

Power relations and democracy: how to regulate fake news in the big-tech ecosystem*

Relações de poder e democracia: como regular a desinformação no ecossistema das big-techs

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Abstract:

This paper discusses the relation between democracy, misinformation, and power relations. Thus, the dissemination of false information in electoral periods directly affects the right to information and may interfere in the formation of public opinion and, consequently, in the democratic exercise. The problem was observed in the Brazilian political scenario, especially in the 2018 electoral process, in which fake news strongly marked the president's campaign, bringing to the public a series of distorted values instead of cohesive proposals and well-defined strategies. Based on this reality, and supported by the logical-deductive method, the research seeks to study the solutions that are being proposed by the Brazilian legal system for greater regulation on the subject, so that disinformation practices are gradually combated in order to preserve democratic values.

Keywords: Communication. Democracy. Elections. Fake News.

Resumo:

Este artigo problematiza a relação entre democracia, desinformação e relações de poder. Sabe-se que a disseminação de informações falsas em períodos eleitorais afeta diretamente o direito à informação, podendo interferir na formação da opinião pública e, conseqüentemente, no exercício democrático. A problemática foi observada no cenário político brasileiro, especialmente, no processo eleitoral de 2018, no qual as *fake news* marcaram fortemente a campanha presidencial, levando ao público uma série de valores distorcidos ao invés de propostas coesas e estratégias bem definidas. A partir desta realidade, e apoiado no método lógico-dedutivo, a pesquisa busca estudar as soluções que estão sendo propostas pelo ordenamento jurídico brasileiro para uma maior regulação acerca do tema, de modo que as práticas de desinformação sejam gradualmente combatidas com vistas a preservar os valores democráticos.

Palavras-chave: Comunicação. Democracia. Eleições. *Fake News*.

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1 Introduction

The term *fake news* has been gaining great notoriety in recent years, presenting in 2018 a very visible impact on the Brazilian political scenario, when from the evident use of this practice, it marked the presidential election campaign. In particular, with regard to the content that circulated freely through social networks, *fake news* "reigned absolute", due to the novelty in its use in a political process and the lack of preparation of the control bodies over its use. These factors have brought an understanding that the internet is a lawless space, where absolutely everything can be shared. However, it is precisely this type of thinking that can legitimize such practices, because: by not giving the subject the necessary attention, it becomes freely rooted in everyone's lives.

Thus, it is appropriate here to analyze the presence and effects of *fake news* in the contemporary political, social and economic scenario, especially when looking at this phenomenon from the perspective of the events in the 2018 presidential elections in Brazil. This is an increasingly evident theme in everyday life, and it should be emphasized that such a practice is not limited to misinforming, but, above all, harming the public by depriving them of the right to access reliable information, and, even worse, making authentic information be seen as lies by those who are targets of *fake news*. This phenomenon, which is still seen by many without due attention, cannot be considered something innocent or the result of some carelessness, but rather as something much more serious and violating the country's electoral laws, produced by those who intentionally seek some benefit for themselves or their group, in addition to the possibility of exerting great influence on the outcome of an election.

From this conception on the subject, and by the deductive logical method, the role of *big-techs* in the (dis)control of the (mis)information that circulates on the networks will be analyzed, as well as the solutions given by the Brazilian legal system in combating the democratic distortions caused by the indiscriminate use of *fake news*. It is necessary to understand that information is not a mere product, but an important service to the population and essential to the exercise of democracy.

2 Between emotion and regulation: the falsification of facts and Brazilian legislation

Given the fast pace that current events give to daily life, it is becoming increasingly common for people, in the little free time they have, to use digital tools to become aware of

different facts. Whether in the search for information or entertainment, everything seems to be within everyone's reach through their *smartphones*, which work 24 hours a day. From the moment they wake up until it's time to go to sleep, a lot of content is consumed: news, amenities, funny videos, images, and even illegal content. This digitalization becomes progressively stronger, more present and more natural in the daily life of ordinary citizens, who are often in greater contact with people who are physically distant than with their family and/or neighbors. In other words, it is difficult to think about what life in society would be like without these resources that manifest themselves in different spheres and from a "progressive digitalization of private life and social interactions" (Gomes, 2019, p. 1560).

In this sense, it is perceived that it is not only about the use of digital tools for private use, but about a whole way of structuring contemporary society, in which relations are mediated by different media supports and vehicles. This means that people are completely inserted in the context of *fake news* and, consequently, increasingly exposed to a series of factors that can be harmful both individually and collectively, affecting free, impartial, and democratic choices.

This way of consuming different content faster and faster goes beyond a false idea of obtaining information about practically everything that happens in the world. A fact that occurs in a distant country is instantly shown on social networks, blogs, news channels and messaging app groups. In other words, it is understood that such facilities are very useful in everyday life and can help many people, playing an important role in the democratization of knowledge and in the popularization of each one's impressions of events. In the view of André Lemos and Pierre Levy (2010), the democratization of access to information, previously retained in the power of the *mass media*, can make it possible for anyone to give their version of the facts, in different contexts and at the same time. However, at the same time, in the face of so many resources, the possibilities of spreading false information on a large scale and reaching an increasing number of individuals are gradually growing, which can cause great damage. According to Pires and Pires (2018), the ease and speed of information in today's world, although they bring a new power to participatory democracy, "can also be capable of causing injuries to third parties and, worse, leading public opinion to undesirable mistakes" (2018, p. 102).

In this regard, attention falls on the ways in which fake news emerges and proliferates, reaching people of all nationalities, social classes and levels of education. And this does not mean that people do not have knowledge or are not able to interpret the information they receive, but that there are a number of factors involved where the manipulation exercised by

fake news can blind them to the facts. Thus, among these factors, the emotional character with which information is received is conveyed in a spectacular way, propagated and reproduced by social networks, which makes people identify with what is shown, believing, sharing and disseminating the content received. Highlighted by D'Ancona, in this twenty-first century, "what is new is the extent to which, in the new scenario of digitalization and global interconnection, emotion is regaining its primacy, and truth, retreating" (2018, p. 38).

Following this logic, it is also observed that fake news is often used by people to legitimize their own thoughts, which occurs when someone notices information consistent with their values and opinions and, without checking its veracity, shares it instantly, thus increasing the reach of *fake news*. This is reinforced by the algorithms of social networks commanded by very few companies around the world, the *big-techs*, which automatically select "equal" content for people who "think the same", generating the false impression that "everyone has the same opinion" and presenting only the side of the truth that is most convenient to that interlocutor. These are "content bubbles"¹ formed in this new public sphere, highly selective and dominated by a few technology companies with global reach. These *big-techs*, through algorithms, gather and select fragmented information from the web, "in order to make behavioral predictions and influence the formation of opinions, values, and decision-making processes, [...] promote a sociability induced by algorithms that aim to retain the maximum daily attention of users around the world" (Machado; Miskolcip, 2019, p. 946-952).

Thus, the technology companies that dominate social networks have an invisible and unprecedented power over billions of people around the world, spreading a culture of exaltation of digital popularity that occurs from the interactions between users, rewarding those who receive the most "likes" and "followers". Thus, in this valuable data market, the maximum degree of online success is to obtain the status of digital influencer. To be the protagonist and dictate trends to his "followers", thus satisfying himself with being the momentary center of attention. However, for *big-techs*, what matters is to keep the individual connected and consuming goods, services, information, and content, even if this means restricting their access to a plurality of ideas that, because they may not fit their preferences, may cause the individual to divert their attention to something other than that social network. This is a new way of

¹ For Giuliano da Empoli, it is a new "quantum politics", in which "the version of the world that each of us sees is literally invisible to the eyes of others. This increasingly removes the possibility of a collective understanding. According to popular wisdom, to understand oneself it would be necessary to 'put oneself in the other's shoes', but in the reality of algorithms this operation has become impossible. Each one marches within their own bubble, within which certain voices are heard more than others and some facts exist more than others" (2020, p. 175).

standardizing thoughts and curbing dissent, where "the selection of content based on its 'viralization' tends to favor a poor diversity of themes instead of a positive and democratizing pluralism", which also contributes to the dissemination of *fake news* (Machado; Miskolcic, 2019, p. 947).

In this regard, it is important to emphasize the need for a careful analysis of the information before disseminating it on the *web*. In this digital world, according to D'Ancona, "rationality is threatened by emotion; diversity, through nativism; freedom for a movement towards autocracy" (2018, p. 19). That is, the values of each individual sometimes become more important than the facts themselves. People prefer to consume what pleases and legitimizes their points of view, and not what is based on empirical data, what is real. In this aspect, according to Brum (2019), there is "a daily life dominated by self-truth, a phenomenon that converts truth into a personal choice, and therefore destroys the possibility of truth".

How the spread of *fake news* through social networks is a relatively recent problem; especially when seen by the possibility of global and instantaneous reach of disinformation, as well as with all the damage that can result; The difficulty of regulating the *fake news*. The legal systems are national and do not have uniform treatment on the matter. Often, and in some countries, there is not even the presence of legislation on the subject, in addition to the immense difficulty in punishing virtual illicit behaviors and acts that, in most cases, are "deterritorialized".

This is a new phenomenon, made possible by another element of the present time, digital platforms. These are new forms of communication that enable the disseminated reproduction of false and distorted information that gains the appearance of reality. The negative consequences of the combination of *fake news* and digital platforms are incalculable, since the public debate is distorted, corrupting freedom of expression and the right to information, two of the main assets of democracy compared to other political regimes. In electoral contexts, the impact of disinformation tends to be even more harmful. Thus, it is no exaggeration to say that *fake news* constitutes a threat to democracy itself, insofar as it can distort electoral results. It cannot be admitted that electoral abuses interfere with the sovereignty of the ballot box. It is essential to create effective mechanisms to prevent the spread of *fake news* during elections. (Queiroz, 2019, p. 11).

Brazilian electoral legislation, even if it provides for the penalization of disinformation or *fake news* In election times, it was unable to inhibit these practices that occurred in a forceful way in the 2018 presidential elections. Since the Electoral Code of 1950 (Law No. 1,164, of July 24, 1950) there was already a provision, in its Article 175, item 28, that it would be a criminal offense "refer to untrue or injurious facts in relation to parties or candidates in the propaganda and with the possibility of exerting influence on the electorate". This regulation was repeated in the text after the civil-military coup of 1964, with the Electoral Code of 1965

(Law No. 4,737, of July 15, 1965) which, in its Article 323, established as an electoral crime "disclosing in propaganda facts that you know to be untrue, in relation to parties and candidates and capable of exerting influence on the electorate".

Currently, the typification of the use of *fake news* in Brazilian legislation it can fit into the items that deal with electoral propaganda on the internet and the right of reply, affirmed in Articles 57-A to 58-A of the Law No. 9,504, of September 30, 1997 (Elections Law), with subsequent amendments, in particular Law No. 12,034, of September 29, 2009 (amended the Electoral Code and the Political Parties Law), Law No. 12,891, of December 11, 2013 (Law for the Reduction of Costs of Electoral Campaigns), Law No. 13,165, of September 29, 2015 (Mini-Electoral Reform), and Law No. 13,488, of October 6, 2017.

In a seminar held in Brasilia on the subject of *fake news*, Brazilian electoral legislation and its difficulties in the face of the growing scenario of disinformation on the *web*, aggravated in election seasons, were discussed. In this sense, the "truncated" wording of Article 58 of the Elections Law, in force at the time of the 2018 elections, was criticized, which, as much as it provided for the right of reply to the injured party, required the presence of specific intent from those who were spreading *the fake news*, for there to be any conviction. In other words, "the crime would only be characterized when there was real malice or *reckless disregard* of the person who is transmitting the news to be sure that this news is false" (Neves, 2019, p. 40).

Thus, in the 2018 elections, if the coalition or the party were not producers of the information conveyed, they would not be held responsible for the dissemination of *fake news* (in view of the need to prove specific intent). This situation changed on December 18, 2019, with the approval of Resolution No. 23,610/2019 by the Superior Electoral Court (TSE), which sought to reduce the use of fake news during the 2020 municipal elections. The new rules imposed on candidates, parties and coalitions the duty to check the veracity of any information conveyed in their campaigns before disseminating it through electoral propaganda – even that produced by third parties. Once the dissemination of false information is verified, the offended party would have the right to reply (detailed by Resolution No. 23,608/2019 of the TSE), without prejudice to the possible criminal liability of those involved, even without proof of intent, but rather due to negligence, that is, due to the lack of care in checking the veracity of the information disseminated in their electoral campaign (Rais, 2018).

With regard to the hiring of people or groups to disseminate untrue news on the internet, or to defame the image of any candidate, coalition or party, the Electoral Code updated by Law 12,891/2013, in its Article 57-H, § 1st, defined as a crime to be punished with "detention 2 to

4 years and a fine of R\$ 15,000.00 to R\$ 50,000.00", without prejudice to other applicable legal sanctions. And in its paragraph 2, it provided that the people who were hired in the dissemination of such news will also incur in a crime.

Finally, it is important to highlight Article 57-I of the Elections Law (Law No. 9,504/1997, amended by Law 13,488/2017), which provides that the Electoral Court, upon request of the injured party, may determine the suspension of up to 24 hours of access to all content broadcast by the party, coalition or candidate who infringes the provisions of the Electoral Law. If the conduct is repeated, the suspension period is doubled, and the company must inform all "users who try to access its services, which is temporarily inoperative due to disobedience to electoral legislation".

It can therefore be seen that, even with broad regulation aimed at preventing *fake news* and its spread by groups hired for this purpose, in 2018 this was insufficient for improved regulation in the 2020 elections. However, there is still the problem of the amount of fines, which sometimes become very low in relation to the advantages that the disseminators of *fake news* can obtain from their illicit conduct.

In turn, the Covid-19 pandemic has caused an unprecedented increase in the virtualization of social, cultural, and economic relations. From this, the use of disinformation on social networks has worsened considerably, such as, for example, the dissemination of *fake news* about miraculous cures and preventive treatment of Covid-19 (use of chloroquine, ivermectin, among other drugs already on the market, but proven to be ineffective against the coronavirus), "herd immunity" policies that have led millions to death, anti-vaccine movements, among others.

Social isolation measures and restrictions on private activity also required daily hiring to be done over the *web*, which increased all kinds of extortion and embezzlement of money, banking sites and the supply of cloned products, virtual scams by *hackers*, *giveaways* (false promises of gifts and money on the *web*), as well as abusive practices of inducing consumption. All these issues bring up again the problem of regulating *fake news*, and the role of *big-techs* in (not) facing the problem.

3 New paths in the fight against *fake news*: the performance of the Brazilian National Congress

Several bills to regulate fake news are pending in the National Congress of Brazil, such as Bill No. 2630/2020, authored by Senator Alessandro Vieira (Citizenship-SE Party) and its various appendices. Its four main points are the following: a) greater accountability of digital platforms in the fight against *fake news*; b) greater transparency on the part of application providers; c) transparency in relation to sponsored content; and d) limitation by providers of the transfer of private messages (WhatsApp, Facebook Messenger, Skype, Telegram, Google Hangout, etc.) especially during election seasons, emergencies and/or public calamity. In this case, the objective is to limit both the number of forwards of the same message to users or groups, as well as to limit the number of users per group (Maciel, 2020). The bill has already been approved in the Senate and is currently in the Chamber of Deputies, being processed on a priority basis. In the Committee on Labor, Administration and Public Service, a working group was created responsible for analyzing the project and its appendices, in addition to preparing a report, with a view to improving Brazilian legislation regarding freedom, responsibility and transparency on the internet. And on October 28, 2021, Report No. 1/2021 was presented, with the rapporteurship of Deputy Orlando Silva (PCdoB/SP) (Chamber of Deputies, 2021), with a comprehensive approach to the subject, with contributions from the face-to-face and remote holding of 20 meetings, including 14 public hearings, with the participation of more than 150 experts in the field. The proposal aims to create an environment that, although minimally regulated, seeks to preserve the fundamental freedoms of expression and opinion, with the possibility of controls over fake news and broad access to information.

In chapter I, the proposal lists principles and objectives of internet regulation, as well as its scope of application. It brings clear rules aimed at providers that aim at profit and that act professionally in the provision of services in Brazil, which can be national or foreign companies, as long as they function as search tools, social network services and/or instant private messaging. Under the aegis of the principles of transparency, adversarial proceedings, full defense and due process, the report adopted the path of regulated self-regulation, detailed in its chapter VIII. In other words, providers will have the obligation (and not just the possibility) to develop their own rules for control and responsibility for the use of the internet, "provided that they respect national legislation and apply it with equity, consistency and respect for the right of access to information and freedom of expression". The Internet Steering

Committee (CGI), a government agency, was responsible for guiding providers in the preparation and application of codes of conduct, carrying out annual reports on their activities, to be sent to the National Congress (Silva, 2021).

Thus, it will be up to application providers (Facebook, Tik-Tok, Instagram, LinkedIn, YouTube, Yahoo, Google, Twitter, among others) to adopt internal measures to control freedom of expression or the functionalities of their users' content and accounts, whenever they find the presence of *fake news*, hate speech, or the misuse of the network. This "regulated self-regulation" must be exercised with moderation – especially when there is exclusion, unavailability or reduction of the reach and signaling of content generated by third parties and their accounts – and the provider is obliged to notify the user in advance, identifying the nature of the measure applied, its justification and whether it was taken exclusively through automated systems. It will be possible to review the decision by the injured party, which will be answered by the providers in a reasoned and objective manner. Thus, if any error or inadequacy in the sanction adopted is verified, the provider must provide for its immediate reversal (Silva, 2021).

As for the accounts used by government agencies and entities, due to the public interest in vogue, they will be protected from abusive interference by *big-tech*, with the obligation to, before removing the content or deleting the account, notify the public agency, clarifying which rules were violated and what gave rise to the decision. On these websites and social media used by the Public Administration, the allocation of public resources for advertising is prohibited, whenever the promotion of hate speech and crimes against the democratic rule of law is detected (Law No. 14,197/2021). Ombudsman offices will be opened on the website itself, so that any citizen and/or user can report or report any disinformation conveyed there. In addition, it was prohibited for political agents occupying elective office to receive remuneration from providers during the exercise of their mandate, as well as to employ public resources in the creation or operation of private accounts on social networks, with a view to separating the use of public resources from the receipt of private revenues (Silva, 2021).

In turn, on *private messaging platforms* (WhatsApp, Telegram, Messenger, Skype, Google Hangout), forwarding messages or media received to multiple recipients was prohibited. This was done to avoid the use of *boots* intended to carry out mass triggering of potentially harmful and/or false content on networks, as well as the profiling of users,² and

² Profiling: any form of partial or automated data processing to evaluate certain personal aspects of a natural person, especially in relation to their professional performance, economic situation, health, personal preferences, interests, location. In this sense, the report instructs providers to make available the history of boosted and advertising content with which the user has had contact in the last six months, with a view to informing the

providers should create solutions to identify and prevent the use of these mechanisms (Silva, 2021).

The issue of the ombudsman's collaboration in the constitution of evidence in criminal investigations and proceedings was also addressed. To this end, it will be possible for the judicial authority to "determine to instant messaging service providers the preservation and availability of records of user interactions determined for a period of up to 15 days", renewable up to a maximum of 60 days, prohibiting generic requests or those outside the scope and technical limits of the service. In case of individual or diffuse damage to a fundamental right, the Judiciary may order providers to send factual and determined information to all those impacted by the content *of fake news*, so that the same reach is obtained in the retraction, compared to what occurred with inappropriate content (Silva, 2021).

Chapter V, which provides for digital education, should be a mandatory public policy to train users for the conscious, safe, critical and responsible use of social networks. It highlights the need for educational campaigns, capable of involving civil society and political society in the fight against disinformation. And in order to bring providers closer to users, digital platforms will provide their own contact channels and ombudsman offices, "for permanent consultation of the information provided, for the formulation of complaints about content and accounts and for sending a request for review of decisions." The technology company will carry out periodic reports on the "procedures and decisions related to the active intervention of accounts and content generated by third parties, which imply the deletion, unavailability, reduction of reach, flagging of content and others that restrict freedom of expression". Such information must be transparent, with clear data, public and objective, made available in Portuguese and easily accessible to the general public (Silva, 2021).

Finally, Chapter VI brings sanctions to providers for non-compliance with the rules, with penalties of temporary suspension or broad prohibition of the exercise of activities in the country, similar to what the Civil Rights Framework for the Internet and the General Data Protection Law do. It also imposes pecuniary fines to be directed to the Fund for the Defense of Diffuse Rights – FDD, created by Law No. 7,347, of July 24, 1985. Thus, this type of prohibition of activities is privileged in order to prevent that, in view of the possible revenue arising from the "viralization" of a *fake news*, than Sometimes the provider prefers to pay the

possible use of some type of profiling technique, which categories of profiling the user has been included, and the duty to provide clear and adequate information regarding the criteria and procedures used for this profiling (Silva, 2021).

monetary fine and not remove the content before monetizing the result for the company. It is understood, then, that the possibility of suspending its activities in Brazil may make regulation in the sector more effective (Silva, 2021).

However, it should be noted that there is a lot of criticism of this project, for being excessively detailed and for giving even greater decision-making power to providers about whether or not to remove a news item from the air, or delete internet user accounts. That is, instead of handing it over to the Judiciary, to be the last arbiter to decide whether the content or the user remains or not, it is handed over to the provider to decide. It is questioned here that when we are faced with a highly fragmented reality, with global geopolitical dispute and fierce confrontations of power blocs, there is a problem in giving the provider a legal authorization to remove millions of accounts, as well as establishing what is false or true. Noting that in both there is a large gray area. Now, in a society that despises the knowledge of science and scientific methods, seeking truth in ideology, religion or binary knowledge, privatizing the power to say what is true or false to the provider is very dangerous. How to deal, then, with this new challenge of combating the industrial spread of *fake news* without the side effect of the medicine being much worse than what is being fought? It is necessary to resolve this without censorship, without touching privacy, freedom of expression and opinion, as well as due process.

And in this sense, perhaps the most serious element in the processing of this bill is the suppression, in its various substitutes, of the articles that dealt with the issue of combating those who finance the *fake news* from the search for the money trail (*follow the Money*). Because to artificially disseminate an idea in the *web*, in order to go viral and reach millions of people, it is certainly necessary to mobilize financial and human resources, as well as designers and massive computational propaganda. In other words, it is necessary to identify and punish those who create industrial mechanisms for the propagation of disinformation, committing the most diverse crimes. Who invests money in a hidden way, using third parties to hire the various services done in this way. One thing is the *fake news* artisanal, the error, the rumor. Another thing is the industrialization of mass dissemination that could be framed as a crime of criminal organization, in order to use the investigative measures of this criminal type.

What it seems is that this project wants to combat the "plague" of *fake news* pulling out the "leaves of the weed", instead of "pulling out the root". The battle of identifying each of the *fake news* that circulate in the *web* and removing them is inglorious, because "their root", which is financing, is not excluded. Attack those who were used as a tool for maneuvering, who are not the mentors and financiers of the mining industry. *fake news*, it is like attacking the one who

consumes drugs and not the trafficker. In the words of the former President of the Chamber of Deputies, Rodrigo Maia (DEM-RJ), "the discussion on legislation for the so-called *fake news* needs to be treated with "great care" to prevent it from threatening freedom of expression and of the press" (Marcello, 2020).

It can be seen that there is a whole movement on the part of the National Congress to make the 2022 presidential elections "cleaner" of disinformation and the power of mass dissemination of *fake news* through social networks. In this sense, the National Congress works so that the large technology companies, whose power has already proven to be greater than the regulatory power of the states themselves, they must find ways to limit the harmful effects of the *fake news* and its viralization, in order to safeguard one of the greatest achievements of modernity: the Democratic Rule of Law and popular sovereignty³.

According to McNair (2017, p. 38) he defines this century as a period in which uncertainty hovers over the veracity of what is conveyed. And in this sense, *fake news* has predominated in the scenario of face-to-face elections both in the United States⁴ and in Brazil, with the use of intentional disinformation (invention or falsification of known facts) for political and/or commercial purposes, presented as real news. The author brings to light, therefore, the malicious bias of this practice, which treats information as a means of deceiving and targeting someone, as a product sold to harm public opinion and, consequently, democracy. Certainly, one can agree with the author that this factor, when decisive in an election, fatally undermines the credibility of the country's legal and political institutions, undermining the fairness of the democratic procedure as a whole, eliminating debate and distorting the public sphere.

4 Politics, power and legitimacy

It is known that legitimacy has a preponderant role in law and politics – as it comes from a rational acceptance by individuals, arising from the union between opinion and will – and

³The role of technology companies in this plot has also been widely discussed, especially after the discovery of a scheme to access the private data of 50 million Facebook users to direct political advertising by the company Cambridge Analytica, which worked in the campaign of the current president of the United States, Donald Trump, and the consequent opening of lawsuits against the social platform (Almeida, 2018, p. 11).

⁴Although it is certainly not new, the popularity of the term *fake news*, "however, is relatively recent, with the 2016 US presidential elections, won by Republican candidate Donald Trump, as a milestone. This dispute was marked by the dissemination of intentionally incorrect or biased information, which acted as a political weapon when it was spread with the aim of influencing the public debate. The speed with which such false content circulates and its ability to establish new modes and procedures of production and distribution have made the debate around the topic gain global proportions. *Fake news* is now identified as a symptom of a broader picture of informational disorders" (Fagundes *et.al.*, 2021).

translates into the incorporation of the exercise of the political autonomy of citizens in the State. In the perception of Jürgen Habermas (2003a, p. 172), popular participation can take place in various ways, separately or together: political parties, popular councils, plebiscites, referendums, popular initiatives for bills, popular consultations, public hearings, among others. However, popular engagement comes from a healthy exercise of participation in which the assumptions and communicational processes capable of resulting in the union of individual freedoms with collective actors and state institutions must be present.

At the same time that the gathering of citizens takes place, who can be individualized from the whole, the same group discovers itself as a nameless and abstract mass, capable of actions that can shake the most solid perceptions and foundations of a government. In this way,

In the Rule of Law outlined by discourse theory, the sovereignty of the people is no longer embodied in a gathering of easily identifiable autonomous citizens. It retreats to the communication circles of forums and corporations, in a way devoid of subject. Only in this anonymous form can its communicatively diluted power bind the administrative power of the state apparatus to the will of the citizens. (Habermas, 2003a, p. 173).

Habermas (2003) finds that, when people unite around a subject to be addressed, it is possible to verify the existence of several conflicting arguments, resulting from different ideological currents and agreements with the individual orientation of each public space, in addition to the tendency towards general understanding in the public sphere. The various public spaces act in order to seek consensus, under the guidance of values resulting from common sense in general. On the other hand, the actors that make up the public spaces may act under the guidance of their own interests, with a view to something that they have the option of defending or a commitment to be signed with another party (*apud* Santin; Hamel, 2014).

At the moment when they employ their forces for a cause, the citizens who make up the various public spaces go to find solutions that come from the formalization of a collective and public will. Without a shadow of a doubt, the social power that this mass represents is based on a normative set, in order to combine human dignity, customs, ideology, politics, values and morals, in addition to the law itself. And this understanding – or negotiation – occurs with well-defined structures – with contributions, information and arguments – logically grounding the rationality to achieve the results desired by the majority (Habermas, 2003a, p. 178). In the plural clashes that occur in the public sphere between the various public spaces, the millennial attitude of the predominance of the best argument between speaker and listener predominates. Valid convictions are produced or reinforced, free from coercion and participation, capable of leading

to the rational and democratic acceptance of relevant rights or duties, aiming at the creation of new social realities through communicative freedoms (Santin, 2017).

Thus, it is important to emphasize that, when collectively discussing the demands, there should be equality of opportunities and freedoms, as well as clear information free of manipulation. However, it is known that groups with greater economic potential tend to stand out in one way or another over the others, often using their influence to achieve their objectives or, as has been demonstrated more recently, with the use of *fake news* in order to influence public opinion. These are what Jürgen Habermas calls "interest groups".

Trying to interpret the judgment of the people is one of the most complicated tasks, because it is imperative that the communicative assumptions are fulfilled through the hearing of all interested parties, free from coercion and in equal conditions in the presentation of their arguments, since being external to the democratic decision-making procedure, the situations involved and the interests that are at stake will never be fully revealed. Such truth, therefore, obliges the interested party to situate himself in the whole of the subject, penetrating the core of the dialogues and observing the different (mis)information, arguments and opinions of the actors involved, in order to only then have a reasonable understanding of the "game" in progress. On the other hand, such immersion does not mean that he will know the whole thing completely, since many times, the movements are made in the dark and even before the beginning of the dialogues (Santin; Santos, 2008).

The majority rule that forms and shapes public opinion, in the case of group decisions, should be synonymous with the search for fairness (what is fair) and truth, establishing itself as an essential aspect in the legal regulation of collective deliberation processes. From this occasion, the decision of the whole gives rise to the proper treatment of the objects addressed, and that all the legal and moral rules of all involved were respected. Namely, then, the political formation of public opinion has to clarify three latent doubts: 1) the formation of compromises, since without this objective a meeting of people with a political intention would be nothing more than wasted time; 2) the ethical-political question, which deals with the different ideological currents supported by each group; and, finally, 3) the practical-moral question, which leads to the encounter of the thought and action of the whole, for the whole. Thus, if such issues are contemplated in the process, it will therefore be configured as an aggregated and authentic general will (Habermas, 2003a, p. 223-225).

From a social point of view, it would be of great value, although impossible, to analyze how the hermeneutics of each individual and/or each group or space that makes up the public

sphere takes place, about their perception and about the information and disinformation (*fake news*) that successively appear in the debates. Of course, for this purpose, a research should be carried out beforehand with complete and precise data from all involved, so that concomitant with the political game waged, a more accurate reading of the logical reasoning that leads to one or another action or decision could be obtained (Habermas, 2003a, p. 32).

When verifying the subject of public opinion, it can be noted that the public itself is weak, since, in its vast majority, it is devoid of a more critical sense in relation to information and *fake news* that circulate in the public sphere; Actors can be established within themselves who, due to their knowledge, power and/or ability to manipulate and/or distort information, become leaders and make the voice stand out from the whole.

In the words of Jürgen Habermas, the public sphere constitutes a relevant communicational structure for the smooth running of processes, since the *Modus operandi* it is individual and collective action guided by and for mutual understanding. It becomes a network focused on the communication of content, opinion and decision-making, where communication flows are filtered and synthesized in public opinion. Thus, in order for all the topics addressed during the exchange of ideas, where reasons for or against are discussed and with a view to an effective conclusion, it is of fundamental importance to completely relegate the technical language and codes that are not of broad domain by those involved. Only in this way will lay guidance be able to achieve the abstraction necessary to differentiate the shared opinions, as well as the concrete obligations of each party involved in the dialogue. It is understood, then, that the actors should be encouraged to achieve the intellectualization of the themes by simpler and less complex means, such as, for example, natural language to the detriment of symbolic language (Habermas, 2003b, p. 93).

However, it is not uncommon to see that public opinion is a "full plate" for malicious political influences, which aim to interfere in people's electoral behavior with the dissemination of *fake news* with a view to interfering in the free and unwilling formation. Certainly, the technology companies responsible for social networks currently have a wide range of tools that can identify such behaviors, in order to curb them and punish those responsible for the dissemination of *fake news*. However, it is necessary to emphasize that state regulation and coercion would be of no use without the political subject itself, in this case both people and institutions, not having the interest, skills and critical knowledge to check the information that hovers in the *web* in order to make their judgments and decisions as close as possible to reality and to their interests and values.

Although the power of fake news *is clear to everyone*, especially during election season, it is almost impossible to have the proper clarity of the way in which social networks, with their message flows and the mass media influence and even manipulate public opinion formed in the public sphere. All that remains is the certainty that there is a pressure that, at the same time, can change the course of state actions and decisions.

However, it is important to emphasize that even using the democratic method of forming legal-political protections, interest groups, which manipulate public opinion and use the propagation of *fake news* through media channels, often manage to insert their demands in the formal agenda of the public sphere, as if the demand corresponded to the population's intentions, and the action takes a different direction from the interests aimed at by the majority of the population. Chomsky denounces these ways of "building consensus" through *big-techs*, that is, of "obtaining the agreement of the people on issues on which they did not agree" (2013, p. 14-15), which is quite effective today.

To this end, there remains the hope of greater seriousness in complying with electoral legislation, not only in Brazil but also in the various countries affected worldwide, demanding from technology companies the honesty and ethics in the disclosure, dissemination and hosting of information, so that the concerns developed here help in the critical orientation of public opinion. Thus, it is necessary to encourage civil society to take an interest in this issue, with a view to allowing sufficient pressure to inscribe the matter of *fake news* on the political agenda, so that the problem is treated in a broad and serious way.

By treating (mis)information as a mere product, the following are disqualified: the work, effort and commitment of professionals who work ethically and who take risks based on what they believe in; those who base their activity on values of great importance and are committed to informing the public about different facts so that it, From what is being shown, be able to consciously make your own conclusions, without being forced to believe in a fabricated reality. In this regard, it is important to point out that as news aims to expand the scope of a particular channel, attract *likes* and gain new followers to its sharing platform, among other activities, there is a distancing from the purpose and commitment to inform. In this sense, from Illade's point of view, news is treated as a product and not as information. That is why what some media outlets produce today is called *content*, not news. Because it is a product for a customer who wants to receive something digestible, quickly and without much effort (2018, p. 2201).

It is worth reinforcing the necessary questioning about what is consumed, shared and not investigated. Certainly, what would be required of a critical and culturally advanced society is

that the news conveyed, both by *the mass media* and by dubious sources, be interpreted and analyzed in a timely manner to check its sources. However, the speed required in contemporary events does not allow this distance. It is possible to see that the spread of *fake news*, in general, occurs through some patterns. Initially, a kind of "bait" is created, which aims to attract the public's attention, either through a thought-provoking title (and usually appealing and/or sensationalist) or an impactful image or, even more evidently, the combination of these two elements. The second step is to appropriate graphic characteristics of renowned vehicles, creating a look that resembles what the public usually sees as a reliable channel, and with a large circulation. Subsequently, this content becomes a great disfavor to the community, by distorting facts and opinions in order to deceive the public through a lot of misinformation. This problem was analyzed by Gragnani (2018), who, in the midst of the 2018 electoral campaigns, verified 272 political groups of different ideologies and parties on WhatsApp.

Contrary to *fake news*, it must be taken into account that there are major agents fighting against this harmful practice. The practice of serious and ethical journalism serves to inform and make society better and more enlightened, working in favor of democracy (Paiero *et.al.*, 2018, p. 52). Behind *fake news* there are usually no ethical, serious and competent journalists, nor people with the commitment to bring the population the truth about their time. On the contrary, there are people – and organizations – with the intention of obtaining some gain, whether financial, political, economic, cultural or ideological, which, in any case, represents a great damage to democracy.

5 Power, politics and elections: challenges in combating *fake news*

Given the strong presence of *fake news* in election periods, it becomes difficult for the public to filter, debug and select what they receive. Article 220 of the Federal Constitution of 1988 provides guarantees to freedom of expression of thought, creation, expression and information. However, such freedoms presume the good faith of the media that work with access to information and communication. To combat those who misuse this freedom, create and disseminate *fake news*, it is imperative to have conscious citizens with a high cultural and educational level, capable of developing a critical sense about what is presented to them. They need to value their rights and fight to preserve them, and not go against the democratic principles guaranteed by the constitution, so important for society in general. It is noteworthy, according to Souza and Chiara, that "disinformation undermines trust in traditional and digital

institutions and media, as well as compromises the healthy development of democracies" (2018, p. 178). In this regard, it is worth noting the need for people to realize their role in the political scenario and value what, for a long time, was a distant dream in the country.

Norberto Bobbio's (2002) classic view of the principle of publicity and the right to information as fundamental for the full exercise of the democratic ideal finds its justification in the Kantian discourse, as a rescue of the individual's "state of minority". To this end, it would be necessary for power to have no secrets, acting in public, and so that people could decide rationally (2002, p. 405-409). Noam Chomsky, in turn, analyzes how rulers remain in power by concealing their acts, in order to keep "the public in its place", subject to the owners of power and the ruling elite. And yet, it denounces the manipulation of public opinion exercised by the information system, fabricating consents:

the basic problem, recognized everywhere, is that, as the state loses the ability to control the population by force, the privileged sectors have to devise other methods to ensure that the mob of mobs are kept out of the public arena. And insignificant nations must be subjected to the same practices used with insignificant people. [...] They must be kept that way, distracted through emotionally potent oversimplifications, marginalized, and isolated. Ideally, each person should be alone in front of the television screen, watching sports, soap operas or comedies, and deprived of organizational structures that allow individuals without resources to discover, in interaction with others, what they think and believe, to formulate their own interests and projects and to act in order to achieve them. The masses can be allowed and even encouraged to ratify the decisions of their superiors in periodic elections. The mob is the appropriate target of the mass media and a public education system geared toward obedience and training in the necessary skills, including the ability to repeat patriotic slogans on opportune occasions. For submission to become a reliable trait, it must be rooted in all fields. The public must be an observer, not a participant, and a consumer of the ideology and the products. (2003, p. 444-458).

Democracy is the regime of government that provides for the maximum control of individuals over institutional powers; however, "this control is only possible if the public powers act with maximum transparency. It is part, in short, of the very logic of democracy" (Bobbio, 2002, p. 414). However, it is impossible to control a power that hides and keeps its acts secret. In the same sense is the reflection of Pierre Rosanvallon (1997, p. 95-96), when he recalls that the democratic ideal is strengthened from conflicts, making them productive and constructive; never denying or concealing them in order to obtain an unlikely consensus. For the author, the development of democracy and the increase in the visibility of power in society go hand in hand.

Thus, the right to information and the principle of transparency are fundamental instruments of democratic exercise, as they enable internal, external, judicial and social control mechanisms, with a view to unveiling the "black box" of public management⁵.

From the full public knowledge of the information and transparency of administrative acts, it will be facilitated the verification of compliance by the rulers with the constitutional principles of the legal-administrative regime, especially that of participation, legality, impersonality, publicity, morality and efficiency by the control bodies, together with the fulfillment of social rights. in an interaction between the government and civil society. It is "from transparency, therefore, that social control will emerge as an imperative order of a constitutional nature, participating in the more or less universalized effort to democratize power, making it visible and, so to speak, more reliable and limited in its temptations of arbitrariness or conformist omission" (Freitas, 2001, p. 15).

The facilities arising from the use of available technological resources and new information and communication technologies, as well as the plurality of sources to be consulted (and contested), need to be seen as tools for expanding the individual's ability to achieve democratic values, and not the other way around, as limiting their power. Social relations based on the multiplicity of ideas mean that there is room for everyone and that, together, it will be possible to collaborate for greater social, political, cultural and economic development. And in this sense, knowing how to differentiate what benefits the population and what harms society as a whole is a relevant strategy to prepare for current challenges.

According to Rais, the use of technology in politics and elections only tends to be expanded, "requiring from all actors not only the preparation to deal with new challenges, but also the capacity for self-transformation to face technological changes and innovations, both in the face of their best effects and in the face of possible side effects" (2018, p. 105). It is necessary, therefore, that the public abandons the comfortable position of mere spectator of

⁵In order to implement the principle of transparency, some basic elements that are part of the principle itself are necessary: a) to make society aware of the organizational structure of the State, clearly defining the functions and responsibilities of the State, since "only through knowledge about who holds the competence to exercise a certain function is it possible to attribute responsibility"; b) to disseminate state acts and government information to the general public, by electronic means and other available means, and not only one means of dissemination should be chosen, but should be clear and accessible to the average citizen; c) the control must reach the totality of the acts of the administration, with full access to the procedures of budget preparation and execution, so that it is possible for individuals to exercise social control; d) the information must be passed on to the control bodies in full, and there must be a perfectly demonstrated comparison of all acts, whether they are of an accountability, legislative, budgetary, administrative, regulatory, police, authorizing, permissive, concessionary nature, etc.; e) credible information must be brought to the attention of the control bodies. It is essential for the full exercise of social control that there is a reliability and correctness of the records, information and acts disclosed. (Mileski, 2002, p. 29-32).

what is automatically provided by the various means of communication, traditional and contemporary, to act critically on the information that comes to their attention.

However, in the same way that *fake news* is strongly present, there are also ways to verify it, because from the moment you become aware of a fact, it is essential to check its sources. The search for different information channels and reliable means of communication, contrary to the acceptance of content without credibility, is one of the ways to combat *fake news*. This critical position on the content disseminated must be stimulated, so that, gradually, the public becomes more discerning and does not allow itself to be influenced by fabricated truths that seek, essentially, to harm them, violate their fundamental rights and manipulate their opinion and freedom of thought.

When thinking critically about this topic, it is necessary to be careful to consider the scope of certain agendas and the reason why they are in circulation, and not simply take them as true. Certainly, there is a lot of interest behind the (de)construction of the opinion of certain groups of people. In this sense, one cannot think of exclusively controlling the content itself that circulates on the *web*. It is also necessary to think about the channels responsible for their distribution and who finances them.

When it comes to social networks, the giant Facebook (currently called Meta, owned by Mark Zuckerberg) occupies a very privileged place. Not simply because of the dominance of Facebook's own platform, but also because it encompasses Messenger, Instagram and WhatsApp. Thus, the presence and power of this *big-tech* and its influence on the lives of billions of people must be analyzed, which is not only limited to the number of active users of its services, but, above all, to the way in which algorithms define what users will see.

Recently, a former Facebook employee gained worldwide prominence by making very impactful statements about the functioning of this *big-tech*. The affidavits and evidentiary documents presented by Frances Haugen to *The Wall Street Journal* describe "how the company's rules favor elites, how its algorithms promote discord, and how drug cartels and human traffickers use its services openly" (Horwitz, 2021). She said that Facebook gains from the adopted algorithm, because lies, crimes and hate speech have more repercussions on the networks, both for the feeling of rejection and adherence to that controversial conduct. And for *big-techs*, the more audience and viralization, the better for the company. Thus, in the case of Facebook, no control mechanisms were used for that algorithm, even when it was possible, to prevent the spread of *fake news*. She also stated that

Facebook works with algorithms that encourage discord that sometimes costs lives; that its tools are designed to create dependency and increase consumption; that they do little to control organized crime and that it is a lie that they treat their more than 3 billion users equally. And what caused the most outrage in the United States: that their managers knew that what they offer leads a not inconsiderable portion of adolescents (13%) to the abyss of suicidal thoughts and anorexia. All this, according to Haugen, just for money. (Seisdedos, 2021, s. p.).

In this post-turn-of-the-century globalized world, characterized by the power of large information and communication technology companies, there is an important particularity: the difficulties in regulating the algorithms used in social networks, which are not subject to the constitutions and legal systems of the countries reached by them. Modern constitutionalists, for more than 200 years, have defended, through the rule of law model, the imposition of rules and limits on state power. The problem is that, in this twenty-first century, power is outside the State, which is unable to stop economic and technological movements, which are highly deterritorialized. Technology companies in this new digital world have ample capacity for action in global public life, as they are freed from state borders and norms⁶. They are in the private world and have no connection with the public power.

If, before the pandemic, the digital world was smaller than it is now and technology companies had less value, as of July 2020 technology companies began to surpass the big countries in economic value. This brings a very significant change at a global level, where the power of these technology companies starts to configure the values, opinions, tastes and consumption desires of individuals, in addition to having an unprecedented capacity to influence communicative processes and, in particular, electoral processes.

Turning to the discussions of constitutional law and human rights, since in the emergency arising from the pandemic, the State occupied an important position in the space and in the public sphere. However, this does not mean that it will be a trend in the future, as what is perceived is the expansion of the power of technology companies and the increasing weakening of states, involved in the reconstruction of their economies devastated by the harmful effects of the pandemic. This state weakening directly affects constitutional ideals, as a strong State is necessary to enforce the rights provided for in the Constitutional Charters. After all, the Constitution depends on the State, and weakening the power of the State causes the weakening of the Constitution's position in public debate.

⁶ However, this own ecosystem is not democratic at all, nor does it follow the model of traditional constitutionalism. The veto power of these *big-techs* is so great that they even had the ability to decide that the former president of the United States of America, Donald Trump, would stay out of their ecosystem, through a decision controlled by their own authorities. In the words of Twitter co-founder and chief executive Jack Dorsey, "closing the account of US President Donald Trump was the right thing to do, although he also highlighted that it sets a 'dangerous precedent'" (Clayton, 2021).

The interests of someone, a company or a group cannot be placed above democratic and constitutional values. They must be treated seriously, to curb the contamination of public opinion by dishonest, unethical, unjust and unconstitutional practices that aim, above all, to harm the fundamental right to information and democratic institutions as a whole.

Thus, a more effective regulation of the use of the internet in general is necessary, so that people recognize the limits of freedom of expression and opinion and do not harm other individuals. And, if they do, they will be harshly responsible for the misuse of their freedom. Likewise, it is of fundamental importance to limit the power of large technology companies such as Apple, Telegram, Twitter, Microsoft, Google, Amazon and Meta (Facebook), after all, malicious content, which circulates through channels like these, should not be present on the *web*.

The difficulties of regulating this sector are a very particular situation, where the sources of law in the state world are no longer decisive in involving the dimension of the power of large technological companies. The regulatory ecosystem of *big-techs* is different from that developed from constitutionalism and the rule of law. The freedoms of information and expression in the digital world have a very different dimension than in the analogue world. And, in this sense, a large part of the fundamental rights affirmed in the constitutions of countries remain analog, even when the world is already digital.

Thus, it can be seen that the role of the State as a regulator becomes indispensable, in the creation of mechanisms capable of combating and curbing this type of activity. An example of this is a law approved by the German parliament, which determines a series of strict measures for social networks in case of offensive publications, hate speech and *fake news*, and may apply millionaire fines to *big-techs* if they do not delete content that is in disagreement with the legislation. The NetzDG (*Netzdurchsetzungsgesetz*, German Law for the Improvement of the Application of Laws in Social Networks, in force since January 1, 2018), even generating a series of questions, presents a positive aspect by holding the intermediary accountable, that is, the platform used in the dissemination of hate speech and *fake news*. Thus, from Eifert's point of view, "it fundamentally paves the correct path and should be paradigmatic for the future regulation of social networks" (2018, p. 60).

Finally, one cannot forget the need to instruct the public in order to develop a more critical and cautious view of the content they consume, denouncing any conduct that hurts the fairness of the electoral process. In this regard,

state measures must be reflexive in the sense of preserving the core of freedom of information, and it is important that there is the maintenance of net neutrality, as a condition for free and free dissemination of information, and that the State encourages the existence of public policies to promote digital education, so that people develop the sensitivity to differentiate news based on reliable data from news of dubious veracity, as well as for the justice system to be activated to demand the removal of false content that causes damage. (Nohara, 2018, p. 87-88).

Thus, it is worth highlighting the role of education in the formation of citizens who are more critical and prepared for the challenges of the present, so that we can think of a future in which disinformation is significantly reduced.

6 Conclusion

Throughout this analysis, it is clear that combating *fake news* is not a simple task. There are two fundamental elements to be observed in this endeavor: a) to qualify, improve, expand and publicize the existing regulation; and b) educating for social media.

It is necessary to optimize and deepen the regulation of the Brazilian legal system on the matter, with the involvement of state control bodies, as well as civil society and formal and informal communication channels in this fight against *fake news*. With a broad knowledge of the applicable legislation, it will be possible for ordinary citizens, political parties and organized civil society to know what attitude to take when faced with *fake news*, denouncing the factual situation to the competent bodies such as the Public Prosecutor's Office.

In addition, it is necessary to have greater awareness and full education of citizens for the use of digital media, so that they have a more critical attitude towards the information provided to them. It takes great care and critical sense not to be deceived by your emotions, your interests and your particular values.

With the effects of the health crisis of the Covid-19 pandemic, there has certainly been an increase in the power of global technology companies, which have their own legal ecosystem, which has the ability to decide on people's rights in this ecosystem. They enter into contracts with millions of people, however, from the point of view of inter-party effectiveness, they are rules that always establish a bilateral relationship between the technology company and each person who adheres to its terms to use the network. Thus, it is difficult to talk about greater regulation when looking at the problem from a private, contractual law perspective, in which the vast majority of users simply ignore the terms of use of the services in question, due to the fact that they can access information from friends (and even complete strangers, but who

in this environment become influential). finding more benefits than harms of being present on such a platform.

Thus, perhaps the most forceful way to stop the advance of *fake news* and all the harmful content present on the internet would be to increase the penalties for aggressors and, for providers, the application of severe sanctions for amplifying the scope of the effects of crimes such as homophobia, Nazism, racism, death threats and physical aggression. pedophilia, as well as crimes against national security and threats to democracy. Such conducts are crimes anywhere and in any country, and must be removed immediately through the internal control systems of *the big techs*. However, what is most difficult to identify and qualify as *fake news* are undue or untrue accusations, capable of artificially and instantaneously being disseminated, deeply hurting the person's image, or even harming electoral campaigns and the free formation of public opinion. Such situations are usually vetoed in the Judiciary, and may lead to convictions and patrimonial reparation. However, there are certain damages that take on such a dimension that the values of Brazilian judicial convictions are not able to repair the damage caused by disinformation. Thus, it is necessary to remove the feeling of impunity of those who act in this way, adopting a harsh regulation on such conducts, capable of curbing them by the certainty of punishment and the severity of their sanction.

Thus, the greatness of such a challenge can be observed when, in the midst of the Covid-19 pandemic scenario, Brazil had a leader (elected with a strong influence from campaigns made mostly through social networks) who acted (and still acts) against science, facts and logic, publicly speaking out against the use of masks, against social distancing and in favor of the use of a drug without any proven efficacy, which may have misled millions of people and even died (Carta Capital, 2021). It was also an initiative of the then President to issue Provisional Measure No. 1068/202, with the clear intention of making it difficult for private digital platforms to moderate content (regulated self-regulation) and to exclude accounts and disinformation (Congresso Nacional, 2021). However, this measure was severely criticized both from a formal and material point of view, because it intended to replace the ombudsman in control over *fake news* with a state agency. It would therefore be the Government that would be responsible for saying what could and could not be disclosed on the networks. However, this measure could favor the Government itself and its base in spreading disinformation and propagating anti-democratic content on the networks, something already observed in the 2018 elections. Based on this understanding, the Provisional Measure was returned by the President of the Senate

without being analyzed. And, at the same time, it was suspended by the Federal Supreme Court, in an injunction issued by Justice Rosa Weber (Jota, 2021).

It should be noted that the trend of Brazilian regulation is to adopt regulated self-regulation, that is, platforms must adopt rules of behavior in their ecosystem, and control over *fake news*, crimes or hate speech will be carried out by the provider itself, with the possibility of resorting to the Judiciary if any right is violated.

However, it is worth questioning to what extent greater regulation on the subject is in the interest of those in power. After all, if in the midst of recent electoral campaigns the use of *fake news* has become evident as an important tool to convince (manipulate) the electorate and win the elections, it is possible to warn that, after the electoral victory, the tendency is for such artifices to continue to be used as tools to distort and omit facts.

It is a game in which the interested parties are often better off running the risk of punishment in view of the advantages obtained from the use of *fake news* to harm the political opponent; and influencing public opinion in a distorted way, which, of course, hurts the fundamental constitutional rights and guarantees for a democracy (such as the right to information) that should never be disrespected.

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