

DOSSIER

THE CONCEPT OF STRATEGIC AGENDA APPLIED TO A STUDY OF THE FEDERAL SUPREME COURT OF BRAZIL¹



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ABSTRACT – The article presents the concept of strategic agenda-setting to propose an analysis model that may help analyze how the Judiciary communicates. By understanding that the Courts have no direct contact with society, the strategic agenda points out that how the Judiciary shows itself in the public debate depends on communication dynamics. This means that there is an internal axis related to communication advisory and an external axis related to coverage. Such dynamics depend on the constraints and opportunities of the political context. It is a policy that sets the tone for the Judiciary to communicate. The concept brings together approaches from communication theory (agenda-setting) with judicial behavior (strategic model), using quantitative data and semi-structured interviews, and creates an analytical model that was applied to the Federal Supreme Court (STF) of Brazil between the years 1988 to 2004.

Key words: Communication and justice. Federal Court of Justice. Political communication. Justice system.

O CONCEITO DE AGENDAMENTO ESTRATÉGICO APLICADO A UM ESTUDO DO SUPREMO TRIBUNAL FEDERAL DO BRASIL

RESUMO – O artigo apresenta o conceito de agendamento estratégico para propor um modelo de análise da comunicação do Judiciário. Considerando a ausência de contato direto dos tribunais com a sociedade, destaca-se que a forma como o Judiciário se

posiciona no debate público depende da dinâmica comunicacional. Isso implica em um eixo interno, relacionado à assessoria de comunicação, e um eixo externo, ligado à cobertura. Tais dinâmicas são influenciadas por constrangimentos e oportunidades do contexto político. Assim, a política estabelece o tom da comunicação judicial. O conceito combina abordagens da teoria da comunicação (definição de agenda) e comportamento judicial (modelo estratégico), utilizando dados quantitativos e entrevistas semi-estruturadas. O modelo analítico foi aplicado ao Supremo Tribunal Federal (STF) brasileiro entre 1988 e 2004.

Palavras-chave: Comunicação e Justiça. Supremo Tribunal Federal. Comunicação política. Sistema de Justiça.

EL CONCEPTO DE AGENDA ESTRATÉGICA A UN ESTUDIO DEL SUPREMO TRIBUNAL FEDERAL DE BRASIL

RESUMEN – El artículo presenta el concepto de agenda estratégica para proponer un modelo de análisis de la comunicación del Poder Judicial. Se destaca que la forma en que el Poder Judicial se posiciona en el debate público depende de la dinámica comunicacional, con un eje interno relacionado con la asesoría de comunicación y otro externo vinculado a la cobertura. Estas dinámicas están influenciadas por las restricciones y oportunidades del contexto político, estableciendo así el tono de la comunicación judicial. El concepto combina enfoques de la teoría de la comunicación y el comportamiento judicial, utilizando datos cuantitativos y entrevistas semiestructuradas. El modelo analítico se aplicó al Supremo Tribunal Federal (STF) brasileño entre 1988 y 2004.

Palabras clave: Comunicación y Justicia. Supremo Tribunal Federal. Comunicación política. Sistema de Justicia.

1 Introduction

The recent political turmoil in Brazil is characterized by the central role of the Judiciary. On January 8, 2023, the headquarters of the Three Branches of Power in Brasília were invaded² by demonstrators who broke and destroyed buildings and symbols of the Brazilian Republic. It resembled a duplicate of the invasion of the US Capitol which took place in January 2021, except that it also encompassed the Executive and Judiciary. The Federal Supreme Court (STF) seat was one of the targets; the movement proposed a coup, the seizure of power. One phrase was constantly repeated: “Supreme is the People”.

This is, however, not the first “slogan” that refers to the highest level of the Judiciary. In this article, we recall the origins of how Brazilian Justice entered the media and public agenda. The current political context possesses its distinct elements and requires a specific analytical effort, but it is essential to highlight the fact that to be on the public agenda it is crucial to occupy the media agenda.

Since the Constituent Assembly, the Justices have been active to guarantee an expansion of the Court's powers. This explains the Court's greater visibility throughout the 1990s and 2000s and the investment in communication by the Supreme Court.

In the early 2020s, one could have said that the ideas involved in affairs such as the Parliamentary Committee of Inquiry of the Judiciary³ and the Judiciary Reform⁴ were back on the agenda under the question "Who controls the judges?", or even under the questioning of the role of the Supreme in the Brazilian crisis. This way, returning to the political context in which these issues entered the media and public agendas helps us understand not only current issues but also presents us with the historical perspective present in the post-constitutional context of 1988 and what turned the Supreme Court into an active player in the political game until today.

The aim of this article is, hence, to understand how the Federal Supreme Court of Brazil learned to occupy the media and public agenda by looking strategically at the political context. In order to understand this development and identify the process, we will present the concept of a "strategic agenda" based on the argument that the new institutional design of the Justices, combined with historical and recent changes, boosted the institution's communication policy.

Brazil's Supreme Court of Justice has placed itself on the media and public agenda by following a strategy, seeing opportunities and constraints. This is what is called a strategic agenda. It is a concept that was developed and is being applied to the Supreme. The time frame for the present concept application is from 1988 to 2004 since these years were marked by the first democratic Constitution after the military dictatorship (Federal Constitution of 1988) and also by the Judiciary Reform which was established by Constitutional Amendment No. 45, approved by Congress in 2004.

This article is the result of a doctoral research. Methodologically, it was elaborated in an exploratory and analytical way by applying different data collection techniques, such as interviews and bibliographical and documentary research, which produced a study built on qualitative interpretations. 24 journalists were interviewed, both press officers who worked at the Supreme Court and professionals who specialized in covering the Judiciary, and most of these interviews were conducted in person. A search was also conducted in public archives for documents on the creation of the Supreme Press Office, its evolution in the organization of the Court,

information on professionals who worked in the area, appointments, ordinances, etc. Articles from newspapers, magazines, and other publications were also included. A cross-section of data from different sources of information was used, and besides presenting a concept, we proffer unprecedented data on the number, communication products, and strategic behavior of journalists and press officers of the Courts.

2 A theoretical support: agenda-setting and the need to be in the media

In contemporary societies (Breton & Proulx, 1997; Briggs & Burke, 2006; Thompson, 1998; Weber, 2002), it is up to the media to make us aware of a series of everyday facts with which we would not have contact if it was not for them. For example, in articles about votes and the behavior of some Justices, what can be observed is an agenda of issues that society begins to “talk about” because of the media. In this sense, the present study demonstrates not only the increasing importance of legal topics in media coverage but also the way they were introduced based on the relationship between the development of an area of communication expertise in the Judiciary and specialized press coverage. One of the most relevant currents that analyses the press and reality is the so-called agenda-setting research. According to this approach, the mass media, because they focus on certain events and ignore others, produce effects on the public. This means that the press does not necessarily tell the public how to think but what today’s issues are on and it is important to have an opinion, whatever it may be.

Since the publication of Walter Lippmann’s book *Public Opinion* in 1922 – in which he reminded us that the media does not reproduce reality but rather produces interpretations and representations of it – analyses of media effects on reality have acquired greater attention. Yet it is beyond doubt that Max McCombs and Donald Shaw (1972), as well as the Chapel Hill studies (conducted in 1968 and published as an article in *Public Opinion Quarterly*, in 1972), created the term agenda-setting⁵. While the first generation of agenda-setting aimed to verify the mere thematic imposition, the second generation went further, seeking to prove and assess the imposition of a given theoretical approach. This conveys that the latter brings agenda-

setting closer to theories related to the phenomena of persuasion and acculturation (Santos, 2015). Thus, there is, besides a personal agenda, also a media agenda that obeys the media's criteria.

The concept of agenda-setting states that themes guided by the media tend to be discussed in the public agenda. McCombs and Shaw's 1972 study specifically sought to quantify how media shapes public discussion topics. The American television program *The Day After*, which deals with the consequences of a nuclear war, was taken as an instrument to measure this influence: before the program, the topic of nuclear war occupied the 13th position in the researchers' measurement of what would be present in the concern of a group of individuals, the so-called public agenda. On the day after broadcasting, the issue jumped to the first place. This investigation displays how McCombs and Shaw (1972) managed to expose the link between a media subject and the public agenda.

After this presentation, we may examine the concept of the perspectives of a strategic analysis of the Judiciary. Nonetheless, there are also differences between these studies, considering that adequacy was made between agenda-setting and strategic approach⁶: It requires abandoning decision-making in favor of communication, shifting focus away from individuals to achieving institutional change, and emphasizing the importance of context. The idea is to establish the basis of a theoretical dialogue to understand the Judiciary in the media. Empirically, the Federal Supreme Court constructed its own strategic agenda.

For a start, it is important to highlight some assumptions. First, the relationship between the Judiciary and society does not occur directly but is mediated and requires the development of the Court's own communication expertise. In the middle of the road, there are specialized media, understood here as sector journalists who engender particular dynamics together with communication advisory. Second, it needs to be emphasized that the dispute for space in the media agenda, which leads to the public agenda, is political.

Executive and Legislative were traditionally covered more ostensibly in Brazil; specialized judicial journalism, on the other hand, has a fundamental importance in bringing to the agenda issues that, without a very specific viewpoint, would be lost in the procedural tangle. Area journalists act as translators of very distinct knowledge and bring to the public attention issues that would hardly appear without their coverage⁷. In this sense, thinking not only about the coverage but also

its relationship with the professionalization of communication in the Brazilian Judiciary is part of a new research area.

This research focuses on the classical approach of agenda-setting theory, but in this case, media convergence is pointing to a new frontier where public debate will not be guided solely by mass media. Lee (2005) wrote a seminal work on the uses and effects of online media and blogs on public opinion. Since the late 2000s, agenda-setting theory has provided academic production on new media as much as old media (Lee, 2005; Lim, 2006; Gane & Beer, 2008). Gradually, articles concerning online media have been shedding light on the analyses of social networks, algorithms, etc. The idea of competition also encompasses convergence or “congruence” (Rodríguez-Díaz & McCombs, 2023).

However, for this study, finalized in 2004, the classic agenda-setting approach based on mass media seems to be the most appropriate. Moreover, after the 2010s, the Supreme Federal Court made several changes, including internal regulations about the Criminal Case 470 trial called the “mensalão” scandal⁸. The work of updating the “strategic agenda” analysis model is being performed in ongoing research that improves the analysis model for the growth of social networks and the historical changes of recent years.

The strategic agenda contemplates a kind of transition called “from law to desires”, which means the organizational timeline of the Supreme Court’s communication that would later explode in the figure of the hero judge on social media and street trials. Hence, we outline the origin of the exhibition which helps us understand the January 8, 2023⁹.

3 Strategic model: court decisions

If it is necessary to observe the relationship between advisory services and journalists, it must also be borne in mind that this exchange is influenced by a political context. It’s necessary to anchor any analysis of a relation between these agents on a theoretical basis related both to communication and to political science since the connection with the media is part of institutional politics.

When we think of a “political” Judiciary, North American literature is fruitful in production that observes the justice system far from strict legalism, perceives preferences and ideological proximities,

and even considers factors that influence decisions and judgments beyond the letter of the law. Decision-making processes within the scope of justice are seen considering interests and pressures, and not just external ones. Formal and informal rules of institutions are taken into account as well as aspects related to applying the law; the judges themselves are seen as political actors.

Let us remember the United States during the 1920s: Juridical realism played an important role because it removed the veil of the idea of a mere application of law in the face of juridical legalism. Thus, the political dimension is highlighted. But the “denunciation” made by realists that the Judiciary was not exempt lacked more substantial proof. This is why one of the contributions of judicial behaviorism was to provide scientific production, especially vast quantitative studies, with the argument that there is no purism in judicial decisions. Preferences and values of judges began to be analyzed as elements that informed the decision-making process. Thus, judicial behaviorism was seen as an autonomy of Political Science from Law to understand judicial decisions. Inatomi stated in 2017: the judge is understood as a political actor who attends to legal rules and also his own political interests.

Judicial behaviorism involves different approaches: first is the attitudinal model with the parameter to analyze politics in judicial decisions through something already established, such as ideological ties, political preferences, generational aspects, etc. The second is the strategic model, in which the judge considers a particular purpose. This model indicates how judicial decisions are guided by a strategic vision, they reveal where the judge wants to go and what goals he intends to achieve. This application is very suitable for judicial behavior in Latin America, which is why the strategic agenda seems most suitable for understanding court communication in the region.

At this point, we can delimit the conceptual aspects of both theories to justify our choice of the strategic model. According to the strategic model, context and the position of other actors involved in the respective matter induce decision-making; the concept is based on the rational choice theory¹⁰, which usually takes into account the following aspects: a behavior guided by maximum result utility; information that allows a vision of the whole and what expectations one has when choosing a certain way, including the positions of the other actors; the possibility of considering different options and the focus on individual choice (Epstein & Jacobi, 2010¹¹).

The strategic approach gained more momentum in the 1990s. The judge was seen as a rational actor who chooses action thinking about the most efficient path that will lead him to achieve his goals (Epstein & Knight, 1999 as cited in Barreira, 2013). Contrary to the classical attitudinal approach, in which the political objectives of magistrates are seen as something they already carry with them (values and ideologies), in the strategic approach, it's the context and the position of other actors involved in the process that gains importance.

4 The strategic agenda: presentation of a concept

It is given this theoretical framework that it seems appropriate to think of judicial behaviorism and especially the strategic model as an influx to dialogue with agenda-setting research. By focusing on the “middle way” that links advisory services to coverage, we carefully look at what newsmaking involves. In the case of our object of study, the Federal Supreme Court of Brazil, the active role of communication is perceptible.

An example of this is the importance achieved in the 1990s through publishing releases, photographs, filming, sound systems, etc.; a series of practices that, when made available by the Supreme Court advisory, facilitate the routine of journalists and tend to increase coverage of the institution. These kinds of examples are updated in social network profiles, lives, and other means of communication used by institutions in the 21st century; time may change and ways of communication too, but the need to strategically set the agenda remains.

Here, the choice of the strategic approach to dialogue with agenda-setting is reaffirmed because when choosing a communication advisor, proposing or agreeing to certain practices of communication advisory will not be effective if based on given values and preferences that do not dialogue with the context; no matter what personal preferences the respective judges may uphold. Thus, when thinking about the agenda-setting research and the strategic approach, we will now highlight the aspects that build a possible dialogue, as well as the points of approximation that show the convergence between these two theoretical supports.

1. Individuum *versus* institution: the focus on behavior and individual preferences is typical of the strategic approach: voting, the decision-making process, and looking at peers or the limits imposed by informal and formal rules have the individual as their center. When

thinking about the choice of a press/communication advisor, however, even if the initiative came from a specific Justice, the next step is necessarily institutional. It should still be noted that in institutions the size of a Federal Supreme Court, it is not possible to assume that advisory services will only serve one out of eleven members. Even though those who have their own press contacts communicate independently or the president gains specific attention, the impact of structuring a sector, increasing staff, making new practices and journalistic products available, etc., will always be institutional. In other words, the work that mobilizes the agenda-setting of a Federal Supreme Court is institutional, even if it reflects the choice of a particular Justice. This means that, as opposed to what occurs in voting, preference is not entirely restricted to the expression of an individual; expressing one's will is always reflected in an institutional movement.

2. Decision-making process (vote) *versus* communication: judicial behaviorism, whether in its attitudinal or strategic approach, looks at decision-making; this is the key point of analysis. Although issues related to communication appear, they always have to do with decision-making. This is what is mentioned in the works of Cook (1977, 1979), in which the author analyses surveys about public opinion, and in the work of Segal and Cover (1989), in which the writers examine the publication of Justices in different newspapers to know about their preferences. Once again, it is noteworthy that communication informs and gives signals for the decision-making process. Whatever the courts do to appear in the media and public agenda is not the object of studies that verify judicial politics; their focus is exclusively on decision-making. In our case, communication is central to analysis, and it describes how an agent presents himself on the political stage.

3. Direct expression *versus* mediation: the vote is expressed by the individual will. This is what allows scaling, comparing with peer votes, and distributing a vote over time to observe possible changes according to the context. A vote is an observation unit that clearly and directly expresses the will of an individual; it can be seen within a broader decision-making process and interacting with other actors. Still, it is always linked to the preference and political choice of the respective judges. Any analysis will always focus on the vote in the same way that a judge controls his decision through a vote (although he may not be able to control the overall outcome). When the analytical center shifts to communication, however, mediation seems to dissolve both the unity that expresses a will and the ability to control decisions. Communication

is mediated (Thompson, 1998); it is screened by the media, and when it comes to the relationship between advisors and journalists, it is also negotiable (Alsina, 2009). There is no control neither in a press release or conference nor in a scheduled interview, etc.; the press itself will always function as a filter that analyses and negotiates the respective interest in an agenda. The results of communication policies spread over time. The effectiveness of communication – let's focus on advisory services, for example – will depend on their ability to make the institution's interests and agendas communicate with the respective context, meet the criteria of newsworthiness, etc. An advisory has to deal with inconvenient guidelines and with crises, sometimes it may be obliged to respond to questions that it has not even addressed. There is no direct expression of will because entering the agenda also depends on conditions alien to the agent.

The positions informed by the conjuncture are the point of congruence of this dialogue, moving from an analysis focused on the individual to thinking about the institution. For example, the chief communication adviser, usually chosen by the President of the Court, establishes the strategic rational choice to be adopted. He or she is an individual in a leadership position who represents the candidate of the Court President in terms of communication. But, the more appropriate this person is for the respective context, the more successful his/her performance will be. Let's not forget that this is not about an already defined theoretical-methodological model but about the possibility of building a dialogue between both aspects.

When we observe the historical changes and recognize the intersection point in which agenda and strategy are informed by conjuncture, we can see how the Federal Supreme Court's new institutional design boosted the institution's communication policy. In other words: Judiciary communication is not driven by sincere interests (attitudinal model), but by the Courts' position regarding the respective political situation.

5 The case of the Brazilian Federal Supreme Court: mediation through communication dynamics

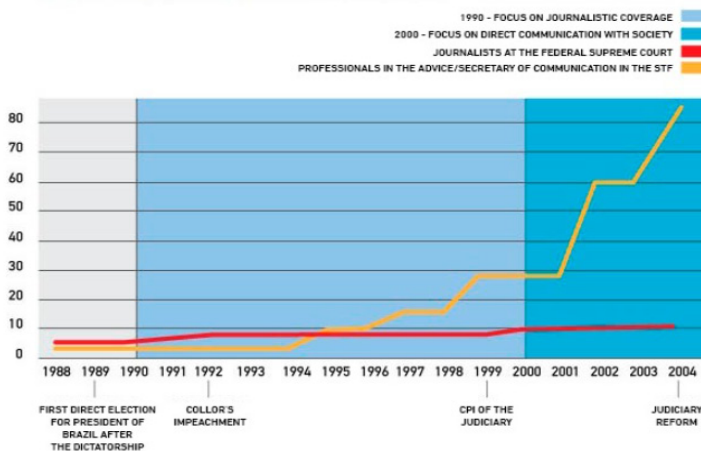
In the 20th-century media world in which professional journalism developed, State bureaucracy was expected to enhance its communication with appropriate professionalism. This being said it becomes evident

that professional communication must act together with the demands of the political situation so that the institutional agenda has strategy and direction. Now, if we want to understand how judicial institutions relate to the media, we need to map changes in two axes: an internal and an external one. They constitute the so-called communication dynamics.

The first axis (1) displays internal processes and organizational transformations concerning communication: resolutions, positions, and nomenclatures, in addition to the number of professionals allocated in the sector – this is a way of measuring growth over time. In the case of the Brazilian Federal Supreme Court, it was hereby possible to demonstrate how the Communication Office gained a new dimension in court structure, how it expanded its functions, and significantly increased its number of allocated professionals. The second axis (2) lays out external processes, it is related to the increase of journalists covering the institution and how this dynamic has changed over time. These variables of what we call communication dynamics are linked to the political context.

Figure 1

Communication dynamics by decade and chronology with events in their respective political contexts



Source: own elaboration resulting from research, based on field data from (2019).

As far as chronological order is concerned, we can see the internal and external communication axes are displayed together with markers of important events in their political context in the early 1990s and at

the turn of the 2000s. It is possible to see an increase in the Supreme's communication structure and coverage precisely at the beginning of the new millennium. From this point on, the analysis of the relationship between communication dynamics and political context may be deepened:

- 1980s and 1990s:

Regarding the time frame of the Federal Constitution, i.e. the years from 1988 to 1995, what could be called the Supreme Press Office¹² was a sector composed of the journalist Ézio Pires and two public servants¹³ who were responsible for clipping¹⁴ and other tasks of administrative assistance in customer services for the press. At that time, the department did not occupy itself with conventional press work apart from clipping. No releases were sent, etc., nor was there any coverage of plenary or appeal court sessions or of any other activity in that sense.

Another significant change to be considered is that, from 1995 onwards, the press advisory office began to physically distance itself from the room where sectoral journalists who covered the Supreme Court worked. With the staff increase, the advisory sector moved, and journalists started to have their own space with technical equipment such as fax machines, computers, etc. In those days began what has since been conventionally called the Press Committee of the Supreme Court, the workplace of the sectorists. From 1995 onwards, the press advisory increased also a series of new work routines: information was sent to columnists, press releases were prepared, Supreme Court journalists started to cover plenary and Chamber sessions, and processes were followed up in the protocol and behind the scenes of the Court to see what could be reflected by the press.

A significant modernization of advisory services occurred in 1995. An important point to be highlighted is that the choice of the Supreme Court press or communication advisor is up to the Court president. As stipulated in the institution's organization chart, the relationship between the Supreme Court President and the Press Office is given by the link between the sector and both the General Secretariat and the Presidency. When talking about the connection between the Supreme Court Presidency and the choice of the Advisory Board, there is, on the one hand, the expression of the Justice's will shown through his vote, and on the other hand, there's also a kind of political seal stamped on the work of the communication sector.

It is no coincidence that changes in the Supreme Court Advisory Board happened during the 1990s when the visibility of

the Judiciary began to increase. This means that Brazil is an example of how the political protagonism of a Supreme Court expands its media coverage and thus its concern with communication to set its agenda. A strategic agenda is exactly that: communication dynamics linked to the political context. Peters (2014) shows a change in Scotus communication after the New Deal. It is an excellent example to illustrate the central point of the article.

The Judiciary started producing news in its advisory office from the 1980s to the 1990s, specifically information related to the Superior Electoral Court. In 1995 the Federal Supreme Court professionalized its advisory services triggered by the presence of Irineu Tamamini¹⁵. At this point, it becomes necessary to highlight the rapprochement between the journalistic work of the market, advisory services, and the relationship networks that constitute an inducing factor for the characteristic openness of communication during the 1990s¹⁶. This was promoted even further through the political context, the importance of the 1989 elections, and how communication evidenced its weight during the re-democratization process.

The changes in the advisory service occurred in the midst of one of the historical moments of peak coverage. There was the case of former president Fernando Collor who was judged in the Federal Supreme Court. Collor was acquitted by the Supreme Court shortly after his impeachment. Still, the fact that there was a lawsuit against a president even before being impeached represented a peak of coverage which is the turning point zero¹⁷ of judicial coverage.

The spotlight on the Collor case clearly showed that changing Supreme Court communication was necessary. So much so that Irineu Tamanini, who had informally helped the judges during the impeachment coverage, is called to take over the communication of the Supreme Court. From the organizational point of view, one modification took place in 1998: the post of press advisor was designated "press secretary", as provided for in Regulatory Act No. 30¹⁸. This brought about a new bureaucratic organization. The press turned into a secretariat now, which could count on an increased number of professionals. According to Alberto Coura (2019)¹⁹, 15 people were working at the press office in the years 1997 and 1998.

In addition to plenary sessions, sector journalists also started to cover second-instance courts when there were moments of specific demand. Legal counsel was provided to address inquiries and clarify technical terminology. This expertise together with a language

adopted from the radio set the tone and made the news composed and written for the website more direct and objective.

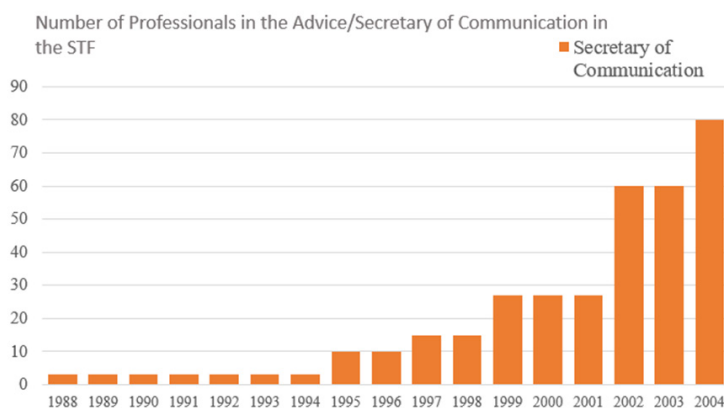
- Beginning of the new millennium:

After the departure of Alberto Coura in 1999, the journalist Armando Cardoso took over the secretariat after being appointed by Justice Carlos Velloso and remained in office until May 2001. During his tenure, the press secretariat was renamed press advisory again and subdivisions were established according to areas of activity. Sections 1 – Research and Writing; 2 – Image and Sound and 3 – Clipping were created by Regulatory Act No. 32²⁰ and demonstrated the department's competence in a range of actions.

In June 2001, Renato Parente became chief advisor to the press office; he was invited to take office by the then president of the Supreme Court, Justice Marco Aurélio, and remained in charge until 2004. He had worked as an advisor for the Regional Labor Court in São Paulo before, and during his time there, the certainly biggest scandal involving the judiciary took place. It was the so-called “Lalau case” and, combined with other factors, it led to the Parliamentary Committee of Inquiry of the Judiciary, which represented the second judicial turning point in coverage.

When this Labor Court case in São Paulo became the trigger for a Parliamentary Committee, the press topics centered on the day-to-day in Congress began to have direct repercussions on the Supreme Court. It was not by chance that such a political event led to a change in the communication of the Justices; after all, Renato Parente had been chosen precisely for having acted during the “Lalau case”, so he was responsible for the second milestone in the professionalization of the Supreme's press office. So that was precisely the moment when a routine that had been focused on journalistic practices, with Courts that were open to the press, was shifted to a broader focus and to a concept of communication aimed at Justices that should be accountable to society. The case of Tamanini and Parente, for example, shows how the choice of advisor made by the President of the Court is personal but dialogues with the political context – as our model of analysis claims.

This new structure also considered the changes related to the creation of Justice TV, which was instituted by [Law 10.461 of May 2002²¹. The journalistic sector went from 27 to 60 people, mainly due to TV programming. There was yet another change during the management of Parente when Justice Radio was created in 2004²².

Figure 2*Staff at the Federal Supreme Court communication department*

Source: own elaboration based on field research data (2019).

There were other changes between 2001 and 2004, too, such as the outsourcing of clipping and the real-time coverage of plenary and appeal court sessions by the press advisory. This innovation had a significant effect, as waiting for press publications to find out about Supreme Court decisions was no longer necessary. As a consequence, judicial press coverage began to intensify backstage analyses and evaluations to differentiate itself; it was a significant modification that has continued up to the present day.

In the same way, it might be interesting to take a look at the activities of press coverage during the same period. The respective information is displayed in figure 3, which shows the yearly evolution of sectoral vehicles in the Justices and illustrates a gradual increase in Supreme Court coverage.

There are two categories of sector journalists: the so-called permanent and the temporary ones. In 1988, for example, national newspapers like *O Estado de São Paulo*, *O Globo*, or *Correio Brasiliense*, and radio and TV companies like Radiobrás had permanent sectionalists in the Supreme Court, who followed sessions and the development of the most relevant cases daily. *Folha de S.Paulo* newspaper had a reporter assigned to cover the Justices too. Still, he only went there sporadically, so he was a temporary sectorist. *Folha* only started to have a permanent sectorist in 1996.

Figure 3

Vehicles with sector journalists in the Federal Supreme Court



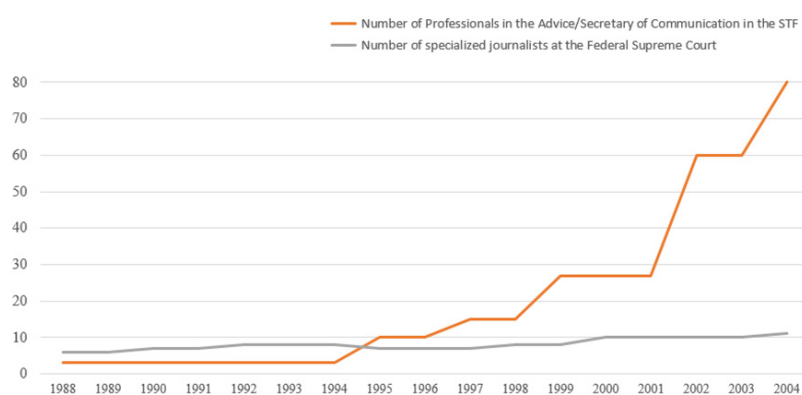
Source: own elaboration based on field research data (2019).

It's possible to visualize an objective relationship between the development of the press office and journalistic coverage. A first look at this quantitative data (see figure 3) seems to refute the idea of a correspondence between what was happening internally (increase in Court communication) and externally (coverage). Yet, when analyzing qualitatively and in detail, we find that there is indeed a relationship between the development of Supreme Court communication, i.e. formulating a communication policy, and Court coverage. The Parliamentary Committee of Inquiry brought judicial matters to the forefront, significantly contributing to the 2004 Judiciary Reform. This reform saw the creation of new platforms for judicial coverage, notably the Juridical Consultor (Conjur) website.

Let us keep in mind that a Parliamentary Committee takes place in Congress, so its impact on judicial routine coverage is not as strong as the reverberations of journalistic *in loco* coverage of such a political event on the Courts' premises. Nevertheless, as was mentioned before, it is a fact that justice was already on the national agenda in a more apparent way at that time: no longer as an institution that applied justice but as an establishment that could be publicly questioned.

Figure 4

Comparison of the increase in professional communication staff at the Federal Supreme Court, and vehicles with sectorists in the press committee



Source: own elaboration based on field research data (2019).

A qualitative analysis shows us three growth aspects not seen at first:

The first point relevant is the nature of coverage, which is related to the fact that the cadre of Justices is much more perennial than that of agents who make up executive ministries and secretariats. A more stable configuration associated with the characteristics of a more closed Power creates conditions so that only through a proximate relationship with a source can a journalist obtain behind-the-scenes information, reports on voting trends, more detailed explanations of judgments, etc. Investing in sector specialists has always been essential for a good coverage of the highest judicial levels. Thus, the permanence of sectorists and their small numeric growth is more significant than one might suppose when looking at an evaluation based only on numbers.

The second point is related to the exclusive coverage of the Supreme about other institutions of the Justice System. Between the 1980s and the 1990s, the Supreme Court was the basis for coverage of all the Superior Courts and bodies with which it maintained links, such as the Superior Electoral Court, the Superior Labor Court, the Attorney General's Office, etc. During the 2000s, an "exclusivity" process could be observed since the volume of work was so

considerable that a Supreme Court sectorist was only able to cover that one Court.

The third point mentioned displays the relevance of the Supreme Court in the political scenario because there was an increase in coverage and in-vehicle diversity. At the same time, the journalistic market suffered a downturn. Thus the fact that the press committee continued to exist, when this practice was already extinguished in various other bodies, is relevant. Precisely, we understand that communication dynamics are related to the connection between Court communication and Court coverage because, over the years, the activities of the press office or communication department affect not only journalistic vehicles of sectorists but also other journalists who cover from a distance and even the general public due to the implementation of Justice TV and Radio.

6 Political context creates opportunities and constraints

In Brazil, the Judiciary started to be more frequently on the public agenda exactly when the effects of the Justice System model designed by the Federal Constitution of 1988 began to be felt. If it was natural for elective powers such as the Executive and Legislative to be in front of the media lens during the democratic transition, now it was the turn of the magistrates to draw attention. That was when the so-called crisis of the Judiciary²³ made headlines during the 1990s; it not only put the Judiciary on the agenda but also its need to reform.

One of the events that put the Justices under the media lens was the proposal for a Judiciary Reform that began to be discussed in the National Congress in 1992, the year when then-President Collor was impeached. In 1998, the already mentioned embezzlement of funds destined to construct the Regional Labor Court of São Paulo became public. That scandal involved Judge Nicolau dos Santos Neto. It triggered the Parliamentary Committee of Inquiry of the Judiciary which was instituted in the following year, accompanied by the return of the discussion in Congress on the necessity of a judicial reform. This context sparked further polemics related to the justice system at the turn of the new millennium. The reform occupied the public agenda throughout 2003, under pressure from the Executive and

Legislative powers and under the argument that it was an instrument to promote accountability. Until December 2004, when the reform was approved.

As the Judiciary began to be more in demand, its performance and political role came to be publicly questioned. Turning points can be identified in this relationship between media and justice in Brazil (Albuquerque, 2017, 2018), such as the Parliamentary Committee of 1999 and the Reform of the Judiciary in 2004 and also more recently, e.g. the judgment of Penal Action 470 (in 2012 and 2013), the so-called monthly allowance, and the operation car wash. But without any doubt, the political crisis puts Justices at a point of saturation of being exposed. This happens to the extent that the Judiciary asserts itself as a political actor and not just as an arbitrator. It is time to look at the conjuncture points that mobilize communication.

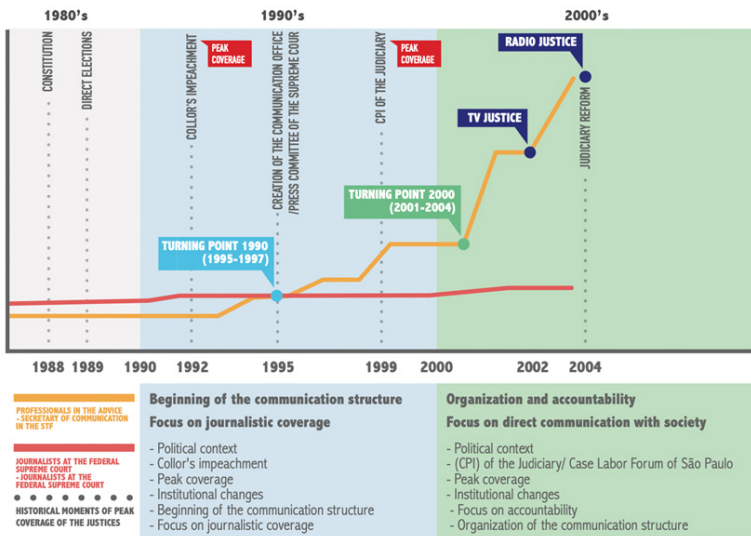
The Collor case and the Parliamentary Committee were turning points in Court coverage during the 1990s. This helps us see two situations: the first is when the Judiciary started to be scheduled by the press. If we understand that coverage peaks correspond to highlights of the Supreme Court schedule, even if transversely when events that occur in the Legislative (Parliamentary Committee of Inquiry) and in other courts (embezzlement of resources in the Labor Court) reverberate up to the top of the Judiciary, we can conclude the following: when the context changes, the strategy has to change accordingly.

In this sense, it is interesting to point out the analytical resource Helmke (2005) used, which she calls “inter-temporal conflict”: it explains that a strategy emerges from a context and therefore changes over time. Leaving the decision-making process for communication, it is the political context and its variation over time that informs about the transformations in judicial coverage and how the Supreme Court communicates, the “political triggers”.

Figure 5

General overview – the relationship between communication dynamics and political context

STF COMMUNICATION X PRESS COVERAGE (DYNAMICS) AND POLITICAL CONTEXT



Source: own elaboration based on field research data (2019).

The personal choice of the Supreme Court presidents regarding the advisory or even the practices implemented in institutional communication are linked to an agenda: when the Judiciary gains visibility, it becomes necessary that the Supreme as an organ on a top level of importance is prepared to respond. These are communication dynamics and indicate that this response's strategy is more political than personal; there usually is a context with opportunities and constraints.

A similar logic applies to other activities and communication products of the Supreme Court which, once instituted, are unlikely to be changed without new media demands or even new demands from the public in general. It is, for instance, unthinkable that the coverage of Supreme Court sessions available on the website could cease to exist. Even with all the discussion about whether it is beneficial to broadcast Supreme Court plenary sessions on Justice TV, it is very unlikely that the broadcasting of sessions on television and on the Internet will suddenly cease.

Remember that this practice was instituted in the 2000s, in the context of the Judiciary Reform (2004), and there was a political demand for accountability. Justice TV went on air during the administration of Justice Marco Aurélio de Mello as Supreme Court president, and this is a very illustrative fact because it shows how a personal decision wrapped in the conjuncture of a time can be institutionally incorporated. Our fieldwork even revealed that Justice Marco Aurélio had to defend internally his decision to broadcast court sessions against other Justices who were dissatisfied with this project. Once such a disclosure has become the norm, social expectations do not permit to reverse of the initiative.

Within a strategic agenda advances from individual to institutional scope. This score is a very important point to be emphasized when we abandon the decision-making process to reach communication, and understanding it helps to clarify how a given context produces opportunities and at the same time constraints so that communication can and must change.

7 Conclusions

The present research assumed the challenge to explore an object that few have investigated so far: considering the Federal Supreme Court a political actor, not in terms of decision-making, but in terms of communication. This objective brought with it the need to map an empirical field that has hardly ever been studied until today. Especially regarding the relationship between the press or communication office and vehicles with sector journalists who cover the courts, the need arose to obtain information unavailable in secondary sources. Looking at the 1990s and 2000s in a panoramic way helps us to understand the origin of current debates involving Brazilian Justices. A key point is that the present study provides an understanding of how judicial protagonism began, and it highlights the relevant aspects related to the courts' visibility.

The Supreme Court is a political institution. Given this fact, the central question should be the analysis of its political behavior while at the same time focusing on communication. This point is again raised here to sustain our conclusion regarding the importance of the political context. The notion that the political game also takes place in the media is the foundation of the concept of strategic

communication, and through this theoretical underpinning, we can demonstrate:

1) how the communication policy of the Federal Supreme Court establishes a relationship with Court coverage and creates communication dynamics;

2) and how the political context offers opportunities and constraints for these communication dynamics.

Given these points, the research concludes by confirming its central argument: historical and conjuncture changes associated with the new institutional design of the Brazilian Supreme Court, which resulted from the Federal Constitution of 1988, in addition to a series of subsequent changes, boosted the institution's communication policy.

Finally, we round off our conclusion with the following points: 1 – the Supreme Court has definitely to be considered a political player; 2 – this policy is implemented both through the decision-making process related to judgments and through the way of communicating and 3 – the Federal Supreme Court is not passive concerning these changes; the institution responds to them and this action, in turn, also modifies the way how the courts are covered by the media, how they are seen and how they position themselves concerning the political game. What we are looking at is a theoretical and methodological arrangement that is not idiosyncratic to Brazil but can be expanded to understand the same triad in other courts, contexts, and countries.

NOTES

- 1 The concept of the Supreme Court's "strategic agenda" was presented in the doctoral thesis "Justiça e Política: um estudo sobre a comunicação do STF (1988-2004)", defended in March 2019 at the Department of Political Science at Unicamp (University of Campinas, Brazil). Since then, the author has been working on updating the research, which was published in a book format in 2023 (published by Amanuense) under the title: "Da lei aos desejos: o agendamento estratégico do STF".
- 2 Find details at: www.nytimes.com/live/2023/01/08/world/brazil-congress-protests-bolsonaro. Accessed on 07/17/2023.

- 3 In 1999, the Parliamentary Committee of Inquiry of the Judiciary was created at the request of the then-senator Antônio Carlos Magalhães. It investigated the embezzlement of resources in construction works at the Regional Labor Court of São Paulo. In that case, Judge Nicolau dos Santos Neto, nicknamed Lalau and former president of the Court, was involved. More information at: www12.senado.leg.br/radio/1/reportagem-especial/2019/08/02/os-20-anos-da-cpi-do-judiciario. Accessed on 07/12/2023.
- 4 More information at: https://repositorio.ufc.br/bitstream/riufc/39015/1/2012_eve_gampaiva.pdf - Accessed on 07/12/2023
- 5 On the occasion of celebrating the 50th anniversary of agenda-setting, an article by McCombs, Shaw and Weaver (2014), entitled “New Directions in Agenda-Setting – Theory and Research”, updated issues related to this subject.
- 6 A theory linked to judicial behaviorism and characterized by studies either in an attitudinal or strategic model that concentrates on an imbricated and voluminous tabulation of votes and judicial decisions as a primary source of work. Later on, this topic will be further detailed.
- 7 Linda Greenhouse, a journalist who covered the United States Supreme Court for decades, is described by Alixandra Yanus in an article on the role of the press in covering the Judiciary, as a specialized journalist who plays the role of a translator of procedural language and who was fundamental for Judiciary to gain an exposure comparable to that of the Executive and Legislative branches. Translated she said: “The press plays an important role in shaping what citizens know about their government. Nowhere is this role more visible or more important than with regard to the courts, which conduct most of their work in relative obscurity. Few citizens have the chance to observe the daily activities of Judges and Justices; media coverage of the courts is far more limited than in the legislative or executive branches” (Yanus, 2009, p. 181).
- 8 Notably, the “Mensalão” scandal was a significant political and media event that culminated in a public trial in 2012 and 2013. The Supreme Court’s rulings on the “Mensalão” case occupied the Court for two years, marking a critical turning point in analyzing the relationship between the Supreme Court and public opinion.

- 9 As referenced in the introduction of this paper, on January 8, 2023, the “Three Branches of Power” in Brasília were vandalized. Following the invasion of the National Congress and the Planalto Palace, protesters advanced toward the “Esplanada dos Ministérios” around 3:00 p.m., and approximately 40 minutes later, a mob breached the Supreme Court building. This event can be seen as a Brazilian parallel to the invasion of the U.S. Capitol on January 6, 2021. However, in the Brazilian context, the Judiciary – an unelected branch of government – was also a target.
- 10 A study considered a pioneer in strategic approach is precisely the Quantitative Analysis of Judicial Behaviour, published by Glendon Schubert in 1958. Walter Murphy was also among those who marked the beginning of that theoretical approach with his publications *Of Congress and the Supreme Court* (1962) and *Elements of Judicial Strategy* (1964). In these works, Murphy analyzed interdependent elements of judicial decision-making (Epstein & Knight, 2000). For example, actions of the Legislative and Executive started to be relevant factors of consideration in judicial decision-making.
- 11 “Strategic accounts, in contrast, belong to a class of nonparametric rational choice models, as they assume that goal-directed actors – including judges – operate in a strategic or interdependent decision-making context. In this account (a) social actors make choices in order to achieve certain goals; (b) social actors behave strategically in the sense that their choices depend on their expectations about the choices of other actors; and (c) these choices are structured by the institutional setting in which they are made” (Epstein & Jacobi, 2010, p. 343).
- 12 This name choice was due to the fact that at that time all activities were focused on contact with journalists; there wasn't any communication part responsible for design, marketing, or internal communication vehicles such as radio and TV. These only emerged in the 2000s.
- 13 The mentioned officials were Pedro Luiz da Silva and Francelina Alvarenga Lopes. According to a court report they both acted in clipping, and Pedro Luiz da Silva was also responsible for photographing formal sessions, visits by authorities, etc.
- 14 It is a term used to designate the reading, mapping, clipping, and organization of articles that appear in the press and are related to a certain subject, an agenda, or to individuals that are monitored

by the Office.

- 15 Irineu Tamanini was the Supreme Court press advisor from 1995 to 1997 and before that, in 1989, he used to be advisor to the Superior Electoral Court. His work as a press officer during the re-democratization process was decisive for him to be chosen for the Supreme Court, and this fact shows how a specific context offers opportunities for technical communication issues.
- 16 Most of the interviewed journalists who covered the Supreme Court at that time confirm this evaluation and agree that the period from 1995 to 1997.
- 17 The ideas about turning points in Judiciary coverage emerged during my Master's research, when Justice Reform was an object of study and it clearly pointed to the related Parliamentary Committee of Inquiry of the Judiciary as a turning point in the judicial agenda. That research also revealed a "blind spot" to be worked on in the early 1990s, related to economic plans and the Collor case.
- 18 Regulatory Act No. 30 of April 15, 1998, specifies the changes in the internal organisation of the Supreme Court. It took as an opportunity law no. 9607 of February 18, 1998, which creates, transforms, and extinguishes positions and functions in the secretariat of the Federal Supreme Court and makes other provisions.
- 19 Interview granted by Alberto Coura to the author of the present study for her research, on January 7, 2019.
- 20 Regulatory Act No. 32 of March 7, 2001, changes the organic structure of the Federal Supreme Court and provides for other specifications.
- 21 It was Law 10.461/2002 that provided for the creation of TV Justiça.
- 22 Justice Radio went on the air in May 2004. It also has its specific site at the following address: www.radiojustica.jus.br
- 23 Three reasons stand out for the crisis of Brazilian justice: social litigation and conflict resolution mechanisms; administrative issues and, finally, access to justice. This crisis Faria (1989, p. 98)

referred to this when he asked: “What will be the responsibilities of legal actors when societies are in transformation?”

- 24 The strategic agenda is being applied to the Brazilian Supreme Federal Court (STF), but we believe it could also be valuable for other courts, particularly those in Latin America. This potential applicability stems from the fact that many Latin American countries share common historical markers, such as the adoption of new constitutions and legal systems following military regimes, often during similar time periods. Given these shared historical contexts and the greater relevance of the strategic model of judicial behavior, as opposed to the attitudinal model, for Latin America, this approach could assist in the analysis of judicial behavior across the region.

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