AFFECTIVE WARFARE AND THE DEMOCRATIC PROCESS: EMOTIONAL INSTRUMENTALIZATION ON DIGITAL PLATFORMS AND THE LEGAL LIMITS OF REGULATION[i]

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ABSTRACT

This article analyzes how emotional instrumentalization on digital platforms impacts the democratic process and what responses the Law can offer in light of the growing influence of “Big Tech companies,” known as “big technology companies.” Given the complexity of the issue, the so-called “affective warfare” is not merely a simple discursive phenomenon, but a consequence stemming from a vast architecture focused on digital algorithms, which are specifically designed to provoke emotional engagement among the population. Beyond emotional engagement, it must be noted that such algorithms can weaken the capacity for collective critical reflection; that is, deliberative rationality; which significantly compromises the quality of the public sphere. Legal responses focused exclusively on the repression of individual content are shown to be insufficient in the current context; a structural regulatory

approach focused on the governance of digital platforms is necessary, without prejudice to constitutional guarantees, especially concerning freedom of expression as provided for in Article 5, item IV, of the 1988 Brazilian Federal Constitution of 1988 (CRFB/1988). The purpose of this study is to investigate and ascertain how emotional instrumentalization affects the Democratic State Governed by the Rule of Law and what limits the Law can impose or offer to protect deliberative public opinion. To this end, this study examines the concept of "affective warfare" within the context of the attention economy and algorithmic architecture, analyzes the role of "Big Tech companies" in amplifying social conflicts, evaluates the constitutional limits and regulatory challenges of State action, and proposes legal parameters that contribute to the protection of the democratic process without compromising the constitutional and fundamental guarantees provided for in the Brazilian legal system

Keywords: big tech companies; democracy; affective warfare; digital platforms; regulation.

RESUMO

O artigo analisa como a instrumentalização emocional nas plataformas digitais impacta no processo democrático e quais são as respostas que o Direito pode oferecer diante da crescente influência das "Big Techs", conhecidas como "grandes empresas de tecnologia". Em virtude da problemática envolvida, tem-se que a chamada "guerra de afetos" não é apenas um fenômeno discursivo simples, mas uma decorrência trazida por uma grande arquitetura voltada aos algoritmos digitais, os quais são desenhados especificamente para causarem engajamento emocional na população. Para além do engajamento emocional, não há de se olvidar que tais algoritmos podem causar uma fragilidade da capacidade de reflexão crítica coletiva, isto é, racionalidade deliberativa, o que compromete significativamente a qualidade da esfera pública. No que compete às respostas jurídicas centradas exclusivamente na repressão de conteúdos individuais, denota-se que estas são insuficientes na conjuntura atual, sendo necessária uma abordagem regulatória estrutural voltada à governança das plataformas digitais, sem prejuízo das garantias constitucionais, sobretudo, no que compete a liberdade de expressão prevista no art. 5°, inciso IV da CRFB/1988. O desígnio deste estudo é investigar e averiguar de que modo a instrumentalização emocional afeta o Estado Democrático de Direito e quais são os limites impostos ou possíveis que o Direito pode oferecer para a proteção da opinião pública deliberativa. Para tanto, busca-se examinar o conceito de "guerra de afetos" no contexto da economia da atenção e da arquitetura algorítmica, analisar também o papel das "Big Techs" na amplificação de conflitos sociais, avaliar os limites constitucionais e os desafios regulatórios da atuação do Estado, bem como propor parâmetros jurídicos que contribuam para a proteção do processo democrático sem comprometer garantias constitucionais e fundamentais previstas no ordenamento jurídico brasileiro.

Palavras-chave: *big techs*; democracia; guerra de afetos; plataformas digitais; regulamentação.

1 INTRODUCTION

In the context of the democracy experienced in Brazil, it is possible to observe the challenge of harmonizing the right to freedom of expression, combating disinformation, and, in

parallel, the need to avoid speech related to hate and censorship (Aboboreira, 2025). Thus, there is a very fine line that ends up generating conflicts over a very essential point: defending opinions and positions without violating the constitutional principles provided for in the 1988 Brazilian Federal Constitution of 1988.

Furthermore, in a participatory and deliberative democracy such as Brazil's, the free formation of popular opinion and will, as well as the exercise of communicative rationality, are presupposed (Lenza, 2023). This popular will stems from the political pluralism provided for in Article 1, item V, of the 1988 Brazilian Federal Constitution of 1988, which aims to ensure coexistence and respect for different ideas and currents of thought within a Democratic State Governed by the Rule of Law (Brasil, 1988).

Along the advancement of information and communication technologies (ICTs), digital platforms have gone from being mere facilitators of communication to also being platforms that foster hostile online environments, which, on one hand, expands the possibility of participation, but on the other, weakens public debates due to the attention economy they employ. Therefore, in view of this scenario, the phenomenon that the doctrine classifies as 'affective warfare' emerges as one of the most well-developed expressions regarding the impacts of digital platforms on democracy in a Democratic State Governed by the Rule of Law.

Therefore, the article seeks to identify how 'Big Tech companies' act beyond simple intermediaries of social communication, because, in practice, they are facilitators, in view of an algorithmic management aimed at filtering and amplifying content with greater engagement capable of awakening intense reactions such as fear, anger, and compassion. By favoring content that provokes more reactions to the detriment of those that promote reflection, these platforms consolidate themselves as strategic agents of manipulation of public opinion, all this through algorithmic architectures that erode the rationality upon which the democratic system is based (Araújo and Kneipp, 2025).

Lopes (2023) reveals that current media outlets are concentrated in the hands of a few people; that is to say, in fact, that a few companies control the monopoly of digital platforms. Great examples of this practice are the companies known as Google, Apple, Meta (formerly Facebook), Amazon, and Microsoft (Mazzeto and Souza, 2025). In view of this monopoly, it is understood that these platforms aim at immediate communication between people through messages or even the sharing of information, which results in the difficulty of state control, especially given the lack of transparency with users (Lopes, 2023).

The research questions how emotional instrumentalization on digital networks impacts

the democratic process and what responses the Law can offer. To answer this question, interdisciplinary means were adopted that aim to establish connections between Law and other areas, with the purpose of justifying the problematization of 'Big Tech companies' in a current context. In this same sense, (Gomes, 2001, p. 5 apud Mazzeto and Souza, 2025, p. 3) presupposes that '[...] it would be of fundamental importance for Information Science to carry out a rigorous analysis of how its theoretical framework is put into objective activity based on the areas with which it has sought to dialogue' (our translation).

One of the hypotheses associated with Big Tech companies concerns their central role in shaping what has been termed *affective warfare*. This phenomenon is not merely a discursive practice; rather, it stems from an algorithmic logic designed to maximize users' emotional engagement. Such a logic arguably weakens individuals' capacity for coherent and rational deliberation within a democratic state. It is further argued that legal responses focused solely on the suppression of individual content are insufficient to address this challenge. Instead, a structural regulatory approach aimed at the governance and operational strategies of digital platforms is required, without undermining the constitutional guarantees of freedom of expression established in Article 5, Section IV, of the 1988 Constitution of the Federative Republic of Brazil (Brazil, 1988).

2 THE AFFECTIVE WARFARE AND THE ECONOMY OF ATTENTION ON DIGITAL PLATFORMS

In a historical context, wars resulting from conflicts have always been conducted by state forces with the ultimate goal of adding other territories to their own. This model of warfare was directly associated with the confirmation and affirmation of political power, which used the consolidation of state authority as its instrument (Silva, [n.d.]). Furthermore, these conflicts were commanded by authorities who were often not directly present on the battlefields, but acted equidistantly, coordinating strategies and making decisions from the center of power (Araújo and Kneipp, 2025).

However, these wars, by going beyond the strictly military field, tend to reach social, cultural, and political dynamics, which end up significantly weakening the social foundations of the nations involved. Moreover, war is not limited to a (re)definition of territories, but also constitutes a means of imposing ideological concepts and promoting state reorganization, while simultaneously harming essential political values and restricting the self-determination of

peoples. War, therefore, must be understood as a multifaceted historical and social phenomenon, in which military, political, economic, technological, and cultural dimensions are articulated, capable of transforming and compromising democratic stability (Lentz, 2023).

Currently, with globalization and the advancement of information and communication technologies (ICTs), a new model of warfare is emerging: hybrid warfare. According to Reis and Rangel (2024), hybrid warfare is a type of conflict that seeks to move away from traditional means of combat, employing unconventional strategies instead. It is noteworthy that this model is closely linked to the so-called Color Revolutions, among which the Rose Revolution (Georgia, 2003) and the Orange Revolution (Ukraine, 2004) stand out. These movements consist of attempts to promote regime change through soft means, by means of political destabilization and popular mobilization. When these soft pressure strategies prove unsuccessful, more rigid methods of intervention are resorted to, thus characterizing the conventional coup (Korybko, 2018, p. 6 apud Reis and Rangel, 2024).

As a consequence of hybrid warfare, the war of affects emerges, conceptualized as a political and social form oriented towards the realm of emotions and subjectivity. Similar to hybrid warfare, the war of affects does not employ conventional and aggressive means, but rather acts upon collective feelings (hate, anger, fear, etc.), seeking to shape perceptions, direct behaviors, and produce adherence or rejection around certain causes (Araújo and Kneipp, 2025).

Lacan ([1972]/1985, [1953]/1986) apud Araújo and Kneipp (2025, p. 6) further conceptualize the war of affects as "a sophisticated mechanism that influences the interaction of the individual with society. This engendering can be explained through the three passions of being, namely: love, hate, and ignorance (our translation)." Therefore, the concept of a affective warfare cannot be restricted solely to an individual field, but rather corroborates society in general, since it organizes perceptions, feelings, behaviors, and engagements between people and digital platforms.

Considering the advancement of societies over the years, as well as the advancement of digital technologies, the benefits presented by these tools are undeniable, among which the expansion of computational processing, the improvement of telecommunications infrastructures in a global context, and especially access to information and ease of communication between people stand out (Brant; Pereira and Magalhães, 2022). On the other hand, if there are benefits, there are also concerns that generate social, ethical, and psychological impacts. Currently, according to Mazzeto and Souza (2025), the greatest

concerns arising from access to information relate to the popular "Big Tech companies," which include Google, Apple, Meta (formerly Facebook), Amazon, and Microsoft.

According to Zuquim (2021), "Big Tech companies" or "Tech Giants" are terms used to refer to companies that dominate ICTs and hold significant market power. However, the author warns that the term "Big" does not only refer to a position of economic scale, but in fact to the characteristics that make such companies true giants, highlighting: "(i) High market value; (ii) Operability in diverse markets and creation of an ecosystem between them; and (iii) Protagonists in social change" (Zuquim, 2021, p. 15). Furthermore, the term "Tech" goes beyond technology companies in the strict sense, encompassing those that structurally transform a market by developing products and solutions that create opportunities for other players.

In this sense, Araújo and Kneipp (2025, p. 6) conceptualize that:

> [...] it can be elucidated that big tech companies, through Hybrid Warfare, define their strategic objectives and employ operational art without restrictions to achieve them. They also use, in the tactical field, distributed and simultaneous operations, both regular and irregular, along with operational-level actions that challenge the culture and even the norms of war of Western states. This movement is coordinated in time, space, and with the purpose of achieving their strategic objectives (our translation).

Therefore, it can be concluded that "Big Tech companies" are largely responsible for the creation of technological products, search engines, e-commerce platforms, and, most importantly, social networks, which are consolidated daily through the consumption of millions of people on a global scale (Zuquim, 2021). "Big Tech companies" not only concentrate technological or economic power, but also act as strategic agents capable of influencing social and political dynamics. This multifaceted role consolidates their position as protagonists in the structural transformation of markets and the redefinition of power relations on a global scale.

Considering the applicability of "Big Tech companies," it is observed that they contribute directly to the consolidation of the so-called "attention economy." In this context, the attention economy can be understood as a logic in which users' time and focus become valuable resources for generating engagement and, consequently, generating profit for large companies. As Silva (2025) points out, given the large number of devices (smartphones, tablets, and computers) connected to the internet, it is possible to observe the great advancement of ICTs and the immediate reach of entertainment through endless feeds. In this perspective, Carr (2010, p. 123) apud Silva (2024) explains that the functional concept of human memory is divided into two forms, "short-term memory and long-term memory." Short-term memory

corresponds to immediate impressions, resulting from an initial and rapid stimulus received by the sense organs (sight, touch, hearing, and others), which exist for only a few seconds or milliseconds.

In contrast, long-term memory corresponds to the knowledge and skills acquired or learned over the course of days; this type of memory tends to remain for long periods, whether for days, months, or even years. In this context, the so-called attention economy, by prioritizing rapid, fragmented, and continuous stimuli, tends to compromise the process of transferring information between short-term and long-term memory, hindering the consolidation of knowledge and the formation of complex mental schemas. As a consequence, a possible weakening of the capacity for critical reflection and cognitive deepening of individuals is observed. It is also worth noting that the attention economy also influences people's emotions. According to Carr (2010, p. 220) apud Silva (2024), "the noblest emotions of individuals are observed by the affective feelings of compassion and empathy, which have a logical consequence with the slower neural processes (our translation)". In contrast, Oliveira and Silva (2024) suggest that the information and stimuli that most easily capture attention and generate immediate reactions correspond to rapid emotional responses, such as anger, fear, and indignation, to the detriment of more elaborate reflective processes. Thus, it can be concluded that the speed of information and the fragmentation of content are structures incompatible with people's emotional development.

Furthermore, the problem of memory consolidation is entirely linked to the algorithmic architecture developed by the platforms, since they aim to equate emotions with the mechanism of capturing attention. The virtual environment is characterized by limiting people's affective responses to patterns previously adjusted by algorithms, which creates a highly fertile space for the consolidation of algorithmic architecture over human behavior (Oliveira and Silva, 2024).

Therefore, it can be concluded that the war of emotions is far from being a mere side effect of digital platforms. It is, in fact, an architectural structure conceived and built with a very clear purpose: to capture human attention and convert it into data and profit. This process does not happen simply; the mechanism actively and calculatedly favors the circulation of content capable of provoking intense emotional reactions, enhancing engagement and fueling uninterrupted interactions. What is concerning is the consequence this cycle produces on the formation of public opinion: it ceases to be guided by reason or qualified debate and becomes shaped by narratives strategically constructed to appeal to emotions and ensure visibility within the logic that drives digital systems (Mazzeto and Souza, 2025).

3. MISINFORMATION AS A STRATEGY FOR EMOTIONAL MANIPULATION

Misinformation should not be understood merely as an informational error resulting from a lack of precision or unintentional ignorance on the part of individuals. According to Santos and Pajeú (2024, p. 12), misinformation should be understood as:

> [...] Its social dimension connects with information as a process, according to Buckland (2017), but some considerations are necessary for this understanding. The individual process of how explicit knowledge becomes tacit does not occur in isolation from the social environment, since access to this knowledge, the way in which it is presented, as well as its meanings, are mediated by the social environment. No process of informing and being informed happens in isolation from the social environment, but because of it, within it, and based on the material conditions it provides. Every process of being informed will be affected by the subject's interactions with their environment in a way that relates to the historical material conditions that shaped that environment (our translation).

Disinformation is, in fact, a strategic instrument aimed at political mobilization and consciously operates on collective emotions, with the purpose of producing adherence, rejection, and engagement (Mazzeto and Souza, 2025). Returning to the digital environment, it is possible to observe that platforms offer ideal structural conditions for the proliferation of disinformation, in the terms of Olegário, Lima, and Coelho (2025), since false and sensationalist content tends to spread more rapidly than true information. This logically follows the policy of digital platforms that prioritize content that generates a strong emotional reaction in their users, regardless of its veracity.

The result of this process is aggravated by the phenomenon that the Pan American Health Organization (PAHO) and the World Health Organization (WHO) call "infodemic," as understood by Garcia and Duarte (2020). Infodemic is a neologism combining "information" and "epidemic," which emerged during the COVID-19 pandemic and aims to describe how the excess of information associated with a specific topic multiplies exponentially, giving rise to rumors, misinformation, and manipulation with dubious intentions (Garcia and Duarte, 2020). In the age of social networks (Instagram, X, Facebook, and others), this phenomenon is amplified and spreads with the speed and reach of an informational virus, making it difficult for individuals to identify what is truly useful to guide their decisions (Garcia and Duarte, 2020).

The impact of misinformation on democratic institutions is equally relevant. According to Aboboreira (2025, p. 187):

> [...] In a scenario marked by misinformation and polarization, Gadamerian

> hermeneutics offers tools to confront the crisis of legitimacy of institutions. By replacing the search for absolute certainties with continuous dialogue, it provides a basis for mediating conflicts in fragmented societies. However, it demands from interpreters—whether judges, legislators, or citizens—a commitment to epistemic humility, recognizing that all understanding is partial and provisional (our translation).

Thus, media influence on the formation of popular will constitutes one of the most sensitive dimensions of contemporary democratic debate. As Silva and Bringel (2024) point out, the media exerts a considerable impact on politics by influencing public opinion and shaping people's decisions. According to the same authors, so-called media manipulation operates in a direction contrary to individual motivation, functioning as a social control capable of replacing the spontaneous formation of opinion with a heteronomous will, forged by selective coverage, the emotional framing of narratives, and the amplification of certain causes (Silva and Bringel, 2024). In this context, disinformation operates as a systemic logic that subverts the functioning of modern systems of action, such as journalism, morality, law, and others, by deactivating the logical, ethical, and aesthetic senses of information and communication, which ultimately undermines political culture and democratic institutions (Silva, 2025).

Lima Neto (2025, p. 4), uses Bernard Manin's deliberative theory to argue that:

> Democratic legitimacy cannot be reduced to the electoral act, [...] but must be understood as the result of a collective and continuous process of public deliberation, in which citizens have the possibility of reconsidering [...] their opinions in the face of conflicting arguments (our translation).

Democracy is legitimate not because it expresses a pre-existing general will, but because it offers an open, inclusive, and rational institutional environment for continuous deliberation. Therefore, any factor that distorts this environment, such as disinformation, algorithmic manipulation, or extreme polarization, compromises the very foundation of democratic legitimacy (Lima Neto, 2025).

This analysis has direct implications for understanding disinformation as a structural threat to Brazilian constitutional democracy. The authors Silva and Bringel (2024) warn that media coverage of events such as elections and protests has great potential to mobilize and promote public opinion, as it is capable of generating discussions and shaping the population's perspectives. In contexts of disinformation, this means that the space for collective deliberation becomes occupied by strategically constructed narratives rather than the free confrontation of ideas.

Lima Neto (2025) points out that the Brazilian electoral processes of 2018 and 2022 demonstrated how the massive dissemination of false content, especially via WhatsApp and

open platforms, directly affected voters' perception of candidates, parties, and public policies, and that once the impact of disinformation is consolidated, it becomes practically impossible to neutralize its effects, reproducing what is called the irreversible cascade effect. Silva and Bringel (2024) further highlight that, although the media can be a fundamental instrument for investigating corruption, accessing information, and social control, it is also capable of censoring or marginalizing the less favored politician solely because of its influence.

In light of all this, the aforementioned authors argue that it is necessary to find a balance between media power and the safeguarding of the free expression of thought, within constitutional limits (Article 1, item V of the 1988 Brazilian Federal Constitution of 1988). Therefore, it is an indispensable condition for strengthening democratic and constitutional values and for guaranteeing a society that is effectively informed, engaged, and capable of exercising its popular sovereignty consciously within a democratic state governed by the rule of law.

4. BIG TECH AND THE ALGORITHMIC AMPLIFICATION OF CONFLICTS

Understanding the role played by digital platforms in contemporary society requires, before any legal or political analysis, a thorough examination of their economic structure. Companies like Meta Platforms (Facebook, Instagram, WhatsApp, Telegram) are not, in their essence, merely passive communication channels (Mazzeto and Souza, 2025); rather, they are companies driven by a specific business model: the monetization of human attention through targeted advertising.

This model, termed surveillance capitalism by Shoshana Zuboff (2020) apud Koerner (2020), is based on the massive collection of users' behavioral data, its processing by highly complex algorithms, and its subsequent conversion into a marketable product. As Mazzeto and Souza (2025, p. 6) identify, when discussing algorithmic culture, they established that:

> The modus operandi of Big Tech companies is the capture, storage, and processing of information on a large scale, giving rise to what Srnicek (2016) calls platform capitalism, a new business model capable of extracting and controlling immense amounts of data, an activity through which they achieve economic hegemony (our translation).

The economic logic behind this structure is straightforward: the longer a user remains connected to the platform, the greater the amount of data generated and the higher the advertising revenue. To maximize this time, algorithms are programmed to recommend and

amplify content that generates greater engagement, and emotionally intense content, especially those that arouse indignation, fear, and anger, obtain significantly higher engagement rates than non-engagement content (M3 Comunicação Integrada, 2026).

Callejón (2023) apud Mazzetto and Souza (2025, p. 6) argue that this dynamic is simply a business, observing that "the algorithms were not programmed to assess whether or not corruption or criminal activities of any kind exist, but are totally focused on extracting data for the purpose of selling advertising." The direct consequence is that, for the platforms, from an economic point of view, fake news and truthful information have the same value; both are simply data used for the business.

For Brant; According to Pereira and Magalhães (2022), this is where the structural mechanism for amplifying political polarization resides, since the content that provokes confrontation, reinforces group identities, and demarcates boundaries is precisely the content that maximizes engagement and, therefore, what algorithms tend to distribute most widely. Moreover, these same authors identify this phenomenon as one of the central dilemmas of contemporary democracy, pointing out that the development of new information technologies introduces structural tensions into the democratic model, insofar as digital mechanisms facilitate or reinforce anti-democratic attitudes.

Mozetic (2024) further observes that the transition from Web 1.0 to Web 2.0, while initially celebrated as an era of digital democratization, has been progressively overshadowed by monopolization by large corporations that have come to define online dynamics, reinforcing the need to rethink the governance of the digital public space.

In this same vein, Almeida (2022, p. 9), in his research, demonstrated that digital social media platforms "do not publish content edited by themselves, but position themselves as intermediaries, serving as a means of disseminating discourse and accessing information for their users," but that at the same time, they can "be considered effective political actors," insofar as they exert power of influence over the formation of public opinion.

Almeida (2022) further exemplifies this with the cases of: a) in 2014, during the Black Lives Matter protests, Facebook's recommendation algorithm prioritized the "ice bucket challenge" campaign over news about the social rebellions; b) In 2016, Facebook blocked Nick Ut's Pulitzer Prize-winning photograph "Terror of War" for allegedly violating nudity policies, and c) in 2021, suspended the Facebook and Twitter accounts (now X) of then-President Donald Trump after the attack on the Capitol. These cases demonstrate that the algorithmic choice of what to amplify is not technically neutral; it is a decision that has consequences for what enters

or does not enter the public agenda.

The perception that platforms play an active role in shaping public debate leads directly to the problem of private governance of the digital public space. Almeida (2022) analyzes in depth the content moderation mechanisms adopted by the main platforms, classifying them into automated systems (based on machine learning and pattern recognition) and systems based on human review. The author demonstrates that both systems present significant limitations regarding transparency, consistency, and democratic legitimacy, and that the transparency reports published by the platforms themselves are insufficient to guarantee due accountability.

Zuquim (2021) deepens the analysis by examining the market structure of big tech companies from an antitrust perspective, demonstrating that the digital platform model creates virtually insurmountable barriers, given the so-called network effects, which consolidate the market power of a very small number of companies. Economic concentration is, in this sense, inseparable from the concentration of political power: whoever controls the platforms with the largest audience controls the main channel for shaping public opinion in contemporary democracies. On the regulatory front, the international response has been heterogeneous. The European Union is advancing with the Digital Services Act (DSA) and the Digital Markets Act (DMA), instruments that impose obligations of transparency, interoperability, and accountability on large platforms (Mozetic, 2024). In Brazil, the debate focuses on the Fake News Bill (PL No. 2,630/2020), which provides for obligations of algorithmic transparency, traceability of boosted content, and accountability mechanisms (Brazil, 2020).

The scenario, therefore, is one of structural tension between three orders of interest: the economic interest of the platforms, which benefit from the amplification of polarizing content; the public interest in preserving a democratic space for rational debate; and the individual interest of users in exercising their freedom of expression without opaque algorithmic interference. Overcoming this tension necessarily requires the construction of a regulatory framework capable of imposing obligations of transparency and accountability on the platforms, definitively recognizing them not as mere conduits of others' content, but as active and structural agents in the shaping of digital democracy.

5. DELIBERATIVE DEMOCRACY AND THE LEGAL LIMITS BETWEEN REGULATION AND CENSORSHIP

The 1988 Brazilian Federal Constitution of 1988, in Article 5, item IV, provides that

"the expression of thought is free, anonymity being prohibited" (Brazil, 1988, n.p.), which consolidates freedom of expression as a fundamental guarantee, becoming one of the greatest pillars of Brazilian democracy. Similarly, Article 220 of the same legal document reinforces that the expression of thought, expression, and especially information, cannot suffer any type of restriction (Brazil, 1988). However, according to legal doctrine, these provisions are not absolute and must be weighed against other rights provided for in the 1988 Constitution, such as the right to honor and the democratic order (Lenza, 2023).

Therefore, Habermas (2012), when discussing freedom of expression, makes a direct connection with the theory of deliberative democracy, since a system must be constructed that aims at public autonomy without prejudice to private autonomy. In this theory, the communicative processes of shaping public opinion developed in democratic environments function as a rational mode for governmental decisions. This rationalization aims at the communicative power of public opinion, which, following democratic procedures, must be taken into consideration; however, it is necessary to avoid hate speech (Faria, 2000). Furthermore, Habermas (2012, p. 156) states that "communicative freedom only exists between actors who wish to understand each other about something in a performative approach and who rely on taking positions regarding mutually raised validity claims."

Logically, authors in the public/private relationship should always strive to maintain that citizens should be the authors, co-authors, and participants in the creation of laws, thus guaranteeing free participation and equality in debates. Therefore, when configuring the pluralism of ideas in the Brazilian legal system, it is clear that this should be based on the diversity of opinions, so as to allow each person to be informed and adopt the political, philosophical, and personal positions that they deem best for society, as already foreseen in articles 1, item V and 5, item IV, both of the 1988 Brazilian Federal Constitution of 1988 (Habermas, 2012).

In this sense, the jurist and former Minister of the Federal Supreme Court of Brazil - Celso de Mello, when discussing the regulation of big tech companies and how to avoid the practice of censorship in our legal system, makes the following warning:

> Constitutional democracy represents an extremely precious asset, which demands from citizens who revere the cause of freedom the duty of resistance and opposition to those who seek to transgress the institutional order and subvert the fundamental principle of government OF the people, BY the people, and FOR the people! (Mello, 2025, n. p, (our translation).

Therefore, regarding the debates involving the regulation of big tech companies, it is

noted that it becomes a challenge for legislators, since they must pay attention to the limits of freedom of expression, without prejudice to other constitutional demands and without censorship by the State concerning the life and opinion of society (Mazzeto and Souza, 2025). In the same vein, Mello (2025, n. p.) highlights:

> [...] At this point, it is necessary to clarify that measures aimed at establishing legislative regulation of digital services, markets, and platforms should not be confused with state censorship (an authoritarian mechanism prohibited by the Constitution of the Republic), nor with undue state intervention, much less with curtailing freedom of expression. Such regulatory measures represent legitimate and essential instruments for protecting the supremacy of the constitutional order, the ethical postulate of truth, the formation of a secure digital space, and the defense of the full integrity of the democratic regime (our translation).

Moreover, in a historical context, Law No. 12.965/2014 (Marco Civil da Internet (Brazilian Internet Bill of Rights))[1], in its article 19, established as a general rule that platforms could not be , in its article 19, The general rule established that platforms could not be held civilly liable for content published by third parties, except in cases of non-compliance with a court order for removal. However, this provision caused some legal embarrassment, as it allowed big tech companies to host, promote, and profit from potentially harmful content until the Judiciary ordered its removal from the platforms, creating a regime of almost total immunity for the platforms in relation to the content of their users (Brazil, 2025).

However, on June 26, 2025, the Federal Supreme Court of Brazil, through Rapporteur and Minister Dias Toffoli, finalized the judgment of Extraordinary Appeal No. 1,037,396 (Topic 987), declaring the partial and progressive unconstitutionality of Article 19 of Law No. 12,965/2014. The thesis established by the Rapporteur stipulated that digital platforms will be duly held liable in the following cases, regardless of a court order, for: sponsored or boosted content, with the platform's knowledge being presumed, and publications distributed by chatbots/robots. Furthermore, the thesis also established an understanding regarding content that constitutes serious crimes, namely: anti-democratic conduct and acts typified in articles 286, sole paragraph, articles 359-L, 359-M, 359-N, 359-P and 359-R of the Penal Code; terrorism crimes (Law No. 13.260/2016); inducement, instigation or assistance to suicide or self-harm; incitement to discrimination based on race, color, ethnicity, religion, national origin, sexuality or gender identity; crimes committed against women based on sex; sexual crimes against vulnerable persons and human trafficking (Brazil, 2025).

[1] Consultation performed via the following link: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2014/lei/l12965.htm.

In this context, Bill No. 2,630/2020 (the Fake News Bill), still under consideration, seeks to create the Brazilian Law of Freedom, Responsibility, and Transparency on the Internet. The bill, initiated by Senator Alessandro Vieira (Cidadania/SE), represents an attempt by the Brazilian legislature to establish obligations, rules, guidelines, and mechanisms for transparency in digital platforms. Its summary reads as follows:

> It establishes rules regarding the transparency of social networks and private messaging services, especially concerning the responsibility of providers for combating disinformation and increasing transparency on the internet, transparency regarding sponsored content and the actions of public authorities, as well as establishing sanctions for non-compliance with the law (Brazil, 2020, our translation).

However, the aforementioned bill faces significant resistance, especially regarding the definition of companies' civil liability for illegal content published by their users, and is still awaiting approval by the Chamber of Deputies (Revising Chamber) (Brazil, 2020).

Subsequently, in September 2025, the Federal Government submitted Bill No. 4.675/2025[2] to the Chamber of Deputies, which aims to change Law No. 12.529/2011[3]. This project aims to regulate the competitive activity of large digital platforms. Among the main points of the project, the Administrative Council for Economic Defense (CADE) stands out as allowing it to identify platforms considered relevant, subjecting them to special rules of greater transparency in search and recommendation algorithms, as well as obligating platforms to allow data portability and prior notification of startup acquisitions. Furthermore, the project also foresees the creation of the Superintendency of Digital Markets (SMD), responsible for monitoring and overseeing compliance with the obligations imposed on big tech companies (Brazil, 2025).

Although the Brazilian legislature has made efforts, we still lack legislation that adequately addresses the subject under study. Therefore, legal professionals must adopt a more comprehensive approach, capable of overcoming the current legislative gaps and seeking individual accountability for published content. According to Silva (2025), this regulation of digital platforms becomes a fundamental event for the proper functioning of the democratic regime, preventing serious situations of rights violations, as prohibited by Supreme Court Ruling 987. Furthermore, this new perspective should also contribute to building a governance of platforms that primarily preserves freedom of expression and respects the fundamental rights and guarantees enshrined in the Brazilian Federal Constitution of 1988.

[2] Consultation performed via the following link: https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2562481.
[3] Consultation performed via the following link: https://www.planalto.gov.br/ccivil_03/_ato2011-2014/2011/lei/l12529.htm.

6 FINAL CONSIDERATIONS

This article sought to demonstrate how the concept of a affective warfare is not merely a discursive phenomenon, but rather the result of an algorithmic architecture built to maximize social engagement. As those responsible for all of this, big tech companies are far from being intermediaries or neutral in this demand; they operate strategically to weaken the capacity for popular opinion, amplify social conflicts, and undermine the deliberative rationality that underpins the concept of a Democratic State Governed by the Rule of Law.

This weakening results in the phenomenon of disinformation, which many of the times, is tied to a context of political mobilization. This political mobilization is connected to the architecture of the platforms, which prioritizes emotionally mobilizing content and produces a fragmentation of public space that makes democratic dialogue impossible. As Canalli (2023, p. 91) aptly conceptualizes, “deliberate disinformation is not encompassed within the limits of freedom of expression; and the effective protection of freedom of expression requires that people be actively protected against disinformation.” From a legal standpoint, this article sought to demonstrate that responses focused on the repression of individual content are structurally insufficient to address the problem.

The landmark decision of the Brazilian Supreme Court (STF) in June 2025, which declared the partial and progressive unconstitutionality of Article 19 of the Brazilian Internet Bill of Rights (RE 1.037.396 and 1.057.258), represents a significant advance, recognizing that platforms are not neutral and that the model of unrestricted immunity is no longer compatible with the protection of fundamental rights. However, the decision itself called upon the National Congress to construct a legislative regulatory framework adequate to the new realities of the digital environment.

The protection of the democratic process with regard to the concept of a affective warfare requires that platform operators (users) have knowledge of the functionalities and that the platforms offer better algorithmic transparency, in addition to effective accountability in case of damages caused by the platforms. With these parameters well defined, they should serve to build a regulatory framework that balances the protection of freedom of expression and the exercise of deliberative democracy, according to constitutional standards.

Thus, the great challenge, not only legal but also political, technological, and cultural, of ensuring the fundamental guarantees foreseen in the 1988 Constitution, so that they effectively apply to the digital space, should not be overlooked. According to Brant, Pereira,

and Magalhães (2022, p. 117), “the future of democracy depends on the soundness of the process of conscious choices made by people, without the constraints caused by attacks perpetrated by digital militias and the corrosion imposed by disinformation disseminated through fake news.” It is concluded, therefore, that for democracy to remain intact in the 21st century, it needs to be constantly safeguarded against the risks of disinformation and abusive practices in the digital space, requiring not only effective legal instruments, but also public policies, technological advances, and a civic culture committed to truth and conscious participation.

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