the Congress of the Republic must enjoy (Sentencia 00015-2012-PI; Ruling 00012-2018-PI and 00013-2018-PI, among others).

20 Peruvian Constitution, Article 133, our translation: “The President of the Council of Ministers may present a vote of confidence to Congress on behalf of the Council. If confidence is refused, or if he is censured, or if he resigns, or if he is removed by the President of the Republic, a total cabinet crisis occurs.”

21 Constitution of Peru, Article 105, our translation: “No bill may be enacted without having been previously approved by the respective examining committee, except as provided for in the Regulations of Congress. Bills submitted by the Executive Branch with an urgent character have priority in Congress.”

However, when this mechanism is employed with the purpose of carrying out transcendental reforms that affect the very essence of our Constitution, an important level of deliberation must be required, an aspect that has not been noticed in this case (Peru, 2018, our translation).

It is important to note that the application of the principle of adequate deliberation occurred exceptionally, as it should, thus dismissing the criticism that it could stifle or unreasonably increase the costs of the legislative process.

In Colombia, the principle of sufficient deliberation, as argued here, requires respect for parliamentary minorities²². If democracy is the rule of the majority, and there is no doubt about that, it also presupposes and demands the participation of those who think differently or want a different outcome, enshrining dissent and the possibility of questioning the *status quo*. Deliberation, to be considered adequate, must include not only formal participation but also the real possibility of influence from minorities²³, and the very legitimacy of the legislation depends on this (Colombia, 2004b). The summary of Ruling C-473, of 2004, reported by Magistrate Manuel Jose Cepeda Espinosa (Colombia, 2004a), already begins with the recognition of the importance of parliamentary debate, based on the democratic principle: "*La jurisprudencia de esta Corporación ha reconocido que las distintas normas constitucionales y legales que regulan el proceso de formación de las leyes señalan la importancia del debate parlamentario en la realización del principio democrático*"²⁴.

The ruling also assumes that proper deliberation does not require or imply control or judgment of the quality of the debate, that is, its merits. As I argue in this work, what must be present are the minimum conditions for its existence, which includes, for example, the participation of minorities. As expressed in the same judgment of the Colombian Court,

[...] existing rules are aimed at determining conditions to guarantee the possibility of the existence of a democratic debate, but not their quality or sufficiency.

22 It should be noted, however, that the matter is still under construction in the Constitutional Court of Colombia, sometimes referring to minimum guarantees of deliberation, sometimes operating on the merits of the norm itself, sometimes more flexible, sometimes more rigid in relation to legislative acts. On the subject, see Teles (2019).

23 "The main guarantee for minorities is the opportunity to be effectively heard. Therefore, the rules regarding the duration and number of interventions, as well as the prerequisites for declaring suficiente ilustración, protect their right to participate. The Constitution and the organic laws that regulate the formation of laws seek to harmonize the rights of majorities with the guarantees of minorities. This is reflected in various procedural rules whose purpose is to allow majorities to make decisions without overriding minorities" (Colombia, 2004a, our translation).

24 "The jurisprudence of this Court has recognized that the various constitutional and legal norms that regulate the lawmaking process highlight the importance of parliamentary debate in realizing the democratic principle" (Colombia, 2004a, our translation).

Respect for the principle of pluralism as well as the principle of autonomy of the Congress of the Republic prevents the constitutional judge from judging these aspects of the debate (Colombia, 2004a)²⁵.

Colombian Constitutional Court Ruling C-473 is a true lesson on legislative process and parliamentary action, offering several insights that can and should be applied to the Brazilian legislative process²⁶. Of particular interest here is that the principle of adequate deliberation is similar to the Colombian Court's understanding of the requirement of *suficiente ilustración* (sufficient debate), which demands:

Suficiente ilustración is established if the majority of congress members consider that they already possess adequate information to make a decision, after a period of debate in which all political forces have had the opportunity to express themselves. This mechanism seeks to balance the duration of the

25 Here is the paragraph in full: "The Court considered that the rules on parliamentary debate of a bill are not violated when not all congressmen registered to speak participate, after the debate has lasted for more than three hours, or when, to facilitate the process, it is organized by party caucuses. This is because neither the Constitution nor Law 5 of 1992 established requirements regarding the quality of the debate or the depth with which bills submitted to Congress for consideration should be analyzed. The existing rules only aim to guarantee the conditions for the possibility of a democratic debate, but do not determine its quality or sufficiency. Respect for the principle of pluralism and the autonomy of the Congress of the Republic prevents the constitutional judge from evaluating these aspects of the debate. No constitutional or legal norm that regulates parliamentary debate requires that Congress or its legislative bodies analyze bills or legislative acts with a specific level of depth or that the different positions be presented under certain quality criteria. Much less do they establish material parameters to measure their sufficiency. The constitutional and legal requirements governing the process The principles of lawmaking are not intended to obstruct or hinder this process, but must be interpreted in service of the substantive purpose they fulfill, since these norms do not have value in themselves" (Colombia, 2004a, our translation).

26 Among them: 1) The control of parliamentary activity is exceptional: "In a general way, the Court has warned that 'not every violation of a rule on the formation of laws, contained in the Constitution or in the respective Reglamento del Congreso, inevitably entails the invalidity of the law and its declaration of unconstitutionality. In fact, in certain cases, It could be an irrelevant irregularity, insofar as it does not violate any principle of constitutional value, and in particular does not affect the process of formation of the democratic will in the chambers, nor ignores the basic institutional content designed by the Charter, [...]"; 2) The control parameter is and must always be the Constitution: "The Court has recognized that it is facing an irregularity that does not result in the unconstitutionality of the law when it has materially complied with the procedure established in the Constitution, even when it has nominally been processed in a different way"; 3) There is the possibility of validation of the formal defect: "It could happen that this is an irregularity that could be validated in the same process of formation of the law, to the extent that it has been fulfilled with the purpose that the procedural rule intended to protect, or the irregularity has been expressly remedied by an authority that had the competence to carry out this remedy"; 4) Respect for the principle of instrumentality of forms: "No procedural error constitutes a vice of unconstitutionality. Due to the principle of instrumentality of forms, some errors may be internal, others may be superseded by mechanisms expressly provided for in current regulations, others may be remedied outside the legislative process and other constitutional vices that lead to the unenforceability of the law project have been defined by jurisprudence as 'substantial vices'. Such vices have the following characteristics: (i) they violate a constitutional principle or value; (ii) they affect the process of forming the democratic will in the chambers; or (iii) they ignore the competencies and basic institutional structure designed by the Charter." As a consequence of the principle of instrumentality of forms, when analyzing the transcendence of a form vice it is necessary to take into account both the context in which it is present, as well as the integral set of the legislative process" (Colombia, 2004a).

debate, guaranteeing the participation of minorities without compromising parliamentary deliberation.

Thus, *suficiente ilustración* allows the majority to proceed with the decision-making process, provided there has been adequate space for public deliberation and respect for minority rights. The requirement for verification of the vote, which also exists in Brazil²⁷, serves as a guarantee to prevent disrespect for the rules on quorum and majorities. However, if there is evidence that the quorum was met and that minorities were able to express their opinions, the absence of a vote verification does not render the law unconstitutional.

Finally, after the minimum requirements for deliberation have been met, sufficient illustration also ensures that the majority can express its decision without being hindered by parliamentary tactics of mere obstruction, such as filibustering²⁸, guaranteeing a balance between debate and decision-making in the legislative process.

Furthermore, there are rulings from the Colombian Court that specifically refer to the principle of adequate deliberation, such as Judgment C-040 of 2010. According to the Court, the legitimacy of the formation of the democratic will of the majority requires that “*each of the matters that later become part of the positive legal order must be preceded by sufficient deliberation*”²⁹.

27 See Article 185 of the Standing Rules of the Chamber of Deputies (RICD) and Article 163 of the Standing Rules of the Federal Senate (RISF). Considering the provisions of the Chamber of Deputies' regulations, whose central idea is repeated in the Senate's regulations, a request for verification of voting corresponds to a request made by at least six hundredths of the members of the House (6/100 of the deputies), or by leaders representing that number, so that, after an announcement of a voting result by symbolic process (“deputies in favor remain seated”), a roll-call verification of the votes is carried out. Once the verification of voting is granted, no other verification is allowed within one hour after the end of the previous vote – it is said that the one-hour interval begins. However, exceptionally, the Plenary may allow the waiver of the interval through a specific request.

28 In countries that allow it, it is a specific type of parliamentary obstruction technique, a “maneuver” that uses congressmen's speaking time for hours, or even weeks, to prevent the conclusion of the discussion and the beginning of the voting on a particular matter. In Brazil, speaking time is regulated by the standing rules of the Houses. In the Chamber of Deputies, for example, the right to speak is granted for five minutes to each registered deputy (or half that time if the matter is being processed under urgency). A deputy who wishes to discuss the matter must register beforehand with the Directing Board. During a deputy's speech, another deputy may request the floor through an interjection. See articles 157 and 174 of the Standing Rules of the Chamber of Deputies, and article 14 of the Standing Rules of the Senate.

29 “What the principle of consecutiveness seeks is to guarantee the proper formation of the democratic will of the chambers, so that each of the issues that subsequently become part of the positive legal order is preceded by sufficient deliberation. As the Court has already highlighted, the central importance of debating these issues lies fundamentally in the fact that, through it, it is possible to mature the final decision that will be taken within the respective legislative body on a bill or legislative act. In other words, this principle has a dual objective: on the one hand, to ensure that parliamentarians can critically analyze the different proposals submitted to their consideration, influencing their individual positions; on the other hand, to allow a collective assessment of the

In the United States, one of the main precedents dealing with this matter refers to the 1997 case of *Reno v. American Civil Liberties Union*³⁰, in which the U.S. Supreme Court highlighted the lack of proper study and legislative debate in the formulation of the *Communications Decency Act* (CDA). The ruling includes, for example, conclusions that Title V of the challenged legislation “contains provisions that were added in the executive committee after the conclusion of hearings or as amendments introduced during the plenary debate on the legislation. This indicates that the rules of the CDA were introduced late in the legislative process, without due prior consideration in formal hearings” (USA, 1997)³¹.

The Court also recognized that legislative records proved that the Senate had moved hastily in its analysis of the matter, without holding a hearing or even a discussion beyond approximately one hour in plenary session, which resulted in a superficial and inadequate deliberation³². Regarding the lack of adequate deliberation, there are other precedents from the United States that can be referenced (USA, 1980, 1988, 1989, 1994, 1996).

Israel and Spain follow the same jurisprudential line, especially regarding the lack of deliberation, as shown in a study by Suzie Navot (2006) in her article “*El control jurisdiccional de los actos parlamentarios: un análisis comparado de la evolución jurisprudencial en España e Israel*”. In Israel, cases such as *The Poultry Growers Organization v. Government of Israel*, 4885/03 (Israel, 2004a)³³ and *Litzman*

advantages and disadvantages that will result from the decision to be adopted. Debate, as an essential element of the principle of parliamentary political participation, is precisely a manifestation of the right to deliberation recognized to members of Congress, guaranteeing them the right to speak and express themselves, which is based on the popular representation that each of them holds. It is, therefore, an expression of citizen representation, since voters have an interest that their representatives in Congress have the opportunity to debate, express their points of view, and position themselves regarding different legislative initiatives, considering that, ultimately, these decisions directly impact society as a whole” (Colombia, 2010, our translation).

30 In this case, the constitutionality of two provisions of the *Communications Decency Act* (CDA), which aimed to protect minors from indecent or offensive content on the internet, was discussed. The United States Supreme Court concluded that the provisions violated the First Amendment by unduly restricting freedom of expression. It also emphasized that the CDA imposed overly broad and disproportionate restrictions, affecting content protected by the Constitution and placing an excessive burden on adults who wished to access legitimate information (pornography). Less restrictive alternatives, such as user-controlled content filters, were mentioned as more appropriate solutions to protect minors without violating fundamental rights.

31 In the original: “*The Act includes seven Titles, six of which are the product of extensive committee hearings and the subject of discussion in Reports prepared by Committees of the Senate and the House of Representatives. By contrast, Title V—known as the ‘Communications Decency Act of 1996’ (CDA)—contains provisions that were either added in executive committee after the hearings were concluded or as amendments offered during floor debate on the legislation*” (USA, 1997).

32 In the original: “*The Senate went in willy-nilly, passed legislation, and never once had a hearing, never once had a discussion other than an hour or so on the floor.*” (USA, 1997).

33 The website states that the translation of the judgment is not an official document, which can only be attributed to the original Hebrew version.

*v. President of the Knesset, 5131/03 (Israel, 2004b)*³⁴ highlight the annulment of laws approved without sufficient deliberation, such as the “Budget Monitoring Act”, which was processed in an accelerated manner and without due examination by parliamentary committees. The case of *United Mizrahi Bank Ltd. v. Migdal Cooperative Village, 6821/93 (Israel, 1995)*³⁵ consolidated the possibility of constitutional review of legislative acts without deliberation by the Judiciary, and *Livnat v. Rubinstein (Israel, 2018)*³⁶ reaffirmed the role of the Supreme Court in controlling serious procedural flaws in Parliament³⁷.

In Brazil, some rulings by the Federal Supreme Court have been cited by legal scholars as relevant precedents regarding the application of the principle of adequate or sufficient deliberation. According to Carlos André Coutinho Teles, for example,

[...] the principle of sufficient deliberation, inherent to the democratic principle, was completely disregarded by the National Congress in its examination of Provisional Measure No. 366, when it disobeyed the command prescribed in Article 62, § 9, of the Constitution of the Republic, at which time the competent joint parliamentary committee failed to issue an opinion. (Teles, 2019, p. 127).

The author refers to ADI 4.029, Rapporteur Justice Luiz Fux, filed against the federal law that created the Chico Mendes Institute for Biodiversity Conservation (ICMBio), alleging that the provisional measure that gave rise to it was not examined by the joint committee of deputies and senators according to the procedure established by the 1988 Constitution. In that case, the Federal Supreme Court recognized the existence of a flaw in the legislative process, having declared, by majority vote, the unconstitutionality of articles 5, main paragraph, and 6, main paragraph and other paragraphs, of Resolution 1/2002 of the National Congress.

I disagree with the example. The ICMBio case pointed to a true formal defect of unconstitutionality, not a procedural defect that falls under the principle

34 The website states that the translation of the judgment is not an official document, which can only be attributed to the original Hebrew version.

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37 Suzie Navot (2006) also refers to several precedents from the Constitutional Court of Spain, a country where jurisprudential evolution has also strengthened control over legislative acts. According to the author, *Sentencia 118/1988* partially broke with the doctrine of *interna corporis acts*, allowing greater judicial intervention in legislative procedures. *Sentencia 23/1990* reaffirmed the primacy of the Constitution over the acts of Parliament, and *Sentencia 5/1983* consolidated the protection of the rights of members of the Legislature in the exercise of their mandates.

of sufficient deliberation. There is no doubt that the constitutional procedure for examining and approving provisional measures was not observed in the case of the creation of the ICMBio Institute, and that, in this case, the need to establish joint committees is also a procedural rule. It is also true that there was a deficit in parliamentary debate due to the absence of the joint committee required by Article 62, § 9, of the Constitution. But to conclude from this that there was a violation of the principle of adequate deliberation is quite different. The discussion phase, typical of the ordinary, abbreviated procedure, or the procedure for provisional measures, is characterized in the 1988 Constitution and takes precedence over the application of the principle of adequate deliberation. Let me explain.

If there is a specific rule in the Federal Constitution regarding the legislative procedure to be followed by parliamentarians in relation to the approval of a particular legislative proposal, the constitutional provision must be applied, and the defect in question is formal in nature, because it was chosen as such by the constituent legislator. Procedural defects are exceptional and residual, serving as grounds for declaring unconstitutionality in cases authorized by the Constitution, but not categorically provided for in its text. These are defects that arise from or are inferred from the 1988 constitutional draft, but are not formally written in its text. This, incidentally, as already discussed, is one of the criticisms of legal scholars regarding the principle of adequate deliberation – that it is not listed in the text of the 1988 Constitution. Now, if there were an express text on this matter, the case would be one of error, defect, or formal flaw, without the need to delimit or identify a principle inferred from the constitutional model.

On the other hand, there is a ruling by the Federal Supreme Court – also cited by Carlos André Coutinho Teles (2019, p. 144 et seq.) – that specifically addresses a declaration of unconstitutionality due to a lack of sufficient deliberation. This is RE 310.028, rapporteur Justice Luiz Fux, filed by a municipal employee against a law applied by the municipality to deny his retirement request, on the grounds that said law originated from a bill that was not subject to legislative deliberation, in violation of the application, by symmetry, of articles 64 et seq. of the 1988 Constitution.

In this case, with the appointment of a new Rapporteur following the retirement of Justice Eros Grau, Justice Luiz Fux expressly stated in the precedent's summary that “the current Federal Constitution did not incorporate Article 26, § 3, of the Organic Law of the Municipalities of the State of São

Paulo, which authorized the approval of a bill by lapse of time” (Brazil, 2012). Thus, the procedural flaw embodied in the lack of deliberation was recognized, since “any law enacted after the promulgation of the 1988 Constitution of the Republic that originates from a bill approved by lapse of time, without the indispensable parliamentary deliberation, is formally unconstitutional” (Brazil, 2012). In fact, the recognized flaw transcends the current concept of formal defect. The case involves a true *procedural flaw* due to the total absence of legislative deliberation.

The distinction is subtle, but it exists. Therefore, with regard to Brazil, I agree with Roberta Simões Nascimento when she states that...

[...] at least for now, the principle of sufficient deliberation appears more as a claim in the literature [...] and has not yet been properly accepted by the jurisprudence of the STF as an autonomous vice of unconstitutionality, even though some writs of mandamus have already been filed trying to establish this thesis (Nascimento, 2025, p. 156)³⁸.

5. Summary

Taking into account the risks of oversimplification, it can be said that the principle of sufficient deliberation corresponds to (i) the presentation and exchange of arguments and reasons of a public nature between parliamentarians, civil society, the opposition, minorities and academia, especially those of (ii) a divergent nature or contrary to the dominant positions or those reflected in the text under debate, (iii) in formal settings or outside the committees or plenary sessions of the legislative houses, with (iv) the predisposition of political actors to listen and consider, or even to critically distance themselves from legislative decisions regarding the norm or topic under debate; and (v) sufficient time for analysis and deliberation, considering the relevance and impact of the matter under analysis.

From this perspective, retrospectively analyzing all the values and principles commonly listed by academia, applicable directly or indirectly to the

38 And it continues: “For example, the case of MS No. 38,079 filed on July 16, 2021, by federal deputies Daniel Pires Coelho and others against the processing of National Congress Bill (PLN) No. 3/2021, which deals with the Budget Guidelines Law (LDO) for the year 2022. In the text of the aforementioned legislative proposal, approved on July 15, 2021, the electoral fund had its values increased by almost three times the previous amount. In the initial petition, the main argument is that there was no reasonable time for deliberation regarding this change, noting that a total of 2,663 amendments had been presented to the PLN, which would result in the impossibility of all amendments being analyzed, discussed, and voted on in a single session” (Nascimento, 2025, p. 156). On the merits, the writ of mandamus was denied due to the supervening loss of its object (Brazil, 2022).

legislative process, the defense of the principle of sufficient deliberation encompasses and upholds the idea, value, or principle of political equality, representation, justification, and publicity, while also translating into a more specific principle inherent to the legislative process, which operates not only in the discussion stage but should govern all deliberations up to legislative production. Sufficient deliberation involves the presentation of reasons, their weighing and reflection, the predisposition to be persuaded, the participation of the minority/opposition within the broader context of a constitutional democracy, and the application of the appropriate procedure, all to ensure and open the possibility of disagreement.

In conclusion, the application of the principle of adequate deliberation, as defended here, would prevent, for example and in theory: holding simultaneous sessions of parliamentary committees on the merits and the plenary³⁹; voting during the early morning hours, with the specific intention of preventing their hearing, unless there is urgency or reasonable justification; unjustified filing and voting on a given proposal on the same day, or with a 24-hour interval, or without observing the deadline for submitting amendments; inclusion of the matter for discussion and/or voting without minimum information about the proposal, or ignorance of the text, which is equivalent to the absence of debate or deliberation⁴⁰; suppression of the participation of the opposition and the minority; beginning and ending of sessions on the same day for the purpose of voting in rounds (amendments to the constitution and complementary laws); failure to make the text to be voted on available with a minimum interval for reading and understanding, especially in the case of amendments to the constitution; presentation of

39 By the way, see an excerpt from the judgment of the Constitutional Court of Colombia, Ruling C-740, of 2013: “The main reason that explains the prohibition of simultaneous sessions between a committee and the respective plenary session is the need to allow members of Congress to fulfill all the obligations and commitments arising from their high office, especially that of attending each of the sessions to which they are summoned, in order to participate in the exercise of the legislative functions attributed to the chambers. However, in addition to this evident and fundamental purpose, these rules also aim to guarantee other objectives of great constitutional relevance, the eventual violation of which would directly affect the possibility of achieving these essential purposes. In fact, the possibility of attending and acting whenever the committee of which a congressman is a part is summoned, or the plenary of the legislative house to which he belongs—this participation being at the same time a right and an obligation—is directly linked to fundamental constitutional principles, such as participation and equality, both recognized in the preamble of the Constitution as inspiring principles of the superior order” (Colombia, 2013, our translation).

40 See excerpt from the judgment of the Constitutional Court of Colombia, Ruling C-760, of 2001: “The general lack of knowledge of the draft bill or the proposal that modifies it excludes the logical possibility of its debate, as it is equivalent to the absence of an object of discussion. Conversely, knowledge of the draft bill or its proposed amendments is the logical prerequisite for debate, insofar as it enables its discussion. Therefore, voting on an unknown text cannot validate the absence of debate. Thus, the minimum prerequisite for deliberative and decisional rationality is knowledge of the texts of the draft bills and the proposed modifications to them” (Colombia, 2001, our translation).

“oral” amendments, hastily drafted during the plenary discussion or after the discussion phase; appointment of a rapporteur on the same day as the vote on the matter in plenary session, etc.

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