

The Brazilian Civil Rights Framework for the Internet (or the virtual times of a postmodern law)

*O Marco Civil da Internet (ou o tempo virtual de uma
lei pós-moderna)*

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Abstract

the paper presents a critical perspective about the article “Le temps virtuel des lois postmodernes ou comment le droit se traite dans la société de l’information” (“The Virtual Time of Postmodern Laws, or How the Law is Processed in the Information Society”), published by the philosopher and jurist François Ost, with the purpose of conducting a case study through the Brazilian law “Marco Civil da Internet” (“Civil Rights Framework for the Internet”). The article analyzes the profound changes in the way the law came to be produced and interpreted, in the passage from the forms of writing and printing based on paper to the forms of text processing and communication based on computers and networks. The law known as “Marco Civil da Internet” (Law 12,965 / 2014) was used here as a validity test of the main elements of the text under examination, by means of illustrations and references published by the international media, especially after the diplomatic incidents arising from the revelations of the electronic monitoring of international telecommunications, conducted by the National Agency of Security (NSA) of the United States of America. The study concludes that Ost’s article, published even before the Internet massification, can be considered as a premonitory insight about the changes in the operation and reproduction of law in the postmodern society, in which the hierarchical and pyramidal understanding of law moves to a distributed and networked understanding and

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production of law. It also concludes that the paradigmatic law “Marco Civil da Internet” validates the propositions of the vanguardist article, by meeting the postmodern characteristics of a law as a network. Finally, it presents relations between the model of word processing of law and risk as deployments of the transformations that law is undergoing in the postmodern society.

Keywords: Brazilian Civil Rights Framework for the Internet; law as a network; legal word processing; legal risk.

Resumo

o trabalho apresenta uma perspectiva crítica do artigo “Le temps virtuel des lois postmodernes ou comment le droit se traite dans la société de l’information” (“O tempo virtual das leis pós-modernas ou como o Direito se trata na sociedade da informação”), publicado pelo filósofo e jurista François Ost, com o propósito de realizar um estudo de caso por meio da lei brasileira “Marco Civil da Internet”. O artigo analisa as profundas mudanças na forma que o Direito passou a ser produzido e interpretado na passagem das formas de escrita e impressão baseadas em papel para formas de processamento de texto e comunicação baseadas em computadores e redes. A lei conhecida como “Marco Civil” (Lei 12.965/2014) foi aqui utilizada como um teste de validade dos argumentos das ideias no artigo ora em análise, por meio de ilustrações e referências publicadas na mídia internacional, especialmente após os incidentes decorrentes das revelações de monitoramento eletrônico das telecomunicações internacionais, realizados pela Agência Nacional de Segurança (NSA) do governo dos Estados Unidos. Conclui-se que o texto do artigo, publicado antes mesmo da massificação da internet, pode ser considerado como premonitório quanto às transformações na operação e reprodução do Direito na sociedade pós-moderna, em que a compreensão hierárquica e piramidal do Direito passa a uma compreensão distribuída e em rede. Também se conclui que a paradigmática lei “Marco Civil da Internet” valida as proposições do artigo vanguardista, por atender às características pós-modernas de um Direito em rede. Por fim, apresentam-se relações entre o modelo de processamento de texto jurídico e o risco como desdobramentos das transformações que o Direito atravessa na sociedade pós-moderna.

Palavras-chave: *Direito em rede; Marco Civil da Internet; processamento de texto jurídico; risco jurídico.*

Introduction

This work pretends to present an interpretation – adapted to our days – of the main arguments exposed in the text “Le temps virtuel des lois postmodernes ou comment le droit se traite dans la société de l’information” (“The Virtual Time of Postmodern Laws, or How the Law is Processed in the Information Society”), published by the legal philosopher François Ost, in 1998. In his article, the author and professor of the Université Saint-Louis Bruxelles proposes an analogy for the changes on the production of law, in the emergence of the Information Society, as the changes from the hand writing of law on papers to the word processing of law in networked computers.

As an analytical/esthetic exercise, the numerous insights of the mentioned article will be alternated with linked references to the Brazilian law “Marco Civil da Internet” - “Civil Rights Framework for the Internet” (BRAZIL, 2014). This original Brazilian legislation will be used as a case of study for an illustration and a possible validity test of the conceptual framework¹ proposed by the Belgium author (OST, on-line)zzz. For this task, numerous references to news published by the international media will be used, as a verifiable form of social perception in a specific time, about the legislative and international context in which the “Marco Civil” was created.

The analyzed text was probably too much of a vanguardist concept to the time when it was published, in which it was “largely ignored by civil law scholars, and virtually unknown by common law scholars”, who in many ways were still not ready to see beyond the dominant paradigm of legal positivism (MARTIN-BARITEAU, 2014, p. 3). For a long time still to come, the premonitory insights manifested by François Ost will inspire many exploratory (and necessary) thinking about the innovative forms of producing and understanding law as a network, as exemplifies the also vanguardist “Marco Civil”.

¹ In order to achieve a better visualization of this critic exercise, a mind map of the text is available at: <<http://popplet.com/app/#/1918822>>.

The current text is a written materialization of a public presentation about the main subject, occurred in an event held at the Université de Montréal² in October 7th 2014, promoted by the “Centre de recherche de droit publique”³. This auspicious occasion had the presence of the author François Ost, who was able to appreciate and criticize the presentation, what brought some new questionings and elements that later became incorporated to the present article.

1 Law in the Information society – the “Marco Civil da Internet” in the networked law

The first and second part of the development are dedicated to the two main divisions of the mentioned article – which is much broader and deeper than the present analysis and should be read in its full content – more exactly, specific passages identified as more relevant for the purposes of the analysis. The last part analyses why the notion of risk may explain the malleability of the text became a characteristic of law in the word processing model proposed by François Ost.

1.1 Text editing – history time and virtual time

The author begins the text stating the unstable, ephemeral and aleatory process of the contemporary legal production as a banal fact. These characteristics are demonstrated by the legislative inflation, the programed text obsolescence and the acceleration of legal change, predicable consequences from which contemporary jurists feel a form of anxiety, yet they already got used to it, invoking a powerful image from Savatier (1951 apud OST, 1998, p. 423): “jurists of today draw their lines on the sands of moving institutions” (Our translation).

² A version with Portuguese subtitles is available at :< <https://youtu.be/39wLyxRkrQ>>. Access at: 13 June 2014.

³ The video with the presentation is available at: <<http://www.crdp.umontreal.ca/nouvelles/2014/12/01/cristiano-therrien-le-cadre-des-droits-civils-de-linternet-au-bresil/>>.

The ephemeral “sand writing” of legal texts, randomly covered by waves of political agendas, imposes everywhere a similar and unstable rhythm of contagious postmodern law, as in the Brazilian society, where more than four million new legal norms took place in the last twenty five years, in which more than a hundred sixty thousands of them in the federal level (INSTITUTO BRASILEIRO DE ALTOS ESTUDOS DE DIREITO PÚBLICO, 2013). In contrast, it still remains a certain generalized public opinion (not only in Brazil) that pictures legislative processes as too slow to debate and decide the many “urgent legislative matters” that need to become new laws as fast as possible, in order to answer the anxieties and urgencies of society.

Every legal subject seems urgent, and urgency becomes permanent and seem to be everywhere. What was supposed to be transitory becomes habitual, the transitory is now and normal. Law is constantly in transit, in movement, in a run. Running towards an urgent subversion of law production, where change overrides stability, where the instantaneous discharges duration. The sense of temporality becomes contingent, variable, radically relative, and almost volatile.

As an evidence of this temporality, a very paradigmatic law was approved by the Brazilian congress – the law 12.965/2014 has the official nickname “Marco Civil da Internet”, what could be translated as “Brazilian Civil Rights Framework for the Internet” – after many years under a “slow” decision processing that suddenly became contingent, in an almost volatile way, due to international conditions that changed its context. In an exceptional fast run, this unusual law was two days later instantaneously signed by the Brazilian president, at the event “NETmundial – Global Multistakeholder Meeting on the Future of Internet Governance” (FGV DIREITO RIO, 2014), in front of representatives from dozens of countries, who received English versions of the text from the Brazilian government, with the supposed purpose of helping other nations to draft similar laws about Internet use, based on this iconic model of Internet law that immediately circulated all over the world (FÁVERO, 2014).

Juridical orders all over the world change, as the so called “information society” inspire new models of analysis based on information technologies. The new computer based “word processing” model overcomes the previous paper based manual writing model. The legal production of text editing becomes circular, reversible, unstable and virtual, as in the metaphor proposed by Morand: a chaotic and unpredictable cloud model (teleocracy) replaces the former mechanical and predictable clock model (nomocracy) of legal production, which was recognized as linear, oriented, and reasonable stable (historical).

The most relevant legal propositions in Brazil usually start in a very predictable (clockwise) way, before being converted in the networked legislative process. Even so, the law 12.965 was born in the cloud-teleocratic model. Based on a draft elaborated by the Ministry of Justice and legal academics, the first proposition faced two phases of public debate in the years of 2009 and 2010, using a collaborative web platform that received massive contributions to the text from multiple stakeholders, which substantially modified the original text through this collective and online “word processing” process (LE MOS, 2015). The final form of this virtual law development was fully accepted by the Brazilian federal government and sent to the Brazilian national congress in August, 2011.

The historical model of legal writing presupposes the existence of an ideal/model author invested of legitimate power, who will present a new and undeniable material proposition, a message with a fixed and finished character, properly dated and localized, supported by an institution, then to become publicly signed and imposed to public domain. Oppositely from that view, the legislative process works more and more under a logic of “text processing”, operated by an undefined number of authors from unexpected origins, who will multiply successive versions/propositions in a copy/paste practice of reassembling more used pieces than new elements of text, generating a permanent rewriting of (hyper) text, a perpetual gestation of working papers in progress, available to be reshaped at any time.

The plasticity of legal text in the process of “word/text processing”, allowed the “Marco Civil” to be molded as soft clay in many different shapes during its legislative progression in Brazilian legislative chambers, inserting, moving, and deleting dozens of amendments that substantively transformed the original collective text, as an update of a famous quote from Antoine Lavoisier: “nothing is lost, nothing is created, everything is copy & pasted”. Nevertheless, a “Deus ex machina” event took place to abruptly solve the oppositions and dead-locks of the proposition in the Brazilian national congress: the Snowden revelations about the NSA monitoring of the Brazilian president and ministers caused a catalytic effect to accelerate the switching of this legal document, destined to serve as a political “patch” to correct flawed national Internet laws (BORGER, 2014). In many ways, the “Marco Civil” became less an ethical and political deliberation on value choices, to turn more to an adaptation of the strategic decision making achieved through a hard learning process.

The polycentric normative production accepts a writing without a single author, through information technologies that allow a networked writing and an interactive participation, constituting massive datasets of legal information that confound the boundaries of writing and reading. In the network model of interactive legal information, there aren't distinct modules of interpretation-application-individualization of law, rather a participation in the contingent rewriting, when the censorship of superior principles depends on the interests involved, and where the roles of sender/receiver of law are easily exchanged, subverting the former centralized structures.

The subversion of the distinctions of sender/receiver, author/reader, and legislator/addressee may explain why a legislation of such postmodern content as the “Marco Civil” – of consistent defence of net neutrality, freedom of expression and online privacy – would come from a peripheral hub of international law/economy as Brazil, and not from the usual main gateways of legal innovation as the European Union or the US. But then again, the blurred and reversible distinctions in the network also allow that the production of law serves as a signal targeted to self-balance the network nodes, exactly as the case of the law 12,965/2014:

the unofficial English translation of a Brazilian law, distributed in an international event was intended to maximize and enable validation to it in the dilated moment of the NSA reports (ARAGÃO, 2014).

The dilated present, the timing of the network is the simultaneity, dealing with a multilateralism of reports flowing from innumerable possible routes (or routers?) of information, operating under the anonymity of all-round communication. In the virtual time of “word processing” of legal information, there are no acts or events, but a flow of almost-reflex adjustments in a multitude of interaction points, where we no longer find a “place” above the text, in front of the text, or behind the text, or under the text, but “in” the text, as a part of the arcane of the network.

The network make the notions of past, present and future lose pertinence, as those refer to duration in a new legal context of instantaneity, interaction and synchrony. In this sense, it's worth to point to the turning moment of the Brazilian Civil Rights Framework for the Internet: for a long time, this legal proposition was not considered a priority, with a low political commitment, so it was kept practically in a dormant legislative state; after the NSA scandal, instantaneously it became interactive and synchronized with the whole political agenda (WATTS, 2013).

2. Law instrumentalization

In the second part of the text, François Ost continues his analysis on the instrumentalization of law, exposing one of its most postmodern new forms of normativity: regulation. This increasing legal modality is quite incoherent with the classical form of constitutional state, which presupposes an authoritarian and centralized model of pyramidal comprehension of law, with clear distinctions (legal and socioeconomical, public and private) and separations (civil society and state, national and international, state powers). Supplanting the former pyramidal matrix, the network is turning these distinctions obsolete. Regulation, could be said, is related to the normative production as the word processing is related do the production of information.

If not much obsolete, the interpenetration between public/private and legal/socioeconomic and national/international serves as a main core of regulation, as a mechanism developed to maintain or restore the balance of a system threatened by disturbances. For the purposes of this case study, the “Marco Civil” may be considered as a good example of this interpenetration, as this law empowers two Brazilian institutions composed of private and public entities, which frequently only agree in disagreeing – the Internet Management Committee (CGI.br) and ANATEL, the national telecommunications agency – and both must be consulted about the regulating decree and application of this law in the complex trenches of technology that governments seem always be falling in a lag disadvantage towards the telecom market (BRADLEY, COOPER, 2014).

As independent administrative authorities assume the responsibility of delicate operations to balance complementary and competing powers in society through self-regulation, it evidences the erosion of the symbolic power of law. The transference of legal power/production to these hybrid institutions comes from the imperative of socio-economic efficiency, as the managerial rationality arises as a major parameter to build a harmony of interests and create a soft consensus in law, particularly when dealing with highly specialized and unstable subjects.

Information Technology serves well for the example, as a specialized area of human knowledge and activity where frequently is pleaded the abstinence of the pyramidal mode of state power, in order to leave the network model assume an eased, decentralized and adaptive form of self-regulation. Similar argument was used by the powerful lobby of telecommunication companies to prevent the new “Internet Constitution” from establishing net neutrality as a fundamental right of Brazilian citizens (COLLINS, 2014). Despite the undeniable display of strength of this lobby, the accumulated experience of self-generated and self-controlled regulations in Brazilian telecommunications assisted the federal government in taking a rare step back from the self-interested-regulation-guidance to another legal approach, closer to the welfare state that exists in the political agenda but never took place in the country.

The welfare state may face an evident crisis, yet its main public policies – full employment, economic development, education, health, culture, housing, environment protection etc. – still are of general interest, even if now their pretensions are more modest and indirectly subject of regulations. Legislation becomes programmatic, bounded to a gradual achievement of its established objectives, and plasticity of law is modulated by the resistance of facts.

The Brazilian Civil Rights Framework for the Internet, in many ways, can be considered an example of programmatic legislation, because a great deal of its content is a beautiful declaration of well intended principles and objectives for Internet users and providers, but mostly declarative and with effects of unmeasurable plasticity. Despite of the uncertain practical consequences, this postmodern law maintained direct coherence with other initiatives in international law, as the United Nations resolution proposed at the time by Brazilian and German governments, as a legitimate response to the exposition of the USA spying of electronic international communications (BBC NEWS, 2014).

Legitimacy plays a big part in public policies, yet it used to come from axiological, procedural and symbolical parameters, now depends on performance: legislation legitimacy becomes contingent and relative to numerical and quantitative results/parameters that are able to demonstrated, despite how difficult and improbable the realization of a public policy can be really done. Under this instrumental and pragmatic perspective, Ost points that the process of formation and application of law, from discontinuous and linear, becomes continuous and cybernetic.

At a first sight, the whole cybernetic process of the Law 12,965/2014 seems very disruptive, as well its continuity remains full of expectations as uncertainties. The Brazilian minister of justice declared the “Marco civil” as “a bill of rights and a new set of relations that debunk various preconceptions”, quite innovative “in terms of its content, but of its method as well”, what puts its performance/legitimacy in the spot light to be closely evaluated (PINHEIRO, 2014). But then, what kind of performance can be expected of that new kind of paradigmatic law,

which should serve as a base to public policies? These answers are not yet visible or are yet to be created.

The law in the postmodern paradigm of the network isn't created as before: the law no longer is an event or an act, but a process and a program; the law doesn't work anymore through dispositions, but through provisions; the law doesn't establish institutions, but elaborates scenarios; the law doesn't impose rules anymore, but opens options. What the law lost from its security and normativity, the law compensates in gains of adaptability and reversibility.

No law is perfect and it also applies to the "Brazil's magna carta for the web", as many law scholars and Internet activists fairly criticize it as a debatable program, based on elastic provisions, in a changing scenario, with many open options (THE ECONOMIST, 2014). Much will depend of the "adaptability stress test" that the law will be exposed in the Judiciary, peculiarly in a country that still doesn't have any relevant legislation of personal data protection – even if the Marco Civil received a very limited inception of a data protection's framework – there are many reasons to fear that this law will backfire, reverting the law to obtain access to data navigation of Internet users. This whole situation puts this law under the permanent obligation of (p)review.

The obligation to know, preview and review the law – a patient and ongoing learning process of trial and error in the writing and rewriting the law – is a cyclical task for law makers who have to manage the potential risks of their decisions. The principles of precaution and prevention many times will include uncertain risks and unpredictable eventualities, putting the probabilistic logic at the limit. The logic of legal risk management have to be used by legislators to justify their initiatives, applying a test of proportionality that brings them back to modesty: every law is an experience as much social as legal.

Maybe depending of what will become of the experimental law "Marco Civil" in the next years, other countries could adhere to similar principles and objectives adopted in Brazilian legislation, very distinct from the model of Internet governance of the U.S government (MEACHAN,

2014). The “Edward Snowden episode” opened an international dispute where the law is the message and as the message is the media, so law is also media. The next movements of the Marco Civil necessarily include a strong obligation to negotiate at domestic and international instances, adjusting the plasticity of the text to the context of change, as a democratic experience of Internet regulation (ZANATTA, 2015).

The concept of participative administration and its obligations to consult and negotiate with the partners of interactive communication, comes from the welfare state off the sixties and seventies of the last century, in order to improve and/or better justify the acts of the state, as well to decrease the resistance of its addressees. As a reflexive movement of horizontality of the network, the participation and subsidiarity principles concur to the decentralization of public power in the growing relationship/transfer of management to the private sector.

A hard dispute with/within the corporate private sector will be the first fireproof test of the “Internet bill”, potentially as much fierce as the one than that took place during the six-months standoff in the lower house of congress, leaded by major tech companies (Google and Facebook included) and Brazilian telecom operators (EDGERTON, 2014). The winning interpretation of the net neutrality declared by the “Marco Civil” is yet to be told. Between the many factors will decide the outcome of this law, it worth highlighting the political ambience of the Brazilian legislative chambers, under a permanent rhythm of extensive negotiation, rearrangement and improvisation.

Postmodern law may appear as having lost the mastery of rhythm and control of its time, as its programmed temporality is dedicated to improvisation, and its cybernetic procedure self-adjustments behave as *ad hoc* reactions. In the abstinence of a methodology of change, legal information appear as products of circumstance, as pragmatic responses to immediate priorities, exposing successions of changes of weak amplitude. This regime qualifies as a “provisional plastic” that the legislator cares as a transitory way which keeps his relevance – since a permanent text would weak his mastery on the subject – leading to

successive extensions and periodic corrections, turning the “provisional permanent”. The legislative orientations are subjected to unexpected changes of trajectory, by reasons not always clear (as the will of ministers), giving place to the “theory of catastrophes”, discontinuous transitions, and untimely regime shifts.

The plasticity of law as/in network was put to an elasticity point in the Brazilian Internet bill of rights, as it was approved just some hours before the opening ceremony of NetMundial, a global stage where the law was finally signed by the Brazilian president (LEHMAN, 2014). It may look a last moment legislative decision, however in this case the apparent impasse was caused by a frenetic dispute of corporatist actors of normative production, which is usually reserved to the keepers of privileged access/password to the offices of law production that works in the closed circuit of Brazilian chambers. Nonetheless, in the last hours came the “untimely regime shift” associated to a media logic of imagery and urgency, and then Marco Civil climbed to a higher stage of the State-spectacle, where what matters is to present an image of action, a spectacle of responsibility (and power) for an informed public about the need of an Internet Bill of Rights to correct the excesses of governments (SNOWDEN, 2015). The whole imagery of the Marco Civil caught the global attention in a very propitious media *momentum* and *locus* to propagate this law in the networks as an example for a possible global *Magna Carta* to protect and expand web rights of an open free and universal Internet (BERNERS-LEE, 2014). This may explain why the Marco Civil da Internet probably became the most internationally mediatized and worldly debated law in Brazilian history.

The decision maker became a media person, who needs to show as someone capable of reactions in (almost) real time that hit quick and hard (the imaginations), visible in their niches, looking for a profitable hit in the necessary media audience. The decision maker sets in motion a new circuit of legitimacy of the normative production, based on the need of creation of laws, orchestrated by conditioning techniques of public opinion. In order to do that, many tools are at the disposal of this decision/law maker: media urgency; improvised public policies; reversible time of

experimentation; contingent time of negotiation; virtual time of circulation of law in network etc. Are there any limits to this precariousness and mobility?

One year after Brazil's Internet Law enactment, the precariousness and legal uncertainty that surrounded any Brazilian legal decisions about Internet subjects have improved substantially in the opposite direction, but this legal mobility is still more followed by the higher courts than in the lower ones (LEMOS, 2015). Even so, maybe the major legal impact of this Brazilian law was external to the country, an opportunity that the Brazilian legislator found to access a broader audience to his game and used most of the above mentioned tools at disposal. Brazilian government used the Marco Civil to propose a "multilateral civil right framework" for global Internet at the United Nations, establishing privacy standards and human rights for a free and open web, proposition that still maintain wide international support, even with the normalisation of diplomatic relations between Brazil and the U.S. after Edward Snowden's revelations (BEVINS, 2015).

For the similarity and conformity between the key ideas of "The Virtual Time of Postmodern Laws, or How the Law is Processed in the Information Society", a powerful insight from François Ost that would widespread in further works (OST, KERCHOVE, 2002), and the international perceptions and repercussions of the Brazilian Law "Marco Civil da Internet", one of the most networked law of the postmodern times, this analysis finds a positive validation as the result of this case study proposal. Next, some reflections about the relations between the model of word processing of law and risk as deployments of the transformations that law is undergoing in the postmodern society.

3 Law, risk and word processing model

Why, in environments characteristic of networks, does law tend to look like malleable texts, with statements that take on meanings that seem to be constantly changing?

The notion of risk may be a useful hypothesis when seeking an answer to this question. We can even consider that perceived or alleged risk is a major factor with respect to justifying and legitimizing laws. Seeing laws as means of managing perceived risk can also help to explain the way they are formulated.

In the postmodern world, risk is a major component in the reconfiguration of deliberative processes associated with the production of law. Different and converging perceptions of risks, their existence and their seriousness contribute to constructing the justifications on which legal frameworks are based.

Anticipation, management and distribution of risk are among the major concerns of legal systems.

Ulrich Beck (2011, p. 11) explained that “Modern society has become a risk society in the sense that it is increasingly occupied with debating, preventing and managing risks that it itself has produced.” If we accept this reasoning, it follows that law can be seen in light of the risks that tend to justify or legitimize it.

Moreover, risk plays a major role in decision processes concerning a largely open future that has been freed of beliefs, traditions and fate. This is why François Ewald and Denis Kessler (2000, p. 55) have written that there is “a requirement that modern policy be thought about in terms of optimal risk distribution” (our translation).

In so far as risk appears as the guiding principle of the transformations that law is undergoing in the postmodern world, it follows that regulation, especially regulation flowing from law, is justified largely by perceived risks with respect to the consequences of poorly governed use of things or inadequately managed relations among those to whom the law applies.

Owing to its contingent nature, risk depends on an infinite variety of perceptions. It proves to be a notion that meshes extremely well with what is usually associated with post-modernity.

Since it depends on fluctuating perceptions, when it is one of the justifications for the legitimacy of legal frameworks, risk requires laws be stated in specific ways.

Law expressed in “word processing” form corresponds very well to a need to read legislation as entailing rules and principles that can provide responses to perceived risks.

Risk is a construction. It is a reflection of the demands of interest groups calling for legislative amendments, or for the law to remain unchanged, or for rules to be interpreted in different ways.

Of course, there is no such thing as risk in itself. There are many kinds of risks and, in fact, to treat risk as a foundation of law is to identify what is perceived, presented or claimed as a risk at a given time and in a given social context.

We need only look at public debate to see that virtually all of the stakeholders on all sides explicitly or implicitly refer to risks to justify their positions.

However, as a social construction, risk will be evaluated differently depending on the era and cultural, political and social context. Ideas about the dangers and benefits of technologies contribute to constructing collective perceptions of their risks and benefits.

These perceptions vary over time: they require a way of stating rules that reflects their fluctuating nature.

Law and other normativities flow largely from these variable perceptions reflecting societal and historical contexts. There is thus nothing surprising in the fact that the law is increasingly expressed in ways that make it possible for there to be changing readings.

Risk, in so far as it contributes to the construction of reasoning underlying requests to establish legal frameworks, requires law that is formulated in a way that can handle fluctuating perceptions of the risks that it is supposed to help manage. It thus requires that law be stated in accordance with the conditions associated with word processing.

Conclusion

The present text intended to realize a critical perspective about the article – bringing it to the present times – “Le temps virtuel des lois postmodernes ou comment le droit se traite dans la société de l’information” (“The Virtual Time of Postmodern Laws, or How the Law is Processed in the Information Society”), published by the philosopher and jurist François Ost. This article analyzes the profound changes in the way the law came to be produced and interpreted, in the passage from the forms of writing and printing based on paper to the forms of text processing and communication based on computers and networks.

In order to conduct a case study and a provide validation test to the text under examination, illustrations and references published by the international media about the Brazilian law 12.965/2014, also known as “Marco Civil da Internet” (“Civil Rights Framework for the Internet”) were used here as a parameter in the search of elements of identification. Numerous news references were used in the present text, which demonstrate the dimension that the “Marco Civil da Internet” took in the international media, probably the most publicized Brazilian law in the international, especially due to the diplomatic incidents arising from the revelations of the electronic monitoring of international telecommunications, conducted by the National Agency of Security (NSA) of the United States of America.

The study concluded that “The Virtual Time of Postmodern Laws, or How the Law is Processed in the Information Society”, published even before the Internet massification in civil society, can be considered as a premonitory insight about the changes in the operation and reproduction of law in the postmodern society, in which the hierarchical and pyramidal understanding of law moves to a distributed and networked understanding and production of law. It also concludes that the paradigmatic law “Marco Civil da Internet” validates the propositions of the vanguardist article, by meeting the postmodern characteristics of a law as a network. Finally, it presented relations between the model of word processing of law and

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