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Fake News, the democratic process and the role of digital platforms

Fake News, processo democrático e o papel das plataformas digitais

Fake News, proceso democrático y el papel de las plataformas digitales

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Abstract

This article addresses the role of digital platforms in the phenomenon of fake news and its consequences in the democratic process. The problem raised is to discover how the phenomenon of fake news is enshrined in the electoral process, the role of digital platforms in the expropriation of user data for political manipulation purposes, the advent of the post-truth phenomenon and the consequences for Democracy, taking into account the variables of freedom of expression and the right to information. The hypothesis consists of the idea that social networks and digital platforms play a central role in the proliferation of fake news, given their systematic use of algorithms to direct publications “to the taste” of the user, and that this process, combined with post-truth phenomenon, has materially tarnished the democratic process. As a methodology, there is a narrative review made through a bibliographical review and doctrinal research relating to the topic, using the qualitative approach and the inductive method for this purpose, as it starts from specific premises to arrive at a general idea. In conclusion, digital platforms, through the extraction of data from users in order to catalog them and discover their positions with the aim of directing publications, have the capacity of negatively influencing and tarnishing the Democratic process through the systematization of the phenomenon of fake news.

Keywords: Fake news; Democratic process; Digital platforms; Freedom of expression; Right to information.

Resumo

O presente artigo aborda o papel das plataformas digitais no fenômeno das Fake News e suas consequências no processo democrático. O problema aventado é descobrir como o fenômeno das fake news se consagra no processo eleitoral, o papel das plataformas digitais na expropriação de dados dos usuários para fins de manipulação política, o advento do fenômeno da pós-verdade e as consequências para a Democracia, tendo em vista as variáveis da liberdade de expressão e do direito à informação. A hipótese consiste na ideia de que as redes sociais e as plataformas digitais têm um papel central na proliferação de notícias falsas e no fenômeno das Fake News, tendo em vista sua sistemática de uso de algoritmos para direcionar publicações “ao gosto” do usuário, e que esse processo, aliado ao fenômeno da pós-verdade, tem maculado materialmente o processo democrático. A título de metodologia, tem-se uma revisão narrativa realizada por meio de revisão bibliográfica e pesquisa doutrinária referentes ao tema, utilizando-se, para tanto, da abordagem qualitativa e do método indutivo, visto que se parte de premissas específicas para se chegar a uma ideia geral. Como conclusão, tem-se que as plataformas digitais, a partir da extração de dados dos usuários de forma a catalogá-los e descobrir seus posicionamentos com o fito de fazer direcionamento de publicações, têm a capacidade de influenciar negativamente e macular o processo Democrático por meio da sistematização do fenômeno das Fake News.

Palavras-chave: Fake news; Processo democrático; Plataformas digitais; Liberdade de expressão; Direito à informação.

Resumen

El presente artículo aborda el papel de las plataformas digitales en el fenómeno de las fake news y sus consecuencias en el proceso democrático. El problema planteado consiste en descubrir cómo se consolida el fenómeno de las fake news en el proceso electoral, el papel de las plataformas digitales en la expropiación de datos de los usuarios con fines de manipulación política, el surgimiento del fenómeno de la posverdad y las consecuencias para la Democracia, considerando las variables de la libertad de expresión y del derecho a la información. La hipótesis consiste en la idea de que las redes sociales y las plataformas digitales desempeñan un papel central en la proliferación de noticias falsas y en el fenómeno de las fake news, dada su sistemática basada en el uso de algoritmos para dirigir publicaciones “al gusto” del usuario, y que este proceso, aliado al fenómeno de la posverdad, ha afectado materialmente al proceso democrático. En cuanto a la metodología, se adopta una revisión narrativa a través de revisión bibliográfica y doctrinaria relacionada con el tema, utilizando para ello el enfoque cualitativo y el método inductivo, ya que se parte de premisas específicas para llegar a una idea general. Como conclusión, se afirma que las plataformas digitales, mediante la extracción de datos de los usuarios para catalogarlos y descubrir sus posicionamientos con el objetivo de dirigir publicaciones, tienen la capacidad de influir negativamente y comprometer el proceso democrático mediante la sistematización del fenómeno de las fake news.

Palabras clave: Noticias falsas; Proceso democrático; Plataformas digitales; Libertad de expresión; Derecho a la información.

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1 Introduction

The evolution of technology has significantly broadened the environment for debate, information, and communication in today's globalized world. The expanded access to diverse opinions and information sources brought about by new technologies initially suggests a strengthening of the public sphere and of democratic practices in the digital space.

Unfortunately, what has been observed in recent years is that the digital environment has also become fertile ground for the spread of disinformation, particularly in the political sphere, moving in the opposite direction of the expected democratic progression. Therefore, the academic discussion around the influence of these new networks and their operational systems on the democratic process is undeniably relevant.

In this context, the present article seeks to investigate the impact of digital platforms and social media on the contemporary democratic process, with an emphasis on the antidemocratic effects caused by their operating mechanisms — especially the extraction and use of user data for the purpose of segmenting political content.

The research is guided by the following question: Can the virtual environment — particularly digital platforms and social networks, through their systematic extraction of user data to profile individuals — and the resulting phenomena of fake news and post-truth negatively influence the democratic process? The hypothesis proposed is that social networks and digital platforms play a central role in the proliferation of fake news, due to their use of algorithms that tailor content to user preferences, and that this process, combined with the post-truth phenomenon, has materially compromised the democratic process.

As a justification, it is argued that this reality presents both legal and academic challenges, as the rapid evolution of technology surpasses legislative developments attempting to regulate this space. There is thus a need for stricter regulation of information and communication technologies (ICTs), with the aim of holding all actors involved in disinformation phenomena accountable. Additionally, legal strategies are needed to protect the democratic process and citizens' freedom of choice without undermining the rights to freedom of expression and access to information.

The aim of this study is to assess whether digital platforms and social media, through their systematic extraction of user data, contribute to disinformation and undermine democracy. More specifically, the study aims to i) analyze the mechanisms through which social networks and digital platforms extract user data and use it for political purposes; ii) discuss the influence of these mechanisms on democratic processes, in connection with other phenomena such as post-truth, and their implications for constitutional guarantees such as freedom of expression and the right to information; and iii) propose regulatory and social alternatives to mitigate risks to the integrity of democratic processes.

2 The Fake News Phenomenon in the Context of the Democratic Process

2.1 What Are Fake News?

The processes of producing, accumulating, and transmitting information have accompanied every stage in the historical evolution of life in society. The *modus operandi* through which human beings have come to acquire knowledge about the facts they experience or encounter — i.e., their mode of forming information — can be understood as the

process of meaning-making based on knowledge, events, speculations, actions, and projects. This content is influenced by the context in which individuals are situated, confirming facts and trends and ultimately contributing to the accumulation of knowledge and the construction of memory (Basan; Borges; Faria, 2020, p. 86, free translation).

The formation and transmission of information are therefore vital to the maintenance of societies, as they encompass knowledge and the construction of memory for the individuals involved. With the evolution of communication methods — especially after the emergence of ICTs and the consolidation of the digital society and digital platforms — the ways in which information is formed and communication occurs have changed entirely.

In an online society, the standard of communication cannot mirror that of societies that once relied on smoke signals. Today, virtually all interpersonal contact and information-seeking activities take place in the digital realm, which has become the primary gateway to the world. In the reality shaped by social media, “connected individuals become dependent on virtual flows of information and social integration, and digital networks, in fact, become essential links in the acceleration of life and the fragmentation of the present” (Wilke, 2020, p. 11, free translation).

The internet has facilitated social life by reducing the time and obstacles required to access and share opinions. The advancement of digital technologies has impacted several aspects of life — from the ways people communicate and access information to how they connect with the world in its many dimensions. Viewed from this perspective, the digital context offers undeniable potential for enhancing community life and, from a political standpoint, it has a strong democratic foundation, as it directly engages the constitutional right to information.

Information enables the formation of critical thinking and knowledge capable of guiding decision-making. For this reason, the right to information is enshrined in Brazil's 1988 Federal Constitution (Brasil, 1988, free translation), in Article 5, XIV, which guarantees “access to information to everyone and safeguards the confidentiality of sources, when necessary for the professional activity.” The Constitution also ensures access to public information provided by government bodies (Article 5, XXXIII), a guarantee later regulated by the Law of Access to Public Information (Law No. 12,527/2011).

Reasonableness demands that any dialogue — whether in digital or non-digital environments — be grounded in facts, rather than the other way around. While technological advances have undeniably facilitated access to information and global communication, they have also enabled the rapid spread of disinformation, both accidental and intentional, thus contradicting the expected benefits of such an expansive and constantly updating informational ecosystem.

The right to information, in its three dimensions — to inform, to be informed, and to seek information — stands in direct opposition to this issue. Legal protection of this right is tied exclusively to “true information; it is unreasonable to imagine the law protecting someone's right to be informed based on content that is harmful, or to inform others using content that could cause harm to others or to society” (Faustino, 2023, p. 9, free translation).

In this regard, the duty of truth embedded within the right to information entails a duty of care for those who inform — especially in seeking reliable sources — because “if someone has the right to inform, the listener has the right to be informed” (Faustino, 2023, p. 9, free translation).

Because of the vast range of possibilities created by the internet, instead of reducing the duty of care for those who generate or share information online, responsibility must, in fact, increase. As Zanon Júnior aptly stress (2010, p. 147, apud Faustino, 2023, p. 9, free translation), “although freedom of expression is protected, when it concerns the right to inform and be informed, the presumption is that the content must be true.”

This means that, under any circumstances, facts must not be distorted — they must serve solely as the basis for debate. However, particularly in digital environments and during political periods, factual truth is often manipulated, biased, or distorted in pursuit of political objectives or the personal interests of individuals or groups. Since “facts and power exist within the same reality” (Wilke, 2020, p. 13, free translation), facts are constantly targeted by and for power.

It is within this context that the core issue of this study emerges: a disinformation process that pervades the democratic environment and has become widely known as the fake news phenomenon. This emerging issue acquired the label fake news after manifesting as the rampant spread of false information. Wilke (2020, p. 13, free translation) defines fake news as “information published with the intent to deceive, in order to harm individuals, groups, organizations, or institutions, for the purpose of obtaining economic or political gain. The consequence of such fraudulent news is disinformation.” Thus, fake news can be understood as distorted information — usually with political content — intended to benefit certain actors at the expense of others who are harmed.

This phenomenon carries a troubling potential to distort reality, especially because it may consist of both deliberately false news and true news taken out of context, sensationalized, or manipulated. Whether intentional or not, whether deliberately misleading or not, the result is always the same: a politically misinformed society that bases its decisions — decisions that shape its political destiny — on false information.

2.2 Fake News, Democracy, and the Role of Digital Platforms

The informational crisis observed on social networks has prompted various speculations regarding its causes. One variable worth noting is the fact that the population itself is often used as an instrument for spreading false narratives — a situation that tends to worsen during electoral periods. Whether due to ideological allegiance, personal interest in a candidate's victory, or genuine belief in the content being shared, groups with aligned political views tend to repeatedly disseminate fraudulent, false, or biased political content, thereby initiating a process of mass disinformation.

This process has proven particularly pronounced in groups formed by people who share the same political interests or views on social networks. David Weinberger (2004) refers to these “ideological bubbles” as Echo Chambers. According to David Weinberger (apud Wilke, 2020, p. 16, free translation), echo chambers are “internet spaces where people with similar views tend to listen only to those who already agree with them.” In today’s reality, WhatsApp groups or Facebook pages serve as prime examples.

An interesting point regarding Weinberger’s echo chambers is their paradox: instead of using digital networks to access a wide array of perspectives and verify the information they receive, individuals increasingly seek information only within groups that share their narrative and ideological stance. Worse still, they rarely verify the accuracy of the information circulated in these groups.

As a result, if a piece of news is fake, it will be shared, stored, and etched into the memory of each individual who failed to verify it, and then passed on to others — thus restarting the cycle. Politically uninformed individuals have their biases reinforced by the echo chamber. True informational processes require respect for factual truth, counterpoints, argumentation, and source verification. One cannot claim to be truly informed without verifying the truth of a piece of information — or at the very least, being exposed to alternative interpretations. Hence, echo chambers on social media become fertile ground for the spread of fake news during elections because these comfortable narrative spaces eliminate debate and fact-checking, allowing false information to spread rapidly.

Unfortunately, this is only the tip of the iceberg. In addition to users spreading content within their own ideological “bubbles,” digital platforms themselves no longer prioritize the verification of factual accuracy. Instead, their goal is to maximize sharing, engagement, clicks, and viral reach.

The structure of social networks — and how their algorithms track and disseminate content based on user preferences — directly contributes to the persistence of this phenomenon. Essentially, the algorithm creates large-scale echo chambers: when a user engages with a post of a certain nature, the platform begins bombarding them with similar content without evaluating the accuracy or truth of those facts.

This entire mechanism is made possible by the procedural logic of digital platforms, which has fundamentally reshaped the structure of social organization. Castells (2011) had already predicted how the rise of networks would affect political organization of individuals:

They may leave the streets, only to return periodically, but they will not leave the social networks or the minds of those who participate in them. They are no longer alone and have lost their fear. Because they have discovered new ways of organizing, participating, and mobilizing that fall outside traditional channels — channels that a large part of society, especially the youth, distrusts. Political parties and institutions must also learn to coexist with this emerging civil society. Otherwise, they will gradually hollow out as citizens move from Wiki-style encampments to this networked democracy — still undiscovered in collective practice, but rooted in each individual (Castells *apud* Basan; Borges; Faria, 2020, p. 78, free translation).

As Castells warned, social networks have become the core of contemporary social life. Along with that central role, they also introduce new forms of political organization and mobilization. Within this digitally restructured democracy, the proliferation and entrenchment of fake news operate almost like a pathological condition.

Regarding the democratic consequences of this phenomenon, Bucci (2018, p. 27 *apud* Wilke, 2020, p. 16) cites Donald Trump’s 2016 U.S. presidential campaign, which managed to convince half the population that Barack Obama was born in Kenya — in under 2 days. Another infamous case demonstrating the democratic damage caused by this phenomenon was Cambridge Analytica, which used user data to manipulate political behavior — a case detailed below.

Fornasier and Beck (2020) explain how user data was systematically collected and processed to categorize individuals and target political content. In the case they analyze, the *modus operandi* of Cambridge Analytica via Facebook was dissected, with direct impact on the 2016 U.S. election:

CA’s *modus operandi* was divided into three stages: the first involved collecting, storing, and processing personal data from Facebook. This included, for example, personal photos, insignificant everyday posts, friend lists, blocked users, and groups the person joined or actively participated in. [...] When users clicked to take a quiz via Facebook, most of them (without reading the terms and privacy policy) granted CA access to their personal data — such as age, race, religion, height, location of residence and work, geolocation, walking routes and pace, and full access to their posts, photos, and files on the platform.” (Fornasier; Beck, 2020, p. 187-188, free translation).

Once these data were accessed, the company began cataloging user information. With near-total access to the data of a vast portion of American voters, Cambridge Analytica processed and manipulated the information for political ends.

In the second phase of the operation, a separate team mined the data to identify undecided voters in swing states like California, Florida, and New York. Employees were tasked with launching targeted fake news attacks on voters deemed “persuadables” (Fornasier; Beck, 2020, p. 188-189).

The result was blatant, unethical manipulation of the American democratic process. The final stage involved producing and disseminating fake news at scale to strategically selected users to artificially polarize society and manipulate political leanings. This operation successfully polarized voters — contrary to the ideals of the U.S. Founding Fathers — similarly to what had happened in the Brexit referendum (Fornasier; Beck, 2020, p. 189, free translation).

This entire phenomenon operates within the context enabled by digital platforms — what Shoshana Zuboff (2019) calls The Age of Surveillance Capitalism. This system is viable because information technologies — especially on social media — convert user interactions into data.

As shown in the Cambridge Analytica case, these data are collected, stored, processed, and sold to parties interested in identifying users and gauging their susceptibility to (dis)information. According to Wilke (2020, p. 19, free translation): “ITs [information technologies] have expanded the segmentation of content, which is key to launching specific fake news — custom-made for particular groups that need to be mobilized.”

Thus, if a user interacts more frequently with a certain type of content, their access, search, like/dislike, and sharing patterns are stored by Big Tech companies such as Alphabet, Meta, and Microsoft. These companies process and categorize users, selling their profiles to entities producing targeted content.

Zuboff explains that this is possible because surveillance capitalism

Unilaterally claims human experience as raw material for behavioral data. While some of these data are used to improve services, the rest are deemed behavioral surplus, which feeds advanced manufacturing processes known as “machine intelligence” and is converted into prediction products that forecast what an individual will do now, soon, and later. These prediction products are traded in a new market I call behavioral futures markets (Zuboff, 2019, p. 21, free translation).

Thus, users’ behavioral surplus becomes currency. In political contexts, users’ social media interactions — likes, dislikes, shares, and searches — are harvested and sold to enable targeted mobilization through manipulated content. That is exactly what occurred in the 2016 U.S. elections.

This system breaks the bond with true democracy. As Marques notes, it results in

(i) a rupture with democratic regimes, which are not only disregarded — as in classic neoliberalism — but viewed as obstacles to the economic interests of surveillance capitalists; (ii) the tech companies’ disregard for the quality of information; (iii) increased social polarization due to platform design; and (iv) personalization, which eliminates even a minimal shared informational baseline among users (Marques, 2021, p. 128, free translation).

According to Marques, democratic regimes are fundamentally incompatible with surveillance capitalist practices. This issue becomes even more serious when the behavioral surplus being commodified is that of the voter.

Even though Cambridge Analytica no longer exists, evidence suggests the emergence of similar companies worldwide — including *Ponte Estratégia* in Brazil (Fornasier; Beck, 2020, p. 190).

The extent to which this phenomenon can interfere with democracy is alarming. A single company — allegedly nonprofit — was able to obtain 1,500 data points per individual for over 300 million people in the U.S. during the 2016 elections (Fornasier; Beck, 2020, p. 187).

To illustrate: suppose a specific population group harbors aversion toward a certain political party. The surveillance capitalism model can determine these users’ fears and opinions, their informational bubble, and their political stance.

Manipulation occurs when their interaction data are sold to third parties, who then craft (dis)information to emotionally target these users — prompting them to share the content and thus fueling a disinformation cycle that tarnishes the democratic electoral process.

What follows is the creation of an “us vs. them” or “us vs. the system” narrative through false, fraudulent, biased, and manipulated news. This weakens the democratic system, undermines elections, and erodes trust in the

press and any information from journalists or public institutions. The result is a material distortion of the democratic process, as voters make decisions based on disinformation — custom-designed for each one of them — to justify choices that shape society's future.

2.3 The Role of Populist Leaders

Populist leaders play a crucial role in this dynamic. During periods of instability, public distrust, and disillusionment with political representatives, charismatic leaders emerge offering easy solutions, pledging to “give voice to the people,” and appealing emotionally to voters — reviving, in a distorted way, a sense of representation.

According to Eatwell and Goodwin (2020, p. 59-71), the context often referred to as “populism” can be understood as a breeding ground for extremist denialism and a steady march toward fascism. This is because it is essentially characterized by charismatic leaders who claim to speak on behalf of the people and, to that end, use crude, colloquial language to simulate closeness with the “real” masses.

Thus, if it serves the interests of a populist candidate's campaign, even democratic institutions themselves may be portrayed as enemies in the new narrative. The result is the erosion — first of the electoral process, and then of democracy itself. As Levitsky and Ziblatt observe:

Some do it with a single blow. More frequently, however, the assault on democracy begins gradually. For many citizens, it may initially go unnoticed. After all, elections are still held. Opposition politicians still have seats in Congress. Independent newspapers are still published. The erosion of democracy happens incrementally, often in tiny steps. Taken individually, each step seems minor — none appears to pose a real threat to democracy. In fact, government measures to undermine democracy often carry a veneer of legality (Levitsky; Ziblatt, 2018, p. 30, free translation).

Most often, the *modus operandi* of these populist leaders, in electoral campaigns based on fake news, involves launching social media attacks against anyone who challenges their narratives. Interestingly, these speeches do not explicitly oppose or diminish the importance of democracy. Instead, they claim that democracy can only be achieved through their own methods.

The result is the corrosion of democracy itself, as the prevailing mindset becomes one in which solutions to societal problems can only be delivered by those specific politicians and their rhetoric. Opposition proposals are no longer the focus of debate — they are replaced by personal attacks and the dissemination of lies.

3 The Post-Truth Phenomenon

One of the key strategies used to make disinformation effective — especially in political contexts — has been to directly target voters' emotions, fears, and feelings when delivering news or information. This can be observed, for instance, in how certain groups “discursively create an us in opposition to an unintelligible other” (Kalpokas, 2019, p. 64-65, free translation).

The social context that enables this phenomenon — referred to as the post-truth era — has been identified by many scholars as one of the main reasons why fake news has infiltrated the Brazilian democratic process so effectively in recent years. In a post-truth scenario, factual truth loses its value, while emotional appeal becomes central to how messages are received.

The term *post-truth* was first used in 1992 by Serbian-American playwright Steve Tesich, in reference to conflicts in the Middle East at the time (Tesich, 1992 *apud* Basan; Borges; Faria, 2020, p. 86). However, due to the surge of disinformation in 2016, during the U.S. presidential election, Oxford Dictionaries named post-truth the word of the year, defining it as: “circumstances in which objective facts are less influential in shaping public opinion than appeals to emotion and personal belief” (Washington Post, 2016 *apud* Pansieri; Kraus; Pavan, 2021, p. 4).

It was in 2016 that post-truth became closely tied to the political sphere, owing to the growing ability — through ICTs — to manipulate American voters by generating “countless versions of events” (Basan; Borges; Faria, 2020, p. 86, free translation). As a result, what emerges is a phenomenon of factual manipulation, often composed of information that is neither entirely true nor entirely false, crafted to resonate with the listener's personal beliefs or emotions. This is made even easier in electoral contexts or times of democratic crisis, when verifying facts is inherently complex, and the creation of falsehoods or post-truth narratives becomes more viable.

In this context, facts that were once seen as indisputable are now met with suspicion, as those seeking to fuel polarization manipulate voters — whether ideologically aligned or not — by distorting information in ways that trigger emotional responses. Within the backdrop of the post-truth era, individuals become emotionally attached to a given narrative, as the factual accuracy of the content becomes secondary to the emotional impact it carries.

This leads to a deep attachment to the narrative itself, regardless of the veracity of the facts being shared, as long as it reinforces a particular bias and persuades others that it might be true. In doing so, yet another variable is added to the erosion of democracy.

4 Fake News, Post-Truth, and Social Networks: Consequences for the Democratic Process

As shown throughout this study, social networks have established themselves as the perfect environment for the consolidation of the post-truth era and the spread of fake news during election periods. The dissemination of false information on these platforms depends solely on the type of behavior demonstrated by each voter-user while browsing. Their data are collected and processed to offer them more content with which they are likely to engage.

Once traditional media outlets — those that verify sources and the truthfulness of information — begin to lose ground, and social networks and echo chambers become the primary sources for election-related information, voter-users effectively become pseudo-journalists.

In this context, the systematic operations of Big Tech, which enable the existence of surveillance capitalism, become the key component that allows populist leaders to act, echo chambers to function, fake news to spread across entire nations, and the fake news phenomenon to influence the democratic process.

Fornasier and Beck (2020, p. 193, free translation) reflect on the interference in the U.S. democratic process, stating: “[...] Cambridge Analytica, through its practices, left the world not without first destabilizing democratic processes in some of the world’s largest powers; millions of citizens had their privacy and intimacy harvested via social media in exchange for electing the candidate who paid the company the most.”

When these factors are combined with a society marked by a lack of digital education and literacy — and one that is now deeply politically polarized — it creates fertile ground for populist discourse to grow, post-truth to flourish, and disinformation strategies on social media to become an almost guaranteed path to electoral success.

The consequence is that the democratic process itself is tarnished — not necessarily in its formal structure, but in its material integrity — since a vote based on disinformation cannot be considered a free, informed choice. Moreover, freedom of expression is distorted and weaponized as a shield to violate other constitutional guarantees, such as the right to information.

This completes the cycle: the population feels betrayed by the representatives they elected and longs for a leader to “speak for them.” The populist leader emerges, promising to be “the true representative and voice of the people” (Mounk, 2018, p. 42, free translation), offering quick and easy solutions, and vowing to “fight the system.” The public then becomes emotionally attached to this narrative — even if it is based on false information — because they feel seen and validated, and they share it, reinforcing the post-truth environment. As a result, democratic institutions and the electoral process itself become targets of public distrust. According to D’Ancona (2018, p. 2), this crisis of confidence in democracy is what laid the groundwork for post-truth, as it began with widespread public dissatisfaction toward elected leaders and their decisions.

As noted earlier, voters who are immersed in this system only contribute to the perpetuation of the problem. Some are entirely consumed by post-truth without a shred of critical thinking, while others are deliberately deceptive in pursuit of political interests. They become true machines for spreading fraudulent and biased discourse and, when challenged, seek to justify themselves through freedom of expression.

The constitutional guarantee of freedom of expression is enshrined in Article 5, items IV and IX, and in Article 220 of the 1988 Brazilian Constitution. These provisions state that “freedom of thought is guaranteed, with anonymity forbidden” (Art. 5, IV, free translation); “freedom of intellectual, artistic, scientific, and communication activities is guaranteed, regardless of censorship or license” (Art. 5, IX, free translation); and that “freedom of expression, creation, and information, in any form, process, or medium, shall not be restricted, subject to the provisions of this Constitution,” with “any form of political, ideological, or artistic censorship being prohibited” (Art. 220, §2, free translation).

Since its emergence, the internet has become one of the main platforms for exercising freedom of expression (Silva; Silva; Gonçalves Neto, 2021, p. 6). However, it is often exploited—whether due to the anonymity it enables

or its algorithmic power — to exaggerate this right at the expense of other constitutionally protected rights. Freedom of expression cannot be viewed as an absolute right, detached from the broader constitutional framework, which demands respect for other rights and a balance of values established through the weighing of freedoms and guarantees (Silva; Silva; Gonçalves Neto, 2021).

In cases of conflict between constitutional norms — such as freedom of expression, the right to truthful information, and popular sovereignty — the appropriate approach is to apply the principle of proportionality or weighing of rights, ensuring the implementation of the rule that best aligns with the legal order (Sampaio, 2013 *apud* Silva; Silva; Gonçalves Neto, 2021, p. 7). Thus, “human dignity is considered the cornerstone guiding the interpreter’s decisions and holds great weight in the system of balancing rights” (Silva; Silva; Gonçalves Neto, 2021, p. 7, free translation).

In this same vein, Hannah Arendt (2016, p. 182, free translation) warns: “the same happens when a liar, unable to convince others of their falsehood, does not insist on the biblical truth of their assertion but instead claims it as their ‘opinion,’ to which they believe they have a constitutional right.” This guarantee cannot be used as a justification for committing crimes. And when weighed against other fundamental rights — such as those that uphold human dignity or the democratic institutions that sustain the rule of law — freedom of expression must be relativized.

Currently, there is some legislation in Brazil aimed at combating disinformation in the digital environment. Article 323 of the Electoral Code provides for a penalty of imprisonment from two months to one year or a fine for anyone who spreads false facts during electoral propaganda or campaigns. The Electoral Law (Law No. 9,504/1997), in turn, establishes fines for those who conduct internet campaigning while falsely attributing authorship to third parties, and also provides for imprisonment when individuals are hired specifically to damage a candidate’s image.

Beyond these provisions, the Fake News Bill (Bill no. 2.630/2020) is currently under review in the National Congress. According to its summary, the bill seeks to establish rules related to the transparency of social networks, provider liability, combating disinformation, and penalties for non-compliance.

However, while a lack of enforcement should not be confused with the absence of legislation, it is undeniable that the existing legal framework in Brazil is insufficient to curb such practices — especially given the rapid, unchecked evolution of social networks and tech giants, for which Brazilian law was not adequately prepared.

Even with the enactment of the Marco Civil da Internet (Law No. 12,965/2014) and the General Data Protection Law (Law No. 13,709/2018), current legislation fails to fully protect user data or ensure the integrity of the democratic process, particularly regarding the direct impact on voters.

The positions of Brazil’s Federal Supreme Court (STF) and Superior Electoral Court (TSE), however, have been more assertive. One example is Direct Action of Unconstitutionality (ADI) No. 7261/DF, filed by the Prosecutor General of the Republic. This action sought to declare the unconstitutionality of Articles 2, 3, 4, 5, 6, and 8 of TSE Resolution No. 23.714/2022, which aims to “combat disinformation capable of undermining the integrity and fairness of Brazil’s electoral process” (Brazil, 2022, Art. 1, free translation). The case was decided on October 26, 2022.

The contested provisions, in summary, prohibit the sharing of knowingly false facts that jeopardize the integrity of the electoral process; authorize the TSE to order platforms to remove such content under penalty of fines; and empower the TSE President to apply decisions broadly to similar cases and to temporarily suspend accounts that repeatedly produce false content. This demonstrates the TSE’s proactive role in fighting disinformation.

When asked to rule on the matter, the STF concluded — by majority — that there were no grounds to declare the resolution unconstitutional. Key arguments included: 1) TSE did not exceed its normative authority in legislating electoral matters, as it holds legitimate police power over electoral propaganda; 2) There can be no rule of law or free society in a representative democracy without preserving the regularity of elections — even through the use of bitter or borderline remedies. These arguments reveal the STF’s stance: fundamental rights such as freedom of expression must be balanced with the integrity of the electoral process. STF seeks to uphold freedom of expression but acknowledges that it is not absolute and must comply proportionally with the Brazilian constitutional framework.

Therefore, the Brazilian Legislature should adopt a more assertive stance in addressing the issue. There must be clearer, more robust regulation of the digital environment in Brazil, particularly to hold platforms accountable when they 1) expropriate user data and convert it into products without consent; 2) use that data to orchestrate targeted attacks aimed at manipulating elections; 3) fail to monitor the spread of fake news on social media, especially when amplified by algorithms.

Merely requiring platforms to remove or temporarily suspend such content is not sufficient to solve the problem. Once published, such content can reach hundreds of thousands of people around the world within seconds — and

cannot simply be erased. The solution must involve civil, criminal, and administrative liability for both the creators of fraudulent content and the companies that profile users and sell their data to facilitate disinformation.

Any regulatory framework must safeguard freedom of expression while simultaneously combating fake news that threatens the democratic process. Even candidates themselves must be held accountable when they spread blatantly biased or fraudulent narratives with the intent to manipulate voters — accountability that is currently lacking when such acts occur on social media. In addition, public policies on digital education and literacy must be developed to equip citizens with the skills needed to verify sources and navigate the online information landscape.

Two recent examples of international regulatory frameworks are the Digital Services Act (DSA) of the European Union and France's Law No. 2018-1202 of December 22, 2018 (loi n° 2018-1202 du 22 décembre 2018 relative à la lutte contre la manipulation de l'information), which addresses the fight against information manipulation.

The DSA, which came into effect in November 2022, aims to “ensure a safe, predictable, and trustworthy online environment in which fundamental rights are protected” (Art. 1.2.b of the DSA-EU). It applies not only to companies located in the EU but also to those serving users there from abroad (Art. 1.3). Under the DSA, digital intermediaries are prohibited from hosting or disseminating illegal content, meaning content that violates EU or national laws — though they are not under a general obligation to monitor. Unfortunately, the DSA does not provide clear criteria for verifying whether content is illegal.

In terms of civil liability, platforms are only held responsible once they are notified that illegal or allegedly illegal material is available on their platforms and fail to respond in accordance with the regulation (Nettesheim, 2022, p. 23). Ultimately, the primary responsibility for spreading illegal content still lies with the users who commit the violations, while platforms are liable only for their own failure to act once informed (Nettesheim, 2022).

The French law, on the other hand, takes a more explicit stance against false information and manipulation. Enacted in 2018, it specifically targets fake news during election periods. Although it does not provide safeguards for satirical or humorous content — which may present a problem — it directly addresses the concept of “fausses nouvelles” (fake news), acknowledges the challenges of extraterritorial disinformation, and provides for prison sentences and fines as penalties (Meneses, 2019, p. 10).

5 Conclusion

Based on the analysis presented throughout this study, the hypothesis is confirmed: digital platforms and social networks play a central role in the disinformation process that has undermined democracy in recent years, particularly through the expropriation of user data and the algorithmic reinforcement of biases. This system, combined with other factors — such as the rise of populist leaders and the post-truth phenomenon — has contributed significantly to the erosion of democratic processes.

A democratic process cannot truly exist when the choice of representatives is not made freely and in an informed manner. Misinformed or biased information cannot produce real freedom, and therefore, there can be no true democracy under such conditions. Moreover, Brazilian legislation continues to lag behind when it comes to regulating the digital environment, as the legislative process is too slow to keep pace with the rapid evolution of social networks.

It is therefore urgent to protect the democratic system and the free choice of representatives through proper regulation of the digital environment — regulation that effectively controls and suppresses the dissemination of politically motivated fake news. Democracy must not be weakened by phenomena that evolve faster than the State's capacity to regulate them.

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