FREEDOM OF EXPRESSION, INSTITUTIONAL ARCHITECTURE OF INFORMATION, AND DIGITAL PLATFORMS: THE EXHAUSTION OF THE BRAZILIAN SUPREME COURT'S COMMUNICATIVE PARADIGM

LIBERDADE DE EXPRESSÃO, ARQUITETURA INSTITUCIONAL DA INFORMAÇÃO E PLATAFORMAS DIGITAIS: O ESGOTAMENTO DO PARADIGMA COMUNICATIVO DO SUPREMO TRIBUNAL FEDERAL

LIBERTAD DE EXPRESIÓN, ARQUITECTURA INSTITUCIONAL DE LA INFORMACIÓN Y PLATAFORMAS DIGITALES: EL AGOTAMIENTO DEL PARADIGMA COMUNICATIVO DEL SUPREMO TRIBUNAL FEDERAL DE BRASIL

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ABSTRACT

This article critically examines the communicative paradigm consolidated by the Brazilian Supreme Court, especially through ADPF 130 and RE 511.961/SP, in light of the structural transformation of the public sphere in the age of digital platforms. It argues that this paradigm has aged poorly because, by radicalizing freedom of the press under a logic of precedence and predominantly ex post forms of accountability and, subsequently, by bringing professional journalism closer to individual freedom of expression, it produced a dogmatic architecture that is now insufficient to distinguish, in constitutionally adequate terms, personal expression, the institutional architecture of information, and the private intermediation of informational circulation. The study adopts a hypothetico-deductive method, combining dogmatic-jurisprudential reconstruction with critical-systemic analysis, and articulates the case law of the Brazilian Supreme Court and the Inter-American Court of Human Rights with the relevant scholarship on the right to information, the institutional structure of informational circulation, the platformization of the public sphere, and algorithmic mediation. It further argues that freedom of expression can no longer be understood solely through a subjective and negative lens, since it also has an objective and institutional dimension linked to pluralism, the formation of a free public opinion, and the protection of the structural conditions for the social circulation of information. Finally, the article proposes a dogmatic reconstruction grounded in the differentiation between individual expression, professional journalism, and digital platforms, in order to restore the normative capacity of democratic constitutionalism in the face of the contemporary erosion of the institutional architecture of information.

Keywords: Freedom of Expression. Right to Information. Digital Platforms. Brazilian Supreme Court. Journalism. Democracy.

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RESUMO
Este artigo examina criticamente o paradigma comunicativo consolidado pelo Supremo Tribunal Federal, especialmente a partir da ADPF 130 e do RE 511.961/SP, à luz da transformação estrutural da esfera pública na era das plataformas digitais. Sustenta-se que esse paradigma envelheceu mal porque, ao radicalizar a liberdade de imprensa sob lógica de precedência e responsabilização predominantemente ulterior e, em seguida, aproximar o jornalismo profissional da liberdade individual de expressão, produziu uma arquitetura dogmática hoje insuficiente para distinguir, de modo constitucionalmente adequado, expressão pessoal, arquitetura institucional da informação e intermediação privada da circulação informacional. O estudo adota método hipotético-dedutivo, com reconstrução dogmático-jurisprudencial e análise crítico-sistêmica, articulando jurisprudência do Supremo Tribunal Federal e da Corte Interamericana de Direitos Humanos com bibliografia sobre direito à informação, estrutura institucional da circulação informacional, plataformização da esfera pública e mediação algorítmica. Argumenta-se que a liberdade de expressão não pode mais ser lida a partir de uma compreensão apenas subjetiva e negativa, pois também possui dimensão objetiva e institucional, vinculada ao pluralismo, à formação de uma opinião pública livre e à proteção das condições estruturais de circulação social da informação. Ao final, propõe-se uma reconstrução dogmática fundada na diferenciação entre expressão individual, jornalismo profissional e plataformas digitais, de modo a restabelecer a capacidade normativa do constitucionalismo democrático diante da erosão contemporânea da arquitetura institucional da informação.

Palavras-chave: Liberdade de Expressão. Direito à Informação. Plataformas Digitais. Supremo Tribunal Federal. Jornalismo. Democracia.

RESUMEN
Este artículo examina críticamente el paradigma comunicativo consolidado por el Supremo Tribunal Federal, especialmente a partir de la ADPF 130 y del RE 511.961/SP, a la luz de la transformación estructural de la esfera pública en la era de las plataformas digitales. Se sostiene que dicho paradigma ha envejecido mal porque, al radicalizar la libertad de prensa bajo una lógica de precedencia y un régimen predominantemente ulterior de responsabilidad y, acto seguido, al aproximar el periodismo profesional a la libertad individual de expresión, produjo una arquitectura dogmática hoy insuficiente para distinguir, de manera constitucionalmente adecuada, la expresión personal, la arquitectura institucional de la información y la intermediación privada de la circulación informativa. El estudio adopta un método hipotético-deductivo, con reconstrucción dogmático-jurisprudencial y análisis crítico-sistémico, articulando la jurisprudencia del Supremo Tribunal Federal y de la Corte Interamericana de Derechos Humanos con la bibliografía sobre derecho a la información, estructura institucional de la circulación informativa, plataformización de la esfera pública y mediación algorítmica. Se argumenta, además, que la libertad de expresión ya no puede ser leída únicamente a partir de una comprensión subjetiva y negativa, pues también posee una dimensión objetiva e institucional, vinculada al pluralismo, a la formación de una opinión pública libre y a la protección de las condiciones estructurales de la circulación social de la información. Por último, se propone una reconstrucción dogmática fundada en la diferenciación entre expresión individual, periodismo profesional y plataformas digitales, con el fin de restablecer la capacidad normativa del constitucionalismo democrático frente a la erosión contemporánea de la arquitectura institucional de la información.

Palabras clave: Libertad de Expresión. Derecho a la Información. Plataformas Digitales. Supremo Tribunal Federal. Periodismo. Democracia.

1 INTRODUCTION

Freedom of expression occupies a central position in democratic constitutionalism. Without it, there is no legitimate dissent, effective public criticism, free formation of opinion, or social control of power. This centrality, however, does not authorize simplifying readings. The contemporary constitutional problem is no longer limited to the classic opposition between the individual who speaks and the State that censors. The digital transformation of the public sphere has shifted the axis of controversy: the social circulation of information has started to occur in environments structured by private intermediaries who select, hierarchize, recommend, amplify, and obscure content according to their own algorithmic, economic, and infrastructural logics. The constitutional question, therefore, no longer concerns only the freedom to express ideas, but also the material conditions of visibility and circulation of public discourse.

It was in a scenario prior to the consolidation of this new communicative architecture that the Federal Supreme Court established, in 2009, two decisive precedents: ADPF 130 and RE 511.961/SP. In the first, by declaring the non-reception of the 1967 Press Law by the Federal Constitution of 1988, the Court built an especially robust understanding of freedom of the press, rejecting prior censorship and favoring the logic of subsequent accountability. In the second, by removing the requirement of a specific diploma for the exercise of the profession of journalist, the STF approximate, from a structural perspective, journalism, professional freedom, freedom of expression and freedom of information, establishing that journalistic activity constitutes a professionalized manifestation of communicative freedoms and, therefore, does not admit state barriers incompatible with the Constitution. Together, these judgments formed a constitutional paradigm of communication that had undeniable historical importance in overcoming authoritarian residues and in the affirmation of the free press as a condition for pluralism and democratic control of power.

It turns out that the historical strength of a paradigm does not make it immune to the aging of its premises. The informational ecosystem on which ADPF 130 and RE 511.961/SP focused no longer corresponds, in its central elements, to the contemporary communicational environment. The old centrality of professionalized means of mediation has given way to digital platforms oriented by data extraction, segmentation, personalization, algorithmic recommendation, and maximization of engagement. Information and opinion have ceased to circulate predominantly in recognizable editorial structures and have begun to travel in privatized spaces of visibility, governed by business models that transform attention, behavior, and predictability into economic value.

It is at this point that the insufficiency of the consolidated framework in 2009 is

revealed. The new digital mediators do not operate as neutral supports for the speech of others. They organize circulation, modulate reach, repetition and permanence, define practical relevance and interfere directly in the public experience of what is the objective truth of the facts. In this environment, the constitutional problem ceases to reside only in the content of the discourse and begins to encompass the structure of its dissemination, and it is no longer enough to ask who can speak. It is necessary to inquire under what systemic conditions speech circulates, who controls these conditions, and to what extent this private control affects pluralism, informational autonomy, and, consequently, the Democratic Rule of Law itself.

It is in this context that the assumptions articulated by the STF in 2009 require a critical rereading. ADPF 130 radicalized the protection of press freedom based on a logic of precedence and subsequent accountability compatible with a universe in which the press still occupied a central position in the social organization of information. On the other hand, RE 511.961/SP, by bringing journalism and generalized freedom of expression closer together, weakened the dogmatic distinction between the individual manifestation of thought and professional journalistic activity as a practice institutionally mediated by investigation, editorial criteria, public responsibility and commitment to informative relevance. What was then justified as a legitimate reaction to corporate or state controls today reveals a relevant theoretical cost: the fusion between constitutionally connected but normatively distinct categories obscures the difference between individual expression, journalistic institutionality, and private algorithmic intermediation.

This insufficiency became even more visible with the judgment of RE 1.037.396/SP, in 2025, when the STF itself began to operate with categories such as systemic risks, duty of care, safe and transparent digital environment, and insufficient protection of fundamental rights. Brazilian constitutional jurisprudence has thus begun to register that the grammar based almost exclusively on the rejection of prior censorship and strictly subsequent accountability no longer responds, by itself, to contemporary forms of damage, viralization, opacity, and private infrastructural power.

The argument of this article, however, is not to nostalgically restore the requirement of a diploma for journalists, nor to legitimize generic forms of prior control of public discourse. The question is more precise: to demonstrate that the Brazilian constitutional paradigm consolidated by the STF in 2009 has aged badly because it was formulated for a communicative environment whose structural premises no longer exist. Individual freedom to give an opinion, the institutional function of journalism and the private power to structure the circulation of content belong to the same thematic field, but not to the same dogmatic plane.

The central hypothesis is, therefore, negative: the paradigm resulting from the combination of ADPF 130 and RE 511.961/SP no longer offers sufficient categories to understand, in a constitutionally adequate way, the contemporary informational ecosystem. Its deficit is not in having overprotected freedom of expression, but in having erected beacons through a conceptual architecture incapable of distinguishing, with the necessary rigor, individual freedom, journalistic institutionality and algorithmic intermediation. When these plans are dogmatically merged, the ability to protect, at the same time, the communicative autonomy of the subjects, the right to information, pluralism and the integrity of the democratic conditions for the formation of public opinion is lost.

The general objective of this study is to demonstrate this insufficiency and to propose a dogmatic reconstruction of freedom of expression capable of distinguishing individual expression, professional journalism and private digital intermediation. To this end, the text adopts a hypothetical-deductive method, with dogmatic-jurisprudential reconstruction and critical-systemic analysis, articulating jurisprudence of the Federal Supreme Court and inter-American and European standards with bibliography dedicated to the right to information, new digital mediators, platform and surveillance capitalism, privacy and informational disorder.

It is argued here that the current crisis does not stem from excessive protection of freedom of expression per se, but from the use of a constitutional grammar that is not very differentiated for communicative realities that are no longer equivalent. In more direct terms: the problem is no longer just in knowing who can speak, but in determining who structures, on a large scale, the conditions under which speech becomes visible, credible, and politically effective.

2 FREEDOM OF EXPRESSION, JOURNALISTIC INSTITUTIONALITY AND THE RIGHT TO INFORMATION

The first premise of this article is that freedom of expression is not exhausted in its subjective dimension. It is true that it protects the individual externalization of thought, criticism, opinion, dissent, and the discursive participation of citizens. But its constitutional significance is not limited to this plan. In complex democratic societies, freedom of expression also has an objective dimension, because it protects the structural conditions for the circulation of discourse, the formation of public opinion, pluralism and social access to information. From this perspective, the right to information cannot be reduced to the individual ability to seek, receive and disseminate content, as it is also projected as a collective good, insofar as it interferes in public opinion and conditions the informed political participation of

citizens.

Although often handled in an approximate way, freedom of expression, freedom of information and freedom of the press are not fully covered. The first operates as a broader category; On the one hand, there is a distinction between expression in the strict sense, linked to ideas, opinions and value judgments, and, on the other hand, freedom of information, aimed at the public circulation of relevant facts and data, normatively connected to the veracity and diligence of the informant. Freedom of the press, in turn, designates the institutional exteriorization of these freedoms by the media, bringing together both the circulation of information and the dissemination of ideas in the public space (Steinmetz; Favero, 2016, p. 641-642).

This understanding prevents the communicative problem from being absorbed by the negative grammar of state non-intervention. What the Constitution protects is not only the freedom to speak, but also the integrity of the normative environment in which society informs itself, discusses and deliberates on matters of public interest. Constitutional protection thus reaches not only individual acts of discursive emission, but also institutional mediations without which the public sphere degrades into asymmetry, opacity or private capture of social visibility. Freedom of expression protects the sender, but it also protects the conditions of possibility of a publicly relevant communication.

Here the right to information acquires its own importance. Although articulated with freedom of expression, it is not to be confused with it. The distinction retains dogmatic utility: freedom of expression in the strict sense refers, at its core, to the expression of ideas, judgments and opinions; Freedom of information focuses on facts, data and content that interfere in the formation of public opinion and, therefore, are not indifferent to the problem of veracity and informative diligence. Hence the relevance of Barroso's doctrinal formulation (2004, p. 18-25), corroborated by Steinmetz and Favero (2016, p. 641-645), which recognizes his commitment to the truth in a subjective sense, that is, to the seriousness of the investigation and to the diligence of the informant, and not to an absolute claim of objective truth.

From this stems a central point: the political self-direction of citizens depends on the existence of minimally reliable, pluralized and institutionally structured information flows. Constitutional democracies do not require consensus, but they presuppose some common basis of intelligibility of the social world. Without it, dissent ceases to operate as a public controversy and begins to function as cognitive fragmentation, strategic manipulation or simple excitation of affections. It is not by chance that disinformation has been associated, in contemporary contexts, with a true political and cultural production of ignorance, through

which economic and political groups benefit from the formation of audiences that are increasingly adaptable by dubious information and parallel realities (Segurado, 2021, p. 19).

In this sense, in terms of politically relevant information, democracy cannot be indifferent to the distinction between verifiable information and deliberate disinformation, because a concept of information entirely detached from the truth may be sufficient for the technical functioning of systems and networks, but not for the sustenance of a free and fair public order (Bucci, 2019, p. 54-55). Freedom of expression, therefore, cannot be read only as a shield against censorship; it must also be understood as a guarantee of the conditions under which democratic controversy remains possible.[2]

It is from this requirement that the constitutional importance of journalism arises. Journalism is not to be confused with the general freedom to express one's opinion, although it participates in it and finds a basis in it. Its constitutionally relevant core is not in the simple emission of content, but in the institutional mediation of information of public interest. This mediation involves verification, checking, contextualization, hierarchization, editorial responsibility and insertion in routines oriented to the production of socially verifiable information. The decisive point, therefore, is not corporate, but functional: journalism has reinforced prominence not because it constitutes a category privilege, but because it performs a material public function in the informational architecture of democracy.

From this perspective, the insufficiency of the jurisprudential paradigm consolidated from ADPF 130 and, subsequently, RE 511.961/SP is evident. In the first, the STF attributed to the press centrality in the formation of public opinion, qualifying it as an instance of critical thinking and an alternative to the official version of the facts. In the second, by removing the requirement for a specific diploma, the Court brought journalism closer to the freedoms of expression and information and rejected state controls on access to the activity. Each movement, taken in its context, had a robust constitutional justification. The critical point lies in the dogmatic result of their combination: if, on the one hand, it radicalized the protection of freedom of the press against censorship and state dirigisme, on the other hand, jurisprudence excessively approximated journalistic practice to individual freedom of expression, compressing normatively relevant differences between personal speech, journalistic activity and intermediation of information circulation.

This compression has become especially costly in the digital ecosystem. While the public sphere was predominantly organized by traditional means, the distinctions between

[2] At this point, the warning of Adriano Duarte Rodrigues, professor emeritus at the New University of Lisbon, for whom veracity does not depend on communication itself, is useful; once communicated, however, the information is understood under pragmatic conditions of enunciation, which makes the problem of its public circulation more complex without removing the democratic centrality of truth (Rodrigues, 2016, p. 34).

individual expression, the press, and the distribution of information remained stabilized by relatively visible institutional mediations. In the digital environment, however, mediation does not disappear; it is reconfigured in private infrastructures that order reach, repetition, priority, and visibility according to their own economic rationalities.[3] The difficulty no longer consists only in protecting expression against the State, but in dogmatically reconstructing freedom of expression and the right to information in the face of private environments that structurally condition the circulation of the credible, the visible and the relevant. That is why the collective dimension of the right to information and the need to face the effects of private powers on the public sphere assume renewed centrality (Steinmetz; Favero, 2016, p. 648-653).

Recent literature on disinformation reinforces this diagnosis. The authors of *The Science of Fake News* note that the rise of the phenomenon reveals the erosion of old institutional safeguards against disinformation and that this content imitates — most often in a crude and ostentatious way — the appearance of journalistic news without reproducing its editorial filters, its validation procedures, and its institutional logic of credibility (Lazer *et al.*, 2018, p. 1094-1095). The formulation is particularly important because it reveals that the contemporary problem does not consist only of error, excess or noise, but in the proliferation of content that simulates journalism without sharing its editorial norms, its internal brakes and its accountability mechanisms.

The dogmatic consequence is unequivocal: not all discursive circulation is press; Not all visibility is qualified public information; Not every speaker who reaches an audience performs a journalistic function. What gives differentiated constitutional relevance to journalism is not the mere externalization of messages, but the insertion in an institutional practice of mediation of social reality guided by duties of verification, verifiability and public responsibility. When this trace is erased, freedom of expression tends to be read only from its subjective and negative side, losing sight of its objective and democratic-structural dimension.

The urgency of this differentiation appears, finally, on the empirical plane. In a large-scale study on the spread of true and false news on the social network *Twitter* — currently known as "X" — researchers at the Massachusetts Institute of Technology (MIT) concluded that falsehood circulates further, faster, deeper, and broader than truth in all categories

[3] The notion that informational mediation, far from disappearing, is reconfigured in private infrastructures that organize public circulation according to hierarchical and economic logics dialogues directly with Francisco Balaguer Callejón's analysis of the "new digital mediators" and their algorithmic ecosystems (Callejón, 2022, p. 179-180, 186-190 and 200-202). In a close perspective, András Koltay highlights that platforms play a role analogous to that of the media in the public sphere and that their prioritization activity decisively influences the way users perceive available content, with effects on access to information and equality in the circulation of opinions (Koltay, 2024, p. 5-6 and 20).

analyzed, with an even more pronounced effect on political information. In addition, they maintain that this diffusive advantage derives mainly from human behavior, and not from automated action (Vosoughi; Roy; Aral, 2018, p. 1146-1151).

Although the authors adopt, for methodological reasons, a broad and non-institutional concept of *fake news*, the finding is eloquent for the argument developed here: in high-speed and enormous-scale digital ecosystems, the structural asymmetry between verification and viralization converts the distinction between institutional journalism and mimetic circulation of content into a constitutional issue of the first magnitude. What once might have sounded like conceptual refinement has become a condition for reconstructing, in adequate terms, the relationship between freedom of expression, the right to information, and democracy.

3 A COMMUNICATIVE PACKAGE IN 48 DAYS: NORMATIVE PURGE AND REORDERING OF THE COMMUNICATIVE FIELD BY THE SUPREME COURT

The combination of ADPF 130 and RE 511.961/SP reveals more than the simple thematic proximity between two relevant precedents. It exposes, in a very short time interval, a true jurisprudential block of communicative reordering: only 48 days elapsed between its judgments. In such a short period, the Federal Supreme Court not only acted as a negative legislator, by purging the 1967 Press Law from the system, but also produced, in a material-hermeneutic sense, relevant conforming effects on the communicative field, by establishing operative interpretative parameters with an unequivocal capacity to shape conducts, communicative markets and normative expectations far beyond concrete cases. This cumulative action was historically decisive, but, precisely for this reason, it calls for a critical reading: when the constitutional jurisdiction restructures, in a few days, the legal regime of public communication, the institutional breadth of its effects requires argumentative density and proportional dogmatic caution.

In ADPF 130, the Court took the protection of freedom of the press against censorship and against the legislative discipline of its essential core to the maximum. It was not only a matter of removing an authoritarian diploma incompatible with the 1988 Constitution, but of formulating a strongly preferential understanding of communicative freedom. The press was conceived as a central institution of democratic life, the matrix of public opinion, a space for critical thinking and an instance of social control of power. The most dogmatically sensitive point, however, is in the way in which the ruling structures the relationship between freedom of the press and personality rights: the latter do not disappear, but tend to be shifted to the plane of subsequent accountability, in a logic of temporal precedence of freedom over its limits.

It is not by chance that Cunha e Cruz (2010, p. 402) read the ruling as a theoretical inflection of high intensity, marked by a very preferential understanding of freedom of expression, in tension with practical agreement and with the axiological unity of the Constitution. In the development of the critique, the author observes that the leading vote goes so far as to affirm a "chronological preference" of freedom of expression in the face of its constitutional restrictions, establishing a "primacy or precedence" of the freedoms of thought and expression *lato sensu*, an operation that stresses the practical agreement and the hierarchical-normative unity of the Constitution itself (Cunha and Cruz, 2010, p. 408-409).

RE 511.961/SP preserves this same theoretical atmosphere, but shifts it from the level of the press to the level of the profession. By removing the requirement of a specific diploma for the practice of journalism, the Federal Supreme Court not only rejected a state access filter, but did so based on a certain understanding of journalism itself: an activity intrinsically linked to the freedoms of expression and information, whose restriction would ultimately be equivalent to an unconstitutional obstacle to the flow of communication. in line with the orientation formulated 24 years ago by the Inter-American Court of Human Rights (Inter-American Court of Human Rights, 1985).[4]

The decision undoubtedly had relevant anti-state and anti-authoritarian force. The problem, however, lay in the underlying conceptual operation: by bringing journalism so intensely closer to individual freedom of expression, the ruling weakened the distinction between personal manifestation and institutional mediation of information. It is precisely this point that Cunha and Cruz (2010, p. 414) emphasize when they state that the decision did not sufficiently incisively differentiate "the two relevant constitutional goods inserted therein: freedom of expression and the right to information". Later on, when reconstructing the difference between the two, the author observes that, while freedom of expression operates in the field of ideas, opinions and value judgments, freedom of information refers to facts and, therefore, brings with it requirements of veracity, diligence and public relevance, which cannot be dissolved without conceptual loss (Cunha e Cruz, 2010, p. 415-416).

In an even more incisive sense, it argues that the right to information, due to its democratic importance, is not exhausted as a diffuse subjective right, but also demands

[4] The contours of the ruling were so controversial that the National Federation of Journalists (FENAJ) and the Union of Radio and Television Companies of the State of São Paulo (SERTESP) filed declaratory motions alleging a defect in the *extra petita judgment*, an unconstitutional omission regarding the differences between journalists and mere collaborators, as well as obscurity and contradiction about possible damages caused by poorly executed journalism and the requirement of specific techniques for your exercise. In view of the problematic temporal and selective curatorship operationalized by the STF, these motions were only judged a decade later, in 2019, being considered merely infringing and, therefore, rejected (Brasil, STF, RE 511.961/SP ED, 2019).

reinforced protection when institutionally exercised by information professionals, through vehicles socially recognized as such (Cunha and Cruz, 2010, p. 418).

Read together, the two judgments produced a powerful result: strongly protected freedom, rejected censorship, compressed prior restrictions and accountability shifted, as a rule, to a later moment. At the same time, journalistic institutionality was constitutionally valued in ADPF 130 and conceptually desubstantiated in RE 511.961/SP, to the extent that the profession came to be thought of, almost entirely, as an extension of general freedom of expression. This combination was consistent with the communicative environment of the time, still structured by traditional means, visible editorial routines and relatively stable distinctions between those who gave opinions, those who informed and those who socially distributed information.

However, it was precisely this historical coherence that concealed its dogmatic limitation. The paradigm proved to be highly capable of confronting state authoritarianism and the corporate closure of the public word. He proved to be much less apt, however, to distinguish, with the precision required today, individual expression, professional journalism and structural intermediation of the circulation of information. The criticism formulated here, therefore, does not diminish the constitutional importance of those precedents; on the contrary, part of it. The historical success of 2009, therefore, does not eliminate the diagnosis of its current insufficiency; It is precisely because that paradigm was emancipatory in its time that its present limitation needs to be recognized with dogmatic frankness.

4 THE TRANSFORMATION OF THE PUBLIC SPHERE AND THE CRISIS OF INSTITUTIONAL MEDIATION

The insufficiency of the communicative paradigm established by the STF only becomes fully visible when the focus of jurisprudence is shifted to the material transformation of the public sphere. The decisive point is not to affirm, in a simplistic way, that the internet would have eliminated mediations. Mediation has not disappeared; it has changed form, scale, and rationality. What was previously carried out predominantly by recognizable journalistic institutions, subject to editorial routines, professional criteria, and relatively visible public responsibilities, began to operate through private infrastructures that select, hierarchize, recommend, amplify, and obscure content according to their own algorithmic and economic logics.

In strict terms, there was a private, platformized and opaque reintermediation of the circulation of information. As Callejón (2022, p. 188-191) observes, the decisive feature of this process lies in the fact that platforms no longer only convey content, but shape, through

algorithmic mechanisms of selection and hierarchization, the very environment in which public opinion is formed.

In the ecosystems thus produced, freedom of expression is no longer exercised in an open and relatively common public space, but within closed environments, designed, managed, and monetized by private companies, in which the impact of the messages, their reach, and their relevance are defined by internal criteria of the system itself (Callejón, 2022, p. 200-201).

This mutation cannot be understood only from a communicational perspective, because it is inseparable from the economic model that sustains it. Srnicek (2017, p. 29; 56-60) shows that platforms are not mere neutral supports of interaction, but specific business forms of contemporary capitalism: digital infrastructures aimed at intermediation between groups, the extraction and processing of data, and the production of competitive advantages based on network effects and informational centralization. Zuboff (2015, p. 75; 78-79; 88-89), in turn, radicalizes this diagnosis by demonstrating that, in surveillance capitalism, lived reality is converted into observable, quantifiable, and *monetizable behavior*, so that the capture, analysis, and modification of behaviors cease to be side effects of the digital economy and become the very center of its logic of accumulation. The problem, therefore, no longer resides only in the content that circulates, but in the material architecture that observes, classifies, prioritizes, and exploits it economically. The old visible editorial mediation is progressively replaced by an infrastructural mediation guided by *the monetization* of attention, behavioral profiling and behavior prediction.

It is precisely at this point that the economic reconfiguration of the public sphere finds its most acute political-communicative translation. Unlike what occurred in previous contexts of relative scarcity of transmitters, the contemporary dispute is no longer only for the dissemination of information, but for the capture of the public's attention in an environment of informational abundance. As Barroso (2025, p. 136) observes, false, defamatory, sensationalist, or content loaded with anger and hatred tends to produce more engagement than factual, moderated, and rational publications, generating perverse incentives for recommendation systems oriented by views, permanence, and advertising revenue. The consequence is structural: the expansion of participation in public debate, although it has democratized access to speech and multiplied sources of information, has been accompanied by the exponential expansion of disinformation campaigns, hate speech, conspiracy theories, and large-scale discursive manipulation strategies.

In fact, this ambivalence was well captured by Luís Roberto Barroso, then minister of the STF, and Luna van Brussel Barroso, when they argued that digital platforms, while

breaking down old barriers to entry into the public space, began to play a central role in shaping who can participate, be heard and influence the collective debate, due to the growing algorithmic intermediation of content visibility (Barroso; Barroso, 2023, p. 53; 56-59). From 2016 onwards, this situation ceased to be a mere theoretical possibility and became a democratic-electoral problem on a global scale, associated with the influence of disinformation in episodes such as *Brexit*, the 2016 US elections, and the 2018 Brazilian elections, further aggravated by the emergence of *deepfakes*, capable of simulating speeches, images, and contexts with an increasing degree of verisimilitude and perceptive opacity for the common citizen (Barroso, 2025, p. 43).

Studies on informational disorder give empirical and conceptual consistency to this diagnosis. Wardle and Derakhshan (2017, p. 20-25) propose to abandon the imprecise notion of "*fake news*" in favor of the broader category of "*information disorder*", distinguishing "*mis-information*", "*dis-information*" and "*mal-information*" and showing that the contemporary phenomenon cannot be understood without simultaneous attention to the agents, the messages, the interpreters and the phases of creation, production and distribution of the content. The analytical relevance of this reconstruction lies in showing that contemporary falsehood is not limited to an isolated misleading content, but integrates complex chains of production, amplification and recirculation, often crossed by financial, political, social and psychological incentives.

In a similar vein, Lazer *et al*. (2018, p. 1094-1096) speak of the erosion of old institutional shields against disinformation and the need for new safeguards, noting that the contemporary crisis stems precisely from the weakening of journalistic norms, the fragmentation of the media environment, and the fall in trust in traditional sources of information. Vosoughi, Roy, and Aral (2018, p. 1146-1151) empirically demonstrate that falsehood circulates further, faster, deeper, and broader than truth, with an even more pronounced effect in political content, not because of automation, but because human users themselves tend to share with greater intensity what is presented as novelty, surprise or emotional upset. The structural asymmetry between verification and viralization ceases to be a simple informational dysfunction and starts to directly affect the institutional conditions for the formation of a minimally informed and discernible public opinion.

The reading of Callejón (2023, p. 141-143), in *The constitution of the algorithm*, becomes decisive in elevating the diagnosis from the communicational plane to the constitutional plane. The author argues that the crisis produced by the large technological agents should no longer be read only as an external democratic crisis, in the manner of global economic and financial impositions on states, but as a form of internal democratic involution,

because it reaches the very core of state political processes through the interference of technology companies in public debate, electoral processes and the social circulation of information. The progressive segmentation and disaggregation of public space becomes, in this environment, economically productive for these corporations, which benefit from instability, polarization, and radicalization.

The result is twofold: on the one hand, the minimum constitutional consensus that sustains common coexistence becomes more difficult; on the other hand, the shared social perception of reality itself is weakened, as the new communicative environments favor the spread of fake news, post-truths, and parallel realities (Callejón, 2023, p. 143-151). The crisis of institutional mediation, in this context, does not only mean the weakening of traditional journalism, but the fragmentation of the symbolic infrastructure on which democratic constitutionalism presupposes some degree of common intelligibility of the social world.

That is why the old opposition between the individual who speaks and the state that censors becomes insufficient to grasp the contemporary problem. Between the two, a third pole of power is installed: that of private infrastructures that organize, on a systemic scale, the material conditions of visibility of public discourse. And this power does not act only through the circulation of content, but also through the massive collection of data, profiling, automated inference, and the opacity of decision making of the systems that govern the distribution of care.

Rodotà (2004, p. 105-107; 116-117) already warned that law cannot succumb to the fascination of a technology perceived as spontaneously self-regulated, under penalty of abdicating its function of evaluative mediation in the face of innovation. Hirsch (2011, p. 439-441; 480), in examining online privacy, shows that the internet has intensified the collection, aggregation, and use of personal information in an unprecedented way, eroding users' trust and evidencing the failure of purely self-regulatory models. In the same sense, Solove (2025, p. 5-6; 25; 61-65) demonstrates that artificial intelligence does not inaugurate new problems out of nowhere, but recomposes and intensifies old modalities of surveillance, inference, identification, and decisional opacity, making legal architectures based on fictitious consent, low *accountability* even more fragile and insufficient protection against systemic risks. The circulation of discourse, therefore, can no longer be dissociated from the data infrastructure and the automated mechanisms that observe, order, and condition it.

The theoretical consequence of this mutation is decisive for the article's argument. The constitutionalism of communication can no longer be satisfied with categories constructed for an environment in which public mediation was visible, predominantly journalistic and relatively separable from the technical infrastructures of circulation. The digital public sphere

is communicative, economic, algorithmic and informational. In this environment, individual expression, professional journalism and platforms remain connected, but they can no longer be described under the same normative grammar. Confusing them under a unitary grammar of freedom of expression means losing the ability to perceive who speaks, who informs and who structures, on a systemic scale, the visibility of what can be heard, believed and shared. This transformation makes the communicative package signed by the STF in 2009 insufficient and prepares the ground for the subsequent jurisprudential inflection.

5 FROM PRECEDENCE TO SUFFICIENT PROTECTION: THE INFLECTION OF THE STF IN RE 1.037.396/SP

If the 2009 communicative package condensed, in a short interval, a jurisprudential reorganization based on the radicalization of press freedom and the expansion of distrust in the face of prior controls, RE 1.037.396/SP represents, in 2025, an inflection of a qualitatively different nature. It is not just a matter of jurisprudential updating in the face of new technologies, nor of a mere case-by-case adaptation of the Civil Rights Framework for the Internet to contemporary problems. What the ruling reveals is something deeper: the constitutional dogmatics of communication itself is beginning to shift from a grammar focused almost exclusively on the prohibition of censorship and subsequent accountability to another, concerned with sufficient protection of fundamental rights, systemic risks, duties of care and security of the digital environment.

The very summary of the judgment is eloquent because it abandons the framework of the classic bilateral conflict and starts to name the problem in a structural key: transformation of the digital environment, regulatory insufficiency, systemic risk, duties of care and deficit in the protection of fundamental rights. This displacement, by the way, is theoretically decisive. At the time of ADPF 130 and RE 511.961/SP, the dominant concern was oriented towards the containment of state power and the rejection of previous filters incompatible with freedom of communication. In 2025, without abandoning the constitutional centrality of freedom of expression, the STF will recognize that the normative architecture based on article 19 of the Civil Rights Framework for the Internet does not offer sufficient protection to highly relevant legal assets, including the democratic regime itself.

The starting point of the ruling is clear: the model of prior and specific court order for the civil liability of the provider, conceived as a safeguard mechanism against private censorship and excessive removals, is insufficient to address the systemic risks that have emerged in digital environments due to new business models and their impact on economic relations, social and cultural aspects. The Court thus affirms the partial and progressive

unconstitutionality of the regime of article 19, not because it repudiates in the abstract its original logic, but because it has become deficient in the face of the contemporary infrastructural power of the platforms.

The mutation is not only in the conclusion, but in the categories mobilized to achieve it. The ruling describes the regulatory insufficiency of the internet as a cause of systemic communication disturbances: hate speech, conspiracy theories, anti-democratic acts, disinformation, fraudulent news campaigns, crimes, fraud, and digital violence. More than that, it argues that such phenomena do not only harm isolated individuals, but spread deleterious effects through societies and democratic institutions, whether by the creation of parallel realities dissociated from factual truth, or by the intensification of polarization and extremism, or by the sneaky exclusion of minorities repeatedly attacked on social networks.

The formulation is revealing: the STF starts to see communicative damage not only from a subjective, reparatory and bilateral perspective, but as diffuse damage to the democratic information ecosystem. As a result, freedom of expression is no longer thought of from the classic issuer-State axis and is now inserted into a broader problem, which involves the architecture of circulation, digital vulnerability and the protection of the collective conditions of public deliberation. It is precisely for this reason that RE 1.037.396/SP should be read less as a simple case of civil liability of platforms and more as a symptom of the mutation of the constitutional dogmatics of communication.

The Court does not abandon the prohibition of censorship, nor does it adhere to a general model of strict liability or universal monitoring of speech. On the contrary, it preserves important differentiations and cautions. The ruling points out, for example, the lack of strict liability in the application of the established thesis, maintains a different treatment for hypotheses such as crimes against honor — to which the regime of article 19 of the Brazilian Civil Rights Framework for the Internet continues to apply, without prejudice to the possibility of removal by extrajudicial notification — and excludes certain services from the most intense core of the new rationality, such as *emails*, closed meetings by video or voice, and instant messaging in interpersonal communications protected by secrecy. It is, therefore, not a pure and simple suppression of the previous grammar, but of its selective reconfiguration, based on the recognition that wide-ranging platforms can no longer be understood as simple neutral supports of the speech of others.

The most dogmatically innovative point lies in the passage from the model of neutrality to the model of duties. The thesis established by the Federal Supreme Court recognizes the duty of care of platforms in relation to the prevention and mitigation of systemic risks, including based on the idea of systemic failure, defined as the absence of adequate measures

to prevent or remove serious illegal content. Here the change is unequivocal: the problem is no longer just the subsequent omission in the face of individually pointed content and starts to encompass the very organization of the platform's activity, its technical capabilities, its amplification mechanisms, its advertisements and boosts, its artificial distribution systems and its duty to act in a responsible, transparent and cautious manner. This language brings constitutional law closer to the communication of more complex regulatory rationality, in which liability does not arise only from ignoring a court order, but also from inadequately structuring an environment whose architecture enhances serious and diffuse damages.

This inflection becomes even more significant when observed in contrast to the 2009 paradigm. In ADPF 130, freedom of the press was elevated to a preferential position, with displacement of conflicts to a later moment and strong distrust in the face of prior containment. In RE 511.961/SP, journalism was brought closer to general freedom of expression, reinforcing hostility to state barriers to access to communicative activity. In RE 1.037.396/SP, the center of gravity shifts and starts to speak of insufficient protection, systemic risks, safe and transparent environment, duty of care, digital vulnerability, and the need for regulatory improvement. Instead of the old almost exclusive primacy of communicative freedom conceived against the State, there is a concern with the deficit of protection of fundamental rights and democracy in the face of private power that organizes, monetizes and scales the circulation of discourse. The STF thus begins to register that the contemporary constitutional threat does not come only from state repression of speech, but also from opacity, viralization, and the private engineering of communicative environments capable of eroding factual truth, pluralism, and the integrity of the democratic process.

This does not mean, it should be insisted, that the Court has resolved in an entirely satisfactory way the tension between freedom of expression, duties of moderation and regulation of the power of platforms. The judgment itself reveals a transitional solution: it recognizes the partial and progressive unconstitutionality of article 19, interprets it in accordance with the Constitution, imposes additional duties and, at the same time, calls on the legislator to produce more appropriate normative discipline.

There is, therefore, a double movement: on the one hand, the Supreme Court overcomes the sufficiency of the previous frame; on the other hand, it recognizes that the institutional reconstruction of the digital environment cannot be fully carried out only through jurisprudence. This displacement, it must be recognized, brings with it a real risk of excessive removals and the strengthening of private speech codes. The point, however, is that the insufficiency of the previous model also produced structural damage. The constitutional problem, therefore, is no longer in choosing between freedom without mediation and control

without freedom, but in designing safeguards against both excesses.

Even so, this transitory character does not diminish its relevance. On the contrary, it shows that the Court realized that the constitutional grammar inherited from 2009 is no longer enough and that the constitutional right of communication needs to operate with categories that are more apt to face algorithmic mediation, industrial scale of viralization, massive circulation of serious illicit content and structural risks to the democratic process.

The deeper meaning of RE 1.037.396/SP, therefore, is not only in making the model of article 19 of the Brazilian Civil Rights Framework for the Internet more flexible, but in putting the communicative problem back on a new theoretical plane. The STF now recognizes that freedom of expression, when inserted in digital ecosystems governed by platforms with enormous power of distribution, recommendation, and behavioral induction, can no longer be read under the same framework that served for the traditional press or for individual manifestation in less asymmetrical communicative contexts. The ruling does not yet formulate, in a fully systematic way, a differentiated theory for individual expression, professional journalism and platforms. But its merit lies precisely in opening up this need. He indicates that Brazilian constitutional dogmatics began to move, albeit incompletely, from the abstract precedence of freedom to the requirement of adequate protection of the structural conditions of democratic communication. It is this opening, still provisional and tensioned, that authorizes the dogmatic reconstruction proposed in the following section.

6 FOR A DIFFERENTIATED DOGMATICS OF COMMUNICATION: INDIVIDUAL EXPRESSION, PROFESSIONAL JOURNALISM AND DIGITAL PLATFORMS

The path developed in the previous sections leads to a conclusion that is difficult to avoid: the constitutionalism of communication no longer has adequate categories if it continues to treat, from the same normative perspective, individual expression, professional journalism and digital platforms. The structural error of the previous paradigm did not lie in overprotecting freedom of expression, but in operating with an insufficient degree of differentiation between communicative functions that, although connected, are not equivalent either from a conceptual point of view, or from an institutional point of view, or from a constitutional point of view.

The dogmatic reconstruction proposed in this article is based on a basic premise: there is not a single communicative freedom with merely contingent applications to different subjects; There is, rather, a common matrix of freedom that unfolds according to the constitutional function exercised by each actor in the informational ecosystem.

Individual expression remains situated at the hard core of freedom of expression. It

protects the expression of thought, opinion, conviction, belief, criticism, satire, dissent, and the discursive participation of citizens in public life. Its constitutional foundation is primarily subjective and negative: to ensure the individual space of communicative autonomy against undue interference by the State and against pretensions of silencing incompatible with democracy. In this domain, the issuer cannot be required to have a general duty of neutrality, balance, impersonality or commitment to professional standards of verification, because individual speech, especially in political matters, is not to be confused with institutional information activity. That is why freedom of expression, in the strict sense, protects even harsh, scathing and merciless criticism of public figures, without prejudice to ulterior, strict and individualized liability, when configured as a constitutionally relevant unlawful in the specific case.[5] Its legal regime thus continues to call for the prohibition of prior censorship, strict limits on generalized filtering mechanisms, and the rejection of abstract controls on access to public space.

Professional journalism, however, does not allow itself to be fully absorbed by this same framework. Although it is based on freedom of expression and presupposes it, it constitutes a functionally distinct communicative practice, aimed at collecting, ascertaining, verifying, editing, selecting, hierarchizing and publicly disseminating facts and information of collective relevance. Here, the decisive point is not corporate, but institutional. Journalism deserves constitutional protection reinforced not because it has a class status, but because it performs a material public function in the democratic architecture of information. What matters, in this plan, is not a formal seal of belonging, but the recognizable presence of verification routines, editorial responsibility and regular public supply of factual information.

In this sense, András Koltay (2024, p. 12-13) makes a central contribution by arguing that freedom of the press is, at the same time, broader and narrower than general freedom of expression: broader, because it demands additional rights and specific guarantees so that information activity can perform its constitutional function; narrower, because it admits limitations, responsibilities and standards of its own, linked to its role in the public sphere.

Journalism is not, therefore, legitimized by a diploma or market reserve, but neither can it be dissolved in a mere sum of deinstitutionalized individual manifestations. From this stems the first normative consequence of the reconstruction proposed here: professional journalism must be protected by its own regime of institutional guarantees. Among these

[5] In a relevant precedent on the constitutional protection of public criticism, the Second Panel of the Federal Supreme Court, under the rapporteurship of Justice Celso de Mello, recognized that the publication of journalistic material with scathing or ironic remarks, as well as with opinions conveyed in a tone of severe, harsh or even merciless criticism, when directed at public figures, may qualify, in this context, as "a true soul exclusionary, capable of removing the malicious intention to offend" (BRASIL, STF, AI 690.841 AgR/SP, 2011, p. 306).

guarantees, the following stand out: reinforced protection of sources, protection of editorial independence, protection against undue interference and recognition of their function of public oversight, production of social intelligibility and mediation of democratic debate. At the same time, because it operates in the field of factual information and institutionalized public influence, journalism is subject to demands that do not fall with the same intensity on individual expression: duties of diligence, minimum standards of verification, responsibility for distinguishing between fact and opinion, and openness to corrective mechanisms, such as the right of reply and subsequent reparation in case of abuse. Freedom of the press, in this perspective, is not a state privilege, but a freedom functionally reinforced and correlatively accountable.

Digital platforms, in turn, occupy a dogmatic position that is different from both individual expression and professional journalism. They are not mere subjects of speech, although they can also exercise their own expression; nor are they, in the strict sense, organs of the press, although they play a structural role in the public circulation of information. Their constitutional specificity stems from the fact that they do not act only as broadcasters or classic editorial mediators, but as private infrastructures for organizing the visibility, priority, recommendation, amplification and reduction of the reach of social discourse.

Koltay (2024, p. 5-6; 14-20; 22-23) is again decisive in observing that, although they are not to be confused with traditional media, platforms play an analogous role in the public sphere and directly affect access to information, equality between broadcasters, and equity in the circulation of ideas. Tim Wu (2019, p. 771-774) illuminates the specific economic trait of this power by describing such companies as central agents of the attention economy, dependent on markets in which scarce and valuable human attention is attracted by apparently free content and services and then resold to advertisers. In this logic, platforms and search engines are not just spaces in which discourses appear; They are structures that dispute, capture, organize, and monetize time, attention, and public exposure.

Also for this reason, in the precedent *Google Spain*, judged by the Court of Justice of the European Union (EU, CJEU, Case C-131/12, 2014), the reading of the search engine as a purely neutral medium was refused, recognizing that the activity of locating, indexing, temporarily storing and making available results constitutes processing of personal data and that the operator of the search engine is legally responsible for such processing. It is not a matter of transplanting, without mediation, the European dogmatics of deindexation to Brazilian constitutional law, but of registering a point methodologically relevant to this final section: the private ordering of informational visibility produces its own legal effects and, therefore, cannot be absorbed without rest by the general category of individual speech.

This finding leads to the second normative consequence of the proposed reconstruction: platforms should not be treated either as neutral communicative subjects, nor as traditional press, nor as simple passive intermediaries. When they exercise governance power over the flow of information — whether by moderation, prioritization, boosting, recommendation, demonetization, or architectural design of the circulation environment — they perform an infrastructural function with a systemic impact on the freedom of expression of others, on the right to information, and on the democratic process itself. It is in this domain that their subjection to reinforced duties becomes constitutionally legitimate.

Such duties are not to be confused with prior state censorship nor do they authorize universal monitoring of speech. Its core lies in three requirements: procedural transparency, effective contestability, and diligence proportional to the systemic risk produced by the platform's architecture itself. The center of regulation, here, shifts from isolated content to moderation processes, visibility criteria, and the structural effects of private governance of information circulation.

On this point, recent United Nations reports offer convergent and particularly useful normative support. The 2021 High Commissioner report insists that the more intense the impacts of automated systems on privacy and related rights, the more necessary a combination of transparency, explainability, human oversight, human rights *due diligence* , independent audit, and access to effective remedies becomes; furthermore, it stresses that in high-risk contexts, certain uses should be limited, suspended or even prohibited if adequate safeguards are not in place (United Nations, 2021, p. 11-14). The 2023 report, prepared in the context of the right to privacy, refines this framework by emphasizing that transparency and explainability must allow the individual to understand, in clear language, the basic elements of the decision-making logic, the effects of automated processing, and the specific reasons for the decision, in order to enable adversarial proceedings, defense, and control over the use of their personal data (United Nations, 2023, p. 9-17).

Cautiously transposed to the domain of digital platforms, these premises reinforce the idea that the algorithmic governance of public circulation is not constitutionally indifferent: the greater the potential for affecting rights, the greater the requirement for transparency, auditability, the duty of procedural reasoning and contestability.

The third normative consequence concerns the very structure of constitutional weighting. If individual expression, professional journalism and platforms perform different functions, the normative conflicts produced by them cannot be resolved by the same decision-making scheme. In individual expression, the emphasis is on autonomy, non-censorship and strict subsequent accountability. In professional journalism, the weighting must take into

account, in addition to the freedom of the issuer, the public function of the informative activity and the need to preserve an institutionality capable of sustaining the collective right to information. On the platforms, the central point is no longer just the freedom to say but also includes the power to order the conditions of visibility of what will be heard, found, boosted or silenced.

In other words, while individual expression is analyzed primarily from the perspective of content and subjective freedom, platforms require analysis from the perspective of architecture, governance, process, and systemic risk. Journalism, in turn, occupies an intermediate and proper position, because it is simultaneously an exercise of freedom and a social institution of information. This is where Brazilian constitutional dogmatics still need to advance: not only in the content of the restrictions, but in the very object of the consideration.

This reconstruction also allows us to reread, in a systematic perspective, the jurisprudential evolution of the Federal Supreme Court. The 2009 paradigm was decisive in protecting public communication against authoritarian residues and undue prior controls, but it failed to sufficiently distinguish individual speech, journalistic institutionality, and private intermediation from informational circulation. The inflection of 2025, in turn, recognized that the architecture of the digital environment produces systemic risks and that article 19 of the Civil Rights Framework for the Internet no longer offers sufficient protection for fundamental rights and democracy. The step that is still missing, and that this section proposes to take at a dogmatic level, consists in making explicit the criterion that connects these movements: it is not the same thing to speak, to inform and to structure the conditions of circulation of what is spoken and what is informed. Each of these functions demands its own constitutional treatment, even if articulated by a common horizon of freedom, pluralism and dignity.

The final formulation can be summarized in the following terms: individual expression is part of the core of citizens' communicative autonomy and must remain under a regime of maximum protection against censorship and general controls; professional journalism constitutes institutionally qualified communicative freedom, endowed with reinforced guarantees and correlated responsibilities due to its material public function in the informative sphere; and digital platforms, finally, exercise infrastructural power over the media and, therefore, cannot invoke, en bloc, the same protective regime applicable to the individual who speaks or the journalist who informs, since their constitutional position is inseparable from duties of transparency, due process, duty of procedural reasoning and prevention of systemic risks, to be implemented by legislative, regulatory and jurisprudential design compatible with the prohibition of censorship and the protection of democracy.

7 FINAL CONSIDERATIONS

This article sought to demonstrate that the communicative paradigm consolidated by the Federal Supreme Court in 2009, although historically decisive for overcoming authoritarian residues and for the affirmation of a specially protected freedom of the press, no longer offers a sufficient response to the contemporary configuration of the public sphere. The combination of ADPF 130 and RE 511.961/SP bequeathed a vigorous constitutional grammar of censorship containment and resistance to undue state restrictions, but based on structural assumptions that have aged in the face of the platformization of informational circulation and the private concentration of the power of mediation of public discourse.

In this new environment, the constitutional question can no longer be formulated only in terms of abstract precedence of freedom of expression or opposition between individual manifestation and state restriction. It is precisely for this reason that RE 1.037.396/SP acquires relevance: more than revising a specific rule of civil liability, the precedent signals the perception, by the STF itself, that the protection of freedom also requires consideration of the structural conditions of public deliberation and the systemic risks produced by the digital communication architecture. The insufficiency of the previous paradigm, therefore, does not result from its original mistake, but from the transformation of the informational ecosystem for which it is no longer sufficient.

The thesis sustained, therefore, does not consist in restricting freedom of expression, but in qualifying it constitutionally based on the function effectively performed by each actor in the public circulation of information. Individual expression, professional journalism and digital platforms belong to the same problematic field, but they can no longer be treated, without conceptual loss and without normative deficit, under the same dogmatic framework. The contemporary challenge is no longer just to ensure that everyone can speak, but to prevent a few from governing, without sufficient constitutional control, the conditions under which everyone will be heard, read, and shared.

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REFERENCES

Barroso, L. R. (2004). Colisão entre liberdade de expressão e direitos da personalidade: critérios de ponderação. Interpretação constitucionalmente adequada do Código Civil e da Lei de Imprensa. Revista de Direito Administrativo, 235, 1–36. Disponível em: https://periodicos.fgv.br/rda/article/view/45123

Barroso, L. R. (2025). Inteligência artificial, plataformas digitais e democracia: direito e tecnologia no mundo atual (1ª reimp.). Belo Horizonte: Fórum.

Barroso, L. R., & Barroso, L. van B. (2023). Democracy, social media, and freedom of expression: hate, lies, and the search for the possible truth. Chicago Journal of International Law, 24(1), 51–70. Disponível em: https://chicagounbound.uchicago.edu/cjil/vol24/iss1/3/

Brasil. (2014). Lei nº 12.965, de 23 de abril de 2014 (Marco Civil da Internet): estabelece princípios, garantias, direitos e deveres para o uso da internet no Brasil. Brasília, DF: Presidência da República. Disponível em: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/l12965.htm

Brasil. Supremo Tribunal Federal. (2011). Agravo regimental no agravo de instrumento 690.841 AgR/SP. Relator: Min. Celso de Mello.

Brasil. Supremo Tribunal Federal. (2009). Arguição de descumprimento de preceito fundamental 130/DF. Relator: Min. Carlos Ayres Britto.

Brasil. Supremo Tribunal Federal. (2019). Embargos de declaração no recurso extraordinário 511.961/SP. Relatora: Min. Rosa Weber.

Brasil. Supremo Tribunal Federal. (2009). Recurso extraordinário 511.961/SP. Relator: Min. Gilmar Mendes.

Brasil. Supremo Tribunal Federal. (2025). Recurso extraordinário 1.037.396/SP. Relator: Min. Dias Toffoli.

Bucci, E. (2019). Existe democracia sem verdade factual? Barueri: Estação das Letras e Cores.

Callejón, F. B. (2022). O impacto dos novos mediadores da era digital na liberdade de expressão. Espaço Jurídico Journal of Law, 23(1), 179–204. Disponível em: https://periodicos.unoesc.edu.br/espacojuridico/article/view/30501

Callejón, F. B. (2023). A constituição do algoritmo (D. F. Guimarães, Trad.). Rio de Janeiro: Forense.

Corte Interamericana de Direitos Humanos. (1985). Opinião consultiva OC-5/85. San José, Costa Rica. Disponível em: https://jurisprudencia.corteidh.or.cr/pt_br/vid/883975817

Cunha e Cruz, M. A. R. (2010). A evolução conceitual da liberdade de expressão na jurisprudência do Supremo Tribunal Federal. Espaço Jurídico Journal of Law, 11(2), 402–421. Disponível em: https://periodicos.unoesc.edu.br/espacojuridico/article/view/1955

European Union. Court of Justice of the European Union. (2014). Google Spain SL and Google Inc. v. Agencia Española de Protección de Datos (AEPD) and Mario Costeja González (Case C-131/12). Disponível em: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62012CJ0131

Hirsch, D. D. (2011). The law and policy of online privacy: regulation, self-regulation, or co-regulation? Seattle University Law Review, 34(2), 439–489. Disponível em: https://digitalcommons.law.seattleu.edu/sulr/vol34/iss2/3/

Koltay, A. (2024). Media freedom in the age of online platforms. e-Publica: Public Law Journal, 11(3), 4–26. Disponível em: https://e-publica.pt/article/127702-media-freedom-in-the-age-of-online-platforms

Lazer, D., Baum, M., Benkler, Y., Berinsky, A., Greenhill, K., Menczer, F., Metzger, M., Nyhan, B., Pennycook, G., Rothschild, D., Schudson, M., Sloman, S., Sunstein, C., Thorson, E., Watts, D., & Zittrain, J. (2018). The science of fake news. Science, 359(6380), 1094–1096. Disponível em: https://www.science.org/doi/10.1126/science.aao2998

Organização dos Estados Americanos. (2000). Declaração de princípios sobre a liberdade de expressão. Washington, DC. Disponível em: https://www.oas.org/pt/cidh/expressao/showarticle.asp?artID=132&IID=4

Rodotà, S. (2004). Derecho, ciencia, tecnología: modelos y decisiones de regulación. Derecho PUCP, (57), 105–122. Disponível em: https://revistas.pucp.edu.pe/index.php/derechopucp/article/view/10328

Rodrigues, A. D. (2016). A natureza pragmática da comunicação e a informação. In V. Morigi, N. Jacks, & C. Golin (Orgs.), Epistemologias, comunicação e informação. Porto Alegre: Sulina.

Segurado, R. (2021). Desinformação e democracia: a guerra contra as fake news na internet. São Paulo: Hedra.

Solove, D. J. (2025). Artificial intelligence and privacy. Florida Law Review, 77(1), 1–73. Disponível em: https://scholarship.law.ufl.edu/flr/vol77/iss1/1/

Srnicek, N. (2017). Platform capitalism. Cambridge, UK: Polity Press.

Steinmetz, W. A., & Favero, S. (2016). Direito de informação: dimensão coletiva da liberdade de expressão e democracia. Revista Jurídica Cesumar, 16(3), 639–655. Disponível em: https://periodicos.unicesumar.edu.br/index.php/revjuridica/article/view/4973

United Nations. General Assembly. (2023). Principles of transparency and explainability in the processing of personal data in artificial intelligence (A/78/310). New York: United Nations. Disponível em: https://www.ohchr.org/en/documents/thematic-reports/a78310-principles-transparency-and-explainability-processing-personal

United Nations. Human Rights Council. (2021). The right to privacy in the digital age (A/HRC/48/31). Geneva: United Nations. Disponível em: https://www.ohchr.org/en/documents/thematic-reports/ahrc4831-right-privacy-digital-age-report-united-nations-high

Vosoughi, S., Roy, D., & Aral, S. (2018). The spread of true and false news online. Science, 359(6380), 1146–1151. Disponível em: https://www.science.org/doi/10.1126/science.aap9559

Wardle, C., & Derakhshan, H. (2017). Information disorder: toward an interdisciplinary framework for research and policymaking. Strasbourg: Council of Europe. Disponível em: https://edoc.coe.int/en/media/7495-information-disorder-toward-an-interdisciplinary-framework-for-research-and-policy-making.html

Wu, T. (2019). Blind spot: the attention economy and the law. Antitrust Law Journal, 82(3), 771–806. Disponível em: https://www.americanbar.org/groups/antitrust_law/resources/journal/82-3/blind-spot-attention-economy-and-the-law/

Zuboff, S. (2015). Big other: surveillance capitalism and the prospects of an information civilization. Journal of Information Technology, 30(1), 75–89. Disponível em: https://journals.sagepub.com/doi/10.1057/jit.2015.5