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Historicity and Expansiveness of Fundamental Rights: From the Absolutist State to Big Techs

Carlos Eduardo Avanzi de Almeida

Department of Procedural Law, Faculty of Law, University of São Paulo, São Paulo, Brazil
Email: avanzi.ce@usp.br

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Abstract

This study examines the historical perspective of fundamental rights, which emerged as a reaction to absolutism with the aim of limiting state power and ensuring individual liberty. It then draws a parallel with the Fourth Industrial Revolution, in which reliance on the services provided by the so-called Big Techs, particularly those known by the acronym GAFAM (Google, Apple, Facebook, Amazon, and Microsoft), has rendered them virtually indispensable to modern life. Conversely, the opacity of the criteria these platforms use with regard to algorithmic intelligence and to the handling of the personal information collected from users poses a serious threat to state sovereignty itself. Drawing on the work of Professor André Ramos Tavares (*A nova matrix*: *direito* (*re*)*programado na civilização plataformizada* [The New Matrix: Law (Re)programmed in the Platformized Civilization]), the study addresses the exponential spread of harm in cyberspace and the imperative need to apply fundamental rights, now in the horizontal dimension, to these global corporate giants.

Keywords

Fundamental Rights, Big Techs, Fourth Industrial Revolution, Horizontal Application of Fundamental Rights

1. Introduction

The historical affirmation of fundamental rights took place gradually. The foundations of the rule of law were built over centuries of history until the current civilizational standards were attained.

Today, however, a new threat is knocking at the door. Extremely powerful global companies, which dominate the digital market in a society that depends on their services, have established a dimension of power not even conceived of at the

beginning of the twenty-first century.

A new era of threats to fundamental rights is thus inaugurated, but one now promoted by private entities that command and dictate the rules, and no longer by the State. This dominance of dematerialized private capital, that is, capital in the form of bytes rather than of bricks and concrete, has to a certain extent been threatening state sovereignty itself.

This is because the structures of the State, including the law, face serious obstacles in asserting themselves against the so-called Big Techs. Not only that. Fallacies such as the democratization of freedom of expression through social networks and the idea that technology would be the remedy for all of humanity's ills exert significant pressure against regulation.

The idea that the networks merely echo the plurality of thought does not hold. Since these are profit-seeking private companies, the stimulation of certain discourses is carefully selected by algorithms to attract engagement and conflict among users, because it has already been demonstrated that polarization and radicalism extend screen time (Zuboff, 2019, 2021: p. 600).

We therefore turn, first, to the contextualization of fundamental rights within their historical panorama and, then, to the analysis of the influence of these oligopolies on contemporary society, including the pernicious consequences arising therefrom.

The question guiding this study is the following: to what extent does the historical rationale of fundamental rights, which emerged to contain concentrated power, justify their application, through procedural safeguards and public regulation, to the power exercised by the large digital platforms? To answer it, a historical and doctrinal approach is adopted, based on bibliographic research and on the analysis of legislation and case law, with a predominantly Brazilian legal scope, without prejudice to occasional references to foreign law. The historical discussion is not merely introductory: by demonstrating that fundamental rights arose as a reaction to the concentration of power and that their catalog expands as new threats emerge (historicity and expansiveness), it provides the premise from which it is argued that the same protective logic must now reach the private power of the Big Techs.

2. Brief History of Fundamental Rights

References to norms of constitutional stature directed at the organization of cities, as occurred in Athens, and their differentiation from ordinary laws date back to Antiquity. Aristotle "distinguished the ordinary laws of the State (*nomoi*) from those that established its foundations and fundamentals (*politeia*)" (Agra & Almeida, 2019: p. 99)[1].

The Middle Ages bequeathed numerous antecedents of what would come to be the Constitution. Town charters (*forais*) and charters of franchise (*cartas de fran-*

[1]Unless otherwise indicated, quotations from Portuguese-language sources have been freely translated into English by the author.

quia) were documents drafted unilaterally by the ruler and presented to society, whose content conveyed norms limiting power and, not infrequently, the recognition of the rights of individuals (Ferreira Filho, 2022: p. 3). Alongside them there were the pacts, as occurred in England. The most notorious is Magna Carta, reflecting agreements concluded between the monarch and the groups that held a share of power, documents that likewise established the restraint of certain prerogatives of the rulers. An identifiable content was already evident in these "seeds of constitution": the limitation of the power of the organs, of the cities and of the kingdoms, on the one hand, and the rights of individuals, on the other.

Beyond these medieval antecedents, the Modern Age offered other seeds, such as the emergence of the Nation-State, which arose under a well-known characteristic (the absolutist system), a model of concentration of powers. The Fundamental Laws of the Kingdom, by way of illustration, were norms that imposed, to a certain extent, limits on the power of rulers, and their hierarchical superiority over the monarch himself was already contemplated at the time. What did not yet exist, evidently, was the notion of the popular origin of these fundamental norms.

The absolutist State, in the Modern Age, caused such discomfort that it provoked a reaction, and the Enlightenment was a consequence of this movement in response to absolutism. The term "constitutionalism" has two meanings: the first designates the theory, built over the seventeenth and eighteenth centuries, that advocates "limited power and respect for fundamental rights" (Barroso, 2012: p. 28); the second relates to the very movement that upheld this limitation, reacting against the absolutist State and its concentration of powers, and that conveys "the theorization and practice surrounding the limitation of state arbitrariness as an instrument for the protection and safeguarding of the rights of the human being" (Alarcón, 2017: p. 5).

This movement, which developed in Western Europe and North America, maintained that each State should have a written Constitution, of popular origin and binding not only on the governed but also on those who govern. To ensure such supremacy, it was necessary to establish a mechanism capable of conferring stability and rigidity on the constitutional text. The content of these Constitutions, already rudimentarily identifiable since Antiquity, concerned the organization of power, the organization of the State, and individual rights. This, according to the adherents of the constitutionalist movement, was the material content of Constitutions.

These ideas were widely disseminated and gained broad acceptance from the so-called Liberal Revolutions of the late eighteenth century onward, at whose philosophical core lay the Kantian premise that:

> […] the strength and the morality of the Revolution lie in the affirmation of this right of the people to freely give themselves a Constitution in harmony with the natural rights of single individuals, in such a way that those who obey the laws must also come together to legislate. (Bobbio, 2004: p. 61)

A negative obligation, a duty not to act, was imposed on the State; hence the

designations Guarantee Constitution or Defensive Constitution. This model prevailed until the end of the nineteenth century, for as long as the liberal State persisted.

At the end of the nineteenth century, the world underwent significant transformations, especially in the social and economic fields, resulting in particular from the Industrial Revolution, which brought about the replacement of human labor by machines. Industrialization led to recession and to the migration of a large contingent of the population from rural to urban areas.

During this period, with the strengthening of political parties and the emergence of trade unions, pressure mounted for the State to abandon its condition of mere overseer of the maintenance of order and to begin to intervene, to provide services, and to carry out activities previously reserved exclusively for private initiative.

Society could no longer obtain, by its own efforts, the material goods necessary for its very survival, which made state action indispensable. It was in this context that the second generation (or dimension) of fundamental rights, the so-called social and economic rights, came to be recognized. The State became charged with the duty to provide services in order to guarantee social rights, that is, the duty to act, to intervene, and to regulate labor relations and the economy.

Thus was born the so-called Social State, or Welfare State (Pinheiro, 2006: pp. 103-104, 113, 119).

As a result, the so-called Social Constitutions emerged, in particular the Mexican Constitution of 1917 and the German Constitution of 1919, the latter regarded as the one with the greatest projection and as having influenced other countries, including Brazil, with the Social Constitution of 1934 (Pinheiro, 2006: pp. 116, 119, 121-122).

It should be emphasized that the Social Constitution does not exclude the purpose of the Guarantee Constitution; it comes to regulate the economic order, the social order, fundamental rights, and second-dimension social rights. In the Social Constitution, as can be inferred, the State's duty to provide public services is recognized.

Having examined, albeit briefly, the emergence of Constitutions and the two major constitutional models, namely the liberal, or guarantee, Constitution and the social Constitution, one may conclude in favor of the historicity of fundamental rights, which explains the consolidation of the expression "generations of rights".

Alongside their historicity, their expansiveness becomes apparent, that is, their prospective character, meaning that other rights may come to be recognized in the legal order, in accordance with the material openness clause set forth in Article 5, § 2, of the Brazilian Federal Constitution (Brazil, 1988), thereby broadening the protection of the person.

So much so that, in light of digital evolution, it became necessary to include in the list of individual rights (Article 5, LXXIX) the guarantee of the protection of personal data, including in digital media, which was effected by Constitutional

Amendment No. 115 of 10 February 2022, but which had already been recognized since 2020 as an autonomous fundamental right by the Brazilian Federal Supreme Court (Supremo Tribunal Federal, STF) in Direct Action of Unconstitutionality (ADI) 6387.

3. Fundamental Rights and the Platformized Society

From the historicity of fundamental rights, it can be inferred that their emergence stemmed from the need of the people to react against an absolutist State whose powers over citizens were unlimited.

These rights thus emerged imbued with a protective purpose vis-à-vis the ruler, which reveals their vertical (or subordination) effect, given the flagrant inequality between the State and the private individual, who longed for freedom.

Both, people and ruler, would have to submit to the law. As Manoel Gonçalves Ferreira Filho points out:

> The constitutionalism triumphant from the end of the eighteenth century onward had as its aim (no one will deny it) the limitation of power in order to foster human freedom. To that end, it sought to establish a "government of laws, not of men," at bottom a government of law, of a just law expressed through the recognition of the community. (Ferreira Filho, 2022: p. 243)

With the Industrial Revolution and technological development, which provided fertile ground for the birth of social rights, as explained above, human relations reached great complexity. Corporations, large landholdings, and industries, on the one hand, and poor workers, on the other, rendered the application of positive law unequal.

Not only in labor relations but also, in modern times, in consumer relations and in those entered into between health insurance plans and their members, for example, there arises the need for State intervention in order to restore equality between the contracting parties.

In these relationships, in which the manifest vulnerability of one of the parties is recognized, the need for specific state regulation emerges, notwithstanding the fact that they are private relationships.

More recently, with the so-called Fourth Industrial Revolution, a profound transformation in power structures has taken place. In the expression coined by Professor André Ramos Tavares, the "platformized civilization" has broken with the paradigm of the State as the holder of sovereignty and has concentrated a significant share of that power in the so-called Big Techs.

Unlike previous revolutions, which obviously had an enormous impact on society, here, in the Fourth Industrial Revolution, one witnesses a disruption of state power driven, to a large extent, by the dematerialization of capital.

Indeed, upon the advent of humanity's great inventions, such as radio, for example, the State still retained full control of its structures, which was exercised through licenses or public concessions, on-site (*in loco*) inspections, and so on, and it could easily adopt effective administrative measures, based on police power,

or even effective judicial measures to curb unlawful practices or violations of the law[2].

The disruptive character of this era is also marked by the exponentiality inherent in it, that is, 1) the speed of the circulation of information, which encounters no physical or logistical limits (such as the printing of a newspaper); 2) surprise, since the digital infrastructure is constantly changing, in a continuous and, at times, abrupt and disruptive process of evolution; and 3) transnational reach.

In the words of Schwab and Davis:

> The Fourth Industrial Revolution is a way of describing a set of ongoing and impending transformations in the systems that surround us, and which most of us take for granted every day. […] the Fourth Industrial Revolution is a new chapter in human development, on par with the first, second and third Industrial Revolutions. (Schwab & Davis, 2018: p. 19)

An injury to the honor of another person, so common in today's platformized society, spreads instantly and unpredictably in the digital environment, rendering both redress and the cessation of its circulation highly uncertain.

Similarly, the circulation of fake news or of disinformation campaigns poses severe obstacles to effective action by the State, which depends, as a rule, on the initiative of the interested party, the filing of an appropriate lawsuit, the assessment of requests for urgent relief, and the enforcement of judicial decisions abroad through letters rogatory, circumstances that are incompatible with the speed inherent in the virtual environment.

The legal system itself lacks adherence to this new reality. Procedural legal institutions such as jurisdiction and competence based on the place of the event or on the domicile of the parties, border control, the imposition of power through the armed force of the State, and the rights of possession and property, all conceived for a predominantly material and analog society, cannot be fully realized amid the virtualization currently experienced[3].

The very role of the Judiciary has come to be rethought. Suppose that an offense against honor is published by Maria and replicated by José. The original lawsuit, encompassing those responsible, could prove ineffective if further shares take place (thousands of them, for example), since res judicata, as conceived in Brazilian procedural legislation, as a rule produces *inter partes* effects (Code of Civil Procedure, Article 506)[4].

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[2]On the concepts of the platformized society, the disruption of the Fourth Industrial Revolution, and the dematerialization of capital in comparison with previous technological revolutions, see Tavares (2024: pp. 27-45, 63-76).

[3]The thesis that the traditional legal institutions of the nineteenth and twentieth centuries are incapable of responding to the speed of the "New Matrix" and to the exponential spread of harm in cyberspace is developed by Tavares (2024: pp. 31-35, 233-237, 250-253, 265-272).

[4]The Judiciary is already adapting, albeit partially, to this new reality, as can be inferred from General Repercussion Theme 987 of the STF: "3.2. In the case of successive replications of an offensive fact already recognized by a judicial decision, all social network providers shall remove the publications with identical content, regardless of new judicial decisions, upon judicial or extrajudicial notification" (Supremo Tribunal Federal, 2025).

The Electoral Justice, aware of this procedural limitation in the face of the disruption brought about by technology in the democratic process, and making use of its constitutional normative power, has sought to maximize the effectiveness of its decisions, extending them to identical or substantially equivalent content, thereby avoiding the need to issue judicial decisions "on a retail basis" for similar cases[5].

This is because the impact of fake news on the electoral process is particularly harmful, since it corrupts a fundamental pillar of democracy: freedom of choice, which becomes vitiated when disinformation is disseminated on a massive scale.

The astronomical and constant collection of user data by algorithms, beyond so-called targeted advertising (microtargeting), has the capacity to predict users' behavior, a circumstance that, combined with the scale and opacity of the platforms, may pose risks to the balance of an election[6].

It is necessary, however, to distinguish this predictive capacity from a demonstrated causal effect on voter choice. The former is well documented: based solely on Facebook "likes", a study of more than 58,000 volunteers correctly predicted, among other attributes, whether users were Democrats or Republicans in 85% of cases (Kosinski, Stillwell, & Graepel, 2013). The latter finds more limited empirical support. Experiments have shown that platforms can influence certain political behaviors, such as turnout, as in the case of a message displayed to 61 million Facebook users during the 2010 U.S. congressional elections, which generated an estimated 340,000 additional votes (Bond et al., 2012), and that biased search engine rankings can shift the voting preferences of undecided voters by 20% or more in experimental settings (Epstein & Robertson, 2015). On the other hand, 59 randomized experiments found only small persuasive effects of political advertising on candidate favorability and vote choice (Coppock, Hill, & Vavreck, 2020), and replacing the algorithmic feed with a chronological one on Facebook and Instagram during the 2020 U.S. presidential campaign did not significantly alter levels of polarization or political attitudes (Guess et al., 2023). The narrower claim sup-

[5]Once the Electoral Justice has ordered the removal of a piece of content, the provider aware of the decision must immediately make unavailable the publications that reproduce, in whole or in part, identical or substantially equivalent content, regardless of a new specific court order (Tribunal Superior Eleitoral, 2019: Article 9-E, *caput*, item VI, a provision included by Resolution No. 23,755/2026; Tribunal Superior Eleitoral, 2026). Moreover, electoral judges are bound by the collegiate decisions of the Superior Electoral Court that have ordered the removal of identical content concerning notoriously untrue or seriously decontextualized facts about the electronic voting system, the electoral process, or the Electoral Justice, even when such content has been altered by artifices intended "to circumvent automatic systems for detecting duplicate content," and these decisions are included in a repository available for public consultation (Tribunal Superior Eleitoral, 2019: Articles 9-F, *caput* and § 1, and 9-G, *caput*). Such provisions presuppose the existence of automated systems for detecting replicated content, and the regulation authorizes the Electoral Courts to enter into agreements with universities, entities, and bodies whose staff includes professionals trained in digital forensics and artificial intelligence (Tribunal Superior Eleitoral, 2019: Article 9-J, *caput*, a provision included by Resolution No. 23,755/2026; Tribunal Superior Eleitoral, 2026).

[6]On the impact of disinformation and of behavioral profiling through algorithms in vitiating the voter's freedom, and on the reactive role of electoral jurisdiction, see Tavares (2024: pp. 41-45, 82-88, 187-209).

ported by the evidence, therefore, is that the predictive capacity of the platforms, combined with their scale and opacity, creates a risk of undue influence which, even if small in each individual, may prove decisive in closely contested elections (Bond et al., 2012), and which justifies preventive regulation, even in the absence of conclusive evidence of large effects on voter choice.

Another striking feature arising from this technological revolution promoted by the Big Techs, notably known by the acronym GAFAM (Google, Apple, Facebook, Amazon, and Microsoft), is the aforementioned dematerialization of the structures of the State. Whereas in the past power was recognized on the basis of the magnitude of physical undertakings (buildings, machinery, etc.), today capital is concentrated, with special prominence, in companies whose main assets are data.

These platforms, arrogating to themselves the authority of the State and relying on opaque "consent terms" that are not read by the vast majority of users, end up deciding on the silencing of content, the deletion or banning of accounts, the restriction or amplification of posts, and so forth, operating as a genuine parallel global power that competes with state sovereignty[7].

On this horizon, there emerges a return to a model of concentration of power that the constitutionalist movement had taken it upon itself to proscribe. In the manner of monarchical absolutism, these technology giants assume functions whose separation and containment constitute the very core of constitutionalism; that is, they unilaterally dictate the rules governing their spaces, judge users' conduct under those guidelines, and summarily enforce the respective sanctions, depriving the affected party of any effective review mechanism.

The terms of use, moreover, resemble the town charters (*forais*) and the charters of franchise, which were likewise drafted unilaterally by the ruler and presented to society (Ferreira Filho, 2022: p. 3), with the aggravating factor that, whereas those medieval documents at least conveyed limitations on the power of those who granted them, the former often serve to expand the prerogatives of those who institute them.

The analogy with absolutism, however, has limits that must be made explicit. The relevant parallel lies in the concentration, in the same private entity, of the functions of creating rules, judging their violation, and enforcing the respective sanctions within the digital spaces it controls, without the separation and the controls that constitutionalism imposed on public power. Unlike the absolute monarch, the Big Techs do not hold the monopoly of the legitimate use of force, do not legislate for the national community, and are not placed above the law: they remain subject to public law, that is, to the Constitution, to legislation, to judicial review, and to the oversight of regulatory bodies, as demonstrated by the liability regime established by the Federal Supreme Court in Theme 987 (Supremo

[7]For the characterization of the GAFAM conglomerate as a new center of supra-state power founded on its stock of data and on the imposition of opaque private rules, see Tavares (2024: pp. 29-30, 76-80, 82-96).

Tribunal Federal, 2025) and by the powers assigned to the national data protection authority, discussed in the Conclusion. What is asserted here, therefore, is not an identity between corporate power and state sovereignty, but a functional similarity, which is sufficient to justify extending to these relationships the protective logic that gave rise to fundamental rights.

The situation being thus framed, the submission of private individuals to the large corporations becomes crystal clear, giving rise to an unequal relationship of dependence that calls for the assurance of fundamental rights vis-à-vis these companies.

Hence, guarantees such as adversarial proceedings, the right to a full defense, due process of law, and respect for privacy, among others, must also be ensured in the private sphere. Here, repeated violations stem from the conduct of private actors, and no longer solely from state action.

It is therefore imperative to extend protection to the user vis-à-vis these superpowerful conglomerates, as well as, eventually, to create new fundamental rights in light of the social virtualization already in place, from which there is no foreseeable possibility of returning to the *status quo ante*, that is, to an analog world.

One might argue that individuals are not obliged to use the services of the Big Techs. It so happens, however, that at the current stage of society many people depend on various platforms in order to work (e.g., Uber, iFood), make calls, and maintain friendships and relationships (WhatsApp, Instagram), among other things. It is difficult to conceive, in the contemporary age, of the existence of disconnected people[8].

In this online environment, crime also stands out, posing great challenges to the State. The creation of criminal offenses[9] and of new investigative techniques, such as the virtual infiltration of agents, and the existence of police stations and Public Prosecution Service groups[10] specialized in investigating and repressing

[8]The application of the horizontal effect of fundamental rights to combat the private arbitrariness of the Big Techs and to safeguard guarantees such as due process of law and the right to a full defense on digital platforms is a central thesis in Tavares (2024: pp. 96-103, 253-260, 277-284).

[9]By way of example, Article 147-B, sole paragraph, of the Penal Code, included by Law No. 15,123/25, introduced a cause for increasing the penalty for the crime whose *nomen juris* is "psychological violence against women," consisting of the use, in committing the offense, of artificial intelligence or of any other technological resource that alters the image or sound of the victim. Criminal law also defines the crime of "electronic fraud," with considerably higher penalties (imprisonment of four to eight years), in cases including, among others, the practice of inducing the victim or a third party into error by means of social networks (Penal Code, Article 171, § 2-A, as worded by Law No. 15,397/26) (Brazil, 1940, 2025a, 2026c).

[10]PGJ Resolution No. 1 of 7 February 2023, published in the Electronic Official Gazette of the Public Prosecution Service of the State of Minas Gerais (MPMG) on 8 February 2023, created the Special Action Group for Combating Cybercrime (GAECIBER), an auxiliary body of the functional activity of the Public Prosecution Service, whose purposes are (Article 2): "I. to carry out, jointly with the member of the Public Prosecution Service who has authority over the case, the extrajudicial and/or judicial measures necessary to make the fight against cybercrime effective; II. to carry out, jointly with the member of the Public Prosecution Service who has authority over the case, the extrajudicial and/or judicial measures necessary for investigations, in the cyber environment, of crimes in general; III. to guide and coordinate the action of the executive bodies in combating cybercrime and in improving investigations in the cyber environment" (Ministério Público do Estado de Minas Gerais, 2023).

crimes committed through the internet are examples of the effort expended by the State to maintain public order in cyberspace[11].

Indeed, the algorithmic dynamic itself, capable of predicting behavior (so-called "surveillance capitalism"), stimulates conflict and polarization among users. Such conduct exponentially increases user interaction and the time users remain on screen and, as a corollary, the platforms' profits.

As Shoshana Zuboff notes:

> Surveillance capitalism unilaterally claims human experience as free raw material for translation into behavioral data. Although some of these data are applied to product or service improvement, the rest are declared as a proprietary behavioral surplus, fed into advanced manufacturing processes known as "machine intelligence," and fabricated into prediction products that anticipate what you will do now, soon, and later. (Zuboff, 2019: p. 8)

Regarding the emotional vulnerabilities of individuals vis-à-vis corporations, which are capable of inducing and promoting behaviors in order to obtain engagement, André Ramos Tavares aptly explains that:

> This manipulation can be achieved through the combination of data […] that are processed by algorithms for the identification or technological tagging of individuals and of their preferences, as well as by new algorithms that distribute propaganda, ideologies, and stimuli according to the identified preferences, the revealed human desires, and the traumas and fears of users captured by the new surveillance machines. (Tavares, 2024: p. 83)

Nor can the platforms exempt themselves from the liability arising from these unlawful acts. By accepting, for consideration, the publication of advertisements, for example, they must be held liable for the damage caused to users[12]. As is well known, criminals repeatedly use paid advertisements to carry out scams[13], and the platforms have technology capable of preventing them, given the tremendous algorithmic and artificial intelligence know-how they have amassed in recent years.

They lack transparency, in our view, regarding the information captured from users by algorithms, the measures adopted to curb unlawful acts in their environments, including the spread of fake news, and the criteria employed for the silenc-

[11]The so-called Anti-Crime Package (Law No. 13,964/19) introduced Article 10-A into the Criminal Organizations Law (Law No. 12,850/13), creating the figure of the "virtual undercover agent" (Brazil, 2013, 2019).

[12]Along these lines, the Federal Supreme Court, in Theme 987, item 4, established the understanding that there is a presumption of liability of social network providers: "A presumption of liability of providers is established in the case of unlawful content when it involves (a) paid advertisements and boosts; or (b) an artificial distribution network (chatbots or robots). In these cases, liability may arise regardless of notification. Providers shall be exempt from liability if they prove that they acted diligently and within a reasonable time to make the content unavailable" (Supremo Tribunal Federal, 2025).

[13]According to the Global Anti-Scam Alliance, Brazil recorded about 34 billion attempted digital scams between March 2025 and February 2026, with 16.5 million victims and R$ 21.2 billion in losses, mainly via WhatsApp, Instagram, and Gmail (Souza, 2026).

ing or banning of accounts, suspensions, or the massive dissemination of certain content, among other things.

4. Conclusion

It is urgent to reaffirm the horizontal effect of fundamental rights[14], providing better guarantees to users vis-à-vis the dominant oligopolies of modern technology[15]. This measure ultimately seeks material equality. But such a measure is not sufficient.

The legal basis of the obligations proposed herein should be specified at this point. The procedural guarantees owed to users in content moderation (adversarial proceedings, full defense, and due process of law) derive, in our view, from the direct horizontal application of fundamental rights, which does not depend on legislative mediation. This was precisely the reasoning of the Federal Supreme Court in Extraordinary Appeal 201,819/RJ: the Court held that the fundamental rights guaranteed by the Constitution directly bind not only public authorities but also private parties, and that the public character of the activity performed by the association, which formed part of a "public space, albeit non-state", together with the member's dependence on the associative bond, since the expulsion prevented him from receiving the copyright royalties on his works, legitimized the direct application of due process guarantees (Supremo Tribunal Federal, 2005). Both criteria are present, to an even greater degree, in the relationship between users and the Big Techs: the platforms structure a significant part of the contemporary public sphere, and users depend on them to work, communicate, and maintain social relationships, as seen in Section 3, so that the arbitrary suspension or banning of an account may produce effects comparable to those of the expulsion examined in that case. The structural obligations proposed below (transparent operating criteria, human review of automated decisions, clarity of the terms of use, and prior identification of users), in turn, cannot be derived case by case from the Constitution, since they require general criteria, technical detailing, and oversight bodies; they therefore depend on statutory and regulatory provisions. The interpretation of private law, notably of the Consumer Protection Code (Brazil, 1990), operates in a complementary manner, as a channel through which these values permeate disputes between users and platforms.

Beyond ensuring such effect, it is incumbent upon the State to regain control of its structures and of its physical and virtual territory. To this end, the National Data Protection Agency (Agência Nacional de Proteção de Dados, ANPD) has represented an important step, albeit still insufficient, toward agile and technically grounded responses, as opposed to the slow ordinary legislative process con-

[14]Article 14(4) of Regulation (EU) 2022/2065 of the European Parliament and of the Council requires that, in applying restrictions, providers act in a diligent, objective, and proportionate manner, with due regard to fundamental freedoms (European Union, 2022).

[15]This is not unprecedented, since the Federal Supreme Court has applied it since 2005, requiring adversarial proceedings and a full defense in the expulsion of a member from a private entity (Extraordinary Appeal 201,819/RJ; Supremo Tribunal Federal, 2005).

ducted by the National Congress[16]. This role was materialized by Decrees No. 12,975 and No. 12,976 of 20 May 2026, which, in updating the regulation of the Brazilian Civil Rights Framework for the Internet (Marco Civil da Internet, Law No. 12,965/2014), assigned to the ANPD the regulation and oversight of the systemic conduct of digital platforms, thereby operationalizing, at the administrative level, the thesis established by the Federal Supreme Court in Theme 987 (Brazil, 2014, 2026a, 2026b; Supremo Tribunal Federal, 2025)[17].

It is necessary, however, to go even further, with regulation that requires the Big Techs to adopt transparent operating criteria and that reaffirms state sovereignty, without, of course, entailing the disclosure of professional and trade secrets, nor infringing the constitutionally guaranteed freedom of enterprise (Federal Constitution, Article 170, *caput*) or freedom of expression (Federal Constitution, Article 5, IV).

A concrete step in this direction, in our view, would be the reinstatement of human review of automated decisions, as provided for in the original wording of Article 20 of the General Personal Data Protection Law (Law No. 13,709/2018), prior to Provisional Measure No. 869/18 (Brazil, 2018).

Zuboff cites a 2008 study by professors at Carnegie Mellon who calculated that a reasonable reading of all the privacy policies a person encounters on the internet over the course of just one year would require 76 full workdays (Zuboff, 2019, 2021: p. 61).

The original study (McDonald & Cranor, 2008) did not observe users' actual behavior; rather, it estimated the time cost of reading privacy policies. Its sample consisted of the privacy policies of 75 of the most popular websites, with a median length of 2514 words, and the reading time was calculated on the basis of a speed of 250 words per minute (about 10 minutes per policy), multiplied by the estimated number of unique websites visited by an American internet user in one year (1462). The result was approximately 201 to 244 hours per year for word-for-word reading, depending on the estimate considered, or 154 hours for mere skimming, the latter based on an online user study. The word-for-word estimate corresponds to roughly 25 to 30 eight-hour workdays, a figure lower than the 76 workdays

[16]Of U.S. origin, regulatory agencies, as Maria Sylvia Zanella Di Pietro points out, enjoy in that country "a certain margin of independence in relation to the three Branches of the State." Here, once the necessary adaptations to Brazilian law have been made, in particular to the constitutional principle of legality (Federal Constitution, Article 5, II), a relevant margin of action is still recognized (Di Pietro, 2026: pp. 531-532).

[17]Decree No. 12,975/2026 inserted Article 19-A into Decree No. 8771/2016, entrusting the ANPD with powers of regulation, oversight, and investigation of infringements concerning the duties of internet application providers, and regulated due process in content moderation, with a reasoned decision communicated to the author of the publication and the possibility of challenging it. Decree No. 12,976/2026, in turn, established guidelines for the protection of women on the internet, providing, among other measures, for intimate content disclosed without authorization to be made unavailable within two hours of the victim's notification. The validity of this regulation is being challenged before the Federal Supreme Court in ADI 7981, on the grounds that the decree allegedly instituted infringements, sanctions, and sanctioning powers in violation of the constitutional principle of legality (Supremo Tribunal Federal, 2026).

mentioned by Zuboff, but one that equally demonstrates that the informed reading of all these documents is unfeasible for the average user.

Corroborating the user's lack of awareness, another empirical study referred to by the same author revealed that the proper reading and understanding of the terms of an online service would require about 45 minutes. However, 74% of users opt for the "quick join" without reading, and the average time spent by those who do open the document is only 14 seconds (Zuboff, 2019, 2021: p. 287).

This is the experiment conducted by Obar and Oeldorf-Hirsch (2020) with 543 undergraduate students at a U.S. university, who were invited to join a fictitious social networking service ("NameDrop"). The 45 minutes correspond to the sum of the times estimated for reading the service's privacy policy (29 to 32 minutes) and terms of service (15 to 17 minutes) at an average adult reading speed of 250 to 280 words per minute, and the 74% refers to the participants who skipped the privacy policy by selecting the "quick join" option. As for the reading time actually measured, the published version of the study reports averages of 73 seconds for the privacy policy, among those who did not skip it, and 51 seconds for the terms of service, which were presented to all participants; these values differ from the 14 seconds mentioned by Zuboff, but still correspond to only about 4% to 6% of the time required. Although a sample of university students in an experimental setting does not allow generalization to all users, the findings corroborate the interpretation that adherence to these terms generally occurs without effective reading or understanding.

The terms of use, therefore, should ensure a certain margin of choice (and effective understanding) for the adhering party with regard to the personal information collected, requiring, for instance, compliance with the requirements referred to in Article 54, §§ 3 and 4, of the Consumer Protection Code, such as font size, clarity of the text, highlighting, etc. (Brazil, 1990).

Another salutary initiative aimed at combating digital wrongdoing would be the mandatory prior identification of the user, for example through biometrics or the Individual Taxpayer Registry (CPF) or National Registry of Legal Entities (CNPJ) number, upon registration or before any comment or public activity, particularly in the boosting of content[18].

This is neither censorship nor a restriction on freedom of expression. The requirement of the CPF or CNPJ number does not, in any way, impact or inhibit the exercise of this freedom: the user may continue to use a pseudonym in his or her public activity, and such personal information must be kept confidential by the platforms, as already occurs with registrations and online purchases in general, which routinely require the same data. It is, therefore, nothing new. These data remain protected by the General Personal Data Protection Law, and their

[18]There are several initiatives with this scope in the National Congress, among them Bill No. 3389/2019, which is moving slowly through the Chamber of Deputies. Similarly, the so-called Digital ECA (Digital Statute of Children and Adolescents, Law No. 15,211/25), with a view to guaranteeing the protection of children and adolescents in the online environment, established the adoption of complementary technological methods for verifying the user's age (Article 24, § 3) (Brazil, 2025b).

disclosure is subject to the hypotheses and safeguards provided for in the Brazilian Civil Rights Framework for the Internet (Article 10) (Brazil, 2014, 2018). Moreover, the measure is in full conformity with the Federal Constitution, which ensures the free expression of thought but prohibits anonymity (Article 5, IV): it does not prevent anyone from expressing an opinion, but merely ensures that whoever abuses this freedom can be identified and held accountable. No one has the right to commit crimes or to intentionally spread false information.

The platforms, on the contrary, have the duty to curb the commission of unlawful acts within their domains, since the technology at their disposal must also be employed for this purpose (and not only to reap exorbitant profits); in doing so, however, they must ensure respect for the fundamental rights of the affected individual and observe transparent criteria previously disclosed to the adhering user, with due deference to Brazilian laws and institutions[19].

Conflicts of Interest

The author declares no conflicts of interest regarding the publication of this paper.

References

Agra, W. M., & Almeida, R. R. (2019). Mutações constitucionais e os processos de reforma [Constitutional Mutations and Reform Processes]. *Revista Justiça Eleitoral em Debate, 9,* 98-113. https://revista.tre-rj.jus.br/rjed/article/download/85/80/159

Alarcón, P. J. L. (2017). Constitucionalismo [Constitutionalism]. In C. F. Campilongo, A. A. Gonzaga, & A. L. Freire (Eds.), *Enciclopédia Jurídica da PUC-SP. Tomo 2*: *Direito Administrativo e Constitucional* [PUC-SP Legal Encyclopedia. Volume 2: Administrative and Constitutional Law] (V. S. Nunes Júnior et al. eds.) (pp. 3-45). Pontifícia Universidade Católica de São Paulo. https://enciclopediajuridica.pucsp.br/verbetes/constitucionalismo/

Barroso, L. R. (2012). Judicialização, ativismo judicial e legitimidade democrática [Judicialization, Judicial Activism and Democratic Legitimacy]. *[Syn]Thesis, 5,* 23-32.

Bobbio, N. (2004). *A era dos direitos* [The Age of Rights] (2nd ed.). GEN Atlas.

Bond, R. M., Fariss, C. J., Jones, J. J., Kramer, A. D. I., Marlow, C., Settle, J. E. et al. (2012). A 61-Million-Person Experiment in Social Influence and Political Mobilization. *Nature, 489,* 295-298. https://doi.org/10.1038/nature11421

Brazil (1940). Decreto-Lei n˚ 2.848, de 7 de dezembro de 1940. Código Penal [Decree-Law No. 2,848 of 7 December 1940. Penal Code]. *Diário Oficial da União*, Section 1.

Brazil (1988). Constituição da República Federativa do Brasil de 1988 [Constitution of the Federative Republic of Brazil of 1988]. *Diário Oficial da União*, Section 1.

Brazil (1990). *Lei n˚ 8.078, de 11 de setembro de 1990. Dispõe sobre a proteção do consumidor e dá outras providências* [Law No. 8,078 of 11 September 1990. Provides for Consumer Protection and Other Measures (Consumer Protection Code)].

Brazil (2013). Lei n˚ 12.850, de 2 de agosto de 2013. Define organização criminosa e dispõe sobre a investigação criminal, os meios de obtenção da prova, infrações penais correlatas

[19]On the need to overcome the State's normative apathy, the imposition of duties of algorithmic transparency, and the structuring of a Legal Statute of Networks, see Tavares (2024: pp. 37, 185-187, 202-209, 318-320).

e o procedimento criminal; altera o Decreto-Lei n˚ 2.848, de 7 de dezembro de 1940 (Código Penal); revoga a Lei n˚ 9.034, de 3 de maio de 1995; e dá outras providências [Law No. 12,850 of 2 August 2013. Defines Criminal Organization and Provides for Criminal Investigation, the Means of Obtaining Evidence, Related Criminal Offenses and Criminal Procedure; Amends Decree-Law No. 2,848 of 7 December 1940 (Penal Code); Repeals Law No. 9,034 of 3 May 1995; and Provides for Other Measures]. *Diário Oficial da União*, Section 1.

Brazil (2014). Lei n˚ 12.965, de 23 de abril de 2014. Estabelece princípios, garantias, direitos e deveres para o uso da Internet no Brasil [Law No. 12,965 of 23 April 2014. Establishes Principles, Guarantees, Rights and Duties for the Use of the Internet in Brazil (Brazilian Civil Rights Framework for the Internet)]. *Diário Oficial da União*, Section 1.

Brazil (2018). Lei n˚ 13.709, de 14 de agosto de 2018. Lei Geral de Proteção de Dados Pessoais (LGPD) [Law No. 13,709 of 14 August 2018. General Personal Data Protection Law]. *Diário Oficial da União*, Section 1.

Brazil (2019). Lei n˚ 13.964, de 24 de dezembro de 2019. Aperfeiçoa a legislação penal e processual penal [Law No. 13,964 of 24 December 2019. Improves Criminal and Criminal Procedure Legislation]. *Diário Oficial da União*, Section 1.

Brazil (2025a). Lei n˚ 15.123, de 24 de abril de 2025. Altera o art. 147-B do Decreto-Lei n˚ 2.848, de 7 de dezembro de 1940 (Código Penal), para estabelecer causa de aumento de pena no crime de violência psicológica contra a mulher quando praticado com o uso de inteligência artificial ou de qualquer outro recurso tecnológico que altere imagem ou som da vítima [Law No. 15,123 of 24 April 2025. Amends Article 147-B of Decree-Law No. 2,848 of 7 December 1940 (Penal Code) to Establish a Cause for Increasing the Penalty for the Crime of Psychological Violence against Women When Committed with the Use of Artificial Intelligence or Any Other Technological Resource That Alters the Image or Sound of the Victim]. *Diário Oficial da União*, Section 1.

Brazil (2025b). *Lei n˚ 15.211, de 17 de setembro de 2025 (ECA Digital)* [Law No. 15,211 of 17 September 2025 (Digital Statute of Children and Adolescents)].

Brazil (2026a). Decreto n˚ 12.975, de 20 de maio de 2026. Altera o Decreto n˚ 8.771, de 11 de maio de 2016, que regulamenta a Lei n˚ 12.965, de 23 de abril de 2014 [Decree No. 12,975 of 20 May 2026. Amends Decree No. 8,771 of 11 May 2016, Which Regulates Law No. 12,965 of 23 April 2014]. *Diário Oficial da União*, Section 1.

Brazil (2026b). Decreto n˚ 12.976, de 20 de maio de 2026. Estabelece diretrizes para a proteção de mulheres na internet e para o enfrentamento da violência contra mulheres em ambiente digital [Decree No. 12,976 of 20 May 2026. Establishes Guidelines for the Protection of Women on the Internet and for Combating Violence against Women in the Digital Environment]. *Diário Oficial da União*, Section 1.

Brazil (2026c). Lei n˚ 15.397, de 30 de abril de 2026. Altera o Decreto-Lei n˚ 2.848, de 7 de dezembro de 1940 (Código Penal), a fim de majorar as penas previstas para os crimes de furto, roubo, estelionato, receptação, receptação de animal e interrupção ou perturbação de serviço telegráfico, telefônico, informático, telemático ou de informação de utilidade pública, bem como para tipificar os crimes de receptação de animal doméstico e de fraude bancária [Law No. 15,397 of 30 April 2026. Amends Decree-Law No. 2,848 of 7 December 1940 (Penal Code) in Order to Increase the Penalties Provided for the Crimes of Theft, Robbery, Fraud, Handling of Stolen Goods, Handling of Stolen Animals, and Interruption or Disturbance of Telegraph, Telephone, Computer, Telematic or Public Utility Information Services, as well as to Criminalize the Handling of Stolen Domestic Animals and Bank Fraud]. *Diário Oficial da União*, Section 1.

Coppock, A., Hill, S. J., & Vavreck, L. (2020). The Small Effects of Political Advertising Are Small Regardless of Context, Message, Sender, or Receiver: Evidence from 59 Real-Time

Randomized Experiments. *Science Advances, 6,* eabc4046. https://doi.org/10.1126/sciadv.abc4046

Di Pietro, M. S. Z. (2026). *Direito administrativo* [Administrative Law] (39th ed.). Forense.

Epstein, R., & Robertson, R. E. (2015). The Search Engine Manipulation Effect (SEME) and Its Possible Impact on the Outcomes of Elections. *Proceedings of the National Academy of Sciences, 112,* E4512-E4521. https://doi.org/10.1073/pnas.1419828112

European Union (2022). Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and Amending Directive 2000/31/EC (Digital Services Act). *Official Journal of the European Union, L 277,* 1-102. https://eur-lex.europa.eu/eli/reg/2022/2065/oj

Ferreira Filho, M. G. (2022). *Curso de direito constitucional* [Course in Constitutional Law] (42nd ed.). Forense.

Guess, A. M., Malhotra, N., Pan, J., Barberá, P., Allcott, H., Brown, T. et al. (2023). How Do Social Media Feed Algorithms Affect Attitudes and Behavior in an Election Campaign? *Science, 381,* 398-404. https://doi.org/10.1126/science.abp9364

Kosinski, M., Stillwell, D., & Graepel, T. (2013). Private Traits and Attributes Are Predictable from Digital Records of Human Behavior. *Proceedings of the National Academy of Sciences, 110,* 5802-5805. https://doi.org/10.1073/pnas.1218772110

McDonald, A. M., & Cranor, L. F. (2008). The Cost of Reading Privacy Policies. *I/S: A Journal of Law and Policy for the Information Society, 4,* 543-568.

Ministério Público do Estado de Minas Gerais (2023). Resolução PGJ n˚ 1, de 7 de fevereiro de 2023. Cria o Grupo de Atuação Especial de Combate aos Crimes Cibernéticos (GAECIBER) [PGJ Resolution No. 1 of 7 February 2023. Creates the Special Action Group for Combating Cybercrime (GAECIBER)]. *Diário Oficial Eletrônico do Ministério Público do Estado de Minas Gerais*.

Obar, J. A., & Oeldorf-Hirsch, A. (2020). The Biggest Lie on the Internet: Ignoring the Privacy Policies and Terms of Service Policies of Social Networking Services. *Information, Communication & Society, 23,* 128-147. https://doi.org/10.1080/1369118x.2018.1486870

Pinheiro, M. C. B. (2006). A Constituição de Weimar e os direitos fundamentais sociais: a preponderância da Constituição da República Alemã de 1919 na inauguração do constitucionalismo social à luz da Constituição Mexicana de 1917 [The Weimar Constitution and Fundamental Social Rights: The Preponderance of the 1919 Constitution of the German Republic in the Inauguration of Social Constitutionalism in Light of the 1917 Mexican Constitution]. *Revista de Informação Legislativa, 43,* 101-126. https://www12.senado.leg.br/ril/edicoes/43/169/ril_v43_n169_p101.pdf

Schwab, K., & Davis, N. (2018). *Shaping the Future of the Fourth Industrial Revolution*: *A Guide to Building a Better World.* Currency.

Souza, B. (2026). Golpes digitais: Brasil teve 34 bilhões de tentativas em 2025 [Digital Scams: Brazil Had 34 Billion Attempts in 2025]. *CNN Brasil*. https://www.cnnbrasil.com.br/nacional/brasil/golpes-digitais-brasil-teve-34-bilhoes-de-tentativas-em-2025/

Supremo Tribunal Federal (2005). Recurso Extraordinário 201.819/RJ, Segunda Turma. Sociedade civil sem fins lucrativos. União Brasileira de Compositores. Exclusão de sócio sem garantia da ampla defesa e do contraditório. Eficácia dos direitos fundamentais nas relações privadas. Recurso desprovido [Extraordinary Appeal 201,819/RJ, Second Panel. Non-Profit Civil Society. Brazilian Union of Composers. Expulsion of a Member without Guarantee of Full Defense and Adversarial Proceedings. Effectiveness of Fundamental Rights in Private Relations. Appeal Dismissed]. Reporting Justice: Ellen Gracie; Justice

Writing for the Court: Gilmar Mendes. Judgment of 11 October 2005 (p. 64). *Diário da Justiça*.

Supremo Tribunal Federal (2025). Recurso Extraordinário 1.037.396/SP, Tribunal Pleno. Tema 987 da repercussão geral. Constitucionalidade do art. 19 da Lei n˚ 12.965/2014 (Marco Civil da Internet). Responsabilidade civil de provedores de aplicações de internet por conteúdos gerados por terceiros [Extraordinary Appeal 1,037,396/SP, Full Court. General Repercussion Theme 987. Constitutionality of Article 19 of Law No. 12,965/2014 (Brazilian Civil Rights Framework for the Internet). Civil Liability of Internet Application Providers for Content Generated by Third Parties]. Reporting Justice: Dias Toffoli. Judgment of 26 June 2025. *Diário da Justiça Eletrônico*.

Supremo Tribunal Federal (2026). *Partido questiona no STF decreto que altera regulamentação do Marco Civil da Internet* [Party Challenges before the STF a Decree That Amends the Regulation of the Brazilian Civil Rights Framework for the Internet]. Supremo Tribunal Federal. https://noticias.stf.jus.br/postsnoticias/partido-questiona-no-stf-decreto-que-altera-regulamentacao-do-marco-civil-da-internet/

Tavares, A. R. (2024). *A nova matrix*: *direito* (*re*)*programado na civilização plataformizada* [The New Matrix: Law (Re)programmed in the Platformized Civilization]. Etheria.

Tribunal Superior Eleitoral (2019). Resolução n˚ 23.610, de 18 de dezembro de 2019. Dispõe sobre a propaganda eleitoral, utilização e geração do horário gratuito e condutas ilícitas em campanha eleitoral [Resolution No. 23,610 of 18 December 2019. Provides for Electoral Advertising, the Use and Generation of Free Airtime and Unlawful Conduct in Electoral Campaigns]. *Diário da Justiça Eletrônico do Tribunal Superior Eleitoral, No. 249,* 156-184.

Tribunal Superior Eleitoral (2026). Resolução n˚ 23.755, de 2 de março de 2026. Altera a Resolução n˚ 23.610/TSE, de 18 de dezembro de 2019, que dispõe sobre propaganda eleitoral [Resolution No. 23,755 of 2 March 2026. Amends Resolution No. 23,610/TSE of 18 December 2019, Which Provides for Electoral Advertising]. *Diário da Justiça Eletrônico do Tribunal Superior Eleitoral, No. 30,* 93-99.

Zuboff, S. (2019). *The Age of Surveillance Capitalism*: *The Fight for a Human Future at the New Frontier of Power.* PublicAffairs.

Zuboff, S. (2021). *A era do capitalismo de vigilância*: *a luta por um futuro humano na nova fronteira do poder* (G. Schlesinger, Trans.). Intrínseca. (Original Work Published 2019).