

THE ROLE OF THE FUNDAMENTAL OBJECTIVES
OF BRAZILIAN FEDERAL CONSTITUTION:
THE DIALECTICS SYSTEM-PROBLEM

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I. Methodical for realisation of Law

The text intends to analyze the adequacy of Weber's value-rationality based on a proposed model for realising the Law. The method of Castanheira Neves is applied to the text of 3rd Article of the Constitution of the Federative Republic of Brazil (CFRB) in order to demonstrate the (im)possibility of the model of realisation of the law.

To achieve the purpose of the analysis, it is necessary to go through some pre-understanding steps. First, the dynamic relation between *system vs. problem* in Castanheira Neves's work (base theory) is delimited, in order to assess how the Law can be realised. In this dialectical context, the appropriate rationality to be employed is established. After that, the elements and conditions requested in the 3rd Article of the CFRB is drawn in the sense of its effectiveness and concretization. Elements of constitutional theory applicable in the context of Brazilian law are considered as assumptions. Finally, the methodical is analysed in its practice having as normative basis the fundamental objectives of the Brazilian Federal Constitution.

The rationality considered adequate for the understanding and the realisation of Law is structured in two fundamental dimensions: *system* and *problem*. It operates in a dialectical way between these two distinct dimensions. In this way, the legal system predetermines – conditioned to historical experience¹ – the types of problems that will get correlative responses of the system (Neves 1993).

¹ It means that the problems foreseen by the system are not the total of those which will be answered. New problems will arise and the system will have to find answers to them. Therefore, the system reflects a certain intentional assimilation of a given experience and is limited by it. The new problems become new questions, not yet absorbed by the elements of the system that tend to answer the new, overcoming the problem, successively. In this sense, see Neves (1993), pp. 157 f.