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Expression as a reorganization of a common condition: freedom, restriction, and the criterion of participation

A expressão como reorganização de uma condição comum: liberdade, restrição e o critério da participação

La expresión como reorganización de una condición común: libertad, restricción y el criterio de la participación

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Abstract: Debates on the limits of free speech tend to follow one of two shortcuts: from the finding that speech has altered something to the authorization to contain it, or from the protection of expression to the conclusion that nothing is owed to those it reaches. This article refuses both on the basis of a single criterion, that of participation: expression that reorganizes conditions others live from calls for justification before them; the intervention that restricts such expression also reorganizes conditions of participation and must meet its own requirements of justification, competence, and control. The criterion is unfolded into three questions — of diagnosis, of justification, and of response and competence — which separate the duty to answer from the authority to restrict and subject the restrictor to the same examination as the speaker. Drawing on three earlier studies on reception, political myth, and the authorization of action, the article shows what reorganization alone does not authorize, how the available responses compare, and what each intervention must satisfy. The final part applies the criterion to Brazilian law, recording what it already secures and what remains open, especially in the regime of Article 19 of the Marco Civil da Internet after the Supreme Federal Court's final ruling in Themes 987 and 533. A comparison with the European Union's Digital Services Act and the United Kingdom's Online Safety Act shows that the gaps in the Brazilian regime — reasons for reductions in reach and for moderation under terms of service, and a review body independent of the provider — have normative counterparts elsewhere, which widen the institutional alternatives under discussion.
Keywords: freedom of expression; participation; justification; content moderation; comparative law; Brazilian Internet Civil Framework.

Resumo: O debate sobre os limites da liberdade de expressão costuma percorrer um de dois atalhos: o que passa da constatação de que uma fala alterou algo para a autorização de contê-la, e o que passa da proteção da expressão para a conclusão de que nada se deve a quem ela alcança. Os dois são recusados a partir de um único critério, o da participação: a expressão que reorganiza condições de que outros vivem exige justificação perante eles; a intervenção que restringe essa expressão também reorganiza condições de participação e responde a exigências próprias de justificação, competência e controle. O critério é desdobrado em três perguntas — a do diagnóstico, a da justificação e a da resposta e da competência — que separam a exigência de resposta da autorização de restringir e submetem o restritor ao mesmo exame que o falante. A partir de três trabalhos anteriores sobre recepção, mito político e autorização da ação, mostra-se o que a reorganização sozinha não autoriza, como as respostas possíveis se comparam e quais exigências cada intervenção deve satisfazer. A parte final aplica o critério ao direito brasileiro vigente, registrando o que ele já assegura e o que permanece em aberto, em especial no regime do art. 19 do Marco Civil da Internet após a tese final do Supremo Tribunal Federal nos Temas 987 e 533. Uma comparação com o Regulamento dos Serviços Digitais da União Europeia e com o Online Safety Act britânico mostra que as lacunas do regime brasileiro — razões para a redução de alcance e para a moderação por condições de uso, e uma instância de revisão

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independente do provedor — têm correspondentes normativos em outros ordenamentos, que ampliam as alternativas institucionais em discussão.
Palavras-chave: liberdade de expressão; participação; justificação; moderação de conteúdo; direito comparado; Marco Civil da Internet.

Resumen: El debate sobre los límites de la libertad de expresión suele seguir uno de dos atajos: el que pasa de constatar que un discurso alteró algo a autorizar su contención, y el que pasa de la protección de la expresión a la conclusión de que nada se debe a quienes alcanza. Este trabajo rechaza ambos a partir de un único criterio, el de la participación: la expresión que reorganiza condiciones de las que otros viven exige justificación ante ellos; la intervención que restringe esa expresión también reorganiza condiciones de participación y responde a exigencias propias de justificación, competencia y control. El criterio se despliega en tres preguntas — la del diagnóstico, la de la justificación y la de la respuesta y la competencia — que separan la exigencia de respuesta de la autorización para restringir y someten al restrictor al mismo examen que al hablante. La parte final aplica el criterio al derecho brasileño vigente, registrando lo que ya asegura y lo que sigue abierto, en especial en el régimen del art. 19 del Marco Civil de Internet tras la tesis final del Supremo Tribunal Federal en los Temas 987 y 533. Una comparación con el Reglamento de Servicios Digitales de la Unión Europea y con la Online Safety Act británica muestra que las lagunas del régimen brasileño — razones para la reducción de alcance y para la moderación por condiciones de uso, y una instancia de revisión independiente del proveedor — tienen correspondientes normativos en otros ordenamientos, que amplían las alternativas institucionales en discusión.
Palabras clave: libertad de expresión; participación; justificación; moderación de contenidos; derecho comparado; Marco Civil de Internet.

1. Introduction

Two moves recur in debates about the limits of freedom of expression. One identifies harm and concludes that speech should be contained; the other invokes constitutional protection and concludes that nothing is owed to those the speech reaches. Neither belongs to a single political camp, and each appears in both, depending on the occasion. Both moves are shortcuts, and they are symmetrical. The first jumps from finding that speech has changed something to authorizing its containment, as though identifying harm were the same as demonstrating who may respond to it and how. The second jumps from protecting speech to dispensing with any justification, as though protecting an act meant declaring that it has no addressees. Both shortcuts run through the regimes that have reshaped platform liability over the last decade — the European Digital Services Act, the British Online Safety Act, the Brazilian Federal Supreme Court's ruling and the decree regulating it — and each has practitioners who read the other as a political adversary. What follows does not choose a side in this dispute; it directs the same questions to both positions, and their symmetry must emerge in the application rather than in a declaration.

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The instrument is a criterion formulated elsewhere and already applied to action in general: participation. An action that reorganizes conditions on which others live includes those persons within it by virtue of the position they occupy, and therefore owes them an answer (DIETRICH, 2026a). Applied to speech, the criterion yields a result accepted by neither shortcut: expression that reorganizes conditions of participation requires justification before those who live from them, but this requirement does not itself become authorization to restrict; and the intervention restricting expression is itself a reorganization of conditions of participation, subject to the same questions it directs to the speaker.

Three previous papers on network reception, political myth and authorization of action have laid the groundwork without going through it(DIETRICH, 2026b; 2026c; 2026d) None derived from the damage an authorization to restrict, nor will it be derived from them here. What is added is the distinction that the three did not make: between the answer that a speech must and the extent to which someone can impose it, there are three steps — the diagnosis, justification and choice of the answer by the competence of the person who adopts it — and each requires its own argument. The method is that of the conceptual reconstruction under test: the criterion is formulated, confronted with the strongest objections and applied to two documented cases, to a hypothetical case with variations, to current Brazilian law, read in the text of the standards and the judicial thesis, and, by comparison, to European and British regimes. Brazil is the main case because in it the redesign was the most recent and the most abrupt, made by a court and completed by decree.

The terrain to be explored thus goes from what is already established to what is not yet: from the three results prior to the criterion and its questions; from what the reorganization alone does not allow for the comparison between the answers and the requirements of each intervention; from the intervention as a reorganization to the current Brazilian law — to the Constitution, to the penalties of honour and incitement, to Law 14.197/2021 and to the final thesis of the Federal Supreme Court in Chapters 987 and 533 — recording what this right already ensures and what remains open —, and finally, to the comparison with the European and British regimes.

2. Three previous findings

The three papers preceding this one investigate dimensions of the same phenomenon — how one receives, what circulates, what one authorizes — and each bases a distinct piece of the

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argument. Taking them in blocks would blur the difference and lend the whole a strength that none of them have in isolation.

The first one described the reception. When someone's success on social media is taken as an aptitude for a position, it's not just the candidate who demonstrates competence in a new way; it's the voter who begins to believe they have competence to judge him. Effective communication is taken as clarification when it confirms expectations, provides an immediately replicable response and produces a sense of dominance without sufficient scrutiny (DIETRICH, 2026b). That result is hermeneutic, not injurious. No one is treated as non-participant for receiving a message in this way, and no position is obstructed. What the work is based on is that speech can form in the recipient a judgment without examination; what it is not based on is any answer other than that which is directed to the examination itself. Their hypotheses, moreover, describe a mechanism and are not valid as empirical evidence that it operates in a particular case.

The second one dealt with the content. The political myth, in the sense that Barthes, Edelman, Flood and Bottici allow us to reconstruct, integrates events different from a shared political narrative, and the label that derives from it replaces the examination with belonging(DIETRICH, 2026c). But the conclusion of that work was deliberately contrary to the restriction: the most offensive interpretation of an ambiguous phrase is not enough on its own to close the square. The German Constitutional Court, when deciding on the sentence “ soldiers are murderers ”, did not certify that the sentence was true or fair; it decided that the place where it could be examined should remain open (BVerfGE 93, 266). The legal protection of speech does not guarantee its judgments, and the degradation of debate by myth does not deprive anyone of the status of a participant. What the second paper underpins is a negative result: there is a class of sentences that degrade the square without closing it, and the answer to them is the exam.

The third dealt with the authorization. An understanding formed under influence can turn a response that the agent had forbidden into a response that he comes to have demanded, and the agent can do evil without recognizing it as such. The cases of Southport, the Capitol and Brasilia showed the cycle — influence, understanding, action — and showed where it can be interrupted with less harm: in timely public correction by those who hold the information, in the focused responsibility of the few who form the understanding of many, and in a narrowly defined measure of reduction of reach for content already proven false during a declared crisis (DIETRICH, 2026d). That paper acknowledged the objection that the evidence that

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disinformation turns citizens into thugs is weak and that a power to take down crisis content will be used outside of it(REILLY, 2024), and confined his proposal to limits that the objection could not reach. What he argues is that a speech can reorganize public assurance that a group will not be attacked for what it is(WALDRON, 2012) And there are answers to that that don't fit the cycle. What it does not support is that the limits of that intervention are conditions for any legitimate response to expression: an incitement can use true information, a threat can occur outside of a crisis, and demand a declared crisis surrender to the authority that declares part of the power to define when protection decreases.

The order in which the three papers were written suggests a sequence: reception without examination would make the label effective, and the label would make authorisation possible. The sequence is useful for organizing analysis and misleading if it is read as a causal chain. None of the three demonstrated that the first moment produces the second or that the second produces the third; each described a mechanism and gathered evidence of circulation — visualizations, repetitions, summonses — which is not evidence of effect. Four hundred and twenty thousand views of a fake name and two hotels attacked in the following days are facts of the same episode, not a proven causal relationship between a publication and an attack. What follows therefore holds three separate things: the interpretation of the mechanism, the evidence of circulation and the demonstration of effects. Only the latter would authorize causal statements about a specific publication, and it is rarely available.

3. The criterion: participation, justification, and competence

A person receives a message saying that the polling place has changed. The information is false and was released to lead you to the wrong address. No one declared that she lost her right to vote. Your name remains on the register, your voting status remains recognised and the rules ensuring your participation have not been changed. Nevertheless, the message may prevent the exercise of that position. The recognition of a right and the conditions for its exercise are different things.

It is now considered to be a complaint of irregularity in the investigation. Their disclosure may reduce confidence in the procedure and lead to dispute. That's not enough to bring you any closer to the previous message. The complaint may reveal an actual defect, require an investigation or present an unconfirmed suspicion. The reliability of a procedure includes the possibility of examining its errors. Preserving it does not mean keeping intact the trust people place in him. There is, however, a complaint of another kind: one that remains the

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same after the examination, expertise and appeal, and which serves to summon, not to examine. That complaint closes the possibility it invokes. The difference between the two is not in the content, which may be the same, but in the relationship that each one maintains with the exam they ask for: one opens it, the other replaces it.

The two examples show the difficulty of taking the change of a common condition as an immediate ground for restriction. The expression modifies understandings, expectations and relationships. Some of these changes make it possible to correct injustices; others make it difficult for former officials to participate. Identifying a transformation is the beginning of the evaluation.

A common condition in the area considered here is that on which the exercise of the participation of several persons depends: the possibility of accessing operational information from an election, contesting a decision or circulating without being subject to directed threats. Their existence does not require consensus on what is true or just. People who disagree deeply may rely on the same conditions to sustain their disagreement. Nor is every shared condition presumed to be legitimate. An exclusive practice may be stable, ancient and widely accepted; these characteristics do not justify its preservation. What distinguishes it from a legitimate condition is precisely what the criterion examines: the exclusive practice treats part of the dependent person as if he did not participate in it, and therefore the second question reaches it in the same way as it reaches speech.

Participation refers to a particular relationship with the condition examined. The voter participates in the electoral procedure; the resident of a place depends on the conditions which make it possible to live in it; the contestant participates in the practice in which reasons can be offered and answered. Identifying these relationships requires description and argument. It is not enough to call someone a participant, nor to say that every person reached by a consequence occupies the same position. The starting point is that of the book from which this criterion derives: no one starts by producing what they live by, and receiving a condition is a way of participating in it, not a lesser degree of participation(DIETRICH, 2026a, caps. 1, 4 e 8); and the field in which the positions are distributed precedes the point of view of the person acting on it (DIETRICH, 2026a, cap. 15).

The first question is diagnostic: what did the speech do, or did it create enough reason to fear it would do, with a condition of participation? The answer needs to identify the act, the condition and the persons whose position is at issue. These people are inside the act by the position they occupy, not by the intention of the speaker: the direction of the action does not

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arise from the intention of the agent, but from the place on which it falls (DIETRICH, 2026a, cap. 11). The response shall also distinguish between the transformation already occurring and the risk of transformation. A message that does not reach its recipients, a threat that immediately alters their behavior, and a call that finds a mobilized audience present different problems. The abstract possibility of producing consequences does not allow them to be treated as equivalent.

That description does not yet contain the judgment of injustice. A complaint can make the continuation of a practice impossible because it has revealed its abuses. True information can frustrate expectations that should not be maintained. A criticism can shake the authority of one who depended on the absence of challenge. The transformation of previous relationships requires examination; it does not set a general priority for their preservation.

The second question is normative: why is the transformation identified justifiable or unjustifiable to those whose participation it achieves? The assumption is that the person who intervenes in the conditions of participation of others cannot consider that intervention to be solely his own(DIETRICH, 2026a, cap. 13). The premise is assumed, and its defense can be given in a few lines. Those who act on a common condition live from it as much as those whose position changes; to treat change as their sole subject would be to use what is of all as if it were their own, claiming for themselves a use which they deny to others. The premise rejects this asymmetry, and whoever rejects it must explain why the condition of all living can be reorganized by one alone without reasons directed to others. It demands reasons directed to the positions struck. It does not require that every speech be given prior authorization, nor does it require that every person affected have a veto on its circulation. The wording approximates the principle of Habermas' speech, according to which the norms of action to which all the possible actors could give their consent as participants in rational speeches are valid, and deviates from it on two points. Habermas defines the affected by the interests affected by the consequences of a regulation; here the recipient is defined by the position he occupies in the changed condition. The difference is not merely verbal: the advertiser whose revenue falls on the removal of a content has an affected interest and no position in the participation condition concerned; the voter who never received the false message has no individual interest and still holds a position in the procedure whose reliability it has affected. And the principle of discourse subjects norms to a hypothetical assent, whereas the premise assumed here requires reasoning directed at the positions reached without making your assent a condition of action. Proximity has an important consequence: for Habermas, the discourse that validates standards presupposes the free movement of topics, information and arguments in a public

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space(HABERMAS, 1997, v. 1, p. 142), and the intervention restricting expression affects those same conditions.

The closeness is greater with Forst, for whom there must be no political or social relations of government which cannot be adequately justified to those affected by them, for reasons satisfying reciprocity and generality, and for whom the core of injustice is arbitrariness, unfounded dominance (FORST, 2012, p. 1-2, 20-21). A feature separates it from the criterion here adopted, and it is it that the argument needs to defend: Forst bases the right to justification on the dignity of the being who can ask and give reasons; the premise here assumed the basis on the position occupied in a common condition. Their notion of order of justification — every context in which norms and institutions govern common life — has, however, a consequence that matters to the argument: the platform that sets and applies traffic rules to millions of people governs, and whoever governs owes reasons to the governed.

The distinction between denying a claim and denying participant status helps in this examination. Responding to a proposal is not the same as saying that its author is no longer someone to whom reasons are due. However, the first operation may also be unjustified: a claim may be rejected on false, irrelevant or discriminatory grounds. And exclusion can occur without an express declaration of inferiority. The message on the voting address obstructs an exercise while formally retaining the recognition of who should exercise it.

Therefore, denial of status and obstruction of exercise are indicators of problems that need to be examined. None of them alone determines the feasible measurement. The assessment depends on what has been denied, the manner of intervention, the reasons presented and the evidence available. A collective reason may reach each participant, but the invocation of a general benefit does not preclude explaining the specific position imposed on him.

The third question concerns the answer and competence. Recognizing a speech as unjustified does not give anyone the power to suppress it. Responding, correcting, repairing, reducing scope, removing content and punishing are different responses. Each intervenes in its own way in existing relations and requires a corresponding justification. The choice must take into account your ability to deal with the problem, the alternatives available, its extent and duration, as well as the conditions for challenge and review. A lawyer will recognise in these requirements the examination of proportionality — adequacy, necessity, weighting in the strict sense (ALEXY, 2008) And the resemblance is real. The participation criterion does not propose a different test, and the control of restrictions on rights has long been the subject of constitutional theory(ALEXY, 2008; SILVA, 2002). What it offers is a common ground for

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examining speech and intervention: it identifies the recipients of both — the people whose positions each changes — and requires, for both, the possibility of effective response in a timely manner. If this reading makes visible something that a limited application to the content of speech would fail to examine, this has to be shown in one case. There is also a limit that the book makes and applies to the answer more than to the speech: the answer cannot destroy the very thing about which it is due(DIETRICH, 2026a, cap. 18). The answer that eliminates the practice in which reasons can be offered and answered destroys the condition it invoked to justify itself.

Restricting expression also reorganizes a participation condition. Blocking a channel can disrupt a threat and prevent other demonstrations; removal can protect someone and eliminate material necessary to criticize the decision itself. These effects do not render any intervention inadmissible. They make it insufficient to justify it merely by identifying a defect in the preceding sentence.

The requirement of justification thus reaches the speaker and the restrictor without making their positions identical. A decision-making authority has powers and means that an isolated participant does not have. A platform that controls access and traffic can set up practical dependencies even when its rules announce guarantees. It is important to check that the objection is effective in a timely manner and that the decision maker remains subject to effective control.

Questions are worth two levels, which should not be confused. At the level of the regime — the legal, judicial or contractual rules governing expression and its moderation — the question arises as to how these rules distribute the possibilities of speaking, receiving, challenging and obtaining review. At the level of private intervention, the question arises as to whether the application of these rules to the case is justified, competent and disputable in good time. Rawls distinguishes between justifying a practice and justifying an action it defines(RAWLS, 1955, p. 3-7), without reducing one level to another: a rule may be unfair and correctly applied, and a justifiable rule may be incorrectly applied. In moderation at scale, examining isolated decisions is not enough, because policies, automated systems and the distribution of errors also reorganise participation(DOUEK, 2022) Neither is it dispensed with, for it is in the particular decision that error reaches a person. The same applies to those who speak: the legal authorization of a speech does not in itself justify it to those to whom it is given, and the duty of justification does not become accountability for each sentence before its

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circulation. It becomes demanding when speech reaches someone and alters, or creates sufficient reasons to fear it will alter, a condition of participation.

The participation criterion sets out these requirements without replacing the arguments required at each stage. The description of a transformation does not prove its unfairness; the unfairness does not automatically determine a penalty; the legitimate purpose of the response does not demonstrate the competence of the person who imposes it. Between speech and restraint there are people whose positions need to remain identifiable, even when it is concluded that a claim must be rejected.

4. What reorganization does not authorize

Identifying that a speech has altered a common condition, and that it must therefore respond to those who live through it, is not enough to authorize a coercive intervention. The statement seems modest and it is not: most restrictive arguments consist precisely in omitting it. It is therefore appropriate to go through what is below the first two questions and what, even crossing them, does not yet indicate any measure.

The first is the opinion which is asserted without attributing crime, without summoning and without obstructing, even if it is false and even if it is hateful. A person who maintains that a certain policy is unfair, that a certain group is wrong or that a certain institution does not deserve to be trusted denies claims; he does not, by doing so, deny anyone the status of a participant. The answer due to this speech is dispute, and the one who disputes it acknowledges, by the very act, that its author remains someone to whom reasons are due. The falsehood and offensive nature of a statement do not, in isolation, demonstrate that it has obstructed someone's participation; they demonstrate that there is something to be disputed. In this respect, the criterion differs from Waldron's, which advocates restricting published and lasting group defamation precisely because it permanently corrupts the public guarantee here used to describe the damage(WALDRON, 2012). The criterion accepts the description and rejects the passage: the corrosion of the guarantee is an alteration to be diagnosed, and only the demonstration that it occurred, in a certain form and to a certain extent, allows the question of the measure to be asked. Kaufmann makes the same point as the limit of tolerance: it is not unlimited, but it does not follow that intolerance must always be fought with intolerance, and when intolerant speech does not endanger guaranteed freedom, there is no basis to deny it freedom(KAUFMANN, 2004, p. 494-495). If the offence is repeated, directed at a specific person and organized in such

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a way as to remove them from a space, it is no longer the offence but the obstruction concerned, and the diagnosis in the previous section applies.

Secondly, there is the myth and the political label as label. Calling an opponent a genocide, a thief or a communist replaces the examination with belonging, and the place where the examination could take place gets poorer. What the second paper established is true here: the degradation of debate by myth calls for examination, and examination is the answer that does not reproduce the myth with an exchanged sign (DIETRICH, 2026c). But the use of a label is not, by itself, a diagnosis. The same word can function as political criticism, as a specific indictment of a crime, as an instrument of repeated harassment, or as a component of an exclusion campaign, and what it has done with someone's participation depends on the use, the recipients, and the context. Being able to respond formally does not show that the exercise of participation remained unobstructed — the voter in the first example was also able to respond, and therefore did not arrive at the right place. What can be asserted is narrower and more certain: falsehood, offensive character or use of a label do not, in isolation, demonstrate obstruction of participation or authorise restriction; what they demonstrate or fail to demonstrate is a matter of diagnosis, as the case may be.

Thirdly, there is ambiguity. A sentence that admits an offensive reading and a critical reading does not rearrange, by simply admitting the first, any condition; the first question requires that the act has done something, or created enough reasons to fear it would, and the possibility of being read in a certain way is neither one thing nor another. The German Constitutional Court has not ruled that soldiers are not murderers; it has ruled that the most offensive interpretation of an ambiguous sentence does not allow the State to choose it against the speaker (BVerfGE 93, 266). The rule has a corollary that the criterion accepts: where the diagnosis cannot distinguish the degradation from the destruction, the response ought to be the lesser one, because the doubt about what the speech did cannot be resolved against who spoke. Hegel already saw the difficulty on both sides. He refused to define freedom of the press as freedom to say and write what one wants, a definition he had as superficial as that of freedom to do what one wants; and he recognized that the indeterminacy of expression prevents the laws from achieving the precision required of the law, so that judgment about it tends to appear as a subjective decision (HEGEL, 1997, § 319, p. 290-291). The first side refuses immunity; the second is, since then, the problem of who restricts.

Finally, what the first paper described remains: the mechanism by which the voter judges without examination and believes he has the competence to do so does not prove, in

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isolation, that someone has hurt him. The mechanism describes a mode of receipt, not a reorganized position against it, and the response to a mode of receipt is the offer of examination, not the containment of the person who provoked it.

There is, then, what crosses the first two questions and yet does not indicate the measure. A speech that verbalizes the exclusion of a group — that says in terms that its members are not recipients of anything — demonstrates unjustification. It does not demonstrate whether the answer is public dispute, correction, redress or containment. This depends on what the third question examines: the context in which the speech was delivered, the scope it had, the risk it created and the alternatives to be adopted. Mill had already observed it: the opinion that the cereal merchants are killing the poor with hunger can circulate freely in the press and be legitimately punished when it is said to an exalted crowd in front of one of their houses (MILL, 2006, cap. III). The content is the same; the act is not.

Nor does the measure itself indicate the limits set by the third paper for the intervention it proposed. Verified falsehood, declared crisis and the set of factors that characterise dangerous speech — speaker, audience, message, context and environment (BENESCH, 2013) — defined a specific measure, the temporary reduction in the reach of content already denied during the Southport days. As a condition of that measure, they are reasonable. As a requirement for any legitimate response to the expression, they do not stand. Connolly's incitement used true information about the existence of hotels that housed asylum seekers (CONNOLLY v. R, 2025); the threat to a given person does not need a crisis to change the behaviour of the recipient immediately; and the declared crisis requirement gives the declarant the power to define when speech protection diminishes — a power that the criterion applied to the restrictor cannot grant without examination. The three limits remain the case, not the rule.

And it doesn't indicate the measure, finally, the description that makes it light. To say that reducing the reach of a publication is not censorship, because it does not remove it and simply refuses to reward it, describes the mechanism and does not justify it. Reduction of scope is an intervention on the participation condition of the publisher and the reader; its legitimacy depends on who determines it, the effects it produces and the possibilities of challenging it, and these possibilities are in practice smaller than those accompanying the removal because the reduction is less visible. An invisible intervention is not a lesser intervention; it is an intervention with less control.

What follows from the diagnosis and justification is therefore that an answer is due. There's no answer for who or what.

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5. Response, competence, and oversight

The responses to a speech that unjustifiably altered a common condition are not equivalent to each other, and the difference between them is not only in intensity. Public objection, correction, repair, reduction of scope, removal and punishment intervene differently in existing relations, require different titles from those who adopt them and allow different controls. What can be said about all of them is that each must be compared specifically with the alternatives, according to their extent, their duration, their reversibility, the urgency justifying them, their effects on third parties and the possibility of reviewing them; and that whoever adopts one of them must explain why a less expensive and sufficiently effective alternative to the speaker's participation was not enough. You can't say they're always in the same order. A high compensation can be more costly than the timely removal of a threat; adding context to a publication does not carry the same weight as reducing its scope; an urgent threat may require removal without first going through public correction. The preference for the least expensive intervention is a requirement; a fixed sequence of steps is not.

It is, however, appropriate to name the answers, because each has its own nature. Public challenge is the answer that any participant can give and that does not require any title; the right to reply, when required institutionally, already imposes an obligation on a third party — the vehicle, the platform — and is therefore not the same as freely challenging. The timely public correction by the person who holds the information is the answer that only a given authority can give: when a false attribution is circulated and whoever could deny it is silent, silence is not neutrality. Shklar called the omission of those who could and should prevent a wrong and did not do it a passive injustice and recalled that the public authority that does nothing is among the most serious cases of this omission (SHKLAR, 1990, p. 40-46) The British inspection of Southport pointed to the information vacuum as flawed, which does not preclude distinguishing what the law allowed to say (HMICFRS, 2025). Civil repair is a response to a past deed without a future deed. Reducing range, labelling and added context keep speech available and change its circulation, each in a different way. The removal removes the publication; the criminal penalty hits the speaker. These differences in nature are what the concrete comparison has to take into account, and they are also what make each response a distinct reorganization of the conditions of who speaks, who reads and who will have to examine the decision.

The requirements accompanying any of these answers can be formulated as six. The first is a proven diagnosis: the identified expressive behaviour, the identified condition and

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sufficient evidence of the damage or risk that the measure intends to address, depending on the nature of the intervention. Three things must be distinguished here, because they are often confused: the proof that the speech occurred and what it said; the proof of the harm consumed or the relevant risk it created; and the basis and requirements of the measure chosen. A threat may require interruption before the aggression is announced, and requiring the consummation of the final damage as a condition of all action would be tantamount to prohibiting prevention; what is required is that the risk is demonstrable, and demonstrated, to the extent of the intervention. Circulation, in isolation, shows none of these elements. When the requirement fails, intervention responds to a class of content, not an act — and responding to classes is the safest way to reach those who have done nothing. The second is a justification stated: denial of status or obstruction of appointed exercise, and the reason for the measure is given to the person who suffers it. A measure whose reason cannot be given to the victim is a forceful preference.

The third requirement is competence. Whoever decides needs a title to reorganize the speaker's participation condition, and the question is not whether there is a title, but which, with what limits and under what controls. A court has it by mandate; an administrative authority, by the rule that sets it; a platform, by a more varied set of sources — the law that imposes obligations on it, but also the contractual conditions of use, the organisation of a thematic forum, the fight against what degrades the service — and the relevant question is which powers these rules legitimize and which examines them themselves. The European Digital Services Regulation admits decisions based on both the illegality of the content and its incompatibility with the terms of service, and makes each subject to substantiation duties(UNIÃO EUROPEIA, 2022, art. 17). This does not solve the normative question; it shows that excluding all own policy as a foundation would be a strong commitment, and that the problem lies in foundation and control, not in the origin of the rule. The requirement seems obvious and is the most frequently omitted, because the severity of the damage tends to be taken as a sufficient excuse for anyone to respond to it. No, it's not. The work on Coase has shown, in another area, that a manager can have formal duties and retain unilateral practical control of the reorganisation he manages(DIETRICH, 2026e); the observation applies to anyone who removes, blocks or reduces range. The fourth requirement is that of guarantees and controls: contradictory, appeal, deadline, publicity of the decision and the standard it applied, and the possibility of challenging the reduction of scope as much as the removal. Solum argued, with regard to the legal proceedings, that the legitimacy of a binding decision depends on the ability of the persons

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concerned to participate at a time when participation still matters, and that this amount is not reduced to the effect of participation on the result (SOLUM, 2004, p. 275). Solum restricts the thesis to final and binding decisions and expressly excludes temporary decisions. The extension to moderation is therefore Solum's own argument, not Solum's: the final removal is approaching the case he is examining, and even a temporary measure can have final effect when it reaches participation in a dated debate — the opportunity lost on the eve of an election does not recover after it. Without control, the response becomes an exception, and the exception is the signal that the response has entered the cycle it intended to interrupt.

A consequence of this opening must be stated. A forum devoted to literature can withdraw election propaganda that has nothing unfair about it, just because it's foreign to the theme that organizes that space. The withdrawal is not justified by the injustice of the speech, which did not exist, but by the stated purpose of the space, which the participants knew when entering and from which they also live. The case separates two questions which the argument has hitherto tended to raise: why a speech is unjustified, and why its exclusion from a given space is justified. The second can be answered without the first when the rule of space is public, prior to the case and applied uniformly, and when the speech retains other places to circulate. The answer changes as the space ceases to be one of many and becomes one through which most traffic passes: the thematic purpose of a forum does not shift to a platform that organizes a country's public debate, and the more participation depends on a space, the more the rule that the organiser approaches a rule of the system itself and the more justification it requires. The distinction follows Post's between public discourse, whose protection serves to enable people to try to govern themselves, and the expression that circulates outside of it, regulated for other purposes(POST, 2011, p. 483-486). Post makes the distinction for constitutional protection against the State; extending it to the duties of the platforms is its own argument, which is based on the criterion and not on the classification of Post: the thematic forum regulates expression according to its purpose, and the platform that has become the place of public debate, by reorganizing the condition on which that debate depends, can no longer do so without the reasons that are required of those who regulate it.

The fifth requirement is that of review conditions. A measure that prevents the speaker from reviewing what he said without admitting total guilt closes a path that the answer had reasons to keep open; the psychology of dissonance suggests that the penalty that closes it may reinforce the self-image he intended to correct (TAVRIS; ARONSON, 2007) But the reaction to a measure can reinforce convictions, produce revision or simply disrupt conduct, and the

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legitimacy of a response does not depend on being able to modify the agent's understanding. What is required is more modest: that the measure preserve the conditions for revision, not that it guarantees them. The sixth is the distribution of responsibility. Scope and position are relevant factors — whoever forms the understanding of many answers for something that the one who only repeats has not done, although the one who repeats, as he repeats, cannot be said to be a stranger to the one who repeats (DIETRICH, 2026a, cap. 22) — but do not replace the knowledge, intention, effective contribution and possibilities of acting otherwise, which the third work's responsibility criterion has already met: effective access to information that would deny speech, ability to examine it, reasons for doubting and opportunities for examination (DIETRICH, 2026d). A response that touches the mass and saves who originated reversed the distribution; one that touches who originated without examining what he knew and could reverse it in another way.

Two documented cases show the requirements in place, with unequal and partly inconclusive results; a third is only delimited. In Connolly's case, the condition was the public assurance of the safety of hotel residents hosting asylum seekers; the conduct, an unambiguous incitement to set them on fire, published on the night of 29 July 2024, hours after the attack and before the disturbances that would begin the next day; the risk has to be assessed by the circumstances of the time — the commotion of the attack and the circulation of falsehoods about his author —, without carrying the subsequent violence to the hearing; the measure, the criminal penalty. The jurisdiction was that of an ordinary court, and control existed: the judge of first instance treated as aggravating the time of publication, on a night of special sensitivity, and the Court of Appeal examined the thirty-one-month sentence, justified its appropriateness and refused permission to appeal against it, so that the sentence remained unchanged(CONNOLLY v. R, 2025). The case thus illustrates the judicial rationale and the review of appeals — the third and fourth requirements. It does not illustrate the rest: the judgment does not compare imprisonment with less burdensome alternatives in the sense here required, and it does not say anything about the conditions of review left to the condemned. Examined requirement by requirement, the case is conclusive as to two and inconclusive as to the others, and this is how a case can test a criterion. The case of the false name assigned to the Southport assailant is more complex, and therefore more useful. The condition was the same; the conduct, a false attribution of crime to a category; the false name was seen about four hundred and twenty thousand times, a number that measures potential reach, not convinced people (HOUSE OF COMMONS, 2025a, §8). The response of those who held the information

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was limited in different ways. The defendant's name, who was seventeen years old, was protected by legal restrictions — the rules of contempt of court and those protecting the identity of minor defendants; other corrective information could be disclosed and were, such as the place of birth and the denial of the false name; on others as well, such as religion, there were divergent guidelines between instances of the Public Prosecutor's Office; and the Merseyside police chief could not tell the parliamentary committee whether the disclosure of religion would have prevented further disturbances. The committee recorded that these restrictions have created a vacuum in which disinformation has grown(HOUSE OF COMMONS, 2025b). It is not, therefore, a mere silence or an imposed silence. It is a conflict between the public guarantee of the threatened community and the defendant's procedural protection, both participants in the situation at stake, and the criterion requires each category of information to be examined before each other. The passive injustice referred to by Shklar only covers the part of the omission not covered by a competing obligation; Shklar itself measures the liability of those who have competing obligations in the light of them(SHKLAR, 1990, p. 44-45). What the case allows us to say is narrow. Where correction was legally possible and delayed, there was a due response that did not come in time. Where the law imposes reservation, the question moves to the regime — the rules of anonymity of minors — and how to preserve them without leaving the vacuum occupied by falsehood. In neither case does the case prove that publication, or lack of correction, caused the attacks. In the case of summonses before 8 January 2023, the condition was institutional; the conduct, the summons to prevent the functioning of the institutions; the response, the accountability of the summoner, in proceedings before the Federal Supreme Court. The case, however, needs a precision that the formula hides. In January 2023 the electoral procedure was completed; the condition at stake was respect for the result proclaimed and the functioning of the institutions resulting from it, and the summonses that preceded the invasion of the headquarters of the three Powers were directed against this functioning. Assessing the answer to the six requirements would require examining identified decisions one by one, and the existence of published proceedings and decisions does not in itself prove that they have been satisfied. The case is recorded as one in which the criterion should be applied more cautiously, because in it symmetry is more difficult to maintain.

The six requirements can be asked as five questions to any intervention. What condition has been changed, why does it behave, with what evidence of harm or danger? Does the amendment deny status or obstruct exercise, and why? What answer, and why was a less expensive and sufficiently effective alternative not enough? Who adopts the measure has the

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right to reorganize the speaker's condition, and what? What guarantees and controls accompany the measure, even when it is the scope reduction? The same questions are asked about the rules: what conditions they allow to be changed, what reasons support them, what measures they authorise, who they give title to and what review they guarantee — including on the distribution of errors that no rules applied at scale can avoid. The first four questions were scattered throughout the previous three papers. The farm wasn't in any of them.

6. Intervention as reorganization

When a profile is blocked, a publication removed, or its reach reduced, something was reorganized. Not only the situation of the speaker, but also that of the person who read it, who would respond to it, who would need the material removed to assess whether the removal was fair. The restriction of expression is an action on a common condition — the square in which reasons can be offered and answered — and, like any such action, has within itself, by the position they occupy, the people who live in that condition. The criterion that has been addressed to the speaker is therefore addressed to the one who restricts it. Not because the positions are identical, but because the field is the same.

The difference between the positions is real and must be stated. An authority that can impose decisions has powers and means that an isolated participant does not have; a platform that controls access and circulation can set up practical dependencies that no speaker sets up. This difference does not mitigate the need for justification; it exacerbates it. Who can reorganize more, and who can reorganize more, you ask more. The book from which the criterion derives distinguishes three ways of being within the same reorganization — the one who acts, the one who holds the power to reorganize and sustain it, and the one who repeats it — and notes that the response of the one who holds it cannot consist of his good intentions (DIETRICH, 2026a, cap. 22). The restrictor takes the second mode. The three questions of the criterion, applied to the restrictor, take the following form. What common condition does intervention reorganize, and with what evidence was reorganization necessary? To whom should the intervention be justified — and the answer includes the speaker, who does not cease to be a participant because he spoke badly? Who controls the decision of who to intervene with, by what deadline, and with what publicity?

The final question is the decisive one, and it's the one the work on Coase prepared. It has been shown here that the existence of formal duties — to inform, consult, give account — does not prevent the manager of a reorganisation from retaining practical and unilateral control

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over it, if the duties do not give the person invoking them a means of amending the decision in a timely manner (DIETRICH, 2026e). It's the same here. A judicial thesis may impose on platforms obligations of transparency, channels of attendance and periodic reporting; the question of the criterion is not whether those obligations exist, but whether they give a removal or a reduction of scope a means of contesting it that works before the damage to their participation is consumed, or if they only document afterwards the control of the person who adopted it. An annual report on removals is not a resource; it is a statistic.

The distinction between justifying a practice and justifying a particular action included in it helps to make the point. Rawls put it about the penalty: to whom he objected that a certain doctrine would authorize the condemnation of an innocent person to deter others, he replied that it was necessary to say who would decide to do so, with what authority and according to what rules, because that authority would have to be written in the institution; and an institution that granted its agents the power to decide, on a case-by-case basis and according to its judgment on the common good, who would be condemned would hardly justify itself (RAWLS, 1955, p. 10-13). The question applies to the restriction of expression. It is not enough to show that, in this case, it would be good if someone withdrew this speech. It is necessary to describe the practice that authorizes someone to remove it — who, according to which rule, with what control — and to ask whether this practice is justified in the eyes of those who participate in it, including the speakers whose speech it will reach by mistake.

Reducing range is the most acute case. It is not invisible by nature: it can be communicated to those who suffer it, accompanied by reasons and challenged, and the European Digital Services Regulation requires justification for certain visibility restrictions, including prioritization (UNIÃO EUROPEIA, 2022, art. 17). The problem lies in the opaque deprivation — which is not notified, does not expose the standard applied and does not offer a means of challenge. In this way, the smaller the measure, the less control it admits. Who describes it as mere refusal to reward describes the mechanics; the question remains who decides what to reward, who justifies the decision and who reviews it.

The symmetry test to which the criterion is subjected has, then, two axes. First, it must produce the same result when the speaker belongs to the political field with which the applicant identifies. Two acts of speech with the same structure — a false attribution of a crime to a category of persons, a summons to prevent a procedure — receive the same five questions, and the answers do not change with the color of the speaker. On the second axis, which the three previous works have not covered, the criterion must reach the restrictionist: the State blocking

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a profile, the platform reducing a scope, the court imposing a measure. If the questions were valid for the summons and not for the exception to which it answers, the criterion would cease to examine the common field and go to serve one side.

There is an objection to this point that deserves to be addressed on its terms. She says that subjecting the restrainer to the same test as the speaker equates the fireman and the fireman, and that symmetry is a form of paralysis. The answer is that symmetry is not in measurements, but in questions. The fireman and the fireman don't get the same answer; they get the same demand to justify what they did to the house, and the fireman, who came in with a title that the fireman didn't have, has more to say, no less. A restrainer who can answer the five questions is not paralyzed by them; he is legitimate. What symmetry paralyzes is the restrictor that cannot respond to them, and that is exactly what should be paralyzed.

A hypothetical case allows us to see what that reading adds. On the eve of an election, a message circulates in town groups announcing the transfer of certain constituencies to a distant address. A limited analysis of the content asks whether the message is false and, therefore, whether it can be removed. Reading by participation raises other questions, and in the order in which they matter. Who is involved: the voters of those sections, whose voting status remains intact and whose exercise may be obstructed; but also the voters of any section effectively transferred, if any, for whom a true notice of similar content is essential. What response faces the risk in the time it exists: the correction by the Electoral Court, which holds information about polling places and can publish it through its own channels before the polls open, reaches the recipients without depending on removal. If removal is adopted, who decides and with what control: a platform that removes bulk, by analogy in text, messages about section change can also remove the actual notice and obstruct, by way of excess, the same exercise it intended to protect; and a decision only contested after the election is not contested in good time. What removal must preserve: proof of conduct, for possible accountability of those who obstructed the exercise of suffrage (Electoral Code, Art. 297). None of these questions are foreign to the proportionality test. What participation reading makes visible is that the recipient of the speech and the recipient of the measure must be identified before the measure is chosen, and that the same error — obstruction of an exercise — can be committed by the speaker and the restrainer.

The case changes when conditions change, and it is in the variations that the criterion works. If the official correction does not reach the recipients — because the message is circulated in closed groups, because time is lacking, because the electoral authority does not

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have their trust — the less expensive alternative is no longer sufficient, and removal or limitation of referral can become the answer without the questions about title and revision disappearing. If the communication is open, the correction next to the message may suffice; if it is encrypted, the platform does not see the content — and the Brazilian regime excludes interpersonal communications in messaging services from the duties of care and notification (Decree 8.771/2016, Art. 16-O) —, and the possible response moves to who can speak to the recipients. If the risk is remote — the message circulates weeks before, when there is time to deny — the urgency to remove is missing. And if the warning was true, removal is itself the obstruction, and the whole criterion turns against whoever restricted it. In none of the variations the criterion decides on its own; in all it indicates who should be considered and what needs to be demonstrated before the measure.

Finally, there is a limit which applies to the restrictor more forcefully than to the speaker: the answer cannot destroy exactly what it is due to(DIETRICH, 2026a, cap. 18). The threshold needs to be read carefully, because the image of closing the square confuses three things of distinct scope. Removing a publication is not removing a person from a space, and neither is removing the possibility of challenging the intervention itself. A publication may be withdrawn on the preservation of evidence, a reasoned decision and an effective appeal, and none of this destroys the square. The exclusion of a person changes his or her participation more extensively and permanently, and requires more. The intervention that removes the means of contesting it — because it is not notified, because it eliminates the material on which the criticism would depend, because the appeal comes after the damage to participation has been consummated — is the one that meets the condition it invoked to justify itself. It is in this third sense that the answer closes the square. So the fifth question — who controls, by what timeframe, by what advertising — is not a procedural addition; it is the way the criterion takes on when it turns to the applicant.

7. Questioning Brazilian law through the criterion

Brazilian law distinguishes, without naming, what the criterion distinguishes. It protects the expression of thought and expression, regardless of censure or license (CF, Articles 5, IV and IX; Article 220); provides for response and redress before any contention (CF, Articles 5, V and X); and responds to acts — incitement, discrimination, the violent abolition of the democratic state — and not to opinions. The following examination does not conclude on this

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right before reading it; it addresses the questions of the criterion to each source, records what the legislative text already answers and delimits what remains open.

The first source is the Constitution itself, and the first question is whether it already contains the criterion. The seal of anonymity (Article 5, IV) is usually read as a condition of subsequent accountability (Article 5, V and X); it can also be read — and is the reading here proposed — as recognition that the statement has recipients to whom its author is accountable. The right of reply (Article 5 V) and the inviolability of honour (Article 5 X) set the first-degree reply — the speech against the speech — before any other. And the decision removing the Press Act established the rule that freedom of expression has precedence, with subsequent liability and no prior restriction (STF, ADPF 130, 2009). The question to be asked to constitutional doctrine is whether this combination — respondents to whom it is accountable, response before contention, responsibility after and not before — equals the comparison between responses required before, or whether the precedence of liberty is regarded as a waiver of justification. The answer determines whether the criterion adds something to the Constitution or just reads it.

The second source is the criminal types, and here the question is double. Crimes against honour (CP, Articles 138 to 140) normally relate to statements that affect someone else's claim to consideration, and criminal proceedings in most cases depend on the offender's initiative. The classification, however, is not uniform: qualified injury under Article 140 (3) of the Penal Code and racial injury, now classified in Law 7.716/1989 (Article 2a, included in Law 14.532/2023) and prosecuted by public action, achieve precisely the status. The Supreme Court maintained, for crimes against honour, the requirement of a court order as a condition of the platform's responsibility, and it is questionable whether this regime also reaches those who deny status. Public incitement to crime (CP, Art. 286) and incitement to discrimination (Law 7.716/1989, Art. 20) respond to acts of summons and denial of status, and the decision confirming the conviction of a publisher for anti-Semitic works stated that freedom of expression does not amount to incitement to racism, in terms which approach the public guarantee that a group will not be attacked for what it is (STF, HC 82.424, 2003; WALDRON, 2012). The boundary between advocating a change in a norm and inciting crime was drawn by the Supreme Court in the 'Marijuana March' ruling (STF, ADPF 187, 2011), and it is there, rather than in abstract formulas, that the distinction between denying a claim and summoning is tested in Brazilian law. The question of the criterion to these types is whether their network application requires sufficient evidence of the behaviour and of the damage or risk that the type

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assumes, and not just circulation, or whether the severity of the type has been taken as a diagnostic dispensation. The question does not imply that the harmful outcome should occur: types of incentives exist precisely to achieve risk, and what the criterion asks is for the risk to be demonstrated to the extent of the response.

The third source is the protection of the electoral procedure and democratic order. Law 14.197/2021 characterised the violent abolition of the democratic rule of law and the coup d'état, both dependent on violence or serious threat, and the interruption of the electoral process by undue violation of the security mechanisms of the electronic voting system (CP, Articles 359-L to 359-N). None of these guys describe the call as such. The same law, however, added to Article 286 of the Criminal Code a single paragraph which punishes public incitement to animosity between the Armed Forces, or theirs against constitutional powers, civil institutions or society; thus, by incitement to crime in general (caput) or by participation in acts, the summoning speech enters the criminal field, and the distinction is important, because the response to a summons depends on what it summoned and how. The same law contained a type aimed at promoting or financing a campaign to disseminate known untrue facts capable of compromising the rigidity of the electoral process (Article 359-O); the device was vetoed. The absence of this type does not leave the electorate without protection in the first example: the Electoral Code punishes those who prevent or impede the exercise of suffrage (Article 297), and it also punishes the disclosure, in advertising or during the campaign, of facts known to be untrue about parties or candidates (Article 323), such as, by their very nature, are unlikely to reach the message about the polling place. In addition, the Supreme Court has already examined a rapid removal of misinformation on the electoral process assigned to the Electoral Court (TSE Resolution 23.714/2022) and upheld it, first by holding a referendum on the waiver of bail on 26 October 2022, then by holding that the action was unsuccessful(STF, ADI 7261) It is in this judgment that the questions of title, term and control were effectively addressed in Brazilian law, and the criterion must be measured against it. The question of the criterion thus becomes narrower: whether the mistaken embarrassment — the false message about the polling place — is within the scope of this type and the instruments of electoral justice, and with what diagnostic requirements, or whether the mass obstruction of exercise became unresponsive after the veto.

The fourth source is the platforms' liability regime, and it's the one that requires the most reading. Article 19 of the Civil Framework of the Internet conditioned the civil liability of the provider on non-compliance with a specific court order. In June 2025, the Federal Supreme Court declared the scheme partially and progressively unconstitutional and established a phased

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arrangement (STF, RE 1.037.396 and RE 1.057.258, issues 987 and 533); on 17 June 2026, when adjudicating the declaration embargoes, it consolidated the final thesis, with immediate transit in court, modulation from 5 August 2025 and a 60-day deadline for structural obligations (STF, 2026). The final thesis distinguishes between regimes: for offences and unlawful acts in general, extrajudicial notification is sufficient, and the liability of the provider who does not remove it is solidary, unless he demonstrates reasonable doubt as to unlawfulness after a diligent and qualified analysis; for crimes against honour, the court order is maintained as a condition of liability, with the express exception of the possibility of removal by extrajudicial notification; for a taxation role of serious misdemeanors, a duty of care with active monitoring is imposed, whose systematic accountability is ensured; for advertisements, promotions and artificial distribution networks, guilt is presumed to be removed by due diligence in a reasonable time. Alongside the thesis, two decrees of 20 May 2026, in force since 20 July, make up the regulatory framework, with distinct objects: Decree 12.975 amends Decree 8.771/2016, which regulates the Civil Framework, and Decree 12.976 deals with the protection of women in the digital environment. The first concerns directly the questions concerning the restrictor: it assigns to the National Data Protection Agency the supervision of the duties of providers (Decree 8.771/2016, Art. 19-A, in the wording of Decree 12.975/2026) and reserves to the Advocate General of the Union a narrow notification power, limited to misleading, abusive or fraudulent publicity related to public policies (Art. 16-N, § 1). Its validity is questioned in the Supreme Court (ADI 7981).

To this scheme, read in the text of the decree governing it, the questions of the criterion receive partial answers, and it is advisable to record them before pointing out what is missing. As regards the diagnosis, the duty of care does not respond to isolated publications: the provider is responsible for systemic failure to provide a roll of typical conduct — terrorism, suicide inducement, incitement to discrimination, crimes against women, sex crimes against vulnerable persons, trafficking in persons and the types of incitement and attempted attack on the democratic state (CP, Art. 286, single paragraph, and Art. 359-L, 359-M, 359-N, 359-P and 359-R) —; the existence of illicit content does not characterize the failure; and it is forbidden to the issuing authority to hold the provider liable only for the isolated maintenance or removal of a content, as well as for the notification to moderate isolated persons (Decree 8.771/2016, Art. 16/2026, Art. 3B, §16-I, 12.975). The system thus separates the two levels previously distinguished: the system is examined by the authority; the private decision is taken by the provider on notification. As regards the justification, removal by notification shall be

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communicated to the user with the specific grounds and means of contesting it, maintenance shall be communicated to the notifier on the same terms, and reconsideration after contestation shall be justified by both parties (Article 16-E); the terms of use shall provide for the appropriate procedure and annual transparency reports (Article 20-A). In this respect, the scheme complies with the requirement of reasoning addressed to the person to whom the measure relates. As regards jurisdiction, the provider may retain the content where, after careful and reasoned analysis, it concludes that there is reasonable doubt as to its criminal nature, taking into account the proportionality between the doubt and the seriousness of the crime, and must take into account the context and the informative, critical, satirical or parodying purpose of the publication (Article 16-G (1) and (2)). The degree of scrutiny increases with what is at stake, as in epistemic liability described by Amaya (2011, p. 316-318); and, as in it, the diligence demonstrated in the process serves to assess the decision maker — the provider —, while the correction of the decision to maintain or remove remains a distinct issue (AMAYA, 2011, p. 318, nota 11). The provider must also prevent the abuse of freedom of expression notifications (Article 16-F), a duty addressed to the restrictor himself.

What's left open is narrower than the initial question. The decree does not lay down the time limits for objections; it authorises the competent authority to regulate them (Article 16d, first subparagraph), and the timely objection depends, inter alia, on whether such time limits exist and are short. The guarantees provided for in Article 16E are triggered by the notification; the decree does not say whether the moderation exercised by the provider for its conditions of use is achieved, nor is it concerned with the reduction of scope, which remains the least visible and least controlled measure. The administrative control of diligence shall be systematic and shall be exercised by the data protection authority (Article 19a). The control of the particular decision is judicial and is provided for in the thesis itself: those who have had the content removed may request its re-establishment proving the absence of wrongdoing, without the provider being condemned to indemnify, and the provider or author of the publication may request provisional protection to prevent the withdrawal (STF, 2026, itens 5.5 e 5.6). The question is no longer the existence of individual control but its sufficiency, its accessibility and its timeliness. The restoration without compensation also poses a problem that directly affects the criterion: restoring the publication does not restore the opportunity of participation lost while it was away, and the message returned after the debate to which it was intended returns to a field that has already reorganized without it. Finally, advertisements, paid promotions and artificial networks are presumed to be responsible for diligent activity (Article 16-L), which

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concentrates responsibility on those who amplify it; but solidarity is embedded in the thesis, which the vote won by Minister Mendonça pointed to as a source of inhibitory effect on user demonstrations (MIGALHAS, 2026), reorganizes the condition of every speaker. Whether the guarantees in paragraphs 5.5 and 5.6 are sufficient to justify this reorganisation to the speakers, or whether the absence of compensation for the loss of participation leaves part of it unjustified, is the question which the thesis leaves to the discretion; answering it would require reconstructing the voting grounds, which is not done here.

8. Three regimes examined through the same criterion

The Brazilian regime is not the only one to have redesigned the responsibility of platforms in the last decade. The comparison with two others — the European Union's Digital Services Regulation and the UK's Online Safety Act — serves one specific purpose: to check whether the criteria questions distinguish between regimes, and whether the gaps found in Brazilian are inevitable or simply unresolved.

In diagnosis, the three converge in the separation between the system and the particular decision. The European Regulation combines a notification and action mechanism applicable to each content (Article 16) with the duty of very large platforms to assess and mitigate systemic risks, including the negative effects on freedom of expression, civil discourse and electoral processes (Articles 34 and 35) (UNIÃO EUROPEIA, 2022). The Online Safety Act imposes risk assessment and precautionary duties on illegal content (pp. 9 and 10) overseen by the communications regulatory authority through codes of practice (REINO UNIDO, 2023). The Brazilian decree holds the provider liable for systemic failure and prohibits punishment by isolated decisions. In three cases, the scheme is examined as a scheme and the private decision as an implementation.

In the justification directed at the victim, the difference is clear. The European Regulation requires the disclosure of clear and specific reasons to all recipients affected by a restriction — removal, access blocking, de-promotion and other visibility restrictions, suspension of payments, service or account —, both where the decision is based on the illegality of the content and where it is based on its incompatibility with the conditions of use (Art. 17). It also requires platforms to apply their conditions of use in a diligent, objective and proportionate manner, with due regard for fundamental rights, including freedom of expression (Article 14 (4)). The Brazilian regime requires reasons for removal by notification and silence

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on scope reduction and moderation by conditions of use. What appears to be an open point in Brazil has an express rule in the European Union.

In control, the difference is in the interval between the provider and the judge. The European Regulation imposes an internal system for handling complaints, free of charge and accessible for at least six months after the decision (Article 20), and opens the way for certified out-of-court dispute resolution bodies, without prejudice to judicial review (Article 21); the two obligations do not, with the reservations provided for therein, affect micro and small enterprises (Article 19). The time limit laid down in Article 21 shows, however, that the extrajudicial procedure does not resolve the loss of participation in a dated debate by itself: a decision may take up to 90 days, which may be extended by another 90 days in highly complex litigation. The criterion thus also meets the European model. The Online Safety Act requires complaint procedures to reach, inter alia, the user whose content has been removed or restricted (p. 21). The Brazilian regime offers the challenge before the supplier itself and the remedy in paragraphs 5.5 and 5.6 of the thesis, but no intermediate court. It is during this period that the dispute is decided in good time: the internal route is decided by the restrictor, and the delay of any external route, judicial or extrajudicial, counts against the participation intended to be protected. Whether an intermediate body would be faster in Brazil is an empirical question that regulatory comparison does not solve.

The Online Safety Act adds a trait that the other two don't have in the same way. The services classified in Category 1, the legal category defined by the system itself, must operate systems which take into account, in moderation decisions, the importance of free expression of democratic content and journalistic content (pp. 17 and 19), and all providers must pay particular attention to freedom of expression in carrying out their duties (pp. 22). Read by approximation — interpretative, not a demonstrated influence —, the device treats the rule that organizes public discourse as more demanding than that which organizes a thematic space, which approximates the distinction of Post. The Brazilian decree approaches this by requiring the purpose of publication to be considered as informative, critical, satirical or parodying (Article 16-G, § 2), but it does so as a criterion for examining the content, not as a duty to protect a category.

The comparison does not show that one regime is fair and others are not; the criterion does not judge entire regimes by a single note. Show me three more precise things. The questions of the criterion distinguish between the schemes: the three converge in diagnosis and differ in justification and control. The open points of the Brazilian regime — reasons for

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reduction of scope and for moderation by conditions of use, and an independent review body of the provider — have regulatory counterparts in other orders; the mechanisms identified extend the institutional alternatives available for discussion, without demonstrating that their absence in Brazil was a deliberate choice nor would it be sufficient here. And filling in the text does not guarantee its functioning: if the statement of reasons is read, if the internal complaint reverses decisions, if the extrajudicial bodies decide in time, these are empirical questions that the normative comparison does not answer and that the criterion only formulates.

9. Conclusion

The square remains open, and what keeps it open is not the absence of response. The rhetoric that reorganizes conditions for others to live — the guarantee that a group will not be attacked by what it is, the reliability of a procedure, access to the exercise of a position — must answer to these people by the position they occupy and not by the intention of the person who spoke. But the right answer does not in itself become an authorization to restrict. Between the shortcut that goes from damage to containment and what goes from protection to dispensation of justification, there is a longer path, which both avoid.

The path has three steps, and each one asks for its own argument. Diagnosis identifies behavior, condition, and people, and distinguishes evidence from what has been said from evidence of harm or risk. The justification states why the amendment was unjustified, by the denial of a status or the obstruction of an exercise, without the use of a label, falsehood or offense deciding the issue itself. The answer is chosen by concrete comparison with the alternatives — length, duration, reversibility, urgency, effects on third parties — and requires a title and control from the adopter. The three previous works offered elements for the first two steps; the third called for the construction here attempted.

Intervention that restricts expression reorganizes the square as much as speech — more, when the intervener can impose decisions — and answers the same questions: what condition has changed, who justifies it, who controls it. Symmetry is not in measurements, unequal because positions are; it's in questions. Removing a publication with the evidence preserved, the reasons given and the appeal in due course does not close the place; removing the means of contesting the closure itself does not close. Read by these questions, Brazilian law appears closer to the criterion than the debate that the fence suggests — responds to acts, foresees the response before contention, requires the name of the speaker, punishes who embarrasses the vote — and, in the Civil Framework Regulation, already requires reasons addressed to the

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affected user, means of challenge and scrutiny proportionate to the seriousness of the case. What remains open is more precise: the time limits for appeal, which the decree does not fix, the adequacy of legal remedies in the event of a loss of participation, the guarantees of moderation by conditions of use, the control of the reduction in scope and the scope of electoral protection against mass fraud. Comparison with the European and British regimes shows that some of these points have already received regulatory response in other regimes, which extends the institutional alternatives under discussion, without demonstrating that they would suffice in Brazil.

The result is argumentative and has three parts. The protection of expression does not exclude the justification of the person who intervenes, speaking, in the conditions of participation of other people: in this sense, freedom of expression is not unrestricted, because it is not immune to the reasons that are due to the person who speaks. This duty of justification does not, by itself, permit any restriction: to owe someone reasons and to be allowed to restrict someone are different relations. And the restriction, when it comes, requires sufficient material grounds — be it protection against harm or unjustified risk, be it the justifiable organisation of a space for a certain purpose —, comparison with the least expensive alternatives, the competence of the imposer and effective control in time; none of these conditions are sufficient without the others. They excluded, because they demanded another method and other evidence, the demonstration that a certain speech caused a certain damage and the assessment, decision by decision, of the institutional response to 8 January.

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