

## Brazilian “hooligans” and some current anti-democratic practices\*

### *Os “hooligans” brasileiros e algumas práticas antidemocráticas atuais*

### *Los “hooligans” brasileños y algunas prácticas antidemocráticas actuales*

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#### Abstract

The paper analyzes some of the contemporary Brazilian anti-democratic practices, notably in the period from 2019 to 2022. The central objective is to diagnose one of the main misconceptions that still resonates in the Brazilian social imaginary: that in that period the temporary occupant of the Federal Executive played within the “four lines of the constitution”. In order to understand this fable, one goes through (i) the theory of rational ignorance (Brennan, 2016) which provides the theoretical basis for the analyses; (ii) the argument that economic new liberalism has a facet that is incompatible with the democratic rule of law, although it presents a “democratic veneer”; (iii) a concrete example of the limits of democracy in confronting anti-democratic practices in the inquiry n. 4.781/DF, still pending in Brazilian Supreme Court (STF, in Portuguese). To this end, this paper uses the theoretical documentary research and the technique of systematic literature review to substantiate the absolute incompatibility between certain ideas and practices with the democratic rule of law. One of the results allows us to state that economic new liberalism has a significant share of responsibility for anti-democratic practices within the “four lines of the constitution”. In conclusion, it is argued that the mentioned inquiry offered necessary institutional answers, however, insufficient to overcome a fable that still hovers in the present time.



**Keywords:** undemocratic acts; democratic rule of law; inquiry n. 4.781/DF; economic neoliberalism.

#### Resumo

*O artigo analisa algumas das práticas antidemocráticas brasileiras contemporâneas notadamente no espaço temporal de 2019 até 2022. Tem-se por objetivo central diagnosticar um dos principais equívocos que ainda ressoa no imaginário social brasileiro: que nesse período o ocupante temporário do Executivo federal jogava dentro das “quatro linhas da Constituição”. Para compreender essa fábula, desenvolveram-se (i) a teoria da ignorância racional (Brennan, 2016), que fornece as bases teóricas para as análises; (ii) o argumento de que o neoliberalismo econômico possui uma faceta incompatível com o Estado democrático de direito, embora apresente um “verniz democrático”; (iii) um exemplo concreto sobre os limites da democracia no enfrentamento às práticas antidemocráticas no inquérito n. 4.781/DF, ainda em tramitação no Supremo Tribunal Federal (STF). Para tanto, utiliza-se a pesquisa teórica documental, conjugada com a técnica de revisão sistemática de literatura, para fundamentar a incompatibilidade entre certas ideias e práticas com o Estado democrático de direito. Um dos resultados encontrados pelo artigo permite afirmar que o neoliberalismo econômico possui parcela significativa de responsabilidade sobre as práticas antidemocráticas jogadas dentro das “quatro linhas da Constituição”. Em conclusão, sustenta-se que o mencionado inquérito ofereceu respostas institucionais necessárias, porém, insuficientes para superar essa fábula que ainda paira no tempo presente.*

**Palavras-chave:** atos antidemocráticos; Estado democrático de direito; inquérito n. 4.781/DF; neoliberalismo econômico.

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## Resumen

*El artículo analiza algunas de las prácticas antidemocráticas brasileñas contemporáneas notablemente en el espacio temporal de 2019 hasta 2022. Se tiene por objetivo central diagnosticar uno de los principales equívocos que aún resuena en el imaginario social brasileño: que en este período el ocupante temporario del Ejecutivo federal jugaba dentro de las “cuatro líneas de la constitución”. Para comprender este cuento se desarrolla (i) la teoría de la ignorancia racional (Brennan, 2016) que ofrece las bases teóricas para los análisis; (ii) el argumento de que el neoliberalismo económico posee una faceta incompatible con el Estado democrático de derecho, aunque presente un “barniz” democrático; (iii) un ejemplo concreto sobre los límites de la democracia en el enfrentamiento a las prácticas antidemocráticas en la investigación n. 4.781/DF, aún en trámite en el Supremo Tribunal Federal (STF). Para tanto, se utiliza la investigación teórica documental conjugada con la técnica de revisión sistemática de literatura para fundamentar la incompatibilidad entre ciertas ideas y prácticas con el Estado democrático de derecho. Uno de los resultados encontrados por el artículo permite afirmar que el neoliberalismo económico posee camada significativa de responsabilidad sobre las prácticas antidemocráticas tiradas dentro de las “cuatro líneas de la constitución”. En conclusión, se sostiene que la citada investigación ofreció respuestas institucionales necesarias, aunque insuficientes, para superar este cuento que todavía sigue en el tiempo presente.*

**Palabras clave:** *actos antidemocráticos; Estado democrático de derecho; investigación n. 4.781/DF; neoliberalismo económico.*

## 1 Introduction

More than ever, the Federal Supreme Court (STF) is at the center of attention and national legal-political decisions. In view of this, it is still necessary to question what the limits of Brazilian democracy would be. The emergence of the present time requires it to be noted that this article does not lend itself to a full and exhaustive examination of recent events in the Federative Republic of Brazil; even less, he arrogates himself to the position of unconditional critic of the STF's performance, notably in the conduct of inquiry no. 4,781/DF, under the rapporteurship of Minister Alexandre de Moraes, still pending conclusion.

Aware of the limitations of time and space, this article undertakes a more localized theoretical objective, namely: to analyze some of the contemporary Brazilian anti-democratic practices, notably in the time span between the years 2019 and 2022; This is supported by the documentary support indicated above. Such a methodological option requires some additional efforts in order to justify the time frame, which coincides with the last presidential term whose direct negative result, among others, was the escalation of anti-democratic acts or practices.

Certainly, the analyses developed imprint some notion of prognosis, since many of the political, institutional, social, legal and economic developments still remain in motion. In addition, Brazilian anti-democratic practices did not begin in 2019, just as they do not end in 2022. As in the recent actions carried out, precisely on 01/08/2023, in Brasília/DF, there is the situation when a mob financed and orchestrated by certain Brazilian political and business sectors promoted acts of symbolic and concrete violence against the democratic rule of law.

It is also worth questioning about the social and state actors who, in some way, adopted insufficient or complacent conducts to carry out these anti-democratic practices. The focus of this article, therefore, lies in the understanding of some of these phenomena, in a kind

of gathering of the pieces of this intricate political "puzzle", in order to have a dimension of the social and institutional capillarity of certain anti-democratic practices.

If, on the one hand, inquiry no. 4,781/DF, known as the *fake news* inquiry, which is processed in secrecy of justice – it is not possible to identify the applicant or any other information – operates with unorthodox investigative and criminal procedural practices. On the other hand, there is a complex network that is articulated and moved through certain economic and parliamentary sectors (self-proclaimed "conservative" or "right-wing"), radio stations and social media profiles, certain members of the Armed Forces, members of public security agencies (federal, state and district) and a minority and noisy portion of Brazilian civil society.

During the analysis of this article, there should be no room for fatalism or determinism, just as it cannot be conjectured that the defense of democracy ends with the choice of representatives through the electoral process. It seeks, primarily, to identify one of the main misconceptions that still resonate in the Brazilian social imaginary: that, in the period from 2019 to 2022, the temporary occupant of the federal Executive played within the "four lines of the Constitution". It is a fable, that is, a narrative whose form and content are not supported by concrete experience, but which served to create, temporarily, a narrative of "constitutional legality" of the conduct of the federal Executive in the period.

Theoretical documentary research combined with the technique of systematic literature review is chosen to substantiate the incompatibility between certain ideas and practices, euphemistically called the "four lines of the Constitution", with the construction of the democratic rule of law in Brazil. In addition, the arguments presented are exemplified through the documentary analysis of the court order issued in May 2020 in the context of the aforementioned "judicial inquiry".

To this end, this central objective is divided into three specific scopes, which also serve to structure the preparation of this article. Thus, in the first place, beyond the simple description of political and social facts, it is worth contextualizing them with a theory that intends to explain a significant portion of the phenomena identified. Based on the theory of rational ignorance, developed by Jason Brennan (2016), there is part of the theoretical basis to identify and explain some of the sociopolitical facts that, for the most part, operated in the observed quadrennium. It is the longest part of the entire article.

In the second section, the article analyzes the argument that, despite presenting a certain "democratic veneer", the economic version of neoliberalism has a facet that is absolutely incompatible with the democratic rule of law. According to Rubens Casara (2021), this is one of the main explanatory vectors for the discredit and consequent collapse of the concept of liberal democracy<sup>1</sup>.

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<sup>1</sup> In a similar vein, among others, Eatwell and Goodwin (2018).

Finally, in the third section, it is illustrated, through a concrete example, the limits of democracy in confronting anti-democratic practices in inquiry no. 4,781/DF, still in progress at the STF. Thus, a more concise and descriptive topic is chosen. One of the results found by the article allows us to affirm that economic neoliberalism has a significant share of responsibility for the anti-democratic practices played within the "four lines of the Constitution".

On the other hand, the unconditional defense of democratic ideals is also carried out through argumentative rigor, in the demonstration of the procedural steps taken to reach the decision-making content and, within a deeper layer of meaning, to hoist the popular sovereignty manifested through direct, periodic and secret voting. This, therefore, is one of the main challenges to overcome certain fables and their practices contrary to the democratic rule of law.

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## **2 Theory of rational ignorance: sociopolitical aspects of some anti-democratic practices in contemporary Brazil**

At first, in order to understand part of the governing ideas between the years 2019 and 2022, which illustrate the keynote of the previous mandate of the federal Executive, it is necessary to go beyond the simple factual description of the phenomena manifested in this period. Although certain facts are quite elucidative, they prove to be of little significance for the purposes pursued in this article. This does not authorize us to affirm that social facts are unimportant or that they can be analyzed theoretically in the abstract, that is, dissociated from concrete events.

In another sense, it is considered appropriate to begin the appraisals based on a theory that allows the understanding of the phenomena, and then to verify the correspondence (or not) of the ideas to the facts. Thus, with the specific purpose of understanding the main socio-political aspects of some anti-democratic practices in contemporary Brazil, the theory of rational ignorance (Brennan, 2016) is chosen, precisely because it enables the knowledge of the social roots that transcend the facts and their consequences.

This theory was originally designed for the current American context by Jason Brennan, professor of strategy, economics, ethics, and public policy at Georgetown University's McDonough School of Business. Within the United States of America, this is one of the leading scholars on democratic theory, especially on the contemporary challenges of Western democratic regimes.

With extensive bibliographic production on the subject, his books have been translated into several languages: Chinese, Spanish, French, Japanese, Portuguese, German, Italian, Korean, Greek, etc. In his most recent releases, the author preserves the interest in democracy as a central element in his analyses, which he intends to debate and carry out a

guided visit for democracy (Debating democracy, 2021; Democracy: a guided tour, 2023), both books published by Oxford University Press (Georgetown University, 2023).

Far from being a kind of "infallible manual" on current political crises, the book "*Against democracy*", originally published in 2016 by Princeton University Press, offers a sociopolitical approach capable of revealing some of the main roots of the current events faced in the United States of America. To some extent, these reflections can also be used to identify and explain some of the events that occurred in Brazil during the 2019-2022 period. This approximate effort is called "*Brazilian hooligans*", however, it is necessary to recognize certain cultural, institutional and normative limits.

On the other hand, it is necessary to recognize that the United States of America and Brazil were countries that, through electoral means, recently had<sup>2</sup> the position of President of the Executive occupied by representatives, at least, refractory to democratic ideals. Likewise, they were countries that carried out the transitions, each in its own time and way, through direct popular vote.

It is also worth questioning whether, and to what extent, the social understanding of the Brazilian political-institutional experience permeates the singular categories of American society. Since the archetype of *hooligans*, for example, presupposes a set of social, economic, religious and cultural factors of that country; while the adjective "republican" does not necessarily equate to the historical and current meanings attributed to Brazilian conservatism. Each one has different matrices, whose outlined objectives prevent us from descending into the details of this issue<sup>3</sup>.

Furthermore, there is no way to disregard the fact that the theory of rational ignorance provides sociopolitical explanations to the detriment of prescriptive or normative analyses, as is the case of militant democracy (Müller, 2011 and 2012) which suggests the adoption of judicial responses to attacks on democracy. Undoubtedly, the set of judicial decisions of the Superior Electoral Court, and of the STF itself, was decisive in the attempt to minimize the negative impacts of the anti-democratic practices prevalent in the period analyzed. However, the potentially most appropriate treatment for this issue requires compulsion Under penalty of treating the effects without knowing their causes.

For this reason, and despite the reservations made in the previous lines, the theoretical framework announced in the introductory part of this article continues. Thus, according to Brennan

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<sup>2</sup> With the result of the presidential elections in 2024, the majority of American voters entrusted a second term to the Republican candidate, by the way, for a significant electoral victory.

<sup>3</sup> We would like to thank the reviewers of this article for their observations, paying attention to a kind of "Brazilian sociology", developed by Christian Edward Cyril Lynch (2011 and 2014), to understand the historical roots of Brazilian conservatism and the possible causes of its violent postures, based on the categories "Luzias" (liberal/federalist) and "Saquaremas" (conservatives/monarchists), as well as their variations (radicals/moderates). For an in-depth study, see, among others, Bruno Gonçalves Rosi (2016) in particular, the first chapters (*1 Viscount of Uruguay, O Saquarema*) and second (*2 Tavares Bastos, Luzia*).

(2016, p. 22-23), there are three ideal types of citizens in a democracy, namely: *hobbits*, *hooligans* and *vulcans*. In general terms, it can be said that *hobbits* are more "apathetic and ignorant" about politics<sup>4</sup>; *Hooligans*, on the other hand, can be considered a kind of "sports fanatics of politics"; *Vulcans*, in political terms, think scientifically and rationally.

Aware of the multiple difficulties of framing human behavior in predefined models – not to mention the different varieties that can make up these three "ideal types" or even the possibility of fusion between them – it must be taken into account that the observation of common traits must be able to justify the intended generalization. For the purposes pursued in this article, only *hooligans* will be analyzed, since it is the category that comes closest to the phenomena portrayed in contemporary Brazil.

It is worth noting, as will be seen in the third section of this article, that in the Brazilian case this is also one of the reflections of the political, social, and personal decisions that were adopted from 2019 onwards. In other words, it means to affirm that the "*Brazilian hooligans*" are the result of a complex combination of factors, which are used to maintain an autocratic project of power, even if, to do so, they have to put personal interests above the Constitution.

In this order of ideas, it can be said that *hooligans* have strong and largely fixed worldviews, they can even present arguments to justify their beliefs, but they cannot explain alternative points of view, in a way that people with other points of view find satisfactory (Brennan, 2016). It is equivalent to affirming that the way of being, acting and thinking collides head-on with political pluralism, one of the foundations of the Federative Republic of Brazil. However, this in itself is not problematic – as *hooligans* are also ensconced in the very idea of pluralism. The central question, then, is when these ideals are instrumentalized for anti-democratic purposes.

Alongside this, there are personal elements that combine to form the *modus operandi* of *hooligans*, who, when consuming "political information, even if in a biased way, seek information that confirms their preexisting political opinions, but ignore, avoid, and reject immediate evidence that contradicts or rejects refute their pre-existing opinions" (Brennan, 2016, p. 22)<sup>5</sup>. This is a fertile field for the proliferation of conspiracy theories and denialist theories of all kinds, from historical revisionism, which tries in vain to deny concrete facts widely recorded by official historiography, to the anti-vaccine movement.

Another facet of this characteristic concerns the selective denial of science, since virologists have interests in "ideological political domination", especially during the Covid-19 pandemic, registered in the years 2020 and 2021, for example. Another example is the

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<sup>4</sup> It should be noted the prejudiced aspect of the phrase "political ignorant" used by Jason Brennan to explain the category of *hobbits*, since passivity cannot be equated with ignorance.

<sup>5</sup> In the original: "They tend to seek out information that confirms their preexisting political opinions, but ignore, evade, and reject out of hand evidence that contradicts or disconfirms their preexisting opinions." (Brennan, 2016, p. 22).

massive use of pesticides being greatly encouraged in export monoculture. Undoubtedly, this characteristic of *hooligans* is an explanatory factor for the current stage of the Brazilian experience.

In the Brazilian case, this characteristic trait was persistently exploited to trigger the result of the presidential elections held in 2018. Motivated by the diffuse dissatisfaction of the "spontaneous" (conjunctural) movement, known as the June 2013 Days, social media (communication and information technology) created true "social bubbles", which, in turn, were inflated by artificial intelligence mechanisms, raising the confirmation bias to its nth degree. Under the insignia of "conservative" or "patriot", ideas contrary to the democratic rule of law achieved scalable results.

Going through the resentment of a portion of the Brazilian population, generally of an older age group, which perceived itself excluded from the recent technological and economic revolutions, added to the nostalgia for a fanciful "golden period" of Brazilian history, read the Brazilian civil, business and military dictatorship (1964-1985), whose systematic violations of human rights perpetrated during the "years of lead" were amnestied through Law No. 6,683, of December 19, 1979<sup>6</sup>, as well as by the Allegation of Non-Compliance with a Fundamental Precept No. 153/DF - 2010<sup>7</sup>. However, it was through the use of instant messaging applications that a "parallel reality" was created, in which, contradictorily, and under the lure of "absolute freedom of expression", one could shout against the institutions that structure the democratic rule of law.

Likewise, part of the Brazilian business community identified not only the possibility of increasing their profits through the flexibilization of labor rights and environmental laws, but also through effective participation in the conduct of national political life. In other words, there are several projects interspersed within one: the so-called "four lines of the Constitution" is nothing more than a personal project conducted by *Brazilian hooligans*, an economic project conducted by certain businessmen, a political project headed by certain agents of the political class, accompanied by a series of "last-minute opportunists"<sup>8</sup>.

If traditionally *hooligans* "tend to despise people who disagree with them, arguing that people with alternative worldviews are stupid, evil, selfish or, at best, deeply mistaken" (Brennan, 2016, p. 22)<sup>9</sup>, the transformation of hate speech on the internet into a practice of action by some members of the Legislative and Federal Executives, and also in anti-

<sup>6</sup> Grants amnesty and makes other provisions.

<sup>7</sup> By majority vote, the Justices of the Supreme Court dismissed the request to declare the unconstitutionality of the amnesty law (Law No. 6,683/1979).

<sup>8</sup> In addition, it is necessary to recognize a temporary inability to articulate socially and politically for the formulation of an alternative project.

<sup>9</sup> In the original: "[They] tend to despise people who disagree with them, holding that people with alternative worldviews are stupid, evil, selfish, or at best, deeply misguided." (Brennan, 2016, p. 22).

democratic acts, it was one of the expected consequences. It did not take long for the instrumentalization of these factors to happen as a (frustrated) attempt to violently seize power by the self-proclaimed "patriots".

In this specific regard, the reflections contained in the second chapter of the work: "*Against democracy*", with the provocative subtitle "*Ignorant, irrational and uninformed nationalists*", come in handy. Brennan (2016, p. 64) develops the theory of rational ignorance by warning, from the beginning, that ignorance and irrationality, mentioned in the chapter, refer to political issues that, in turn, lead to the underestimation of evidence and the possibility that people die.

When portraying the political reality of the United States of America, the author states that there is a tendency for Democratic voters to be "ignorant or misinformed". In particular, the so-called poor Democratic voters are paradoxically the most susceptible to reactionary agendas, such as the approval of the military invasion of Iraq in 2003, even coming to position themselves "more strongly in favor of the *Patriot Act*, invasions of the civil liberty, torture, protectionism and restriction of the right to abortion and access to birth control. They are less tolerant of homosexuals and more opposed to gay rights" (Brennan, 2016, p. 87)<sup>10</sup>.

A bellicose environment is then created that is conducive to the existence of a "political tribalism", that is, when an "animosity towards other groups" develops, even when there is no basis for it. In this hypothesis, there is a presumption in assuming that a certain group is "good and just", and that the members of other groups are "bad, stupid and unjust". This explains the tendency to forgive most of the transgressions of one's own group to which one belongs or sympathizes and to consider the small mistakes of other groups "cursed" (Brennan, 2016, p. 98).

As a consequence, there is the incorporation of concepts such as team, opponent, etc., within institutional politics, hence reinforcing the main characteristic of *hooligans*, as "sports fanatics", similar to certain members of organized soccer fans who promote violence, regardless of the result of the game. Alongside this, there is the manipulation of news with dubious content (adulterated or untrue), which reinforces the prejudices that exist in society, which are used for economic or electoral purposes. Especially because citizens "with little information tend to have fewer opinions and weaker opinions" (Brennan, 2016, p. 127)<sup>11</sup>.

So far, the plausibility of the diagnosis made by Brennan (2016) based on the American reality described before the year 2016 has been seen. Part of these reflections also finds reverberation in the recent Brazilian experience. Next, the author suggests that, in the

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<sup>10</sup> In the original: "[They] more strongly favored the Patriot Act, invasions of civil liberty, torture, protectionism, and restricting abortion rights and access to birth control. They are less tolerant of homosexuals and more opposed to gay rights." (Brennan, 2016, p. 87).

<sup>11</sup> In the original: "Low-information citizens tend to have fewer and weaker opinions." (Brennan, 2016, p. 127).

face of this type of action that reinforces ignorance (as one of the characteristics of *hooligans*), the ideal would be to consider some form of "epistocracy", that is, the government of experts by which there is some "form in which suffrage is restricted only to citizens who pass a test of basic political knowledge" (Brennan, 2016, p. 231)<sup>12</sup>.

It seems that the solution is not reasonable for a country historically fractured by social inequalities, such as Brazil. The emphasis on voting reserved only for holders of certain predicates (social and economic position) suffers from the same criticisms of an anti-democratic nature: first, because it violates fundamental rights and freedoms; second, because it concentrates political decisions even more. In this way, the content of the book is compatible with its title.

From then on, the author goes on to defend this point of view. The argument does not necessarily develop against representative democracy, but understands that "if epistocracy and democracy work equally well, then either system is good" (Brennan, 2016, p. 322)<sup>13</sup>. It is impossible not to highlight that the theory of rational ignorance carries with it a lot of prejudices, since it interprets with extreme suspicion a portion of fellow citizens, who are considered "incompetent, ignorant, irrational, uninformed and morally irrational in relation to politics" (Brennan, 2016, p. 328 and 445).

To some extent, it is necessary to recognize the existence of people who fulfill some or all of these characteristics. However, the construction of a collective project based on social collaboration (fraternity) and intergenerational commitment becomes unfeasible if it adopts this type of reading in advance. Undoubtedly, there are "immoral and corrupt" voters. In other words, immoral is when the majority votes for a white candidate instead of a black candidate, just because of racism; and corrupt when the majority of voters choose a policy for their own benefit, even if it seriously harms or risks imposing harm on the minority (Brennan, 2016, p. 363). However, this is not a sufficient reason for the installation of an epistocratic regime. In his (elitist) view, it makes sense to question why all citizens vote, but he does not propose the replacement of voters (popular sovereignty) by *experts*. On the other hand, he considers a hybrid political system called universal suffrage with an epistocratic veto (Brennan, 2016, p. 488)<sup>14</sup>. In short, this proposal suggests concentrating the exercise of power in the hands of a select group, tangential to "census democracy".

In this way, the controversial figure of the "epistocratic council" would act as a kind of "moderating power" to protect the choices democratically made. The so-called "epistocrat

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<sup>12</sup> In original: "Consider a form of epistocracy in which suffrage is restricted only to citizens who can pass a test of basic political knowledge." (Brennan, 2016, p. 231).

<sup>13</sup> In the original: "If epistocracy and democracy work equally well, then either system is fine." (Brennan, 2016, p. 322).

<sup>14</sup> In the original: "Consider instead a hybrid political system called universal suffrage with epistocratic veto." (Brennan, 2016, p. 488).

council could veto bad elections, but also veto bad legislation, regulations, and executive orders" (Brennan, 2016, p. 493)<sup>15</sup>. In the end, it is suggested that the Supreme Court of the United States of America functions as a kind of epistocrat council (Brennan, 2016, p. 494).

Apart from the counterpoints mentioned throughout this section, it is clear that the option for epstocracy does not seem to be the most viable from a democratic point of view. In the same sense, the idea of an "epistocratic council" capable of protecting democracy is equally anti-democratic. Starting with the many difficulties in morally evaluating certain political choices as being "good or bad" (based on which criterion?). In addition, a constitutional court must carry out judicial control of laws and normative acts, in accordance with the text of the Federal Constitution, with constitutional principles (explicit and implicit) and with their judicial precedents.

Thus, it is clear that the pseudo-solution presented to an authentic socio-political problem would be capable of further aggravating anti-democratic practices. Unlike the diagnosis based on the metaphor of *hooligans*, it is clear that the epstocracy fails to consider the roots of the so-called "bad choices" made by the electorate in general. One of the main causes is related to neoliberal rationality, that is, the keynote of economic neoliberalism (ultraliberalism) constitutive of subjectivities. This argument will be developed in the next section.

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### 3 "Democratic veneer": one of the facets of economic neoliberalism

Faced with the realization that there are certain personal and cultural traits that facilitate political manipulation, instead of attacking only the consequences, one must question their main causes. Thus, once we understand how the fable of the "four lines of the Constitution" can instrumentalize certain characteristics (*hooligans*) to reach and remain in power, it is worth questioning what are the social reasons that originate or accentuate this phenomenon.

Certain that the integral examination of these issues requires bringing together transdisciplinary efforts (social anthropology, political science, law, economics, political philosophy, history, social psychology, sociology, etc.), a situation that would require taking advantage of more time and space than those available for this article, a variable analysis of this phenomenon is proposed, that is: economic neoliberalism.

This is one of the main reasons to explain a significant portion of the facts that occurred in Brazil in the 2019-2022 period. Far from being the only possible explanation, certainly, economic neoliberalism figures as one of the possible explanations for the anti-democratic acts that make up the fable of the "four lines of the Constitution". To this end, this

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<sup>15</sup> In the original: "The epistocratic council could veto bad elections, but also veto bad legislation, regulations, and executive orders." (Brennan, 2016, p. 493).

argument is developed, supported, for the most part, in the reflections presented by Rubens Casara (2021), in his recent book entitled "*Against neoliberal misery*".

From the preface, written by Christian Laval, the work makes explicit its position in relation to the fact that there is a version of neoliberalism that can perfectly accommodate itself to (neo)fascist methods and discourses to impose itself against left-wing forces and unions and, occasionally, can take up coups d'état, promote mass mobilizations, encouraging armed militias, even if it cannot be entirely confused with historical fascism (Casara, 2021).

However, a distinction must be made between the philosophical (classical) liberalism of English origin that, in a way, brought the ideas of what is currently understood as liberal democracy. Individual freedoms still remain valid and function as a proposal to try to limit the exercise of state power. However, economic liberalism, as a historical perspective of the late nineteenth century, was undoubtedly responsible for bringing several challenges to the construction of the democratic rule of law.

Under the (other) fable of *laissez-faire économique*, as well as free negotiation between the contracting parties, it was seen that civic virtues and democracy progressively lost space to greed and violence. With the collapse of the absolutized vision of free enterprise, exemplified by the stock market crisis of 1929 in the United States of America, liberalism had to "reinvent" itself and acquired the prefix *neo* agora to designate another type of rationality. This last facet, on a daily basis, has proved to be incompatible with democratic ideals, starting with the incompatibility of its market economy practices and environmental preservation, for example. In the midst of this whirlwind of events, what can be called the "neoliberal imaginary" has been shaped, whose maximum exponent lies in the idea of the "entrepreneur of himself". However, as Márcio Sotelo Felipe points out in the introduction to the aforementioned book, "neoliberal rationality separates the desirable and the undesirable" (Casara, 2021). For the rare cases of "individual success" there is always a "social ocean" of undesirables who wander on the margins of society (or adrift), and the practice of managing these undesirables does not is compatible with the fundamental rights and guarantees affirmed in the constitutional text of 1988.

Hence it is understood that the mentality of *hooligans* is much closer to a product of this state of affairs, socially constructed, than to a biological or cultural fact. Therefore, it is necessary to consider that democratic limits (especially fundamental rights and guarantees) are interpreted as obstacles to the efficiency of the State or to the satisfaction of the selfish interests of individuals (Casara, 2021). Therefore, the practice of anti-democratic acts is instrumentalized, without greater shame, for the satisfaction of certain individual interests (political and economic).

In certain cases, the neoliberal model of understanding and acting in the world involves decisions that authorize the concrete or symbolic death of those who were considered

undesirable. It is worth noting that this diffuse category often coincides with the markers of class, race, gender, etc. There are also specific issues that allow, under certain conditions, to consider an indigenous ethnicity, a riverside community or a remaining quilombo territory, for example, undesirable. Always varying according to the economic or political interests involved.

Within this imaginary, called by the author "neoliberal rationality", it is evident that economic neoliberalism does not have a fundamental and immutable essence, on the contrary, it presents a plasticity that allows adaptations and permanences depending on the context. Therefore, the terminological variability used by the author when describing this phenomenon sometimes called "ultra-authoritarian neoliberalism", sometimes called "neoliberalism tending to dedemocratize" (Casara, 2021), but all used with the same meaning.

Neoliberalism, as rationality, has a normativity and an imaginary that go beyond the limits of the market and the State, as the author points out. Much more than a mode of managing economic production, economic neoliberalism in the present time (de)constitutes subjectivities, crosses bodies and minds, forges an individual (private) model of being and acting that makes spaces unfeasible for the public, for the common. The transformation of space – as described by Casara (2021) – molded in the image and likeness of the market, is the strategy to encompass an economic policy that aspires to the management of the entire social body.

The author calls this the "ideological component of neoliberalism", which allows individual freedom to be made an excuse for the exercise of power in an authoritarian way, as well as to establish a "regime of truth" that is nourished by the so-called post-truth. In light of neoliberal rationality, there is no shame in assuming narratives that confirm social prejudices or provide useful data to the holders of economic power (Casara, 2021).

In this way, the multiple dimensions of the neoliberal phenomenon – composed of rationality, normativity, and the imaginary – depending on the circumstances, gradually or abruptly, leave aside the "varnish" or the "democratic appearance" to be replaced by a "new" neoliberalism, now with an ultra-authoritarian character or hyper-authoritarian neoliberalism (Casara, 2021). Under these conditions, there are few spaces left for the manifestation of popular sovereignty, otherwise, the masses – when not the mobs – start to play an important role within this order of ideas.

It is no coincidence that, in a time dominated by neoliberal economic rationality, people are "surreptitiously" harassed and harassed by algorithms with "anti-intellectualist postures" (Casara, 2021) and, in this way, discourses against science and universities – especially public ones – have formed true "anti-democratic consensus", with the support of the subjects of hegemonic public opinion. It is for this reason that the author maintains the impossibility of maintaining an authoritarian regime without investing in ignorance. Hence, once again the justification of the approximative theoretical effort undertaken in the previous section.

The junction of rationality with neoliberal economic normativity produces the neoliberal imaginary, so that, in the twenty-first century, inequality is naturalized and the responsibility for poverty ends up being attributed to the subject himself. Increasingly, there is the propaganda of a minimal State for social issues, guided by the canon of fiscal austerity. However, on the other hand, this same State, now giant to "save" the market economy – the same one that needed broad freedom – in the face of the cyclical crises caused by volatile capital, especially in the peripheries of capitalism.

However, the book's proposal is not satisfied with the description of the facts and their consequences. Casara (2021) suggests that, in order to overcome neoliberalism, it is necessary to develop alternatives capable of producing new images, new norms, and new practices, as well as radically changing the way in which individuals act in the world, without being seduced or co-opted. Undoubtedly, a necessary task, but difficult to carry out in practice.

The author's methodological option focuses on the rescue of the "principle of the common", which, by definition, is that which cannot be appropriated or negotiated. This is thought through the (re)creation of common spaces to build a rationality, a normativity and an imaginary of the common, of what is worth being built by and for all. Of what, because it is (in)common, becomes non-negotiable.

This is a collective (social) enterprise, which cannot be implemented from the top down or led by a so-called "Enlightenment vanguard", composed of *experts* who intend to "push history". However, the emergence and intensity of the anti-democratic attacks have required the adoption of responses that test the limits of democracy itself. Thus, in view of the dysfunction of certain guarantee institutions, such as the Federal Public Prosecutor's Office, and control institutions, such as the Federal Legislature, in order to contain the anti-democratic practices that intensified from 2019 onwards, it was up to the STF, without institutional provocation, to open inquiry No. 4,781/DF to determine the criminal responsibility of certain anti-democratic acts, known as the fake news inquiry. This argument will be developed in the third section.

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#### **4 A few lines about inquiry no. 4.781/DF: the limits of democracy**

If in the first section of this article the theoretical basis of analysis was demonstrated, in the second part the argument of economic neoliberalism was explored as one of the explanatory vectors for the current state of affairs, in this third section one of the institutional responses to the growth of anti-democratic acts is set in motion. Hate speech has been openly uttered since mid-2014, after the results of the presidential elections, without any effective practical accountability. However, they were accentuated (in frequency and intensity) from 2018 onwards, largely due to the political and social result of the presidential

impeachment process that took place in 2016.

"Coincidentally", a series of channels on a video viewing platform intensified their attacks against the STF and the National Congress. Subsequently, the focus was almost entirely directed to the Ministers of the STF, as well as against the institutional dignity of that court. It is a gratuitous and unmotivated, symbolic and concrete offensive, without any precedent in the Brazilian constitutional experience, which, in view of the aforementioned inaction and the growth of attacks, the STF opened *ex officio*<sup>16</sup> a criminal inquiry to determine the authorship and motivations of these anti-democratic acts.

The aforementioned inquiry was initiated by means of the Ordinance of the Office of the President of the Federal Supreme Court No. 69 of March 14, 2019<sup>17</sup>, at the time exercised by Justice Dias Toffoli, pursuant to article 43 of the Internal Regulations of the Federal Supreme Court (RISTF) (chapter VIII - On the Court's police), which regulates the investigation of criminal offenses at the headquarters or dependency of the STF. It should be noted that the rapporteurship was not distributed by lot (through the use of a computerized system, activated automatically, article 66, RISTF), but assigned to Justice Alexandre de Moraes, under the terms of the first regimental provision mentioned.

However, almost seven years have passed since the opening of this inquiry<sup>18</sup> without any provision for the presentation of the information piece and the offering of the complaint by the Attorney General of the Republic. This time period corresponds to approximately 40 times the regimental period of 60 days provided for the police authority to conclude the investigations, as provided for in article 230-C, RISTF. It is unlikely that the rapporteur of any criminal action, which will be directed to the same rapporteur of the investigation (article 74, RISTF), will determine the archiving in the event of non-compliance with the deadline for the instruction of the investigation (article 231, § 4, "e", RISTF).

Since the beginning of the inquisitorial work, some facts have caused perplexity: first, by the extensive expansion of the concept of seat or dependence of the court; second, by the appointment of a rapporteur without observing the rules of distribution; third, because of the novelty that the criminal investigation within the scope of the STF causes; fourth, by the confusion between the functions of investigating and judging the alleged criminal offenses. This last argument represents a frontal violation of the fundamental guarantee of judicial impartiality. Thus, it is worth asking whether it is possible to preserve democracy outside the limits of the democratic rule of law.

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<sup>16</sup> Since it is not possible to identify the applicant(s) due to the secrecy of justice, it is assumed that the investigation was opened *ex officio*.

<sup>17</sup> Whose constitutionality was declared, by majority vote, in the Allegation for Non-Compliance with a Fundamental Precept – ADPF No. 572/DF - 2020. On the other hand, see Mateus Côrte Vitória (2021).

<sup>18</sup> Until November 14, 2024, 2,437 days had elapsed, making a total of 6.67 years.

As a rule, in the context of an investigation, the fundamental guarantee of the adversarial process is deferred to ensure the collection of elements that identify the authorship and materiality of the infractions investigated. However, in view of the exceptionality and gravity, almost all acts are processed in secrecy of justice, not being disclosed even to the lawyers. Regarding this judicial investigation, the only document available in the institutional repository of the STF is a judicial warrant (Brasil, 2020), dated May 26, 2020, from which the documentary records of this topic are extracted.

First, however, it should be specified that the procedural issues, which govern the accusatory penal system, do not represent simple details. On the contrary, they are fundamental guarantees (materially constitutional) that aim to limit the scope of the state's punitive power, especially with regard to the ownership and exercise of the criminal investigation. The active participation of the rapporteur in the investigation and in the trial puts under suspicion not only the conditions of his impartiality, but the very "honorability of the Court", which it was intended to defend, and above all the institutional image of the Judiciary. Such conducts further fuel the narratives of *Brazilian hooligans* about the existence of a "court of exception" or the "dictatorship of the toga".

In practice, inquiry no. 4,781/DF has as its object, in addition to false or fraudulent news (*fake news*), to verify the reports of crimes, slanderous denunciations, threats and other related infractions that the STF has, as well as its Ministers and their families. Likewise, the inquiry proposes to verify the existence of financing schemes for this type of content and its mass dissemination on social networks, with the aim of harming or exposing the independence of the Judiciary to danger of injury and collapsing the democratic rule of law.

Anti-democratic acts are understood to be the set of practices that aim to embarrass or prevent the exercise of constitutional functions or unjustifiably place the fairness of the electoral process under suspicion. The "institutional attacks" and the propagation of "anti-democratic values", especially in the online environment, give rise to a discursive repertoire composed of "anti-minority" ideas, identity character (giving the idea that the right is a cohesive group); anti-communism, conspiracy content; support for the president; defense and apology for the dictatorship and defense of the removal of powers (STF, Legislative, etc.)" (Massuchin; Orso; Saleh, 2021, p. 51).

On the other hand, the fundamental right to manifest oneself critically in relation to constitutional powers (participation and political opposition) is not to be confused with the criminal conduct of hate speech. Since these anti-democratic practices seek to artificially create the figure of the "internal enemy", in order to subtract the basic rights for life in society (civil, political, economic, cultural rights, etc.).

Initially, 11 people were investigated in this survey, forming a very diverse group composed of entrepreneurs and digital influencers. For the alleged practice of the conducts

typified in articles 138 (slander), 139 (defamation), 140 (injury) and 288 (criminal association) of the Brazilian Penal Code of 1940, as well as in articles 18 (preventing the exercise of instituted powers), 22 (public propaganda of violent means to alter the political or social order), 23 (inciting subversion of the political or social order) and 26 (slander against the Presidents of the instituted powers) of Law 7.170/1983<sup>19</sup>.

The *modus operandi* of the criminal association uses the dissemination of dubious news – repeatedly, almost daily – disseminated through robots in closed groups in instant messaging applications (text messages, audio, photographs, videos, text files – editable or not – voice calls and videoconference). These practices are orchestrated by a brotherhood of businessmen who act in a veiled way, providing financial resources in the most varied ways.

The ongoing investigations are carried out with the participation of the Attorney General of the Republic, through the issuance of opinions and requests. The evidence found so far points to the existence and performance of a criminal association, called the "hate cabinet", by encouraging the break with institutional and democratic normality. The main objective of this association would be to produce a constitutional rupture through the amplification, at the national level, of offensive messages, slander and fake and hate news against numerous authorities or any people who represent some nuisance.

This "cabinet" coordinates nationally and regionally the propagation of these dubious and aggressive messages, counting, for this, on the interconnected performance of a significant number of profiles on social networks, which almost instantly replicate the messages of interest of the "cabinet of hate". In view of the situation narrated, it was necessary to carry out other diligences, including the exceptional removal of individual guarantees<sup>20</sup>, which could not be used as a true protective shield for the practice of illegal activities, nor do they work as an argument to prevent or reduce administrative, civil or criminal liability for criminal acts, under penalty of disrespect for the rule of law, according to the rapporteur of the inquiry.

This entire complex structure, apparently, is being financed by a group of businessmen calling itself "Brasil 200 Empresarial", in which its participants collaborate with each other to promote videos and materials containing offenses and questionable news, with the aim of destabilizing democratic institutions and the independence of the constituted powers.

For the determination of responsibilities, the removal of banking and tax secrecy

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<sup>19</sup> The national security law, Law No. 7,170, of December 14, 1983, was abrogated by Law No. 14,197, of September 1, 2021, which, among other things, other amendments, inserted in the Brazilian Penal Code title XII - Crimes against the democratic rule of law (articles 359-I to 359-P, CP/1940).

<sup>20</sup> However, it is worth questioning whether it is possible to "defend" the democratic rule of law outside the vicinity of the democratic rule of law itself. It is worth adding that the current permanence of this inquiry, in this way, causes a paradox in which the "sovereign" is simultaneously inside and outside the current constitutional order (Agamben, 2004). The temporal extension of these measures (it should be repeated for almost seven consecutive years) and their secrecy reverse the roles of the rule and the exception, according to which the so-called exceptional measures become the rule and the observance of fundamental rights and guarantees becomes the exception.

from all those investigated was ordered, in the period between July 2018 and April 2020. Thus, the aforementioned court order determined the search and seizure of computers, *tablets*, cell phones and other electronic devices that are in the possession of the investigated; the blocking of accounts on social networks, such as Facebook, Twitter and Instagram, of the investigated; the testimony of those investigated by the Federal Police.

In addition, it determined: the hearing of several Federal and State Deputies, allegedly involved with the criminal organization; the issuance of an official letter to social networks, so that all the content of users' posts is preserved; the preparation of necessary expert reports that demonstrate the possible practice of criminal offenses and, finally; the issuance of an official letter for the social network Twitter to provide the identification of some investigated users<sup>21</sup>.

It is, without a doubt, a singular moment in the Brazilian historical experience. Faced with a dysfunctional situation, in which not all institutions functioned, the STF was impelled to adopt unconventional practices, such as the installation of an *ex officio* investigation or the issuance of search and seizure warrants, based only on instant messages. There are, of course, areas of occasional uncertainty about these and other judicial practices adopted in the midst of this investigation.

But, on the other hand, one cannot generalize and print the figure of an authoritarian STF. Any excesses in the conduct of the rapporteur of the inquiry can and should be reviewed by the Plenary of the STF, which, eventually, may rectify certain deviations in the exercise of investigative power or, more precisely, in the constitutional function of checks and balances also performed by this Court.

The final balance, produced by the considerations, indicates that when dealing with fundamental rights and guarantees, as is the case of the right to liberty, for example, greater caution is required to relativize these historical civilizational achievements, especially by the Judiciary, which has the constitutional function of ensuring these fundamental freedoms. Still, in the case of the STF, the highest body of the Brazilian Judiciary, much more than precaution is required, since its judicial decisions are not subject to replacement by other review bodies.

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## 5 Conclusion

With the objective of analyzing some anti-democratic practices registered in contemporary Brazil, especially with regard to the period from 2019 to 2022, this article sought to diagnose one of the main misconceptions that still resonate in the Brazilian social imaginary: that in this period the temporary occupant of the Executive played within the "four lines of the

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<sup>21</sup> These are: @bolsoneas, @patriotas and @taoqueei (Brasil, 2020).

Constitution". This proposal seeks to contribute to the task of undoing some "misunderstandings" about the performance of the Federal Supreme Court in combating anti-democratic practices, exponentially accentuated in the period analyzed.

However, this article does not lend itself to the unconditional defense of all the positions and judicial decisions rendered in the context of inquiry no. 4,781/DF, still pending conclusion (after almost seven consecutive years). In view of this, documentary theoretical research combined with the technique of systematic literature review was used to substantiate the absolute incompatibility between a certain set of ideas and practices with the democratic rule of law.

It was then decided to divide this central objective into three specific objectives. First, there was the need to partially support a theory capable of explaining the socio-political conditions for events to lead to the current state of affairs. Through the theory of rational ignorance (Brennan, 2016), it was realized that there are some personal and cultural conditions that favor these behaviors. These characteristics, called *hooligans*, prevent two basic conditions for any idea of democracy: pluralism and the capacity for dialogue.

Continuing, it was understood that there is a conjunctural factor that also reinforces these conditions, which is economic neoliberalism. By creating the volatile category of "undesirables", almost always coinciding with the social markers of race, class and gender, for example, polarization and its instrumentalization are allowed, in favor of certain electoral and economic gains. Nowadays, classical liberalism has degenerated into ultraliberalism, creating an unstable environment that, in turn, favors the emergence of authoritarian outbursts of all kinds.

Finally, it ended with a concrete example of a judicial response to authoritarian practices, the aforementioned fake *news* inquiry (STF, n. 4.781/DF). Far from being ideal, it was the possible response to confront anti-democratic ideas and practices (still in progress), called the "four lines of the Constitution".

In conclusion, it should be repeated that the aforementioned inquiry offers some of the necessary institutional responses, but insufficient to completely overcome this fable. The rescue of the common (rationality, normativity and imaginary) reveals itself to be one of the possible paths for the (re)construction of the democratic state of law. Finally, if the "illness is serious", the "medicine must be bitter", but not to the point of "eliminating the patient".

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