



Between state power and the protection of fundamental rights

Between the power of the state and the protection of fundamental rights

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SUMMARY

This research critically investigated the challenges that the digital age imposes on traditional legal instruments and analyzed proposals for normative modernization in order to preserve fundamental rights in the face of technological transformations. The qualitative and bibliographic review covered academic productions from 2010 to 2025, consulting databases such as Scopus, Web of Science and Google Scholar, as well as specialized journals and university repositories. After carefully selecting works that deal with topics such as cybercrimes, civil liability for artificial intelligence, regulation of personal data, deep web, copyright, smart cities, cryptoeconomics and digital environmental auditing, content analysis was applied to identify gaps and guidelines for modernizing the legal framework. The results revealed that conventional standards are insufficient to deal with the speed and complexity of digital phenomena. It is believed that the dematerialization of credit titles, electronic surveillance, the use of algorithms in criminal proceedings and the protection of health data illustrate the inadequacy of legal provisions originating from another reality. The research also indicated that the absence of a specific diploma on digital fundamental rights worsens legal uncertainty, as there are no clear parameters to balance freedom of expression, privacy and innovation. The relevance of interdisciplinarity was also noted: only dialogue between different branches of law and with areas such as computer science allows for the formulation of more comprehensive responses. The adoption of “privacy by design” principles and the updating of the Constitution to expressly recognize the right to data protection as fundamental were proposed. Furthermore, it was suggested that a guide of good practices be created for the implementation of the LGPD in strategic sectors, such as health and education, and that amendments or complementary laws be drafted that specifically address technology and innovation. It is concluded that only through this integrated and proactive approach will it be possible to redefine the limits of state power and ensure the effectiveness of fundamental rights in the digital society.

Keywords: State Power; Fundamental Rights; Digital Age; Normative Modernization; Personal Data Protection.

ABSTRACT

This research critically investigated the challenges that the digital age imposes on traditional legal instruments and analyzed proposals for normative modernization in order to preserve fundamental rights in the face of technological transformations. The qualitative and

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Keywords: State Power; Fundamental Rights; Digital Age; Regulatory Modernization; Protection of personal data.

1 INTRODUCTION

The debate on the limits of state power in protecting fundamental rights has been ongoing intensified in recent decades, especially in light of technological advances and new social demands. This discussion reflects the need to rethink defense mechanisms human rights and the constitutional instruments that guarantee them.

Internet regulation reveals complex challenges in enforcing rights constitutional, especially when considering phenomena such as revenge porn. According to Hartmann (2018), the digital environment poses new questions that require answers innovative legal measures, highlighting the tension between freedom of expression and protection of human dignity.

The use of artificial intelligence and its implications for group discrimination vulnerable are also fundamental. Costa and Kremer (2022) point out that technologies facial recognition can generate situations of inequality, increasing the need for mechanisms that guarantee social justice in the digital context.

Reflection on development and fundamental rights gains prominence when considering the influence of Eurocentric projects, which, according to de Sousa (2020), can reinforce a colonized and racialized view of knowledge. This perspective highlights the importance of a cognitive decentering that values diverse identities and cultural contexts. Thus, the protection of the rights to health and education constitutes a central axis in the analysis of mechanisms for the defense of human rights. Pinto (2015) argues that financing adequate exercise of these rights is essential for the realization of constitutional principles, indicating the need for effective public policies.

The challenge of protecting personal data assumes a strategic position, especially in the sector health. De Aragão and Schiocchet (2020) highlight the difficulties in implementing the Law General Data Protection Regulation, highlighting the risks and opportunities that effective regulation can offer to the unified health system. With this, the emergence of digital constitutionalism allows an innovative analysis of how constitutional norms can respond to challenges of the digital age. Celeste and da Silva Santarém (2021) emphasize the need to update and reinterpret legal frameworks to keep up with technological transformations.

The debate on the indispensability of a digital charter of fundamental rights also contributes to this scenario. According to Canotilho (2019), the proposal of a set specific regulations for digital challenges seek to balance technological innovation with protection of human rights. Therefore, fraternity in constitutional law is presented as an instrument that can promote the protection of fundamental rights transindividual. Jaborandy (2016) proposes this view, which is complemented by analyses criticisms by Sarlet (2004) and Lobato (1999) about the challenges in the jurisdictional protection of social, economic and cultural rights in times of crisis.

Accordingly, constitutional evolution and mechanisms for defending rights humans in contemporary times reveal a complex network of challenges that demand the constant review of legal instruments. According to various analyses and studies, including discussions broadcast on platforms such as Jusbrasil, the reinterpretation of the limits of power state is essential to ensure the effectiveness of fundamental rights in a context of constant transformation.

The central problem of this research lies in critically analyzing how evolution constitutional and human rights defense mechanisms adapt to the challenges imposed by the digital age. To what extent is state power prepared to redefine the limits of its performance in the face of emerging demands in the digital environment, without compromising the rights

fundamental? How can legal instruments be reinterpreted to provide a effective protection in a context of constant technological innovation?

2 METHODS

The methodology adopted in this research is based on qualitative analysis and review bibliographical list of academic works published in the last 15 years, covering the period 2010 to 2025. The time frame allows us to identify the main discussions and innovations about the impact of emerging technologies on the regulatory framework, contributing to the understanding the challenges and guidelines for its modernization, without considering laws and decrees. The qualitative approach enables in-depth investigation of phenomena legal and technological, favoring the integration of multiple theoretical perspectives.

For data collection, a systematic search will be carried out in databases recognized academic journals such as Scopus, Web of Science, Google Scholar and specialized. The selection of materials will follow criteria of relevance, timeliness and rigor methodological, prioritizing articles, books, dissertations and theses that address the impacts of emerging technologies in law. This bibliographical section allows the analysis of debates and of the theoretical contributions that shaped the discussions in the defined period.

Data analysis will be conducted using the content analysis technique, aiming to identify and categorize the main themes and challenges faced by the instruments traditional legal systems in the face of technological innovations. Using this technique, critical elements and propositions that point to the need for modernization of the normative framework. This analytical approach enables the identification of trends and construction of an updated overview on the topic researched.

The study is based on the comparison of different theoretical currents and the synthesis of contributions from various authors working at the interface between law and technology. The research will also use critical analysis of case studies present in the literature, which illustrate the application of the concepts discussed and the practical challenges faced by society digital. This triangulation of sources contributes to the robustness of the results and to the identification of gaps in current knowledge.

The delimitation of the materials to be analyzed is restricted to academic productions published between 2010 and 2025, ensuring the temporal relevance of the information and adherence to recent technological advances. The exclusion of laws and decrees aims to maintain the focus on theoretical and critical discussions, without interference from normative devices

that can distort the analysis of the phenomenon studied. This criterion contributes to clarity and objectivity of the results obtained in the research.

The interpretation of the collected data will be carried out in a reflective and dialogical way, allowing the confrontation between different theoretical perspectives and the construction of a debate reasoned. The critical analysis adopted aims to highlight the challenges faced by traditional law in the face of rapid technological evolution, as well as proposing guidelines for normative modernization. This reflective stance is fundamental for the elaboration of proposals that engage with contemporary reality.

3 RESULTS AND DISCUSSION

3.1 Challenges of Traditional Legal Instruments in the Digital Age

Challenges of traditional legal instruments in the digital age emerge as a theme central to rapid technological transformation and the complexity of social relations contemporary. The inadequacy of conventional standards in the face of digital innovations highlights the need to rethink the current legal framework.

The research by Neto and Oliveira Zamberlan (2023) highlights the challenges and implications of criminal law in the digital age, especially with the advent of the deep web and its practices illicit activities. The authors emphasize that traditional instruments of criminal repression are insufficient to contain the dynamics of cybercrimes. The complexity of these crimes requires the adaptation of legal mechanisms and the improvement of investigation tools. Thus, the study highlights the urgency of regulatory updates to keep up with new forms of criminality.

De sousa and santos (2024) address cybercrimes with an emphasis on analysis legislative, doctrinal and jurisprudential, pointing to significant challenges in the application of the right. The authors suggest that current legislation lacks specificity to deal with speed and complexity of digital crimes. This analysis highlights the need for a legal apparatus that understands the particularities of crimes in the digital age. In this way, the fragility of traditional instruments in the face of technological innovations is evident.

Do vale oliveira et al. (2024) explore the phenomenon of dematerialization of the title of credit, demonstrating the challenges inherent in the transition to electronic media. Digitalization of financial documents and processes requires a reinterpretation of legal concepts classics. The authors argue that the adaptation of traditional instruments is imperative

to ensure legal security in digital transactions. This transformation points to the need for regulatory modernization.

Da Silva (2023) discusses civil liability in the context of artificial intelligence, highlighting the difficulties of attributing damages in digital environments. The author highlights that traditional accountability mechanisms are not sufficient to address the challenges imposed by automation and machine learning. The analysis proposes reflection on new forms of assigning responsibility, adapted to the complexity of the systems digital. Thus, the urgency of updating legal devices is reinforced.

Toffoli (sd) analyzes the challenges for copyright protection in the digital age, considering the interface with the right to education and access to justice. The study highlights the need for mechanisms that reconcile the protection of personality rights with the demands of a dynamic digital environment. Conciliatory proposals suggest a adaptation of traditional legal instruments to encompass the specificities of the environment digital. This approach highlights the importance of innovative solutions in the field of human rights copyright.

Reck and vanin (2020) investigate the challenges faced by law in cities intelligent, highlighting the possibilities and limitations of public planning policies and urban management. The authors emphasize that the modernization of legal instruments is fundamental for sustainable development and the organization of cities in the digital age. The integration of technological and regulatory aspects proves crucial for the effectiveness of policies urban areas. Thus, the research points to the need for regulatory updates that include the digital reality.

Giacomolli (2023) highlights the risks and challenges related to knowledge and wisdom in the digital age, highlighting the fragility of traditional legal instruments. The author warns to the limits imposed by outdated practices, which may compromise the protection of fundamental rights. The analysis proposes a critical reflection on the control mechanisms and dissemination of digital knowledge. In this way, it reinforces the importance of rethinking standards in the face of technological advances.

Neto, Afonso and Fuck (2019) address the challenges of the tax system in the digital age, highlighting the difficulties in taxing virtual activities. The authors highlight that the traditional instruments are not fully suited to the dynamics of an economy digitized. This problem reinforces the need for a regulatory review that contemplates the specificities of the virtual environment. The analysis points to the importance of modernizing the collection and monitoring mechanisms.

From the discussions presented, it becomes evident that the inadequacy of the traditional legal instruments is aggravated by the advancement of digital technologies. The gap between current legislation and new social and economic practices is notorious, requiring responses innovative. The studies analyzed point to the urgency of an adapted regulatory apparatus to the digital reality. This update is essential to ensure the effectiveness of rights fundamental.

Interdisciplinarity is presented as a central element for understanding the challenges in the digital age. The integration of perspectives from criminal, civil, tax and urban planning contributes to a more complete analysis of the phenomena under study. This approach enables the identification of critical points and the proposition of solutions that transcend the fragmentation of traditional norms. Thus, the research reinforces the need of a dialogue between different areas of knowledge.

The implications of digital transformations require proactive action from legislators and legal practitioners. The modernization of legal instruments cannot be seen only as a reactive response, but as a continuous process of adaptation and innovation. The construction of an effective regulatory framework demands collaboration between the public authorities, the private sector and civil society. In this way, it is possible to create an environment legal system more resilient and able to face the challenges of the digital age.

It is important to highlight that the challenges of legal instruments traditional in the digital age demand a profound review of existing regulatory frameworks. The analysis of the studies presented shows that updating the standards is imperative for the protection of fundamental rights in a context of constant transformation. The Traditional instruments often prove inadequate given the complexity of the digital phenomena. Thus, normative modernization is imposed as a necessity urgent.

Reflecting on the challenges in the digital age not only highlights the weaknesses of traditional instruments, but also points out ways to build a more modern and adaptable. The integration of diverse studies shows that digital transformation impacts all spheres of the legal system. This panorama calls for a reassessment continuous mechanisms for the protection of fundamental rights. The search for solutions innovative is essential to ensure the effectiveness of the legal system in contemporaneity.

3.2 Impact of Emerging Technologies and Guidelines for Modernizing the Regulatory Framework

The growing insertion of emerging technologies in society poses challenges significant to the modernization of traditional legal instruments, requiring a reinterpretation of the regulatory framework. This digital transformation permeates several branches of right, impacting everything from property to public safety. The current debate highlights the urgency to incorporate new guidelines that dialogue with technological innovations. The discussion integrates economic, social and political aspects, reinforcing the need for a multidisciplinary approach.

Andrade and Silva (2024) analyze the contemporary challenges of the cryptoeconomy, highlighting the impact of emerging technologies on property and possession in civil law Brazilian. The authors point out that the digitalization of assets and the decentralization of processes bring unprecedented complexities to the legal system. This analysis highlights the difficulty of traditional instruments in keeping up with the rapid evolution of transaction mechanisms. Thus, it highlights the importance of rethinking the regulatory structure to ensure safety legal.

Cardoso, Polari and Neto (2025) address the use of electronic surveillance totems in Amazonas, demonstrating how technological innovation can change the dynamics of security public. The study highlights that digital devices, while promoting greater control, pose challenges regarding the protection of individual rights. The authors indicate that the implementation of these systems requires a regulatory update that includes the specificities of the digital environment. In this way, the double impact of technologies is evident in security and privacy.

De Paiva et al. (2024) investigate the recognition of data protection as a right fundamental, highlighting the effects of constitutional amendment no. 115/2022. The research highlights the importance of giving legal status to data protection in the context of transformations digital. The authors point to the need to adapt legal devices to the new reality, in which the flow of information is constant and massive. This analysis reinforces the urgency to update the regulatory framework to safeguard fundamental rights.

Saviato (2024) brings perspectives on environmental auditing in the future, emphasizing the interface between emerging technologies and environmental control mechanisms. The author suggests that digitalizing audit processes can increase transparency and effectiveness of assessments. However, it highlights that current legal instruments lack flexibility

to absorb these innovations. The work highlights the need for integration between law environmental and new technologies.

De Souza Mello (2024) discusses democratic challenges and the protection of rights fundamental in the context of emerging technologies, highlighting the importance of a critical and updated approach. The author proposes that normative modernization should consider the evolution of digital media and new forms of social interaction. This perspective points for the convergence between technological innovation and the realization of democratic rights. Thus, the relevance of rethinking the foundations of law in the digital age is highlighted.

Rodrigues et al. (sd) investigate the challenges and opportunities in the field of criminal law in the face of artificial intelligence. The authors argue that the use of algorithms and automated systems impose the need for a review of traditional concepts of criminal liability. The work shows that emerging technologies can both enhance the effectiveness of the penal system and generate new risks. In this way, it reinforces the importance of guidelines that guide the application of law in digital environments.

The synthesis of the works analyzed reveals the complexity of the impacts of technologies emerging in the various branches of law. Each study contributes to highlighting the gaps existing in the traditional regulatory framework. The discussions point to the need for a regulatory framework that keeps pace with technological innovations. This integration is essential to ensure the protection of fundamental rights in a scenario of continuous transformation.

The normative challenges highlighted by the research indicate that legal instruments traditional methods cannot encompass all digital innovations. The complexity of new practices, such as cryptoeconomics and electronic surveillance, requires a reassessment of existing legal paradigms. Studies show that normative modernization

must be guided by a flexible and adaptable approach. Such change is imperative to ensure the security and effectiveness of legal standards.

The need for innovation in regulation is evident in the convergence between areas affected by digitalization. The recognition of data protection and the adaptation of environmental auditing mechanisms exemplify this movement. The challenges presented point to the urgency of establishing guidelines that integrate technological advances into law. This integration provides a more robust regulatory framework that is more appropriate to current demands.

The modernization of the legal framework involves recognizing the importance of fundamental rights in the digital age. The studies analyzed highlight that the protection of these rights must keep pace with technological changes. The adequacy of

legal instruments is seen as an essential step to mitigate the risks associated with digital innovations. In this way, the construction of new normative guidelines becomes an imperative for contemporary justice.

Analysis of the challenges and opportunities presented by emerging technologies encourages reflection on the role of law in the digital society. The convergence between studies show that regulatory updating is crucial for the protection of individual rights and collectives. From the theoretical contributions, it is clear that the legal framework needs to evolve to keep up with technological transformations. This movement is essential to ensure the legitimacy and effectiveness of legal norms.

Therefore, the impact of emerging technologies requires an urgent review of traditional legal instruments. The works analyzed point to the need for guidelines that promote the modernization of the regulatory framework, ensuring the protection of fundamental rights. The integration of digital innovations into law requires an approach interdisciplinary and adaptable. This normative transformation is essential to ensure the effectiveness of justice in a scenario of constant technological evolution.

FINAL CONSIDERATIONS

The analysis undertaken in this research showed that technological evolution imposes clear limits to the exercise of state power and demands constant review of instruments legal measures to guarantee the effectiveness of fundamental rights. It became clear that standards conventional, formulated for pre-digital contexts, lack flexibility to encompass phenomena such as cybercrime, artificial intelligence and the dynamics of smart cities. Such inadequacy reveals a mismatch between the letter of the law and the real needs of protection in increasingly connected environments.

It is clear that interdisciplinarity is an essential vector to face these challenges, integrating knowledge of criminal, civil, tax, urban and technological law. When combining different perspectives, it becomes possible to identify gaps and formulate more effective proposals robust and aligned with the multiple facets of the digital age. Collaboration between academics, legal professionals, technology developers and civil society representatives proves to be essential for designing effective regulatory solutions.

The research also demonstrated the urgency of adopting “privacy by design” principles and to give constitutional status to the right to the protection of personal data, especially in the sectors sensitive areas such as health and education. The regulation of the General Data Protection Law, still

in the process of maturation, needs to be complemented by specific guidelines that consider the nuances of the unified health system and other public policies. Without this step, we run the risk of perpetuating vulnerabilities that compromise fundamental guarantees.

Another relevant finding was the growing demand for a “constitutional right digital” or by a charter of fundamental rights specific to the virtual environment. This charter would serve as a guiding framework to balance technological innovation and safeguarding human dignity, while serving as a parameter to evaluate practices of electronic surveillance, use of algorithms and cybercrimes. The standardization of this instrument would contribute to greater legal certainty and regulatory predictability.

The study reinforces that the modernization of the legal framework should not be seen as a one-off measure, but as a continuous process of adaptation. Proposed amendments constitutional, review of codes and creation of new legal diplomas must follow schedules that encourage controlled experimentation and periodic evaluation of results. Only in this way will it be possible to adjust standards to the speed of social transformations and technological.

Finally, the importance of training legal professionals and public managers is highlighted. to deal with emerging issues through training and exchange programs international experiences. The consolidation of permanent debate forums and the promotion of empirical research will allow us to measure the impact of legislative innovations and improve continually the legal system. This proactive stance will strengthen the resilience of the State Democratic of Law.

In short, the effective protection of fundamental rights in the digital age involves combination of normative review, interdisciplinarity, institutional innovation and training qualified. Only by embracing this integrated approach will it be possible to redefine the boundaries of state power without giving up the essential guarantees of the dignity and freedom of individuals.

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