


HABEAS DATA AND INFORMATIONAL SELF-DETERMINATION IN THE INFORMATION SOCIETY: A CRITICAL COMPARATIVE ANALYSIS AND A REGULATORY INTERVENTION DIAGNOSIS (RIA) FOR THE PROTECTION OF PERSONAL DATA AND PERSONALITY RIGHTS

O HABEAS DATA E A AUTODETERMINAÇÃO INFORMATIVA NA SOCIEDADE DA INFORMAÇÃO: UMA ANÁLISE COMPARATIVA CRÍTICA E UM DIAGNÓSTICO DE INTERVENÇÃO REGULATÓRIA (AIR) PARA A PROTEÇÃO DE DADOS PESSOAIS E DOS DIREITOS DA PERSONALIDADE

HABEAS DATA Y AUTODETERMINACIÓN INFORMATIVA EN LA SOCIEDAD DE LA INFORMACIÓN: UN ANÁLISIS COMPARATIVO CRÍTICO Y UN DIAGNÓSTICO DE INTERVENCIÓN REGULATORIA (RIA) PARA LA PROTECCIÓN DE DATOS PERSONALES Y DERECHOS DE LA PERSONALIDAD

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ABSTRACT

This article synthesizes the evolution of the right to personal data protection in Brazil, contrasting the historical constitutional remedy of habeas data (HD) with the broader concept of informational self-determination (ISD). Originally designed to enable citizens to access and rectify information held in public databases, HD has proven inadequate for safeguarding rights within the Information Society, due to its limited scope and procedural constraints. The research employs a Regulatory Impact Analysis (RIA) to diagnose this inefficacy, concluding that effective protection requires the recognition of ISD as a substantive fundamental right. It further advocates for the revitalization of habeas data by assigning it a subsidiary role and aligning it with more robust instruments, such as the General Data Protection Law (LGPD). The study proposes specific regulatory interventions to ensure that HD provides more effective control over the circulation of personal data and the protection of personality rights.

Keywords: Regulatory Impact Analysis. Informational Self-Determination. Personality Rights. Habeas Data. Regulatory Intervention.

RESUMO

Esse artigo sinteriza a evolução do direito à proteção de dados pessoais no Brasil, contrastando o remédio constitucional histórico do habeas data (HD) com o conceito mais amplo da autodeterminação informativa (AI). Originalmente concebido para permitir ao cidadão conhecer e retificar informações em bancos de dados públicos, o HD revelou-se insuficiente para tutelar os direitos na Sociedade da Informação, sendo restrito em seu

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alcance e processualmente limitado. A pesquisa utiliza uma Análise de Impacto Regulatório (AIR) para diagnosticar essa ineficácia, concluindo que a proteção efetiva exige o reconhecimento da AI como direito fundamental material e sugere a revitalização do habeas data, conferindo-lhe um papel subsidiário e alinhando-o a instrumentos mais robustos, como a Lei Geral de Proteção de Dados (LGPD). O trabalho propõe intervenções regulatórias específicas para que o HD garanta um controle mais efetivo sobre a circulação de dados pessoais e a proteção de direitos da personalidade.

Palavras-chave: Análise de Impacto Regulatório. Autodeterminação Informativa. Direitos da Personalidade. Habeas Data. Intervenção Regulatória.

RESUMEN

Este artículo sintetiza la evolución del derecho a la protección de los datos personales en Brasil, contrastando el remedio constitucional histórico del habeas data (HD) con el concepto más amplio de autodeterminación informativa (AI). Originalmente concebido para permitir al ciudadano conocer y rectificar informaciones en bases de datos públicas, el HD se ha revelado insuficiente para tutelar los derechos en la Sociedad de la Información, debido a su alcance restringido y limitaciones procesales. La investigación emplea un Análisis de Impacto Regulatorio (AIR) para diagnosticar dicha ineficacia, concluyendo que la protección efectiva exige el reconocimiento de la AI como derecho fundamental sustantivo. Asimismo, se propone la revitalización del habeas data, asignándole un papel subsidiario y alineándolo con instrumentos más robustos, como la Ley General de Protección de Datos (LGPD). El estudio sugiere intervenciones regulatorias específicas para que el HD garantice un control más eficaz sobre la circulación de datos personales y la protección de los derechos de la personalidad.

Palabras clave: Análisis de Impacto Regulatorio. Autodeterminación Informativa. Derechos de la Personalidad. Habeas Data. Intervención Regulatoria.



1 INTRODUCTION

In contemporary society, characterized by an intense and ubiquitous flow of information, the protection of personal data has transcended the specialized debate to become a fundamental pillar of citizenship and human dignity. The ability to collect, process and interconnect information on a massive scale, both by public and private entities, has generated new and complex threats to fundamental rights, requiring robust and adequate responses from the legal system to this new reality (Doneda, 2007; Mendes, 2019).

In this scenario, Brazilian law has gone through a remarkable evolutionary trajectory, whose central landmarks are the two institutes analyzed in this article: *habeas data*, a historically situated constitutional guarantee, and the right to informational self-determination, a broader and more comprehensive fundamental right. The first was born as a constitutional remedy reactive to authoritarianism; the second is consolidated as a structuring principle for the protection of personality rights in the digital age (Cruz, Castro, 2018; Dallari, 2002; Doneda, 2007).

The objective of this research is to identify which regulatory interventions are necessary in *habeas data* to apply it as a guarantee of data protection in the digital age. To guide the investigation, the following question guided its development: **what regulatory interventions are necessary in *habeas data* to apply it as a guarantee of data protection in the digital age?**

The main question was broken down into secondary questions:

- I) Are there academic contributions, in the form of scientific articles, recommending regulatory intervention in *habeas data*?
- II) Do they precisely identify and delimit the regulatory problem? What is its nature and magnitude? Which groups are affected? What are the legal, economic and social impacts? What alternatives and inspection mechanisms?
- III) Is it possible to prepare a diagnosis of regulatory intervention in the Brazilian *habeas data* so that it can be applied as a guarantee of data protection in the digital era?

The research corpus was obtained from the databases CAPES Periodicals, Unicesumar Digital Library (BDU), Scielo Brazil and Google Scholar. Open academic articles, peer-reviewed, published in national academic journals and written in Portuguese, were included, always considering the specificities of the search browsers of those databases.



The search term used was *habeas data* to identify the breadth of related documents (**Chart 1, Output 1**), then filters were applied (**Chart 1, Output 2**) to refine the search. This residual volume was submitted to exploratory reading of title and abstract in order to exclude duplicate documents, outside the scope of research or inconsistent with the filters applied.

Table 1

Quantitative results

Database	Search term	Output 1	Filters	Exit 2	After Reading the title/abstract
CAPEX Journals	Habeas data	132	Open, peer-reviewed, national	5	4
BDU	Habeas data	3685	Full text; academic journals; National	3	1
Scielo Brazil	Habeas data	2	Open, peer-reviewed, national	0	0
Google Scholar	Habeas data	30.900	Review articles, pages in Portuguese	27	0

Source: Authors.

The search was carried out on 13 Nov. 2025, resulting in 5 research findings (Chart 1), which were qualified in **Chart 2**, through which it is also possible to access the *link* that leads to the journal where the document is hosted.

Although we can affirm that the first specific question is affirmative regarding the existence of scientific articles that recommend regulatory interventions in habeas data, the timid number of studies published in Brazil shows that the subject is not densely investigated by Brazilian academia, this gap justifies the production of new studies on the subject.

Table 2

Qualitative results

Code.	Base	Title/access link	Author/year
1	CAPEX Journals	Habeas data in the Brazilian legal system	Dalmo de Abreu Dallari, 2002
2	CAPEX Journal	Habeas data and informational self-determination	Laura Mendes, 2019
3	CAPEX Journal	Habeas data and the protection of the dignity of the human person in private life	Fernando Maia, 2012
4	CAPEX Journal	Habeas data and the realization of the right to the protection of personal data in Friedrich Müller's constitutional methodology	Marco Aurélio Rodrigues da Cunha e Cruz; Matheus Felipe de Castro, 2018
5	BDU	Habeas data in the Brazilian legal system and the protection	Danilo Doneda, 2007



		of personal data: an absent integration	
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Source: Authors.

After analyzing the selected documents, the individual contributions of each author were systematized. This stage was developed using the deductive approach method, applying the monographic, historical and comparative procedures. For systematic document analysis in Law, a specific protocol was developed based on the *Regulatory Impact Analysis* framework to extract patterns and categories of analysis. And to manage, analyze and synthesize texts and document data, *NotebookLM* was used as a tool for document analysis and synthesis.

The research findings address the dignity of the human person and the right to life, the relationship between fundamental and human rights, and the procedural instrument of habeas data as a guarantee of privacy and informational self-determination against threats from technology and electronic data circularity. Their contributions were used as evidence extracted from the academic field, from which tables were assembled to form a Regulatory Impact Analysis (RIA/RIA). This tool establishes steps that will make up a systematic evidence-based process, widely used in OECD countries to improve the quality and effectiveness of regulation, detailing guidelines, evaluation methods (such as cost-benefit and risk), and strategies for reviewing and implementing policies.

This article contrasts the legal theory of individual rights with the bureaucratic and methodological practice of regulatory governance.

2 ACADEMIC CONTRIBUTIONS RECOMMENDING REGULATORY INTERVENTION IN THE BRAZILIAN HABEAS DATA

This section of the work is divided into three scenarios: i) the critical comparison between habeas data and informational self-determination; ii) critical comparative analysis, and; iii) the application of the Regulatory Impact Analysis (RIA). The latter, in turn, is subdivided into three themes: i) convergences and the recognition of the material base; ii) divergences and the regulatory ineffectiveness of habeas data (RIA), and; iii) possibilities of articulation and a new paradigm.

It is intended to record the research findings based on the contributions of its authors to answer the main question and be inputs for the construction of the RIA.



2.1 THE CRITICAL COMPARISON BETWEEN HABEAS DATA AND INFORMATIONAL SELF-DETERMINATION

Habeas data (HD) was constituted as an innovation in Brazilian Law, having appeared for the first time in the Federal Constitution of 1988 (Dallari, 2002). Its historical origin is umbilically linked to the political circumstances of post-1964 Brazil, notably as a reaction to the authoritarian, secretive, and improper use of false or incorrect information by bodies such as the National Information Service (SNI) (Cruz, Castro, 2018; Dallari, 2002; Doneda, 2007; Guerra Filho, 1998; Lobato, 1996). The HD was designed to provide citizens with an instrument that would allow them to know and rectify information about themselves in databases (Doneda, 2007).

In the constitutional text (art. 5, LXXII), the HD has a specific and limited purpose, distinct from the generic right to information (Cruz, Castro, 2018; Dallari, 2002). The program of the HD standard is intended to: a) ensure knowledge of information related to the person of the petitioner, contained in records or databases of governmental or public entities; and b) for the rectification of data.

It is a constitutional remedy of an instrumental, civil and summary nature, which is intended to protect personality rights, such as intimacy and private life (Cruz, Castro, 2018; Maia, 2012; Lobato, 1996). Although its creator, José Afonso da Silva, conceptualized it as a means of protecting the intimate sphere against abusive use of personal data records and the preservation of false data, in practice, its material performance was restricted to the binomial knowing/rectifying/noting⁴ (Maia, 2012).

The concept of informational self-determination (IA), in turn, emerges as a response of constitutional law to the technological revolution and automated data processing. Historically, its most significant formulation came from the German Constitutional Court's 1983 decision on the Population Census Act (*Volkszählung*). The Court conceived AI as the power of the individual to determine, fundamentally, for himself/herself, the collection and use of his/her personal data (Cruz, Castro, 2018; Cueva, 2012; Mendes, 2019).

AI represents an evolution of the concept of privacy, overcoming the conception of the "private sphere" that has proven insufficient in the face of the ubiquity of data processing. The core of AI is based on the principle that due to the modern conditions of electronic processing, there is no longer any insignificant data. The focus of protection shifts from the

⁴ On the other hand, for Sundfeld (2011, p. 169) *Habeas Data* has a dual purpose: "to ensure the right to obtain information" and "to guarantee the right against information or against its misuse".



content (whether intimate or private) to the context of application, the purpose and the process (collection, storage, use, transmission) (Mendes, 2019).

In its material dimension, IA encompasses a much wider range of faculties, configuring itself as a fundamental right that requires effective control over the circulation of data. It includes subjective rights such as the right of access, notification, rectification, cancellation, blocking and opposition to data processing, as well as the prohibition of being subject to automated individual decisions (Cruz, Castro, 2018).

2.2 CRITICAL COMPARATIVE ANALYSIS AND APPLICATION OF REGULATORY IMPACT ANALYSIS (RIA)

The comparison between HD and AI, using the RIA *framework*, reveals notable convergences and deep divergences, especially regarding regulatory effectiveness and the scope of protection.

2.2.1 Convergences and the Recognition of the Material Base

The main convergence lies in the fact that HD and AI are focused on the protection of personality in the face of the processing of personal information, inserted in the broader context of the right to privacy and the dignity of the human person (Cruz, Castro, 2018; Maia, 2012). Although HD is primarily a procedural instrument, Brazilian doctrine and jurisprudence have recognized the existence of an underlying substantive right that underpins it (Mendes, 2019). By protecting the right of access and rectification, HD protects the right to informational self-determination (Cruz, Castro, 2018; Maia, 2012; Niess, 1990; Tothenburg, 1998).

The Federal Supreme Court (STF), in the judgment of Extraordinary Appeal (RE) No. 673,707, took a fundamental step in this articulation. Justice Gilmar Mendes stated that the judgment could be the "starting point of a vitalization of *habeas data*, in a broader perception", already speaking of a fundamental right to informational self-determination (Brasil, 2015; Cruz, Castro, 2018; Mendes, 2019). In this sense, the HD was considered the appropriate constitutional guarantee for obtaining data from the taxpayer himself in computerized collection systems (Brasil, 2015).

This jurisprudential evolution suggests that HD and IA can be considered "two sides of the same coin" (Mendes, 2019), the first being the guaranteeing procedural mechanism (HD, art. 5, LXXII) and the second the substantive law itself (AI, extracted from art. 5, X, and art. 1, III, of the FC/88).

2.2.2 Divergences and the Regulatory Ineffectiveness of Habeas Data (RIA)

Chart 3 presents the central divergences manifested in the extension of the scope of the protection and the effectiveness of the defense mechanisms, a crucial aspect in the application of the *RIA framework* to Personality Law and Data Protection.

Table 3

Divergences and the ineffectiveness of habeas data

Comparison Aspect	Habeas Data (HD)	Informational Self-Determination (AI)	Evaluation (AIR)
Material Scope	Restricted to the binomial access/rectification/annotation. (Cruz, Castro, 2018; Maia, 2012)	Comprehensive, including access, rectification, cancellation, blocking, opposition, and consent/control. (Cruz, Castro, 2018; Maia, 2012; Mendes, 2019)	Critical Divergence: The hard drive is "excessively restricted" and does not lend itself to the protection of personal data in the Information Society. (Cruz, Castro, 2018; Doneda, 2007)
Nature of Protection	Predominantly <i>ex post</i> (remedial). It seeks to protect the right after administrative refusal or injury (Doneda, 2007).	It requires an <i>ex ante</i> model (preventive and systemic). It involves state duties of regulation, organization, and procedure (positive duties) (Mendes, 2019).	Critical Divergence: The HD fails to provide the agile and versatile protection necessary for the dynamics of personal information (Doneda, 2017).
Procedural Conditions	It requires a resisted claim (prior administrative request) and representation by a lawyer, making access difficult (Cruz, Castro, 2018; Dallari, 2002; Doneda, 2007).	It requires the simplification of the mechanisms of supervision and supervision by an independent authority (Mendes, 2019).	Negative Impact (RIA): The procedural requirements (Precedent No. 2 of the STJ and Law No. 9,507/97, art. 8) restricted the scope and contributed to the "emptying" of the institute (Dallari, 2002; Doneda, 2007).
Scope of Entities	Records or databases of governmental or public entities (Dallari, 2002; Doneda, 2007).	It covers all processing of personal data, both in the public and private sectors (horizontal effectiveness) (Mendes, 2019).	Regulatory Risk: The hard drive is "negligible" for the business/private sphere on the Internet, where data vulnerability is abysmally greater (Cruz, Castro, 2018).

Source: Authors.

The application of the RIA reveals that the regulatory architecture of *the Brazilian habeas data*, conceived for a specific historical context (combating dictatorial arbitrariness), proved to be insufficiently effective to face the complexity of the risks inherent to the Information Society (Doneda, 2007). The HD maintained a narrowness of scope present in



its original project, which led authors to classify it as a "guarantee for the past" (Doneda, 2007), or to conclude that it had and has "diminished importance in the protection of personal data" (Cruz, Castro, 2018).

The absence of a unified and material regulatory system for data protection (which the General Data Protection Law - LGPD came to institute later) has exacerbated the problem. The hard drive alone cannot meet the fullness of the right to personal data protection (Cruz, Castro, 2018; Doneda, 2007).

2.2.3 Possibilities of Articulation and New Paradigm

The articulation between the institutes points to the need to recognize IA as the material foundation that gives meaning and effectiveness to HD today.

1. **Recognition of the Autonomous Material Right:** The protection of personal data (IA) can be recognized as an implicit or atypical fundamental right, based on article 5, paragraph 2, of the FC/88, and anchored in the dignity of the human person (article 1, III) (Cruz, Castro, 2018; Mendes, 2019).
2. **Vitalization and Expansion of HD:** The intervention of the STF in RE 673.707 suggested the "vitalization" of HD (Brasil, 2015), allowing it to be interpreted more broadly, in coherence with IA (Mendes, 2019).
3. **Subsidiary and Residual Function:** Given the insufficiency of HD in the face of the vastness of the right to AI and the more protective sparse legislation (such as the Access to Information Law - LAI) (Brasil, 2015), HD tends to have, in the current constitutional reality, a subsidiary or residual role (Cruz, Castro, 2018; Doneda, 2007).
4. **Broadening the Material Scope of the HD:** To overcome the substantial objections, the HD must be reformulated beyond access/rectification, incorporating the right to object, cancel, block, and, crucially, control over the flow and interconnection of data. The new paradigm proposed by the doctrine aims at the HD as an instrument that guarantees the prohibition of processing information that is not strictly necessary and compensation for damages caused by misuse (Maia, 2012).

In conclusion, based on the monographic, historical, and comparative analysis, it is verified that *habeas data*, as a constitutional guarantee (art. 5, LXXII, CF/88), and informational self-determination, as a fundamental material right, converge in the purpose of

protecting the dignity of the human person and personality against the risks of data processing (Mendes, 2019).

However, HD, due to its reduced material scope (binomial knowing/rectifying) and its procedural barriers (resisted claim), according to the analysis of its regulatory effectiveness, proved to be insufficient for the protection of IA in the information society scenario (Cruz, Castro, 2018; Doneda, 2007). The procedural and substantive objections and the superiority of the sparse legislation (organic objection) deconstitute the hypothesis of a full "vitalization" of the HD as an exclusive instrument for the protection of personal data (Cruz, Castro, 2018).

Therefore, the critical articulation between the institutes postulates that the HD should be understood as *one* of the guarantees of AI, assuming a subsidiary or residual role, and that the effective protection of the fundamental right to informational self-determination requires a robust regulatory system — such as that established by the General Data Protection Law (LGPD) — that meets the requirements of control, transparency and purpose, going beyond the *ex post judicial protection* of the HD (Doneda, 2007; Mendes, 2019).

3 REGULATORY PROBLEM, NATURE AND MAGNITUDE, AFFECTED GROUPS, LEGAL, ECONOMIC AND SOCIAL IMPACTS, ALTERNATIVES AND INSPECTION MECHANISMS

In order to overcome the subsidiary or residual role of the HD, this paper offers a framework, elaborated from the research findings, which summarizes the regulatory challenges to transform habeas data into a robust instrument for the effectiveness of informational self-determination and protection of personal data.

Table 4

Analysis of the Regulatory Challenge: Habeas Data and the Protection of Personal Data

AIR STEP	ANALYTICAL COMPONENTS	PATTERNS AND EXTRACTATIONS FROM SOURCES
1. IDENTIFICATION OF THE REGULATORY PROBLEM	1.1 Clear Definition of the Problem	The protection of personal data in Brazil is not the product of a single specific legislative source, resulting in a "national legislative insufficiency" (Cruz, Castro, 2018; Doneda, 2007). The central problem is the insufficiency of Habeas Data as an adequate constitutional guarantee for the full protection of the fundamental right to the protection of personal data (informational self-determination) in the Information Society scenario (Cruz, Castro, 2018; Doneda, 2007; Maia, 2012). Habeas Data is restricted to the access/rectification binomial . (Cruz, Castro, 2018; Doneda, 2007; Maia, 2012)



	1.2 Nature and magnitude	The issue of personal data protection reached transnational, legislative and jurisprudential relevance between 2015 and 2017 (Cruz, Castro, 2018). The magnitude is imposed by the technological revolution (information technology and telematics), which generated electronic circularity and data interconnection, threatening privacy and informational self-determination (Maia, 2012; Mendes, 2019). The scope of <i>Habeas Data</i> is reduced to the Information Society scenario (Cruz, Castro, 2018; Doneda, 2007; Maia, 2012; Mendes, 2019).
	1.3 Affected groups	Data subjects / Citizens: subject to the risk of automated processing, surveillance, discrimination (racial <i>profiling</i>) and loss of control over their information (Mendes, 2019). Government and public entities: bodies that manage records or databases containing personal information, which are subject to <i>Habeas Data</i> (Cruz, Castro, 2018; Mendes, 2019). Private/Business Sector: the amplitude and risk of violations are abysmally greater in the business/private sphere on the Internet, which requires attention from legal protection (Cruz, Castro, 2012; Mendes, 2019).
2. ANALYSIS OF THE LEGAL BASIS	2.1. Legal basis	Habeas Data is affirmed in item LXXII of article 5 of the Federal Constitution of 1988 (Cruz, Castro, 2012; Doneda, 2007; Mendes, 2019). Other constitutional foundations: Dignity of the Human Person (art. 1, III) and Inviolability of Intimacy and Private Life (art. 5, X) (Cruz, Castro, 2012; Doneda, 2007; Mendes, 2019). <i>Habeas Data</i> was regulated by Law No. 9,507/97 (Cruz, Castro, 2012; Doneda, 2007; Mendes, 2019).
	2.2. Normative competence	The STF, in the judgment of RE 673.707 , discussed the "vitalization" of <i>Habeas Data</i> as a guarantee of the fundamental right to the protection of personal data, establishing the thesis that it is the appropriate instrument for obtaining taxpayer tax data (Cruz, Castro, 2012; Doneda, 2007; Mendes, 2019). The jurisprudence has been consolidated requiring proof of a resisted claim (need for a prior administrative request), according to Precedent No. 2 of the STJ, which was incorporated by Law No. 9,507/97. However, research findings strongly question the inconvenience of this limitation (Cruz, Castro, 2012; Dallari, 2002; Doneda, 2007; Maia, 2012; Mendes, 2019).
	2.3. Identification of gaps	<i>Habeas Data</i> is limited to access and rectification , not contemplating all the implications of the right to the protection of personal data, such as the right to consent for collection, right to notification , right to oppose or cancellation/blocking (Cruz,



		<p>Castro, 2018; Maia, 2012). The regulatory law (Law 9.507/97) restricted its scope, especially with the concept of "private use" of the detaining agency (Dallari, 2002). CF/88 does not protect "data per se", but only the communication of data (art. 5, XII), according to the previous interpretation of the STF and doctrine (Cruz, Castro, 2018; Schertel Menes, 2019).</p>
3. DEFINITION OF OBJECTIVES	3.1. General and specific objectives	<p>Original/Historical: Break the confidentiality of false or incorrect data used by authorities (SNI) and ensure correctness, aiming at democratic consolidation (Cunha and Cuz, Castro, 2018; Dallari, 2002; Doneda, 2007).</p> <p>Specific/Current: Ensure the knowledge and rectification of information related to the person of the petitioner, in government or public records (Cruz, Castro, 2018; Dallari, 2002; Doneda, 2007).</p> <p>Proposed/Evolutionary: Promote Informational Self-Determination (substantive law) and effective control over the circulation of personal data (Cruz, Castro, 2018; Maia, 2012; Mendes, 2019).</p>
	3.2. Alignment of public policies	<p>The search for an instrument for requesting personal information is vital for the formation of a democratic culture and the consolidation of a "regime of visible power" (Doneda, 2007).</p> <p>The recognition of data protection as a fundamental right is aligned with the principle of the Dignity of the Human Person (Cruz, Castro, 2018; Maia, 2012). The General Data Protection Law (LGPD) instituted an <i>ex-ante</i> model of data protection, essential to ensure self-determination and legal certainty (Mendes, 2019).</p>
4. MAPPING OF ACTION ALTERNATIVES	4.1. Direct regulation	<p>Approval of sectoral and general legislation: Access to Information Law (LAI - Law 12.527/2011), Civil Rights Framework for the Internet (Law 12.965/2014) and, notably, the General Data Protection Law (LGPD - Law 13.709/18) (Mendes, 2019).</p>
	4.2. Amendment of Habeas Data / Judicial	<p>"Vitalization" or broad interpretation of Habeas Data: The STF sought to expand Habeas Data to extract a material right to informational self-determination (RE 673.707) (Cruz, Castro, 2018; Mendes, 2019).</p> <p>Pluralization of Habeas Data faculties: Proposal to expand to an octagon of rights (know, rectify, annotate, justify, confidentialize, prohibit, indemnify, dissociate) (Maia, 2012).</p> <p>Procedural simplification: Eliminate the need for a lawyer and the requirement of a resisted claim (Cruz, Castro, 2018; Mendes, 2019).</p>
	4.3. Non-Action	<p>Maintaining the status quo: Continuing with Habeas Data in its reduced scope (access/rectification) and residual, despite criticism that it is inadequate for the Information Society (Cruz, Castro, 2018; Doneda, 2007).</p>



5. ANALYSIS OF THE IMPACTS OF THE ALTERNATIVES	5.1. Legal impacts	The LAI is reputed to be more coherent and effective than <i>Habeas Data</i> for the safeguarding of the right, relegating Habeas Data to a subsidiary or residual role in constitutional implementation (Cruz, Castro, 2018). The development of the right to informational self-determination in Germany, for example, requires moving away from a protection based on a fixed scope (intimate/private sphere) to a system based on decision-making power and procedural instruments (Mendes, 2019).
	5.2. Economic impacts	The interconnection of data between companies can generate information asymmetry and "negative externalities", harming the individual in material legal relationships and expanding the economic power of private capital (Maia, 2012). The misuse of personal data can be used for discriminatory purposes (blacklists, racial <i>profiling</i>) (Mendes, 2019). Habeas Data can be used to protect data in credit protection services (Dallari, 2002; Maia, 2012).
	5.3. Social impacts	Habeas Data was a symbol of the rupture with the dictatorial regime (SNI) and promoted knowledge about the authoritarian past (Cruz, Castro, 2018; Dallari, 2002; Doneda, 2007). Data processing can generate serious risks to personality and moral integrity (Mendes, 2019). The loss of control of data (<i>Kontrollverlust</i>) in modern communication infrastructures increases the need for state protection (Mendes, 2019).
	5.4. Environmental impacts	There is no relevant information in the sources for the analysis of this component
6. SELECTION OF ALTERNATIVES	6.1. Evaluation criteria	Effectiveness vs. Limitation: The insufficiency of the access/rectification binomial demonstrates that the solution is neither efficient nor effective in dealing with the complexity of the information (Cruz, Castro, 2018; Doneda, 2007). Legality: The requirement of exhaustion of the administrative remedy (resisted claim) and the need for a lawyer are seen as obstacles to constitutional legality/effectiveness (Cunha and Cruz, Castro, 2018; Doneda, 2007; Maia, 2012; Mendes, 2019).
	6.2. Justification of choice	The procedural, substantive, and organic objections deconstruct the hypothesis of "vitalization" of <i>Habeas Data</i> as the sole constitutional instrument, conferring on it a subsidiary or residual role (Cruz, Castro, 2018). The most appropriate alternative is the Recognition of a Fundamental Right to Informational Self-Determination (substantive right), supported by the inviolability of intimacy (art. 5, X), Habeas Data (art. 5, LXXII) and Human Dignity (art. 1, III) (Cruz, Castro, 2018; Schertel Mendes).



7. INSPECTION AND MONITORING STRATEGIES	7.1. Inspection Mechanisms	The realization of the right to data protection depends on procedural mechanisms (Mendes, 2019). The control and supervision of the processing activity by an independent administrative authority is essential (Mendes, 2019). The Judiciary (Judge-State) must act to ensure the protection due in the absence or insufficiency of the legislator's action (Duty of Protection) (Mendes, 2019).
	7.2. Performance Indicators	The success of the intervention is measured by the guarantee of effective control by the data subject, which includes: right of access, rectification, cancellation, respect for the principle of purpose and prohibition/limitation of the storage of sensitive information. (Cruz, Castro, 2018; Mendes, 2019)
	7.3. Review Process	The Constitution is an unfinished project, subject to interpretative changes that reflect a fallible learning process (Mendes, 2019). It is necessary to reread the constitutional guarantees to deal with the new risks arising from data processing (Mendes, 2019).

Source: Authors.

In view of this picture, based on the analytical components and the description of the patterns extracted from the research sources, we propose another one (**Chart 5**) recording diagnoses and intervention suggestions. The reader will observe that the intervention column does not describe the respective source on which these authors base their propositions. This is because many of the suggestions can be inferred from the texts investigated, others are the result of our reflections on the subject.

Table 5

A diagnosis of regulatory intervention: habeas data as a guarantee of data protection in the digital age

AIR STEP	ANALYTICAL COMPONENTS	DIAGNOSIS	INTERVENTION
1. IDENTIFICATION OF THE REGULATORY PROBLEM	1.1 Clear Definition of the Problem	Expand the chances of incidence	Recognize habeas data as a constitutional guarantee of the right to informational self-determination, an instrument to control the regular flow of citizen data, and a remedy against deviations practiced by the controller of personal data
	1.2 Nature and magnitude	Broaden its reach in the context of the information society	Expand the reach with a view to and address the asymmetry of power, informational and economic, between data



			subjects and private companies
	1.3 Affected groups	Guarantee the data subject to file habeas data against private sector entities; To guarantee collective redress in the face of data controllers; Expand the list of active and passive legitimates	Both the individual considered and the citizen, as well as institutions (public or private) are impacted by the risks inherent in the digital society
2. ANALYSIS OF THE LEGAL BASIS	2.1. Legal basis	Altering a constitutional provision or expanding the interpretation of text; Amending provisions of Law No. 9,507/97	Prepare regulatory impact analysis on constitutional provision and infra-legal norm
	2.2. Normative competence	Presentation of a constitutional amendment project; Presentation of a bill amending Law No. 9,507/97	Constitution of specialized committees in parliament or at the initiative of the Federal Executive Branch
	2.3. Identification of gaps	Expand the hypotheses of incidence having as a parameter the General Data Protection Law and the Access to Information Law	Ensure popular participation (social control of the legislative process); Guarantee of representativeness by members of the republic, representatives of State bodies and entities (AGU, DPU, MPU, ANPD, etc.)
3. DEFINITION OF OBJECTIVES	3.1. General and specific objectives	Promote Informational Self-Determination (substantive right) and effective control over the circulation of personal data.	Recognize this objective as a response to the regulatory problem
	3.2. Alignment of public policies	Declare habeas data an instrument for the formation of a democratic culture, reactive control of data protection	Recognize this objective as the purpose of regulatory intervention
4. MAPPING OF ACTION ALTERNATIVES	4.1. Direct regulation	Forwarding of changes to provisions of CF/88 and Law No. 9,507/97	Proposal for a Constitutional Amendment and to change the wording of Law No. 9,507/97
	4.2. Amendment of Habeas Data / Judicial	Establish its own procedural procedure, eliminate prior appointment of a lawyer and requirement of resisted claim.	Propose the repeal only of specific provisions of Law No. 9,507/97
	4.3. Non-Action	Impossibility of facing and mitigating the legal, economic and social impacts	Non-intervention (maintaining the <i>status quo</i>)
5. ANALYSIS OF THE IMPACTS OF THE ALTERNATIVES	5.1. Legal impacts	Convert habeas data into an instrument to safeguard informational self-determination and provisions of the LGPD	Quantitative increase in habeas data filed in court, increasing the procedural burden on operators of the judiciary and executive branches.
	5.2. Economic impacts	Habeas Data can be used to protect data in a broad sense	Investments in <i>enforcement</i> and <i>accountability</i> actions by data controllers. Budgetary pressure on public spending, with the purpose of increasing investments in



			materials, equipment and personnel of the executive and judicial branches. Increase in financial penalties for conviction for unlawful personal data processing practices
	5.3. Social impacts	Habeas data can be a symbol of individual and collective protection of very personal rights	Risk of revitalization of the indemnity industry; Risk of predatory lawsuits
	5.4. Environmental impacts		-
6. SELECTION OF ALTERNATIVES	6.1. Evaluation criteria	Expand the chances of incidence, suppress exhaustion of the administrative route	Include in the list of purpose of the hard drive the legal hypotheses provided for in the LGPD; Repeal a legal provision that requires the exhaustion of administrative remedies
	6.2. Justification of choice	By opting for the regulatory route, recognizing habeas data as a substantive right to informational self-determination	To amend the wording of article 5, LXXII
7. INSPECTION AND MONITORING STRATEGIES	7.1. Inspection Mechanisms	Convert the administrative route into a mechanism for the constitution of evidence; or In case of denial or untimely response, convert it into an extrajudicial enforcement title. Filing of a writ of mandamus based on the absence or insufficiency of the legislator's action	Repeal a specific provision of Law No. 9,507/97; Include the right to monetary compensation in the event of untimeliness, and non-compliance with the order. Investigate the existence of the procedural assumptions and conditions of the action for filing a writ of mandamus based on the legislator's inertia in strengthening habeas data due to the risks inherent to the digital age
	7.2. Performance Indicators	Monitoring of the guarantee of effective control by the data subject based on the following indicators: access fees, rectification, cancellation, respect for the principle of purpose and prohibition of delimitation of the storage of sensitive information	Survey and case studies on inspection procedures of the National Data Protection Authority
	7.3. Review Process	Need to reread constitutional guarantees to deal with risks of the digital age	Expand academic studies on the subject

Source: Authors.

4 FINAL CONSIDERATIONS

The discussion on Habeas Data and Informational Self-Determination has evolved significantly. In the past, the focus was only on the procedural instrument (the constitutional remedy of Habeas Data); today, the central debate revolves around the substantive right to control one's own data, driven by the General Data Protection Law (LGPD) and Constitutional Amendment 115/2022.

The present work goes further, proposing an analysis of regulatory impact, situation diagnoses and intervention suggestions. An academic contribution to the improvement of the instruments for the realization of personality rights.

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