

Université de Montréal

**Legal analysis of the use of fake news in the political process
between 2018 and 2021**

By

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Abstract

The objective of this master's thesis is to analyze the influence of fake news on the Brazilian political scene, more specifically in the context of the 2018 elections and the Jair Bolsonaro government between 2019 and 2021 in its management of popularity and its administration of the Covid-19 pandemic. The analysis will be focused on the response of the Brazilian legal system while using the Canadian legal system as a point of comparison. The text also focuses on how fake news works and how it was used in the context of the 2018 elections and later during Jair Messias Bolsonaro's government until August 2021, when this study was completed. In addition to factual analysis, this thesis will present the legal elements that aim to protect the privacy, security, transparency, use and responsibility of private data information, as well as the devices that can be used to combat the use of false news to manipulate the masses. This will be analyzed in the scenario of electoral campaigns, official government announcements and public policies in the Brazilian context and will be compared to the Canadian context. Furthermore, combined approaches from science and literature will be explored to reflect on the normative concerns posed by global challenges and local risks caused by mass manipulation, invasion of privacy, radicalization, use of personal data and data collection. Conclusively, we will verify whether the current instruments are efficient and sufficient to prevent, curb and punish the aforementioned practices. The results will reveal that even if the current instruments are efficient, they are not enough and need to be complemented with more flexible laws that are closer to the digital reality, with public policies and digital education for the population in general.

Keywords: Fake News, International politics, Radicalization, Mass manipulation, Brazilian data protection law, Canadian data protection law, Bolsonaro Government, Hate cabinet.

Résumé

L'objectif de ce mémoire de maîtrise est d'analyser l'influence des fausses nouvelles sur la scène politique brésilienne, plus spécifiquement dans le contexte des élections de 2018 et du gouvernement de Jair Bolsonaro entre 2019 et 2021 dans sa gestion de la popularité et son administration de la pandémie Covid-19. L'analyse sera axée sur la réponse du système juridique brésilien tout en utilisant le système juridique canadien comme élément de comparaison. Le texte se concentre également sur le fonctionnement des fausses nouvelles et la manière dont elles ont été utilisées dans le contexte des élections de 2018 et, plus tard, pendant le gouvernement de Jair Messias Bolsonaro jusqu'en août 2021, date à laquelle cette étude aura été achevée. En plus de l'analyse factuelle, cette thèse présentera les éléments juridiques qui visent à protéger la vie privée, la sécurité, la transparence, l'utilisation et la responsabilité des informations de données privées, ainsi que les dispositifs qui peuvent être utilisés pour lutter contre l'utilisation de fausses nouvelles pour manipuler les masses. Ces éléments seront analysés dans le scénario des campagnes électorales, des annonces officielles du gouvernement et des politiques publiques dans le contexte brésilien et seront comparés au contexte canadien. En outre, des approches combinées de la science et de la littérature seront explorées pour réfléchir aux préoccupations normatives posées par les défis mondiaux et les risques locaux causés par la manipulation de masse, l'invasion de la vie privée, la radicalisation, l'utilisation des données personnelles et la collecte de données. En conclusion, nous vérifierons si les instruments actuels sont efficaces et suffisants pour prévenir, freiner et punir les pratiques susmentionnées. Les résultats révéleront que même si les instruments actuels sont efficaces, ils ne sont pas suffisants et doivent être complétés par des lois plus flexibles et plus proches de la réalité numérique, par des politiques générales et par l'éducation numérique de la population en général.

Mots-clés : Fausses nouvelles, Politique internationale, Radicalisation, Manipulation de masse, Loi brésilienne sur la protection des données, Loi canadienne sur la protection des données, Gouvernement Bolsonaro, Cabinet haineux.

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List of Acronyms

AI Artificial Intelligence

AIQ - AggregateIQ

ARADHPBPPI - Act respecting access to documents held by public bodies and the protection of personal information

CA Cambridge Analytica

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CEO Chief Executive Officer

CIA Confidentiality, Integrity and Availability

CIO Chief Information Officer

CRIM Centre de recherche informatique de Montréal

DNA Deoxyribonucleic acid

GDPR - General Data Protection Regulation

ICF Intelligent Community Forum

LAI Lei de Acesso à Informação

LDA Loi sur le droit d'auteur

LGBTQIA+ Lesbian, Gay, Bisexual, Transgender, Transvestite, Queer, Asexual, and others

LGPD Lei Geral de Proteção de Dados

MDPI Multidisciplinary Digital Publishing Institute

NASA National Aeronautics and Space Administration

NDA Non-Disclosure Agreements

NGO Non-Governmental Organization

PDF Portable Document Format

PIA Privacy Impact Assessments

PIPEDA Personal Information Protection and Electronic Document Act

PPP Public-private partnership

UdeM Université de Montréal

URL Uniform Resource Locator

US United States

UK United Kingdom

STE Superior Tribunal Eleitoral (Superior Electoral Court)

STF Suprema Corte Federal (Federal Supreme Court)

VPN Virtual Private Networks

Introduction

This research aims to analyze the use of fake news to influence Brazilian public opinion. To this end, we will use the example of the 2018 Brazilian elections, when candidate Jair Bolsonaro, against all odds, managed to get elected president of a country as large as Brazil and the example of the Bolsonaro government's behavior during the Covid-19 pandemic.

This introduction gives the main objectives, questions, hypotheses, and methods involved in the thesis, as an introduction should. However, it also contains a lot of explanation about concepts and narration of factual situations, as this is a complex theme, relatively new and intimately connected to daily facts, thus we feel the need to make it crystal clear to the eventual reader which reality the Brazilian and Canadian legal systems should address.

This master's thesis establishes more specific and attainable objectives, while intending to respect appropriate limits and possible capabilities¹:

- Analyze the aspects and construction of fake news;
- Summarize the applicable legislation related to the specific cases;
- Synthesize well-located scenarios and socio-legal concerns for manipulation practices;
- Discuss possible factors and contributions to the legal framework for data protection;

After all the objectives are aligned, we will try to answer the general research question²:

- After understanding the role and function of fake news during the 2018 basilar election and in the Bolsonaro Government between 2019 and 2021, can we say that current legal solutions are sufficient to avoid and/or reduce the losses arising from this practice?

¹ Brian PALTRIDGE, *Thesis and dissertation writing: an examination of published advice and actual practice*. Department of Linguistics and Applied Linguistics, The University of Melbourne, Australia, Victoria 3010, (2001).

² Hugh G. GAUCH Jr, Hugh G. GAUCH, *Scientific Method in Practice*, Cambridge University Press, (2003), Available in : <https://books.google.ca/books?id=iVkugqNG9dAC&lpg=PA1&ots=1T1SxUPjTL&dq=scientific%20methodology%20in%20master%20thesis&lr&hl=pt-BR&pg=PR4#v=onepage&q&f=false>.

In the interest of answering the general question, some specific questions needed to be extracted to pursue the purpose of this thesis:

- What is and how does Fake News work?
- How does Mass Manipulation occur?
- What existing legal elements in data protection and dissemination could be used to prevent or stop the spread of fake news?

Beyond the delimitations of this analysis, it is necessary to point out why we chose this specific field of study. Our interest in the subject started to develop in the beginning of the 2018 electoral campaign and stemmed from the rapid and improbable growth in the polls of candidate Jair Messias Bolsonaro and the radicalization of the Brazilian population. We sought to understand how this phenomenon happened and how the continued use of the infamous office of hate³ was able to maintain a minimum percentage between 20% and 30% of voters loyal to governing agendas⁴.

Our objective is to verify if the use of an extremely comprehensive database such as the ones some social networks have, like Facebook and Instagram, can offer enough information to build psychological profiles capable of aggregating groups of people with similar reasoning formation logic. If so, we want to verify the possibility to create propaganda and fake news capable of radicalizing a group of people that would initially be more inclined to direct their opinions and accept radical changes in the sociopolitical framework.

To do so, we will analyze facts, doctrine and jurisprudence present during this specific context of Brazilian governance; a historical moment in which there are suspicions that a group of people organized and used mass manipulation and spreading of fake news for a specific purpose.

A few months before the elections, Facebook admitted the theft of thousands of data points from Brazilian accounts, a fact remarkably similar to what had happened a few months before

³ Name given by the press to the organized system set up with the sole objective of producing and disseminating fake news. This theme will be discussed more extensively throughout this thesis.

⁴ PODER360, « Rejeição a Bolsonaro e ao governo ainda é recorde, mas taxas param de aumentar Trabalho pessoal do presidente é ruim ou péssimo para 56%; desaprovação ao governo é de 62%», PODER360, 21.jul. (2021), Online:<<https://www.poder360.com.br/poderdata/rejeicao-a-bolsonaro-e-ao-governo-ainda-e-recorde-mas-taxas-param-de-aumentar/>> (Site consulted on August 20, 2021).

Donald Trump's election in the United States. The similarities between the ideological profiles of the two candidates were also widely publicized in the media.⁵

In fact, the similarities between the Trump and Bolsonaro campaigns are striking. The Brazilian press speculates that these similarities are due to the closeness of businessman Steve Bannon to the family of the current president during the 2018 electoral campaign, which extended after the elections⁶. Even though the president denies⁷ that there was direct help from the right-wing businessman, Bolsonaro's son posted pictures on social networks saying that he, Bannon, "was willing to help". Furthermore, there are various statements of Bannon praising the Brazilian president.⁸

After being elected, the Bolsonaro government continued using the so-called "cabinet of hate" as an essential tool to maintain its popularity, and avoid an impeachment that was already being considered since the first year of government following several crime allegations. However, nowadays the Brazilian Congress has more than 100 requests for impeachment, aggravated by the management of the pandemic that has dealt a solid blow to Bolsonaro's popularity. In this scenario, manipulating public opinion is no longer a matter of vanity but something vital.

To better understand this process, it is necessary to recall the world events that were driven by fake news. Firstly, we will talk about the US electoral process that elected Trump in 2016.

Several fake news stories about the US presidential election had more reach on Facebook, compared to the top election stories from 19 primary news sources, such as the "New York Times," the "Washington Post," and NBC News. That was the result of released a BuzzFeed News analysis.

⁵ Roberto Leiser BARONAS and Samuel PONSONI, «Bolsonaro e Trump: (des)semelhanças enunciativas / Bolsonaro and Trump: enunciativa (dis)similarities», Websensors, (2019), Online: <<http://websensors.net.br/seer/index.php/guavira/article/view/735/518>>. (Site consulted on August 20, 2021)

⁶ João FILHO, «Nova visita de Eduardo Bolsonaro a Bannon escancarou: vai ter tumulto nas eleições de 2022. Não há mais dúvida sobre qual será a tática de Bolsonaro: a mesma usada por Trump. 03 foi aos EUA aprender tudinho», 14 Ago. (2021), The Intercept. Online: <<https://theintercept.com/2021/08/15/eduardo-bolsonaro-bannon-trump-eleicoes-fraude/>>. (Site consulted on August 20, 2021).

⁷ Associated Press. «Brazil's far-right presidential candidate denies links to Steve Bannon after son's claims Son of frontrunner Jair Bolsonaro has been pictured with the former Trump strategist and said he offered assistance», The Guardian, 12. oct. (2018), Online: <<https://www.theguardian.com/world/2018/oct/11/brazil-steve-bannon-jair-bolsonaro>>. (Site consulted on August 20, 2021).

⁸ Tom PHILLIPS, «Rival's advert plays up Jair Bolsonaro's links with Steve Bannon. Fernando Haddad flags ties after populist's son boasted of meeting ex-Breitbart chief». The Guardian. 17. Oct. (2018), Online: <<https://www.theguardian.com/world/2018/oct/17/rivals-advert-points-up-jair-bolsonaros-links-with-steve-bannon>>. (Site consulted on August 20, 2021).

In the last three months of the campaign, 20 election-related fake stories from blogs as well as sites claiming to be informative generated 8.711 million shares, reactions, and comments on Facebook.⁹

The two fake news stories that resonated the most were "Wikileaks confirms Clinton sold weapons to Islamic State" and "Pope Francis shocks the world and supports Donald Trump."¹⁰ Of the 20 top-performing fake news stories analyzed, only three were not pro-Donald Trump or against Hillary Clinton. The only fake news stories that went viral and were against Trump's interests were a false quote from his vice president, Mike Pence, about first lady Michelle Obama; the untrue information that Ireland would be receiving "American refugees" fleeing Trump and about the false statement by artist RuPaul that the Republican had touched him. A Facebook spokesperson told BuzzFeed News reporting that the top news stories do not reflect overall engagement on the platform. He explained that some news stories are considered long-tail (a term used for news generating employment over a long period). "It may seem like the top stories get much traction, but they represent a tiny fraction of the total."

As far as fake news is concerned, the concept dates back to antiquity. There are narratives that Roman emperors used fake news to demonize foreigners in order to gain support from the native population.¹¹ Such an expression also appears in Nazism when the government of Adolf Hitler spread false ideas using the news to win popular support. In view of this, it is clear that this informational practice has existed for a long time, in such a way that Rais¹² states that "it is not new in society, but the scale in which it can be produced and disseminated is that it elevates it to a new category, polluting and putting all other news in check".

⁹ C. SILVERMAN, «This analysis shows how viral fake election news stories outperformed real news on Facebook». BuzzFeed, (2016), Online:<<https://www.buzzfeednews.com/article/craigsilverman/viralfake-election-news-outperformed-real-news-on-facebook>>. (Site consulted on September 22, 2021)

¹⁰ Hannah RITCHIE, « Read all about it: The biggest fake news stories of 2016», CNBC, 30 dec (2016), Online: < <https://www.cnbc.com/2016/12/30/read-all-about-it-the-biggest-fake-news-stories-of-2016.html>>. (Site consulted on September 21, 2020).

¹¹ N. MATTA, «Fake news: o poder das notícias falsas». Revista do Tribunal de Contas do Município do Rio de Janeiro, Rio de Janeiro, n. 71, p. 6-9, (2019).

¹² D. RAIS, «O que é "Fake news"». Portal Mackenzie, São Paulo, 13 abr. 2017. Online:<<https://www.mackenzie.br/fakenews/noticias/arquivo/n/a/i/o-que-e-fake-news/>>. (Site consulted on December 14, 2020)

Although fake news is not something recent, the term fake news began to be used in 2016.¹³ The term is often associated with the 45th US President, Donald Trump, who cited it in almost all his speeches and tweets; moreover, he created an award called the Fake News Awards to highlight the sources of information that, according to him, were responsible for misrepresenting him or producing false reports before and during his presidency.¹⁴ Fake news isn't just a Donald Trump related regalia, candidates Bernie Sanders and Hillary Clinton have also had their names implicated in some infamous news. For example, during the 2016 election, a man walked into a pizza parlor armed with a rifle, motivated by a fake news story reporting that Hillary Clinton ran a pedophile ring based in a pizza parlor in Washington.¹⁵

Hillary Clinton's campaign fell victim to constant attacks, in an attempt to damage her candidacy with the use of either fabricated or misleading content. In addition to the fabricated content cited in the paragraph above, an image of the candidate started to circulate on social media platforms, depicting her at a rally with less than 25 people in attendance.

Fake news serves not only to defame a campaign but also, to aggrandize it. This is what happened with the information related to the rallies of candidate Bernie Sanders. The fake news associated with Sanders ranges from content manipulation to misleading content.

One of the fake news stories that resonated most during the election was that Pope Francis had declared support for Trump. This fabricated content originated from the town of Veles, a small city in the country of Macedonia, known as The Fake News Capital of the world. It was created by teenagers who had no interest in American politics¹⁶ but who figured out how to make money through hits on their websites.

Each access to their sites generated money. The most profitable accesses came from America, so they searched for the most talked about topics in the country at that time, mainly in

¹³ Peter S. FIELD, «Fake news was a thing long before Donald Trump — just ask the ancient Greeks». The Conversation. February 25, (2021), Online: <<https://theconversation.com/fake-news-was-a-thing-long-before-donald-trump-just-ask-the-ancient-greeks-155867>>. (Site consulted on September 14, 2021).

¹⁴ H. ALLCOTT and M. GENTZKOW, *Social media and fake news in the 2016 election*. *Journal of Economic Perspectives*. 31(2), 211-236. Online:<<https://www.nber.org/papers/w23089>>. (Site consulted on September 21, 2020). DOI : 10.1257/jep.31.2.211, (2017).

¹⁵ M. WENDLING, «The (almost) complete history of 'fake news'». BBC News, 2018. Online:<<https://www.bbc.com/news/blogstrending-42724320>>. (Site consulted on November 5, 2021).

¹⁶ S. SUBRAMANIAN, «Inside The Macedonian Fake-News Complex». Wired, (2017).

Facebook groups, and discovered the pro-Trump movement. Soon, they started posting in social network groups, and their audience grew. These teenagers had no pro-Trump political agenda. Still, according to one of Veles' fake news creators, the pro-Trump public believed fake news more easily than supporters of the other candidates.

According to BuzzFeed¹⁷ and The Guardian¹⁸, Veles hosted at least 100 pro-Trump websites containing sensationalist news and fake news in a city of approximately 55,000 inhabitants¹⁹. A worrying fact that we can analyze with the emergence of this new "job" in Veles is that people without any political interest can directly influence the democracy of a country (which may not even be their country of origin), flooding users with fake news about candidates and campaigns thus affecting the population's vote and the real politics.

A survey conducted in 2016 by Pew Research Center²⁰ states that 62% of American adults receive news through social media. In contrast, in 2012, a similar survey pointed out that only 42% received news through this platform. It is to be expected, then, that the information present shapes the political opinion of more than half of Americans on their timelines. Such information can be directed to users through computer advertising techniques, as explained above.

As previously mentioned, one of the strategies used by Donald Trump's campaign was hiring private company Cambridge Analytica,²¹ which combined data mining and analysis. Following the scandal over the misuse of Facebook user data in March 2018, Christopher Wylie,²² a former employee of the company, claimed that CA used the personal data of over 50 million Facebook members to influence the US presidential election and revealed that the company planted

¹⁷ C. SILVERMAN, «This Analysis Shows How Viral Fake Election News Stories Outperformed Real News On Facebook». BuzzFeed, (2016), Online:<<https://www.buzzfeednews.com/article/craigsilverman/viralfake-election-news-outperformed-real-news-on-facebook>>. (Site consulted on September 22, 2021).

¹⁸ C. J. I. o. C. LEES, *Fake news: the global silencer: The term has become a useful weapon in the dictator's toolkit against the media*. Just look at the Philippines. 47(1), 88-91, (2018).

¹⁹ S. SUBRAMANIAN, «Inside The Macedonian Fake-News Complex». Wired, 2017;

²⁰ Jeffrey GOTTFRIED and Elisa SHEARER, «News Use Across Social Media Platforms 2016». Pew Research Center. May, (2016), Online:<<https://www.pewresearch.org/journalism/2016/05/26/news-use-across-social-media-platforms-2016/>>. (Site consulted on September 11, 2021).

²¹ Dan TYNAN, «How Facebook powers money machines for obscure political 'news' sites. From Macedonia to the San Francisco Bay, clickbait political sites are cashing in on Trumpmania – and they're getting a big boost from Facebook». The Guardian. August, (2016), Online:<<https://www.theguardian.com/technology/2016/aug/24/facebook-clickbait-political-news-sites-us-election-trump>>. (Site consulted on September 11, 2021).

²² BBC. «Cambridge Analytica planted fake news», BBC News, March (2018), Online:<<https://www.bbc.com/news/av/world-43472347>>. (Site consulted on August 20, 2021).

fake news. The data was collected through a personality test. Such a breach allowed Facebook to use data, such as sexual orientation, race, gender, age, and through their "likes," a sense of their political positions, without users' consent and used for political influence, which can be perceived as interference in the democratic process.

According to fact-checking website PolitiFact, of 474 topics addressed by Donald Trump from the election to the present day, only 5% were categorized as true while 32% were false. The remaining percentages concern possibly true (12%), half-true (15%), possibly false (22%) and fabricated content (15%).²³

The same mechanism of political and organized use of fake news can be observed during the Brexit voting process. The United Kingdom's exit from the European Union, known as Brexit (short for Britain and exit), voted in June 2016, has gained further repercussions in the media, not because of the controversial decision but because of the statements made by Christopher Wylie, who stated that Brexit would not have happened without the help of the company he worked for as well as AggregateIQ (AIQI). This Canadian company worked together with CA to disseminate and praise the Leave.EU campaign for Brexit.²⁴

The victory of the UK's exit from the European Union had a difference of less than 2% of the vote,²⁵ which Wylie claims was won thanks to the work of CA and AIQI. According to Wylie, Cambridge Analytica played a crucial role in politics, focusing its data mining and analysis work mainly on elections in emerging countries, as was done during the 2015 presidential campaigns in Nigeria, spreading compromising information to intimidate the party that was in power.²⁶

²³ POLITIFACT, «Donald Trump's file», Politifact, (2018), Online: <<https://www.politifact.com/personalities/donald-trump/>>. (Site consulted on August 20, 2021).

²⁴ BBC. «Leave.EU chief executive Liz Bilney welcomes police investigation». BBC. November, (2018), Online: <<https://www.bbc.com/news/av/uk-politics-46065111>>. (Site consulted on September 11, 2021)

²⁵ AFP. «Brexit não teria acontecido sem Cambridge Analytica, diz delator». Exame, (2018), Online: <<https://exame.abril.com.br/mundo/brexit-nao-teria-acontecido-sem-cambridge-analytica-diz-delator/>>. (Site consulted on September 11, 2021).

²⁶ RFI. «Cambridge Analytica teria tido papel crucial no Brexit, diz ex-diretor de pesquisa», G1 – online, (2018), Online: <<https://g1.globo.com/mundo/noticia/cambridge-analytica-teria-tido-papel-crucial-no-brexit-diz-ex-diretor-de-pesquisa.ghtml>>. (Site consulted on September 21, 2020).

Alexander Nix, chief executive of Cambridge Analytica, stated in an interview conducted by Campaign magazine²⁷ in February 2016 that CA was working for Leave.EU, helping to spread and overload the campaign on social media with the help of bots and other computer programs, the intention was that their biased messages would reach the right users.²⁸ If an excessive amount of propaganda (fake or otherwise) is spread to multiple users, it is likely to change voters' opinions enough to alter the outcome of a vote.

Seeing all this myriad of repercussions that fake news can cause in the political field, it is also necessary to emphasize the consequences that this practice can have in the judicial sphere. Spreading fake news is a hazardous act. Sharing false information, manipulated photos, videos, and dubious publications can bring public health risks, encourage prejudice, and result in deaths. Here are some examples:

- Lynching of innocents

In 2014, Brazil witnessed a case of fake news that had a tragic ending. UOL's Media reported that residents of Guarujá / SP lynched a woman to death because of a rumor spread on Facebook accusing her of child abduction and black magic rituals.

The use of social media to share news also perpetuates fake news violence in other countries. India has been faced with problematic spread of fake videos on WhatsApp. In 2018, fictional scenes were edited and aired as alleged child abductions in Rainpada, a local village in India. Desperate, residents began chasing the alleged kidnappers, resulting in the deaths of five people.²⁹

- Public Health Issues

²⁷ A. NIX, «How big data got the better of Donald Trump», Campaign. e.c, 2016. Online:<<https://www.campaignlive.co.uk/article/big-data-better-donald-trump/1383025>>. (Site consulted on August 20, 2021)

²⁸ A. MACASKILL, «What are the links between Cambridge Analytica and a Brexit campaign group?» Reuters, (2018), Online:<<https://www.reuters.com/article/us-facebook-cambridge-analytica-leave-eu-idUSKBN1GX2IO>>. (Site consulted on August 20, 2021).

²⁹ Josh K. ELLIOTT, «India WhatsApp killings: Why mobs are lynching outsiders over fake videos», Global News, (2018), <<https://globalnews.ca/news/4333499/india-whatsapp-lynchings-child-kidnappers-fake-news/>>. (Site consulted on Sept 30th 2020).

Anti-vaccination movements have grown again in recent years. Some people who oppose vaccines spread false news and propagate their views that vaccinating the population is bad for them, which is a severe problem. Resistance to vaccination endangers the population.

As a result of the growth of measles cases in Brazil in 2018, the Ministry of Health (MS) promoted vaccination campaigns. Furthermore, to combat fake news on the subject and encourage participation in the movements, the MS launched advertisements and newsletters to combat phony information about vaccines in different media outlets and social media.³⁰

- Homophobia

In 2016, the Ministry of Education (MEC) had to go public, in order to refute rumors, to clarify that there was no circulation of the fake "gay kit" in Brazil's public schools.³¹

- Prejudice - Xenophobia

Hate speech that circulated over social networks has resulted in attacks on Venezuelan immigrants' camps. For example, residents of Paracaima, a city in Roraima through which people coming from Venezuela enter Brazil, used sticks, stones, and homemade bombs to attack the camps.³²

Another example was that of a shopkeeper who was injured after being robbed by a group of Venezuelans. The fake news about the case reported that the shopkeeper was not helped because priority was given to Venezuelan immigrants. The information caused anger among the city's population, who started to attack the immigrants.

- Legitimization of Violence

³⁰ Agência Nacional de Vigilância Sanitária - Anvisa. «Cuidado com as 'fake news' sobre vacinas contra Covid-19», ANVISA, (2021), <<https://www.gov.br/anvisa/pt-br/assuntos/noticias-anvisa/2021/cuidado-com-as-2018fake-news2019-sobre-vacinas-contracovid-19>> (Site consulted on Sept 30th 2021).

³¹ Erick MOTA, «Kit gay nunca foi distribuído em escola; veja verdades e mentiras». Congresso em Foco, (2020), <<https://congressoemfoco.uol.com.br/educacao/kit-gay-nunca-foi-distribuido-em-escola-veja-verdades-e-mentiras/>>. (Site consulted on Sept 30th 2021).

³² Jackson FELIX and Emily COSTA, «Após ataques de brasileiros, 1,2 mil venezuelanos deixaram o país, diz Exército: Após assalto e agressão a comerciante, imigrantes tiveram acampamentos queimados e foram expulsos de Pacaraima (RR), na fronteira com o país vizinho, no sábado (18). Cidade amanheceu com ruas vazias», G1, (2018), <<https://g1.globo.com/rr/roraima/noticia/2018/08/19/pacaraima-tem-ruas-desertas-apos-confronto-entre-brasileiros-e-venezuelanos.ghtml>> (Site consulted on Sept 30th 2021).

Positions contrary to a political ideology can fuel hate speech. For example, fake news about Councilwoman Marielle Franco, who was murdered in 2018, spread on social networks.³³ Among the rumors was the victim's supposed connection to drug trafficking. The Justice of Rio de Janeiro entered the case and ordered the removal of the content from the internet.

Marielle was a councilwoman linked to the fight for human rights, especially for women and the black community in Rio de Janeiro. She denounced politicians and police officers for abuses of power and other violations and, because of this, created enmities with various public figures.

The scope of this thesis is to evaluate the impact of Fake news on the Brazilian political scenario in the period between 2018 and 2021, as well as its legal implications.

Thus, it will be necessary to define what will be considered a fake news for the purposes of this research. We will do this in the first title of this survey, as well as detailing its functioning.

In the next title, we locate the reader within the Brazilian political scene. Since, to understand the legal analysis of merit, it is important to understand the functioning of fake news within the framework chosen for this research. In this way, we will go through several scenarios and examples of how this tool was used in an organized way for electoral gains.

Next, we'll deal with mass manipulation. This is because fake news only represents a real problem for Brazilian political institutions if it is done in an organized and spread out way, therefore we need to specify and explain how this practice works.

In our third title we will approach the Brazilian laws applied to this problem from several angles: Fake news, data protection, mass manipulation and data leakage liability. Here we will also make a parallel with Canadian law in order to improve and develop the Brazilian legal system.

³³ Vera ARAÚJO and Chico OTAVIO, «Caso Marielle: Entenda a relação da prisão de Girão com o assassinato da vereadora: Polícia Civil acredita que, com a prisão do ex-vereador, está próxima de descobrir quem mandou matar a parlamentar e o motorista Anderson Gomes», O Globo Rio, (2021), <<https://oglobo.globo.com/rio/caso-marielle-entenda-relacao-da-prisao-de-girao-com-assassinato-da-vereadora-25055385>> (Site consulted on Sept 30th 2021).

Then, we will make an overview of whether the legal system responds efficiently to the proposed problem, if not, how to improve it. In another look, we will introduce non-legal alternatives to solve the problem.

Finally, in conclusion, we will make an overview of what the research found. How we see fake news within the record proposed in this thesis and last considerations about the solutions found for the problem.

Fake News

After understanding the context and methodology used. It is necessary to define and understand the central theme of this master's thesis.

Definition

Fake news is false news published by media outlets as if it were accurate information. For the most part, this type of content is made and disseminated to legitimize a point of view or harm a person or group (usually public figures). Fake news has great viral power. That is, it spreads quickly. Fake information appeals to the reader/viewer's emotions, causing people to consume the "news" material without confirming whether its content is authentic.³⁴

The persuasive power of fake news is more significant in populations with less education and that rely on social networks for information. However, fake news can also reach people with more education since the content is commonly linked to political bias.

Despite the recent use of the term “fake news”, the concept of this type of false content goes back centuries, and there is no official date of origin. The word "fake" is also relatively new in the vocabulary, as stated by the Merriam-Webster Dictionary.³⁵ Until the 19th century, English-speaking countries used the term "false news" to refer to widely circulated rumors.

Fake news has always been present throughout history. What has changed is the terminology, the medium used for dissemination, and the potential persuasion that false material has acquired in recent years.³⁶

³⁴ M. HORTA-RIBEIRO, P. H. CALAIS and V. ALMEIDA, «Everything I disagree with is fake news. Correlating Political Polarization and Spread of Misinformation», *Social and Information Networks (cs.SI); Computers and Society (cs.CY)*, (2018), Cornell University, 8 p, Online: <<http://arxiv.org/abs/1706.05924>>.

³⁵ N. SHAH and L. KUMAR, «False Information on Web and Social Media: A Survey», Arxiv, (2018), Online:<<https://arxiv.org/pdf/1804.08559.pdf>>.

³⁶ C. SHAO, G. L. CIAMPAGLIA, O. VAROL, A. FLAMMINI and F. MENCZER, «The spread of low-credibility content by social bots». *Nature Communications* , (2018), Cornell University, 41 p, DOI: 10.1038/s41467-018-06930-7, Online:<<https://arxiv.org/abs/1707.07592v4>>.

Long before fake news hampered journalism, writers spread false information about their opponents through press releases and works. Years later, propaganda became the vehicle used to apply distorted data to the population, which gained momentum in the 20th century.³⁷

Fake news is false information shared on the Internet as if it were true, using mechanisms such as social networks and messaging applications for dissemination. Generally, when reporting fake news, the aim is to create something controversial about a situation or a person, in order to damage their image and honor.³⁸

The objectives of fake news are as diverse as possible, but not restricted to that. As an example, one can cite a fake news story with the sole and exclusive purpose of cyberbullying a certain person, by imputing disrespectful facts with the intention of humiliating, intimidating, or attacking the victim.³⁹ Another use that has become increasingly common and has the potential to bring devastating social consequences, because it involves public health, is the anti-vaccine movement, which gained even more visibility with the coronavirus pandemic (COVID-19), spreading misconceptions and instructing the population to have harmful attitudes both for their lives and for others.⁴⁰

In addition to these examples, companies can use fake news against their competitors, they can spread disrespectful facts or information known to be false, seeking to reduce their competition and increase their profits. For example, let's imagine that two companies practically dominate the organic products market and claim that their products are natural, free of pesticides and preservatives, and produced with respect for forests and native vegetation. One day, one of the companies, aiming to dominate the market and increase its income, may begin to falsely report that its competitor uses banned pesticides that cause various diseases to consumers and that, in addition, the farm where the goods of its competitor are produced is an area that has been cleared of native vegetation.

³⁷ C. SHAO, G. L. CIAMPAGLIA, O. VAROL, A. FLAMMINI and F. MENCZER, *Id.*

³⁸ *See*: H. SHAH and L. KUMAR, *prev. cited*, note 35.

³⁹ In this sense, we recommend reading: FLUMIGNAN, W. G. G., «Cyberbullying and the role of internet providers». In: XXV CONPEDI Congress, 2017, Curitiba. *Law, governance and new technologies I. Florianópolis: National Council for Research and Graduate Studies in Law*, (2017), pp. 81-99.

⁴⁰ Thais Carvalho DINIZ, «Movimento anti vacinas: como surgiu e quais consequências ele pode trazer?», UOL. (2017), Online: <https://www.uol.com.br/universa/noticias/redacao/2017/12/05/o-que-o-movimento-antivacina-pode-causar.htm>. (Site consulted on March 5th 2020).

Therefore, it can be seen that the power of persuasion and the consequences of fake news are immeasurable and are not restricted to the electoral sphere, although in this scenario, it has gained more notoriety. An emblematic case involving fake news occurred in mid-2014 in Brazil, when an innocent person was lynched to death due to false affirmations. At that time, the discussion about the use of the Internet in Brazil in light of the “Marco Civil da Internet” was still in its early stages, and there was no fundamental notion of fake news.⁴¹

In the midst of 2016, we became aware of the power of fake news in the electoral field, more specifically in the 2016 presidential elections in the United States of America, in which President Donald Trump was elected. Research at the time indicated that there was a direct influence of fake news on the outcome of the election and that about 27% of the American electorate had accessed at least one piece of fake news in the weeks leading up to the election.⁴²

In 2018, during its presidential elections, Brazil experienced firsthand the persuasive power of fake news in the electoral sphere and was faced with a situation hitherto unknown nationally. Fake news was used in unimaginable ways to garner votes and harm candidates. The phenomenon was so intense in Brazil that the OAS (Organization of American States) described the event that occurred in Brazil as "unprecedented".⁴³

Already in 2020, the problem involving the theme of fake news was perceived at the core of issues involving public health. In fact, during the coronavirus pandemic (COVID-19) there was a drastic increase in fake news related to the subject which worried the Ministry of Health who thus decided to create a specific channel to alert the population about fake coronavirus news.⁴⁴

⁴¹ See: H. SHAH and L. KUMAR, *prev. cited*, note 35.

⁴² Allcott HUNT and Matthew GENTZKOW, "Social Media and Fake News in the 2016 Election." *Journal of Economic Perspectives*, 31 (2): 211-36, 2017

⁴³ AGÊNCIA BRASIL. «Para OEA, difusão de notícias falsas no Brasil não tem precedentes», Agência Brasil, (2018), Online:<<http://agenciabrasil.ebc.com.br/politica/noticia/2018-10/para-oea-difusao-de-noticias-falsas-no-brasil-nao-tem-precedentes>>, (Site consulted on October 30, 2020)

⁴⁴ In this sense, we recommend the reading: FLUMIGNAN, W. G. G., «Fakenews, coronavirus and the current Brazilian scenario», *Conjur*, (2020), Online:<<https://www.conjur.com.br/2020-mar-28/wevertton-flumignan-fake-news-coronavirus-atual-cenario-brasileiro>>, (Site consulted on: June 10, 2020)

Brazil has tried to make use of the Marco Civil da Internet.⁴⁵ However, this law had already proven to be ineffective and insufficient in addressing the civil liability of Internet providers, especially regarding illicit content from third parties, a common problem with fake news.

How does fake news work?

The production and dissemination of fake news constitute a real lucrative market, as shown in a special report by the newspaper *Correio Braziliense*. The realm of fake news is fed by major influence, usually politicians in electoral campaigns who hire teams specialized in this type of viral content. These teams are typically composed of former journalists, advertisers, marketers, technology professionals, and even police officers, who ensure the safety of the headquarters and the equipment used⁴⁶.

Some fake news producers illegally buy the e-mail addresses and cell phone numbers of millions of people to "trigger" false content. There is a preference for religious leaders and political movements' contact information since they pass the information (taken as accurate) on to their followers and ask that it be shared.

On social networks, fake profiles are created (with photos, personal data, and daily posts) and interact with other people to give them legitimacy. Then, these same profiles are used to spread news and videos from fake websites and to encourage their contacts to do the same.⁴⁷

The websites that contain fake news, for the most part, are also part of the strategy of teams specialized in this service. Those responsible for viral information buy page domains and adopt a visual identity similar to that of the target (political party, for example). They start with sometimes valid publications to attract their audience. Then, with the gain in relevance on search engines, fake news producers start publishing false information as if it were real.⁴⁸

⁴⁵ Law No. 12,965/14

⁴⁶ R. M. ROSS, et al. «Beyond 'fake news': the analytic thinking and the detection of false and hyperpartisan news headlines». *PsyArXiv*, (2019), Online: <<http://dx.doi.org/10.31234/osf.io/cgsx6>>

⁴⁷ Martín I. PALACIO and D. ARROYO, «Fake News Detection». In: Herrero Á., Cambra C., Urda D., Sedano J., Quintián H., Corchado E. (eds) 13th International Conference on Computational Intelligence in Security for Information Systems (CISIS 2020). CISIS, (2019). *Advances in Intelligent Systems and Computing*, vol 1267. Springer, Cham, (2021). Online: <https://doi.org/10.1007/978-3-030-57805-3_22>

⁴⁸ M. V. BRONSTEIN et al., «Belief in fake news is associated with delusionality, dogmatism, religious fundamentalism, and reduced analytic thinking». *J. Appl. Res. Mem. Cogn.*, 8, (2019), pp. 108-117.

This practice is called cybersquatting, when a person registers a domain with a name and identity similar to a famous or a relatively well-known brand with the intention of impersonating it. In Canada, there are several cases in which a court ruled the practice incompatible with the current legal system and with the practice of good faith.⁴⁹

Contractors invest large sums of money to produce and disseminate fake news secretly and without leaving traces for potential investigations. In addition, these people use different means such as temporary accommodation and products including prepaid cell phones and computers, which they discard once the production reaches its end point.

The producers constantly change their location to avoid prosecution, just as the team's technology professionals change the IP (type of computer address). The content produced is also stored in the so-called “clouds.”⁵⁰

The producers of fake news invest heavily in technologies and adopt strategies to conceal the identities of the individuals who hired them. This is another factor that makes it exceedingly difficult to identify the disseminators of fake news. Aside from the challenges of locating the culprits, the Brazilian legislation does not even provide for a specific punishment for this type of crime.

Fake news in Brazil

Since 2015, when Dilma Rousseff was reelected, Brazil has been facing a highly acute political crisis. The then-president was already worn down by the beginning of the economic crisis and several corruption scandals involving her party, which displeased a considerable part of the population. Moreover, her popularity declined rapidly due to the legislative boycott of most of the measures she used to maintain fiscal balance, to the point that her governing became unfeasible. In a political maneuver known as the White Coup of 2016, Dilma suffered an impeachment process and was sentenced to be removed from office, thus replaced by her vice president Michel Temer.

⁴⁹ Guangdong Galanz Enterprises Co v Situ, (2020) LNCIRA 15 and GINGRAS, Patrick et Nicolas VERMEYS, « Noms de domaine », dans Stéphane ROUSSEAU (dir.), *Propriété intellectuelle*, Jurisclasseur Québec, Collection Droit des affaires, Montréal, LexisNexis, 2012, pp. 20/1.

⁵⁰ N. GRINBERG, K. JOSEPH, L. FRIEDLAND, B. SWIRE-THOMPSON and D. LAZER, «Fake news on Twitter during the 2016 us presidential election», *Science* 363(6425), 348, 2019

Due to its lack of legitimacy and worsening of the economic crisis, the Temer government suffered more severe unpopularity than the previous one. This was worsened by the advent of several unpopular measures such as the public spending freeze, described by the press as "PEC of death" due to the various collateral damage that it would have caused in the long term to education and health in the country.

As a consequence of this chaotic context, the population, in an attempt to rationalize the various social catastrophes that had occurred at the time, was divided between those who blamed the executive government, considered inconsequential, and those who blamed the political opportunism of a ruling class who got rid of a popular leadership. As a result, there was a growing desire among the population for the emergence of a savior. Many people were waiting for an immaculate figure that would cleanse the stain of corruption that plagued the country, for the main cause of great popular discontent.

2018 Elections

Social media became the centerpiece of the political discussion of the 2018 presidential campaign, with the impact of misinformation as a central theme. An analysis by FGV DAPP,⁵¹ which consisted in monitoring social networks in the 2018 elections, developed within the scope of the Digital Democracy Room, and which is presented below, pointed to the massive use of social media in all political fields from different parties, and identified the presence of automated accounts and fake news on Twitter, Facebook, and YouTube.⁵²

FGV DAPP analyzed the references to the main fake news in the open social networks (Twitter, Facebook, and Youtube) in the period between September 22 and October 21, in order to measure the reach they had in each platform and the network's response to the content, i.e., if they were verified, if there was sharing, or if the inaccurate information continued to have an impact after its appearance on the web.⁵³

⁵¹ M. A. RUEDIGER, (Coord.). *Bots, social networks and politics in Brazil [recurso eletrônico]: a study on illegitimate interferences with the public debate on the web, risks to the democracy and the 2018 elections*. Rio de Janeiro, Fundação Getúlio Vargas, p. 28, 2017

⁵² M. A. RUEDIGER, *Desinformação nas eleições 2018 [recurso eletrônico]: o debate sobre fake news no Brasil*. Rio de Janeiro, FGV, DAPP, 2019

⁵³ See: M. A. RUEDIGER, prev. cited, note 51.

Among them, the alleged fraud in the electronic ballot boxes was the most cited. In fact, there were around 1.1 million tweets about the supposed insecurity of the devices, disseminated both in posts calling for the return of the printed ballot and in reports of "errors" during the voting process in the first round of the presidential election.⁵⁴

The President of the Republic pressed for a bill that would change the electoral system from electronic to paper ballots in the Congress,⁵⁵ but that bill was rejected twice.⁵⁶ Despite this defeat in the legislature, the president continued insinuating that the 2022 elections would be insecure, which led to a huge demonstration on Brazilian Independence Day (September 7th, 2021).⁵⁷ During this event, crowds of people protested throughout Brazil demanding printed ballots, military intervention, and the closure of the Superior Court of Justice.

On that occasion, Bolsonaro claimed again that the elections of 2022 would be rigged. He said that the STF was making political arrests (referring to the arrests of supporters of the government who recorded videos threatening the lives of ministers of the Court in question)⁵⁸ and that he would not accept any decision coming from the Minister Alexandre de Moraes (the person responsible for the investigation of fake news into the president).⁵⁹

On the night of September 6th there was an unconfirmed rumor that there was an coup attempt that was stopped by the ministers of the Supreme Court.⁶⁰ Whether it was real or not, the fact is that on the following day President Jair Bolsonaro made a statement apologizing and saying

⁵⁴ See: M. A. RUEDIGER, *prev. cited*, note 52.

⁵⁵ L. F. BARBIÉRI, «PEC do voto impresso: Lira confirma votação e diz esperar que Bolsonaro aceite resultado», G1, (2021), Online:<<https://g1.globo.com/politica/noticia/2021/08/10/pec-do-voto-impresso-lira-confirma-votacao-e-diz-esperar-que-bolsonaro-aceite-resultado.ghtml>>, (Site consulted on September 11, 2021)

⁵⁶ L. F. BARBIÉRI, «Em derrota para Bolsonaro, Câmara rejeita e arquiva PEC do voto impresso», G1, (2021), Online:<<https://g1.globo.com/politica/noticia/2021/08/10/em-derrota-para-bolsonaro-camara-rejeita-e-arquiva-pec-do-voto-impresso.ghtml>>, (Site consulted on September 11, 2021)

⁵⁷ G1 Team, «7 de Setembro tem protestos a favor e contra o governo Bolsonaro», G1, (2021), Online:<<https://g1.globo.com/politica/noticia/2021/09/07/7-de-setembro-tem-protestos-a-favor-e-contra-o-governo-bolsonaro.ghtml>>, (Site consulted on September 11, 2021)

⁵⁸ A. FERNANDES, «PF prende bolsonarista que revelou proposta por morte de Alexandre de Moraes. Correio Braziliense», Correio Braziliense, (2021), Online:<<https://www.correiobraziliense.com.br/politica/2021/09/4947937-pf-prende-bolsonarista-que-revelou-proposta-por-morte-de-alexandre-de-moraes.html>>, (Site consulted on September 11, 2021)

⁵⁹ G1 Team, «Bolsonaro é incluído no inquérito das fake news: os principais pontos da decisão de Moraes», G1, (2021), Online:<<https://g1.globo.com/politica/noticia/2021/08/04/bolsonaro-e-incluido-no-inquerito-das-fake-news-os-principais-pontos-da-decisao-de-moraes.ghtml>>, (Site consulted on September 11, 2021)

⁶⁰ F. HORTA, «Bolsonaro tentou o golpe, e ele não aconteceu», Twitter, (2021), Online:<<https://twitter.com/FernandoHortaOf/status/1435602260239785986>>, (Site consulted on September 11, 2021)

that he said things in the "heat of the moment",⁶¹ that he respects the separation of powers and ended with the proverb "Then you will know the truth, and the truth will set you free."⁶² Nonetheless, he did not retract the fake statement about the possibly fraudulent elections.

Fake publications that attempted to oppose Jair Bolsonaro had a more timid reach. They speculated that the knife wound Jair Bolsonaro sustained during an attempt on his life, had been "faked" and that the scar was nothing more than a result of an oncological surgery. The rumor's circulation peaked during the final days of the election, with 34.6 thousand references on record. The change of the patron saint of Brazil, falsely announced as one of his proposals, was cited 16.7 times. Finally, the news that Bolsonaro would be the most honest politician in the world had 6.5 thousand mentions.

The identified bots complement a previous survey, based on data from October to December 2017, in which mentions made by accounts from Argentina, Venezuela, and Ecuador were also identified in interaction with the official profiles of Brazilian political actors and associated with parties and political figures aligned to the left parties from these countries. Of the 732 automated profiles in the 2017 database, 102 accounts were marked as those mentioning political actors from South America.

The elections were also the target of disputes of diverse narratives, with one of the most prominent subjects being the suspicion of fraud in the voting results. Some episodes were crucial in the mobilization of this debate, such as the suspension of the Supreme Court's implementation in June 2017 and the denial of the candidacy of former president Lula.⁶³

The statements made on social media that associated the impossibility for Lula to be a candidate for the presidency with the potential election fraud were more intense in the month of August of that year, especially following the UN human rights Committee's recommendation that the Brazilian State allow the candidacy of the former president. The hashtag #eleiçãosemlulaéfraude (Election without Lula is fraud) gathered most of the mentions.⁶⁴

⁶¹ *Id.*, prev. cited, note 60.

⁶² John 8:32

⁶³ *Id.*, M. A. RUEDIGER, prev. cited, note 51.

⁶⁴ *Id.*

The comments related to Jair Bolsonaro, on the other hand, made reference to electronic ballot box tampering from previous elections and the presidential candidate's speech attributing a possible defeat in October due to fraud in the voting system. Furthermore, a video released by the candidate on his Facebook page, speaking about the possibility of fraud in the elections, generated more than 470,000 comments.

In moments of more organic debate, such as the mobilization of the hashtag #elenão (not him), born with the women's movement against Jair Bolsonaro and later expanded due to mentions from supporters and artists - the opposite tendency was verified. Between September 12 and 24, while more than 73,000 users retweeted the theme, only 164 automated accounts did the same, representing 0.22%.⁶⁵

Since the early 2010s, the landscape indicates that social networks have shaped and will continue to profoundly shape politics. In this sense, Ruediger (2018) highlights that "The constant monitoring of networks must be sought, both by society and by the market and the state structure, which should incorporate in their decision-making and management dynamics the strategic understanding of the impact of these new media."⁶⁶

It is also worth noting that a robust debate on the role of WhatsApp in the fragmentation of the national political environment has emerged since the second round of the elections in Brazil. Given the particularities of the platform, such as the nature of private communication, of reduced social scope (family, friends, co-workers), and the less direct interaction between influencers and ordinary citizens, a new phenomenon of dispersion of political content emerged. This phenomenon is different from the one observed in other recent (national and international) scenarios, in which Facebook and Twitter were more prominent.

The many popular social networks among Brazilians, widely used to debate elections and the political situation, present particularities regarding production and interaction with content. All information spreading strategies, however, are adapted to the properties of each platform, and thus there are multiple ways to manifest disinformation and the sharing of false information. This can be done not only from links or pages that simulate journalistic activity but with intense use of

⁶⁵ *Id.*

⁶⁶ *Id.* prev. cited, note 51.

videos, tutorials, blogs, memes, apocryphal texts, and sensationalist publications; thus, there are various subtypes of fake news.

Traditional institutions of democratic systems worldwide have been losing the public's trust, including the political class, the press, legislative and legal bodies, unions, and public administrators. This is quite evident in Brazil and has been reflected in the public's electoral choices and in the profound structural change in the way successful campaigns have been organized. Social networks have become the central axis of interlocution between voters and elected officials.

With less mediating power, the usual channels of dialogue between society and public power have to share their space with those networks, and the same is true in the business and private environment.

Misleading Predictions

Written and audio messages have been warning people of what "is going to happen in the next few days," mainly in the press. In an exercise of deceptive predictions, the creators of fake news seem to create some of it preemptively. This kind of fake news also gives the message a premonitory aspect because only a few have access to it and therefore these people think they are one of the lucky ones that are "in the know". Other predictions are clearly a fabrication of things that will never happen but although these never happen, the message can get through and cause a lot of damage.⁶⁷

Some examples include: a ubiquitous message about an interview supposedly authorized by the court (it authorized the transmission) from Adélio Bispo, the man who stabbed Bolsonaro, that said that he would testify that the attack was a frame-up in the coming days. It also said that "these lying statements will be aired two days before the election" and that "the communist media will bombard the 'myth' on TV. The text asked the user to share it as much as possible to "save Brazil." The call for maximum sharing to "save the country" is a technique that is used quite frequently.⁶⁸

Audio recordings of 'people like us'

⁶⁷ *Id.* prev. cited, note 52.

⁶⁸ *Id.*

The "intimate" audio technique, that is an audio recording of an average citizen showing sympathy for a candidate - something that can be replayed anytime throughout the week - is a common technique used in Brazil. Some patterns became clear when looking at the messages as a whole: The narrators are mostly men who tell banal stories from real life such as some situation that would have happened to them and that involves some candidate. They use very informal ways to address the listener, as if they know him, as if that message was initially intended for a friend and "fell into the net". These narrate impossible or almost impossible-to-verify situations. We believe that this type of audio elicits familiarity, proximity, and sympathy.⁶⁹

One of the audio recordings that circulated the most throughout the week, was the one from a man claiming to be a Rio de Janeiro taxi driver working during the Brazilian demonstrations. At the protest against Bolsonaro, he claimed there were "marijuana smells" and "everyone drinking" and at the one in favor of the candidate he claimed that there were only "the good people, who don't like bullshit".⁷⁰ No one knew the true identity of this person and if he really was a taxi driver as he claimed to be.

Unfortunately, it is extremely difficult to verify the origin, veracity and organicity of these audio recordings. The latter can be fabricated by anyone, pretending to be people, propagating a message designed to convince the modest population. These are then passed on by family members and close people who guarantee the veracity of something whose source can never be verified, thus reinforcing the impression that it is real. After all, there is a growing belief in the population that the traditional news media can manipulate information to meet the needs of an elite and therefore cannot be trusted, whereas someone like your next-door neighbor would have no reason to lie to you. It is for these reasons that these types of fake news spreads so easily in in the Brazilian virtual environment.

Office of Hate

The Inquiry (INQ) 4781, known as the Fake News Inquiry, was opened on March 14, 2019, by the former president of the STF, Dias Toffoli, to investigate crimes involving the dissemination

⁶⁹ *Id.*

⁷⁰ *Id.*

of fake news and defamation against the court and its ministers.⁷¹ Eight days later, the inquiry's rapporteur, Minister Alexandre de Moraes, ordered the blocking of the accounts that attacked the STF on social media. On April 16, following a court decision ordering the blocking of all social media accounts of those involved, a Federal Police operation was launched for the search and seizure of all ten addresses of the accused in São Paulo, Goiânia, and Brasília.⁷²

On May 27, 2020, another Federal Police operation called Operation Fake News, was launched under the same investigation. In the dispatch about the operation, Moraes states that "the evidence collected and the technical reports presented in the investigation pointed to the existence of a criminal association dedicated to the dissemination of fake news, offensive attacks [...], with flagrant hate content, subversion of the order and encouragement to break the institutional and democratic normality".⁷³ This blocking request by Moraes raised controversy because the platforms refused at first to block the listed accounts. Then, they admitted to blocking them, but only nationwide, the accounts being viewable by users who configured their profile as being from another country. Only on June 30, Minister Moraes ordered the international blocking of a new list of accounts⁷⁴

The profiles analyzed in the operation participated in digital mobilizations that led to hashtags against the STF to occupy the top of Twitter's trending topics between November 7 and 19, 2019. Users, often anonymous, used hashtags such as "#STFVergonhaNacional" (Supreme court national shame), "#STFEscritoriocrime" (Supreme Court crime office) and "#ImpeachmentGilmarMendes" (Impeachment of Minister Gilmar Mendes),⁷⁵ with the latter even

⁷¹ R. D'AGOSTINO and M. OLIVEIRA, «Toffoli abre inquérito para apurar 'notícias fraudulentas', ofensas e ameaças a ministros do STF», G1, (2019), Online: <<https://g1.globo.com/politica/noticia/2019/03/14/toffoli-anuncia-inquerito-para-apurar-noticias-fraudulentas-que-ofendam-a-honra-do-stf.ghtml>>. (Site consulted on November 7, 2020)

⁷² G. M. C. GUIMARÃES, *Gabinete do ódio, uma alt-right à brasileira?: identidade e repertório de contas brasileiras de extrema-direita no Twitter*, 64 f. Trabalho de Conclusão de Curso (Bacharelado em Ciência Política), Universidade de Brasília, Brasília, 2020

⁷³ M. SOARES, *Novas práticas de leitura e escrita: letramento na cibercultura. Educação e Sociedade*, v. 23, n. 81, Sielo, p. 143-162, (2002). Online: <<https://www.scielo.br/pdf/es/v23n81/13935.pdf>>. (Site consulted on November 7, 2020)

⁷⁴ P. FERREIRA, «Alexandre de Moraes determina bloqueio de perfis bolsonaristas no Twitter a nível internacional», O Globo, (2020), Online: <<https://oglobo.globo.com/brasil/alexandre-de-moraes-determina-bloqueio-de-perfisbolsonaristas-no-twitter-nivel-internacional-24559707>> (Site consulted on December 5, 2020)

⁷⁵ D. W. CARRAHER, *Senso crítico: do dia a dia às ciências humanas*, São Paulo, Livraria Pioneira, 1983

resulting in demonstrations across the country on November 17, 2019,⁷⁶ in which they called for the removal and the imprisonment of Minister Gilmar Mendes from the STF and defended agendas.

The CPMI of Fake News, in turn, was installed on September 4, 2019, after a request by federal deputy Alexandre Leite and over 324 supports from senators and deputies.⁷⁷ The purpose of the CPMI is "to investigate the creation of fake profiles and cyberattacks on various social networks, with possible influence on the electoral process and public debate".⁷⁸ The goal differs from the Fake News Inquiry, moving to encompass events that happened in the 2018 election period and focusing on public debate, and going beyond digital attacks against the STF. However, the CPMI and the Inquérito are similar both because of the accounts cited and because of the description made of the actors of these crimes - a network or criminal association focused on digital disinformation.

This group, described in the STF reports and in the documents used in the CPMI of Fake News, appears to have significant differences with the right-wing that took to the streets in 2015 described by the literature. In 2015, the larger and prominent groups had leaders who did not hide their identity - in 2018, many even managed to get elected to positions in politics, such as Kim Katagiri and Bia Kicis, both federal deputies elected in 2018. Their mobilizations were mainly made in opposition to leftist party figures, mainly the Workers' Party (Largest leftist party in Latin America), such as Dilma Rousseff and Lula. Discussions about disinformation were held on the internet, but core issues of this type of fake news, such as the manipulation of the public debate through fake accounts, are not being discussed.

The comparison of this group with groups in other countries that seem to have similar practices may have help clarify what we observe in Brazil. The comparison of this sector of the Brazilian far-right with the alt-right, as previously mentioned, has some relevance when one observes the ideologies and practices of the American social movement: organization focused on digital practices; use of Twitter hashtags as a way to disseminate and attack opponents; use of

⁷⁶ C. SARTORI, «Manifestantes pedem impeachment do ministro Gilmar Mendes no Rio», UOL, (2019), Online:<<https://noticias.uol.com.br/ultimasnoticias/agencia-estado/2019/11/17/manifestantes-pedem-impeachment-do-ministro-gilmarmendes-no-rio.htm>> (Site consulted on December 5, 2020)

⁷⁷ SENADO, «CPMI das Fake News é instalada no Congresso. Senado Notícias», Senado Federal, (2019), Online:<<https://www12.senado.leg.br/noticias/materias/2019/09/04/cpmi-das-fakenews-e-instalada-no-congresso>> (Site consulted on November 7, 2020)

⁷⁸ *Id.*

anonymity; creation of aggressive memes against political opponents; attacks against the right itself; use of its own symbols such as vaporwave; and creation of Internet news that lead to misinformation.

The construction of transnational networks for the dissemination of right-wing agendas is not new. Bob⁷⁹ (2012) found links between the debates and propositions at the United Nations (UN) on sexuality and reproductive rights, and the creation of non-governmental organizations (NGOs) focused on lobbying and organizing countries with conservative views, dating back to at least 1976. In addition to taking advantage of a common morality among the countries opposed to progressive agendas in the sexuality debate, these NGOs took advantage of the discourse of fear, thus instigating nationalism in these countries. To this end, they helped spread the idea that homosexual rights and abortion are Western agendas imposed worldwide.⁸⁰

In Brazil itself, these transnational right-wing networks are distinguished by three cases: the School Without Party Movement, in 2004; the campaign for "No" in the referendum on the prohibition of commercialization of firearms and ammunition in 2005; and the mobilization against "gender ideology," which began around 2011.

In the case of the School Without Party Movement, there was inspiration by the group No Indoctrination, in the USA. In the second case, the campaign against the ban on the sale of firearms had the support of NGOs from the US, Canada, and even worldwide against disarmament. The sharing of strategies and logistics of these international organizations with Brazilian activists gave the country the impression of living a weapons crisis. In the third case, we witnessed the appearance of the term "gender ideology" in the Brazilian political scene, a term defined by the Argentine Jorge Scala, who states that "ideologies are imposed using the formal [...] and non-formal educational system [...], as the Nazis and Marxists did". Gender ideology, thus, would be an attempt to impose misrepresented values about sexuality. When building his arguments, Scala also makes reference to the disputes in the debates held at the UN, which also suffered influence from the transnationalization of right-wing activism, as already mentioned.

⁷⁹ C. BOB, «The Global Right Wing and the Clash of World Politics», New York, Cambridge University Press, p. 42, 2012

⁸⁰ *Id.*

Because of the transnational character of right-wing networks, bringing in discussion of other countries to try to understand some of the national right-wing parties is a worthwhile initiative. However, it is necessary to analyze the discourses and practices that would have crossed these borders, as well as compare them.

The historical ideology of the American alt-right and the origin of the term is important to understand the evolution of this right-wing party over time: from a narrow group of intellectual influence in 2008 to a diverse group composed of trolls, masculinists, and white supremacists in 2018. It is also important to emphasize the formation of the organizational structure, which is composed of intellectuals, leaders, and events which allowed them to develop their organizational aspects as well as their digital practices.

The discussions about the importance of a common identity in a social movement have existed in political science since at least the 1930s., with the attempts to understand fascism.⁸¹ However, due to European theorists, a more robust discourse started in the 1980s, with consistent talks about the concept of "collective identity". The discussion about the new social movements that were emerging in this period raised questions about the adequacy of old concepts of group cohesion.

Unlike traditional social movements such as labor unions, organized around class issues, and groups focused on racial issues, which represent "traditional political problems"⁸², the new social movements have emerged by grouping people with different backgrounds, without an easily distinguishable previous common characteristic. Movements such as environmental movements and groups that fight for peace in the world, for example, encompass people from different races and classes. The concept of collective identity arises when we try to understand the cultural issues shared by these people, forming this set of "common orientations, values, attitudes, worldviews, and ways of life" shared by individuals⁸³.

⁸¹ W. GAMSON, «Commitment and Agency in Social Movements», *Sociological Forum* 6, (1991), p. 27–50

⁸² A. MELUCCI, «The Process of Collective Identity», in *Social Movements and Culture*, edited by Hank Johnston and Bert Klandermans. Minneapolis: University of Minnesota Press, (1995), p. 41

⁸³ D. DELLA PORTA, «Multiple Belongings, Tolerant Identities, and the Construction of “Another Politics”’: Between the European Social Forum and the Global Social Fora», p. 175–202 in *Transnational Protest & Global Activism*, edited by Donatella Della Porta and Sidney Tarrow. Lanham: Rowman & Littlefield Publishers, Inc. (2005), p 92

Melucci⁸⁴ proposes to understand this formation of collective identity, of a "collective we" within a group, using three "orders of orientation": the meaning that the action has for the actor, concerning the ends of his actions; the possibilities and limits of the actions, which relate to the means used by individuals in their mobilization; and the field in which the action takes place, which relate to the relationships developed in the environment. The author understands collective identity as the process of construction of this system of actions, "an interactive and shared definition produced by several individuals [...] and concerned with the directions of actions and the field of opportunities and limits in which action takes shape"⁸⁵.

In the case of the alt-right, in order to understand the beliefs, values, and ideas of this group, it is important to discuss their collective identity. It is not a purely traditional movement - although the racial issue is important to the movement, the cultural debate is fundamental, by allowing to explain how the white race is losing space in the world, with video games and movies adhering to the representativeness agenda, for example. Newton⁸⁶ proposes a reading of the alt-right from this classic social movement doctrine. By understanding collective identity as "the shared definition of a group that comes from the common interests, experiences, and solidarity of its members"⁸⁷, the author proposes to define the alt-right's collective identity using four central components: protagonist framing, in which movement members antagonize each other with a figure; movement culture; shared language; and submerged networks.

Framing the protagonist concerns the view that a movement creates of its opponent.⁸⁸ This ability to differentiate the "self" from the "other" is a central component of a movement's collective identity, as it implies the ability to understand context and boundaries between areas of belonging.⁸⁹ The creation of a group's collective identity involves a positive definition of what it is good and

⁸⁴ A. MELUCCI, prev. cited, note 90, p. 43-44.

⁸⁵ A. MELUCCI, prev. cited, note 90, p. 44-45.

⁸⁶ E. K. NEWTON, *What's So Alternative About The 'Alt-Right'?*, Dissertação (Mestrado em Politics) – Lancaster University, Lancashire, (2017), p. 40

⁸⁷ V. TAYLOR and N. WHITTIER, «Collective Identity in Social Movement Communities: Lesbian Feminist Mobilization». Pp. 104–29 in *Frontiers in Social Movement Theory*, edited by MUELLER, C. M. and MORRIS, A. D., New Haven: Yale University Press, (1992), pg 39

⁸⁸ S. HUNT, R. BENFORD and D. SNOW, «Identity Fields: Framing Processes and The Social Construction of Movement Identities», Pp. 185–208 in *New Social Movements: From Ideology To Identity*, edited by E. Larina, H. Johnston and J. R. Gusfield. Philadelphia, PA: Temple University Press, (1994)

⁸⁹ C. FOMINAYA, *Creating Cohesion from Diversity: The Challenge of Collective Identity Formation in the Global Justice Movement*, Sociological Inquiry 80:3, (2010)

what is bad.⁹⁰ The alt-right's definition of this collective is diverse: from the appropriation of pejorative terms by opposition figures, such as The Deplorables, a term used by Hillary Clinton during the U.S. presidential election, to red-pillers, in reference to the movie Matrix, in which those who take the red pill begin to see reality.⁹¹

Movement culture refers to a concept that encompasses distinct and broad elements such as "customs, beliefs, narratives, values, artifacts, myths, symbols, and rituals".⁹² It is in this component that the alt-right's culture of meme creation and dissemination comes in, as does the issue of trolls. Also entering here is the creation of symbols that are understood by members of the community, such as the use of the triple brackets, called "(((echo)))", to identify figures linked to Judaism and Zionism.⁹³ The group's appropriation of emojis is also notorious, most notably the use of the frog emoji, in reference to the meme "Pepe, the Frog," and milk, a reference to the use of milk as a symbol of white supremacy.⁹⁴

The creation of its own language is also a fundamental element of the group's collective identity. This language in the case of the alt-right is composed of a variety of words: colloquialisms, such as lulz and kek (variations of the term lol, representing acidic attack humor against opponents); nicknames to characterize groups of people, such as cuckservatives (in reference to conservatives) and rapefugees (associating refugees with rapists); and acronyms, such as HBD/human biodiversity and ZOG/Zionist occupied government.⁹⁵

Finally, Newton makes reference to "submerged networks," taking up Melucci's⁹⁶ and Mueller's (1994) concept. This is a space in which members of a group who share the same collective identity feel free from those in power, and can create counter-hegemonic thoughts and attitudes, "without fear of being ostracized or judged".⁹⁷ In traditional social movements, these spaces are often found in marches, protests, and in-person events. The alt-right, however, has a

⁹⁰ DELLA PORTA, D. and M. DIANI, *Social Movements: An Introduction*. Oxford: Blackwell Publishers Inc. (1999)

⁹¹ E. K. NEWTON, *What's So Alternative About The 'Alt-Right'?*, Dissertação (Mestrado em Politics) – Lancaster University. Lancashire, (2017), p. 40

⁹² E. K. NEWTON prev. cited, note 99, p. 41.

⁹³ *Id.*

⁹⁴ E. K. NEWTON, prev. cited, note 99, p. 42.

⁹⁵ E. K. NEWTON, prev. cited, note 99, p. 43.

⁹⁶ A. MELUCCI, «The Process of Collective Identity», in *Social Movements and Culture*, edited by Hank Johnston and Bert Klandermans. Minneapolis: University of Minnesota Press, (1995)

⁹⁷ E. K. NEWTON, prev. cited, note 99, p. 44.

digital organizational focus, which makes these spaces primarily digital. These spaces are cited in different ways in the literature on social movements, with Della Porta and Diani⁹⁸ drawing attention to the emergence of "networks of trusting relationships" among actors when a collective identity emerges in a group.

These digital spaces are diverse for the alt-right, who has changed over time. In 2016, Anglin cited platforms like Twitter, Reddit, and 4chan as places where the alt-right was organizing itself organically. In these spaces, such as Reddit, where any user can access any forum, the alt-right was driving other members away through the use of extremist language. However, as Newton shows, these platforms began to ban and censor accounts of the group, leading them to develop their own versions of these platforms. This shift was what became characterized as alt-tech, resulting in social networks like Gab, a platform similar to Twitter but which promised to house all kinds of speech, in defense of free speech.⁹⁹

Besides the collective identity of a movement, another important aspect to analyze is its repertoire of confrontation, which allows us to understand the tactics used in its mobilization against its opponents. This concept was originally defined by Tilly, who characterizes it as the set of ways in which people act to achieve a common goal.¹⁰⁰ As Tarrow points out, "it is both a structural and cultural concept", since it takes into account what the people involved in the action do, but also what they know how to do, situated in a well-defined time and space.¹⁰¹ Thus, the confrontational repertoire of social movement activists in Europe in the mid-2000s, for example, was composed of marches, press statements, and petitions, methods that were modified by the activists, but were learned by them in that specific context.¹⁰²

Digital practices fundamentally make up the confrontational repertoire of the alt-right, which is a group that has mobilized and expressed itself mainly through the Internet since 2015.¹⁰³

⁹⁸ D. DELLA PORTA and M. DIANI, *Social Movements: An Introduction*. Oxford: Blackwell Publishers Inc. (1999), p. 94

⁹⁹ E. K. NEWTON, prev. cited, note 99, p. 45.

¹⁰⁰ S. TARROW, *O Poder em Movimento: Movimentos Sociais e confronto político*, Petrópolis, Editora Vozes, (2009) [1998], p. 40

¹⁰¹ *Id.*

¹⁰² C. TILLY, *Regimes and Repertoires*. The University of Chicago Press, 2006. p. 36

¹⁰³ G. HAWLEY, *Making Sense of the Alt-Right*. 1a. ed, Columbia, Columbia University Press, (2016), p. 68

Dal Bosco's¹⁰⁴ mapping of the group's digital practices showed the role of concepts such as memes and the media hoax in the practices of the US alt-right. The author draws attention to how the digital practices of the alt-right attempt to subvert hegemonic communication with a focus on humor and satire.¹⁰⁵

An important concept for understanding the digital practices and behavior of the alt right is that of trolls. A troll is a user who joins a digital community to "cause 20 confusion and/or to start or accentuate conflict for their own amusement".¹⁰⁶ The term has actually been in use since at least 1992, when it appeared in the Oxford English Dictionary referring to a "fishing for inflammatory reactions".¹⁰⁷ This reference to fishing is because of the use of the term trolling in fishing, in which a bait is placed behind a boat to see what could be caught that way.¹⁰⁸ Merrin¹⁰⁹ proposes to see the practice of trolls, trolling, as this attitude of provocation, with the use of humor, almost like a sport - it is fun for the troll to irritate and manage to do so with as many people as possible.

Trolling¹¹⁰ is actually a multivariate practice, with different types of trolls doing different things in different environments.¹¹¹ It is possible to have trolls who are content with smaller actions, as well as those who seek larger actions. Even the act of hacking a government website can be a trolling practice, with the hacker putting a song on the hacked site, for example.¹¹² It is even possible to speak of a troll culture, which developed mainly in chans like 4chan, a forum in which the alt-right also developed. Beyond this proximity of environments, the alt-right benefits from this attitude of provocation for the purpose of self-satisfaction,¹¹³ which guides several of its digital

¹⁰⁴ J. K. DAL BOSCO, *O uso de mídias táticas e hacktivismo pelo movimento contemporâneo alt-right*. Monografia, Curso de Comunicação Social: Habilitação em Jornalismo, Universidade Federal do Rio Grande do Sul. Porto Alegre, (2018)

¹⁰⁵ J. K. DAL BOSCO, prev. cited, note 112.

¹⁰⁶ C. HARDAKER, *Trolling in asynchronous computer-mediated communication: From user discussions to academic definitions*. Journal of Politeness Research, v. 6, n. 2, jul. (2010), p. 237.

¹⁰⁷ W. PHILLIPS, *This is why we can't have nice things: Mapping the relationship between online trolling and mainstream culture*. The MIT Press, (2010), p. 30

¹⁰⁸ W. MERRIN, «President Troll: Trump, 4Chan and Memetic Warfare». In HAPPER, C., HOSKINS, A. and MERRIN, William (Org.) *Trump's Media War*. Palgrave Macmillan, (2019), p. 201

¹⁰⁹ *Id.*

¹¹⁰ A 'troll' can be defined as someone who makes deliberately offensive or provocative online posts, usually with the intention of eliciting reactions from others.

¹¹¹ W. PHILLIPS, prev. cited, note 115, p. 39.

¹¹² R. SANTINO, «Hacker 'trolla' site da NSA para demonstrar falha do Windows 10». Olhar Digital, 16 jan. (2020), Online: <https://olhardigital.com.br/fique_seguro/noticia/hacker-trolla-site-da-nsa-para-demonstrarfalha-do-windows-10/95477> (Site consulted on November 6th, 2020)

¹¹³ E. K. NEWTON, prev. cited, note 99. p. 46.

practices. To satirize activists of progressive causes, the alt-right has already used the autistic screeching meme, for example, with the figure of a character wearing a shirt with a feminist symbol showing dissatisfaction with a woman's choice to remain at home, for her family, instead of taking a job.

Keeping in mind the collective identity and confrontational repertoire of the alt-right, along with its history and key actors, it is important to know what this group is about and how it differs from other right-wing movements. It is a far-right group that is characterized by its identity and its practices, which are mainly digital. Although it is a movement with a diffuse ideology, understanding how this movement identifies and acts helps when we talk about drawing parallels between this American alt-right and other far-right groups around the world, such as the "hate cabinet" in Brazil.

Pandemic Management

Just as the coronavirus has spread around the world, so have the fake news stories on the subject. No wonder that the WHO (World Health Organization) has treated the issue as an infodemic, that is, an overflow of information, some accurate and some not. PAHO and the WHO say that infodemic¹¹⁴ can make the pandemic even worse. This is because it makes it difficult for people in general, decision-makers, and health professionals to find reliable sources and reliable guidance when they need it.¹¹⁵

In addition, this misinformation epidemic can make people feel anxious, depressed, overwhelmed, emotionally exhausted, and unable to meet important demands. It can also affect decision-making processes, when immediate answers are expected and not enough time is taken to carefully analyze the evidence; after all, there is no quality control of what is published.

¹¹⁴ According to material produced by PAHO's Department of Evidence and Intelligence for Health Action in partnership with the WHO, the term 'infodemic' refers to a large increase in the volume of information associated with a specific issue, which can multiply exponentially in a short period of time due to a specific event, such as the current pandemic. In this situation, rumors and misinformation arise, as well as manipulation of information with dubious intent. In the information age, this phenomenon is amplified by social networks and spreads faster, like a virus (PAHO, 2020).

¹¹⁵ Paula FALCÃO and Aline Batista de SOUZA, «Pandemia de desinformação: as fake news no contexto da Covid-19 no Brasil». *RECIIS - Revista Eletrônica de Comunicação, Informação e Inovação em Saúde*, Rio de Janeiro, v. 15, n. 1, p. 55-71, jan./mar. (2021)

For expository purposes, we bring an overview of the various fake news that has circulated in Brazil during the pandemic. The examples were collected from news from online communication vehicles, from the fact-checking agencies websites and, especially, from the Ministry of Health's website - on the specific page created by the agency to deal with false news about Covid-19.¹¹⁶ The collections were made in September 2020 and comprise the initial period of the pandemic in Brazil until the time of writing of this paper, that is, between March and September 2020.

For a better understanding, we organized these fake news stories according to the themes created by Posetti and Bontcheva (2020). According to the authors, in general, the fake news subjects related to Covid-19 are:

- Origin and spread of the virus;
- False and misleading statistics;
- Economic (and health) impacts of the pandemic;
- Discrediting journalists and the media;
- Medical science: symptoms, diagnosis and treatment;
- Impacts on society and the environment;
- Politicization with point of view;
- Content promoted for fraudulent profit from personal data; and
- Celebrities who were supposedly contaminated.

We emphasize that some of the fake news can fall into more than one category, because these categories are not mutually exclusive.

In the category 'origin and spread of the virus', among the fake news disseminated on social networks (such as Facebook and Twitter) and messaging applications (such as WhatsApp) is the claim that "pets can transmit Covid-19 to humans".¹¹⁷ The Ministry of Health points out that there is no evidence about this. Several dogs and cats that have been in contact with infected humans have tested positive for Covid-19, but it is not possible to say that these animals can transmit the

¹¹⁶ BRASIL. Ministério da Saúde (MS). Orientações para retomada com segurança [Internet]. 2020. Online:<<https://coronavirus.saude.gov.br/orientacoes-para-retomada-com-seguranca>>. (Site consulted on September 30, 2021)

¹¹⁷ Mário MARCONDES, «Afiml, os animais podem contrair ou transmitir o novo coronavírus?», *Veja Saúde*, São Paulo, 18 mar. (2020), Online: <https://saude.abril.com.br/blog/pet-saudavel/pets-podem-contrairtransmitir-coronavirus/>. (Site consulted on August 28, 2020)

disease to humans and spread the virus. Also shared in this category are claims that 'only symptomatic people transmit Covid-19' and that 'alcohol consumption protects against Covid-19', both of which have already been declared false by the Ministry of Health.

The fake news about homemade recipes and indications of natural products for immunization against the disease are among the most common on WhatsApp. The category 'medical science: symptoms, diagnosis and treatment' that supposedly prevents or cures Covid-19 has been very widespread: 'Coffee prevents coronavirus'; 'Alkaline foods prevent coronavirus'; 'Drinking water every 15 minutes cures coronavirus'; 'Hot lemon tea with baking soda cures coronavirus'; 'Drinking lots of water and gargling with warm water, salt and vinegar prevents coronavirus'; 'Drinking hot drinks to kill coronavirus'; 'Coronavirus can be cured with bowl of freshly boiled garlic water'; 'Sweet herb tea cures coronavirus'; 'Avocado tea with mint prevents coronavirus'; 'Immune tea against the new coronavirus'; 'Whiskey and honey against coronavirus'; 'Oils to fight coronavirus'; 'Vitamin C + zinc and the new coronavirus'.

Another extra category is the 'false cure', which includes statements such as: 'Brazilian government announces coronavirus vaccine'; 'Patient with coronavirus cured in 48 hours with AIDS medication'; 'Thai doctors cure coronavirus in 48 hours'; 'Russia announces cure for coronavirus'. In the category 'appeals to religiosity': 'Oil consecrated to cure coronavirus'. Finally, in the category 'statements from health professionals' there were texts and/or audios supposedly produced by doctors, nurses, technicians, and authorities in the area: 'Audio of the Minister of Health on peak coronavirus infection'.

Finally, the existence of the extra category 'surreal information'¹¹⁸ was also identified. These include statements such as: 'Cow urine as a remedy against the new coronavirus', 'Bubble wrap can pass coronavirus', 'Infrared thermometer kills neurons'; 'Consumers of beef would be immune to the new coronavirus' and 'Hair dryer destroys coronavirus'.

In Brazil, fake news has a curious ally, to say the least. It is the President of the Republic himself, who since the beginning of the pandemic has been describing Covid-19 as just a "little

¹¹⁸ C. SANTOS, «Conheça as fake news mais absurdas já cheçadas sobre o coronavírus no mundo», UOL Notícias, São Paulo, 31 ago. (2020), Online:<<https://www.uol.com.br/tilt/noticias/>> (Site consulted on August 20, 2021);

flu".¹¹⁹ Even after the confirmation of the first case of Covid-19 in Brazil, Bolsonaro said that the pandemic was a "fantasy"¹²⁰ and ignored the recommendations of health agencies. The president greeted supporters during demonstrations, while these agencies recommended to avoid crowds.¹²¹ Bolsonaro made several appearances without a mask - even when face masks were already mandatory in the country. He even stated, in a TV statement on March 24, that the coronavirus would not affect him "because of [his] history as an athlete".¹²²

On March 29, during a tour in Brasilia, Bolsonaro said: " That's life. We will all die one day".¹²³ On April 10, in another of his outings, even when in need of social isolation, he stated, "No one is going to take away my right to come and go"¹²⁴, while greeting supporters inside a pharmacy. On April 20, when asked about the number of deaths, the president replied, " I am not a mortician"¹²⁵; On April 28, he also said, "So what? I'm sorry. You want me to do what? I am Messiah, but I don't do miracles," in allusion to his middle name¹²⁶. He also positioned himself several times against social isolation, stating that "the economy cannot stop"¹²⁷.

¹¹⁹ FOLHAPRESS. «“Não vai ser uma gripezinha que vai me derrubar”, diz Bolsonaro». A Gazeta, Vitória, 20 mar. (2020a), Online:<<https://www.agazeta.com.br/brasil/nao-vai-ser-uma-gripezinha-que-vai-mederrubar-diz-bolsonaro-0320>> (Site consulted on September 02, 2020)

¹²⁰ G1. «Bolsonaro diz que “pequena crise” do coronavírus é “mais fantasia” e não “isso tudo” que mídia propaga», G1, Brasília, DF, 10 mar. (2020), Online: <<https://g1.globo.com/politica/noticia/2020/03/10/bolsonaro-diz-que-questao-do-coronavirus-e-muito-mais-fantasia.ghtml>> (Site consulted on August 27, 2020)

¹²¹ L. A. OTTA, «Sem máscara, Bolsonaro cumprimenta apoiadores na Praça dos Três Poderes», Valor Econômico, Brasília, DF, 31 mai. (2020), Online: <<https://valor.globo.com/politica/noticia/2020/05/31/sem-mascara-bolsonaro-cumprimenta-apoiadores-na-praca-dos-tres-poderes.ghtml>> (Site consulted on August 20, 2021)

¹²² REDAÇÃO. «Por que o histórico de atleta não garante imunidade contra a Covid-19». Veja, São Paulo, 07 jul. (2020), Online:<<https://veja.abril.com.br/blog/maquiavel/infectado-pela-covid-19-bolsonarocolocara-a-prova-historico-de-atleta/>> (Site consulted on August 27, 2020)

¹²³ F. CAIXETA, «Bolsonaro sobre coronavírus: “Todos iremos morrer um dia”», Metrôpoles, Brasília, DF, 29 mar. (2020), Online: <<https://www.metropoles.com/brasil/saude-br/bolsonaro-sobre-coronavirustodos-iremos-morrer-um-dia>> (Site consulted on August 27, 2020)

¹²⁴ AGÊNCIA ESTADO. «“Ninguém vai tolher meu direito de ir e vir”, diz Bolsonaro em passeio». R7, São Paulo, 10 abr. (2020), Online:<<https://noticias.r7.com/brasil/ninguem-vai-tolher-meu-direito-de-ir-e-vir-dizbolsonaro-em-passeio-10042020>> (Site consulted on August 20, 2021)

¹²⁵ FOLHAPRESS. «Bolsonaro sobre número de mortes por covid: ‘não sou coveiro’», A Gazeta, Vitória, 21 abr. (2020b), Online:<https://www.agazeta.com.br/brasil/bolsonaro-sobre-numero-de-mortes-porcoronavirus-nao-sou-coveiro-0420?utm_medium=redacao&utm_source=twitter&origin_r=leiaag> (Site consulted on September 02, 2020)

¹²⁶ G. GARCIA, P. H. GOMES and H. VIANA, «“E daí? Lamento. Quer que eu faça o quê?”», diz Bolsonaro sobre mortes por coronavírus; “Sou Messias, mas não faço milagre”», G1, Brasília, DF, 28 abr. (2020), Online: <<https://g1.globo.com/politica/noticia/2020/04/28/e-dai-lamento-quer-que-eu-facao-que-diz-bolsonaro-sobre-mortes-por-coronavirus-no-brasil.ghtml>> (Site consulted on August 28, 2020)

¹²⁷ R. SILVA and D. PASTI, «Da “gripezinha” ao “e daí?”: as falas de Bolsonaro em cada fase da pandemia», A Gazeta, Vitória, 05 mai. (2020), Online: <<https://www.agazeta.com.br/es/politica/da-gripezinha-ao-e-daias-falas-de-bolsonaro-em-cada-fase-da-pandemia-0520>> (Site consulted on September 02, 2021)

On June 11, 2020, in a Facebook live speech, the president encouraged his supporters to enter hospitals and film bed occupancy¹²⁸, claiming that there was an overreporting of Covid-19 deaths in the country. According to reports from the Brazilian Intelligence Agency (Abin) itself, the number of cases of the disease may actually be eight to ten times higher than those reported. After Bolsonaro's suggestion, five deputies from the state of Espírito Santo invaded Hospital Dório Silva, in the municipality of Serra, on June 12th of the same year, in order to smoke out the covid pandemic hoax. In an interview, they stated that almost all the beds were occupied by Covid-19 patients.¹²⁹

In addition, the Ministry of Health has been without a minister for over two months¹³⁰, in the midst of the pandemic - the portfolio being under the interim command of active duty general Eduardo Pazuello¹³¹. The previous ministers, Nelson Teich and Henrique Mandetta, left office due to disagreements with the president about the health crisis.¹³² Another questionable conduct of the federal government was in relation to access to information, a right provided in the 1988 Constitution and also in the Access to Information Law (LAI). Already under Pazuello's management, the Ministry of Health had stopped disclosing the accumulated number of Covid-19 cases and deaths in Brazil.¹³³ It also started to delay the time of data disclosure, so that *Jornal Nacional* (Newspaper of national reach) could not show them daily¹³⁴. The disclosure of the data

¹²⁸ L. FLORES, «Bolsonaro incentiva invasão de hospitais para checar ocupação de leitos». *Metrópolis*, Brasília, 11 jun. (2020), Online: <<https://www.metropoles.com/brasil/politica-brasil/bolsonaroincentiva-invasao-de-hospitais-para-checar-ocupacao-de-leitos>> (Site consulted on August 25, 2021)

¹²⁹ E. MOTA, «Após pedido de bolsonaro, deputados invadem hospital, diz governo do ES». *Congresso em Foco*, (2020), <<https://congressoemfoco.uol.com.br/area/governo/apos-pedido-de-bolsonaro-deputados-invadem-hospital-diz-governo-do-es/>> (Site consulted on August 25, 2021);

¹³⁰ A. SOUZA and P. FERREIRA, «Brasil completa dois meses sem titular à frente do Ministério da Saúde. *O Globo*, Rio de Janeiro, 15 jul. 2020. Sociedade. Online: <https://oglobo.globo.com/sociedade/brasilcompleta-dois-meses-sem-titular-frente-do-ministerio-da-saude-1-24533078>. (Site consulted on September 06, 2020);

¹³¹ Currently dismissed and is now facing an investigation into crimes committed during his tenure as health minister, including the adoption of “herd immunity” as a policy of confrontation even against all expert reports, overpriced vaccines, and corruption.

¹³² M. FERRO, «Mandetta é demitido do Ministério da Saúde e Nelson Teich assume Baixa em meio a pandemia Oncologista já está em Brasília», *Poder 360*, 16.abr.(2020), <<https://www.poder360.com.br/governo/mandetta-e-demitido-do-ministerio-da-saude-e-nelson-teich-assume/>> (Site consulted on August 28, 2021)

¹³³ M. RODRIGUES, «Após reduzir boletim diário, governo Bolsonaro retira dados acumulados da Covid-19 do site». *G1*, Brasília, DF, 06 jun. 2020. Política. Online:<<https://g1.globo.com/politica/noticia/2020/06/06/apos-reduzir-boletim-governo-bolsonaro-retira-dados-acumulados-da-covid-19-de-site-oficial.ghtml>> (Site consulted on August 24, 2020)

¹³⁴ G. GARCIA, «“Acabou matéria do *Jornal Nacional*”, diz Bolsonaro sobre atrasos na divulgação de mortos por coronavírus». *G1*, Brasília, 05 jun. (2020), Online: <<https://g1.globo.com/politica/noticia/2020/06/05/dados-do-coronavirus-bolsonaro-defende-excluir-de-balanco-numero-de-mortos-de-diasanteriores>> (Site consulted on August 28, 2020)

became more regulated after the Supreme Court order and the emergence of independent initiatives to investigate the information¹³⁵.

Claims that 'there is a specific drug for the treatment or prevention of Covid-19' (category 'medical science: symptoms, diagnosis and treatment') were also classified as fake news. In fact, this is the most disseminated fake news by President Jair Bolsonaro. According to the Ministry of Health, clinical trials are still ongoing and there is no proof that hydroxychloroquine or any other drug can cure or prevent Covid-19. Even in the face of the absence of scientific proof, Bolsonaro advertised chloroquine on numerous occasions - interviews, social media posts, photos, videos, and lives¹³⁶. Even after announcing that he tested positive for Covid-19, on July 7, the president continued advertising the drug on his social networks, using his own case as an example.¹³⁷

The president also ordered the army to increase the production of chloroquine, disregarding the absence of scientific proof of its effectiveness, as well as its side effects.¹³⁸ Experts warn that the use of the substance should not be done without direct medical monitoring, because of the severity of possible reactions to the drug. One of the main side effects of the drug would be heart complications.¹³⁹

An article published by UOL (SANTOS, 2020) highlights that the International Fact-Checking Network (IFCN) has gathered more than 80 verifiers in over 70 countries in a large alliance to verify fake news. Coincidentally - or not - the three countries with the most verified fake

¹³⁵ Felipe PONTES, «Ministro do STF manda governo divulgar dados totais de Covid-19», Agência Brasil, Brasília, 09 jun. (2020), Online:<<https://agenciabrasil.etc.com.br/justica/noticia/2020-06/ministro-do-stf-manda-governo-divulgar-dados-totais-de-covid-19>> (Site consulted on August 24, 2020)

¹³⁶ M. ZYLBERKAN, «TCU investiga 'propaganda' de Bolsonaro sobre uso da cloroquina». Veja, São Paulo, 22 jul. (2020), Online:<<https://veja.abril.com.br/blog/maquiavel/tcu-investiga-propaganda-debolsonaro-sobre-uso-da-cloroquina/>> (Site consulted on August 23, 2021)

¹³⁷ S. TEÓFILO, «Bolsonaro testa positivo para Covid-19 em novo teste», Correio Braziliense, Brasília, 22 jul. (2020a), Online:<https://www.correiobraziliense.com.br/app/noticia/politica/2020/07/22/interna_politica,874227/bolsonaro-testa-positivo-para-covid-19-em-novo-teste.shtml> (Site consulted on August 23, 2021)

¹³⁸ R. VELEDA, «Por ordem de Bolsonaro, Exército já fez mais cloroquina do que em 10 anos», Metrôpoles, Brasília, 15 maio (2020), Online:<<https://www.metropoles.com/brasil/por-ordem-de-bolsonaro-exercito-ja-fez-mais-cloroquina-do-que-em-10-anos>> (Site consulted on August 23, 2021)

¹³⁹ A. MENDONÇA, «Coronavírus: o que especialistas falam sobre o uso da cloroquina», Estado de Minas, Belo Horizonte, 13 maio (2020), Online:<https://www.em.com.br/app/noticia/nacional/2020/05/13/interna_nacional,1147078/coronavirus-o-que-especialistas-falam-sobre-o-uso-da-cloroquina.shtml> (Site consulted on August 28, 2020)

news are the same ones that lead the rankings of Covid-19 cases in the world: India, the United States, and Brazil.

"A social media war involving misleading, ambiguous and false information, in addition to the negative consequences for public health, have undermined adherence to social distancing measures".¹⁴⁰ This conclusion can be found in the technical report of the Center for Studies and Research in Health Emergencies and Disasters (Cepedes), of Fiocruz. According to the survey, the low rates of social isolation have contributed significantly to the overload of the health system, to the compromise of the medical and hospital care, and to the lack of access to health services.

This avalanche of misinformation propagated by the federal government, in direct conflict with the information passed on by mayors, governors, and scientific communicators, has directly contributed to the exponential increase of cases in Brazil. In this case, the false news were direct causes of the loss of thousands of lives and the creation of several variants that may, in the future, put the safety of vaccines at risk and immerse the whole world in a new pandemic.

The CPI of Covid also revealed, that in order to maintain the Anti-Covid kit narrative (a set of drugs with no proven efficacy used in the "prevention" of covid), the Ministry of economy subsidized a scientific study by a private healthcare company called PreventSenior, to prove that the kit was efficient in preventing covid-19. It turns out that the board of directors forced doctors to sell anti-covid kits to anyone with flu symptoms, even if the doctor refused. According to the testimony of the lawyer who represents the doctors at the CPI, sometimes, these doctors would get fired, or the medical records would be changed without the doctor's knowledge.¹⁴¹ In addition, several drug efficacy studies were conducted without the consent or knowledge of the patients and their families, which caused several deaths due to the lack of care given to the patients. There were also reports that the protocol was to reduce the oxygenation of patients in the ICU if they exceeded 14 days of hospitalization, and the phrase that was heard from the board was that "Obito is also

¹⁴⁰ R. P. CRUZ, «“Fake news relacionadas à Covid-19 crescem no Brasil, diz estudo” », R7, São Paulo, 21 mai. (2020), Online:<<https://noticias.r7.com/saude/fake-news-relacionadas-a-covid-19-crescem-no-brasil-diz-estudo-21052020>> (Site consulted on September 02, 2021)

¹⁴¹ AGÊNCIA SENADO. “Advogada diz à CPI que Prevent obrigava médicos a receitar 'kit covid'”, Agência Senado (2021), Online:<<https://www12.senado.leg.br/noticias/materias/2021/09/28/advogada-diz-a-cpi-que-prevent-obrigava-medicos-a-receitar-kit-covid>> (Site consulted on December 28, 2021)

medical discharge", referring to the fact that the ICU bed would be released for a new patient either by healing or by the death of the previous patient. ¹⁴²

¹⁴² J. DE MARI, «Entenda todas as investigações envolvendo a Prevent Senior: Na mira da CPI, operadora de saúde será investigada criminalmente pelo MP-SP sob suspeita de ter cometido pelo menos três crimes, entre eles homicídio», CNNBrasil, (2021), <<https://www.cnnbrasil.com.br/politica/entenda-todas-as-investigacoes-envolvendo-a-prevent-senior/>> (Site consulted on September 29, 2021)

Mass Manipulation

Even with all these protocols and guidelines for the protection of personal data, a majority of the world's population, to a greater or lesser degree depending on the country's secondary education level, does not have access to knowledge about how to protect themselves. This is often due to lack of knowledge of its existence or even lack of interest. Due to ignorance or lack of care, most personal data is on the Internet either unprotected or easily collected, within reach of any company that creates a tool capable of collecting, organizing, sectoring, processing, and selecting it so that it can be used effectively. This can be a challenge, because the ease with which this information can be obtained, combined with its enormous flow, makes processing this data a task that, while complex, is not impossible.¹⁴³

Initially, the categorization of this data was not used for the production of fake news. Companies like Facebook, Microsoft, and other multinationals have become specialized in this process to a frightening degree, and use our data as merchandise, usually sold for the targeted production of advertising, which earns them billions a year.¹⁴⁴

This exchange can be considered unbalanced since hardly an internet user knows the exact value of each piece of information made available on the most diverse platforms; it is like traveling with foreign money and offering a good service for the equivalent of a dollar. It may seem like an excellent deal at first glance since there are no tremendous economic losses. However, the user does not know the cost of that service in the local currency, maybe the client should be paying only 0.05 cents. In other words, the consumer is handing over thousands of bits of data per day for a service that should have only cost them a fraction of that data, for example.

Moreover, this ignorance is vital for the platform to keep being fed information without paying for the extra data and therefore profiting by paying almost anything for input. It is also vital

¹⁴³ M. M. COSTA, *A era da vigilância no ciberespaço e os impactos da nova lei geral de proteção de dados pessoais no Brasil: Reflexos no direito à privacidade*. (bacharelado em Direito) – Universidade Federal do Rio de Janeiro, Rio de Janeiro, (2018)

¹⁴⁴ D. D. QUEIROZ, *Privacidade na Internet*. In: REINALDO FILHO, *Demócrito (coord.)*. *Direito da Informática – temas polêmicos*, 1. ed. Bauru, Edipro, (2002), p. 81 - 96

for these platforms to keep the consumer unaware of the real use made of the data,; mass manipulation¹⁴⁵.

Although this data has been used for years to manipulate the population to encourage the purchase of certain products, this social engineering is not limited to its commercial use¹⁴⁶. With mass manipulation it became possible to categorize the population in specific profiles and produce specific fake news for each profile, increasing the reach and efficiency in making each profile believe the information conveyed.¹⁴⁷

That said, mass manipulation is not a new practice and has been in use since the invention of mass media such as radio and TV¹⁴⁸. However, with the advent of the Internet, this manipulation was able to better understand its audience and be directed to specific profiles, becoming much more efficient. Fake news has a fundamental role in this efficiency, since it is capable of creating a kind of parallel reality, where conspiracy theories, false documents and manipulated audios, etc, are considered true¹⁴⁹. In this way it is much easier to convince someone of an idea if you create a reality in which this idea makes sense, so the more absurd and intolerable an idea is in the real world, the more immersed you need people to be in these parallel reality bubbles. Undoubtedly, fake news is essential to form these bubbles allowing mass manipulation to work efficiently.

Types of Mass Manipulation

To understand how this manipulation happens, we believe it is necessary to point out the main stereotypes used by the media in general. It is important to emphasize that these strategies work well without the need to implement fake news, but as it was already explained before, the more radical and unpopular an idea initially seems, the more unreal and distorted the manipulation needs to be. In this way, it is not uncommon to see many of the strategies we will list associated

¹⁴⁵ M. KABOLI, K. YAO and G. CHENG, *Tactile-based manipulation of deformable objects with dynamic center of mass*, IEEE-RAS 16th International Conference on Humanoid Robots, (2016), p. 752-757, DOI: 10.1109/HUMANOIDS.2016.7803358

¹⁴⁶ R. D. FILHO (coord.). *Direito da Informática – temas polêmicos*. 1. ed. Bauru, Edipro, (2002), p. 432

¹⁴⁷ S. A. A. VIEIRA, *Inviolabilidade da vida privada e da intimidade pelos meios eletrônicos*. 1. ed. São Paulo, Juarez de Oliveira, (2002), p. 200

¹⁴⁸ P. M. BLAKAR, «Language as tool of the social power, Language and modeling of social influence», New York, NY, Cambridge University Press, (1987), Online:< <http://www.columbia.edu/~rmk7/PDF/HSP.pdf> >

¹⁴⁹ J. BLOMMAERT, *Discourse: key topics in sociolinguistics*, New York, NY, Cambridge University Press, Illustrated edition, (2005), p. 314

with fake news in a political context¹⁵⁰. With this in mind, we have compiled the main manipulation strategies used by the media in general:

- The Strategy of Distraction¹⁵¹: This is one of the most used strategies against the population. It consists of diverting society's attention from fundamental problems and issues that political and economic elites choose. At the same time, our focus is shifted towards insignificant information. The example of the "smokescreens" used by the Bolsonaro government every time the press publishes some scandal involving the name of the president or his family, or the misconduct of the pandemic, he diverts attention to such things as the decrease of the tax on gun purchases or bringing up the debate on changing elections to paper ballots¹⁵². These facts have been widely reported in the national¹⁵³ and international media¹⁵⁴.
- Create problems and then offer solutions¹⁵⁵: If one of the purchasers of information from a company such as Facebook wants to implement an unpopular measure, to get widespread acceptance, they create a problem, they engineer a situation, with the goal of distracting, confusing or portraying the measure they want to change or eliminate as "a necessary evil,". However, solving this concocted problem comes at the expense of the rights and achievements of the individual person.¹⁵⁶

¹⁵⁰ J. MCLEOD, S. WARD and K. TANCILL, *Alienation and uses of the mass media*, *Public Opinion Quarterly*, v. 29, Issue 4, WINTER, (1965), p. 583–594, Online:<<https://doi.org/10.1086/267361>>

¹⁵¹ *Id.*

¹⁵² A. H. B. ALMEIDA and K. R. M. BORGES, *De Cortina de Fumaça à Opinião Pública: As táticas comunicacionais do Governo Bolsonaro*. Intercom, *Sociedade Brasileira de Estudos Interdisciplinares da Comunicação*, 42º Congresso Brasileiro de Ciências da Comunicação, Belém, Setember 7, (2019)

¹⁵³ M. SCHUCH, «'Cortinas de fumaça' lançadas por Bolsonaro escondem ações positivas do governo, diz Mourão: Para vice, prioridade deve ser o combate a problemas como o desemprego e a alta da inflação, que atualmente estaria "indomada"», *Valor Econômico*. Brasília. (2021), Online:<<https://valor.globo.com/politica/noticia/2021/09/13/cortinas-de-fumaca-lancadas-por-bolsonaro-escondem-acoes-positivas-do-governo-diz-mourao>> (Site consulted on September 22, 2021)

¹⁵⁴ T. DUONG, «Brazil Using Pandemic as Smokescreen for New Attacks on the Amazon, Activists Warn», *EcoWatch* May. 08, (2020), <<https://www.ecowatch.com/brazil-amazon-deforestation-coronavirus-2645950493>> (Site consulted on: September 15, 2021)

¹⁵⁵ *Id.*

¹⁵⁶ *See*: A. H. B. ALMEIDA and K. R. M. BORGES, *prev. cited*, note 160.

- The strategy of gradualness¹⁵⁷: To gain acceptance for an unacceptable or unpopular measure, it is implemented gradually, over a long time. This way, when the goal is reached, many of us do not even remember when or where it started.

The “Referente” strategy is when one postpones, moves to another date, or procrastinates a commitment. The process is based on proposing something challenging to accept, but that is necessary. It is said that the sacrifice will not be made now but in the future. This buys the audience more time to get used to the idea of change and to accept it more easily when the time comes.

- Addressing the audience as children¹⁵⁸: This is because the more childlike the form of the message, the greater the likelihood of a response, the greater the reach, and the lower the rejection rate.
- Appealing to emotions rather than intellectually¹⁵⁹: Appeal to people’s emotional side so they cannot make a critical and rational analysis of things. As rationalizing makes the person list his priorities or identify lies, it makes it easier to spot a manipulation or a mistruth. Appealing to emotional and less rational aspects allows for a greater ease of manipulation.
- Keeping the public in ignorance and mediocrity¹⁶⁰: Without access to complete information or education, the development of a critical sense of thinking is compromised, making it easier to insert the only "truth" desired by the acting party, without questions, reducing the possibility of revolt and maintaining control.
- Getting the public used to mediocrity¹⁶¹: Promoting, stimulating, and spreading the culture that a society used to "bad" or low-quality standard of living, is a common and everyday occurrence. Encouraging the consumer to accept paying dearly for a poor-quality service or product.
- Reinforcing self-blame¹⁶²: This strategy, unfortunately, has been gaining more and more strength in the social environment in recent times. The plan is to make the individual believe

¹⁵⁷ K. ADIBIFAR, *Technology and Alienation in Modern-Day Societies*, International Journal of Social Science Studies 4, no. 9 (September, 2016), p. 61-68

¹⁵⁸ J. MCLEOD, S. WARD and K. TANCILL, prev. cited, note 158.

¹⁵⁹ *Id.*

¹⁶⁰ K. ADIBIFAR, prev. cited, note 165.

¹⁶¹ *Id.*

¹⁶² *Id.*

that they alone are to blame for their unfortunate situation due to their body, abilities, or behavior.

Not only do companies use the above-mentioned methods, but if they have coordinated data among their users, as is the case with social media, who know who their family and friends are, they are able to verify what they like, since we usually follow the tastes of the people around us. This is explained by Sarit Mizrahi¹⁶³, in the following text:

“The various connections and relationships formed between users in such a fashion results in the creation of a marketing tool known as the Social Graph, which is essentially a public display of connections linking people to one another based on their associations with each other, thus providing “rich sources of naturalistic behavioral data”. The connections linking individuals to one another that are exhibited in the Social Graph can simply be based on the fact that they are acquainted with one another, but they can also be further pinpointed to demonstrate the various traits and interests people have in common.”

The better the network knows the user, the better the results of the manipulation¹⁶⁴. For example, the manipulator can influence a person to believe that he needs something that he does not need or to defend an idea that makes no sense if he thinks it through. This requires a massive volume of data to be processed and fed into an algorithm that can predict reactions¹⁶⁵.

How to form psychological profiles

To be able to produce satisfactory results, precise materials need to be prepared and targeted to specific user profiles.

However, it is impossible to create material explicitly targeted at each individual. Moreover, it is not efficient to think of a single generic template's potential to classify the population into niches.

¹⁶³ S. MIZRAHI, *The Legal Implications of Internet Marketing : Exploiting the Digital Marketplace Within the Boundaries of the Law*, Faculté de droit, Mémoire in Droit des technologies de l’information, Montréal, Université de Montréal, 2012

¹⁶⁴ M. C. BARBOSA, *Manipulação midiática ou a dimensão declaratória da memória?*, E-compos, Brasília, v.20, n.2, maio/ago, 2017

¹⁶⁵ M. KABOLI, K. YAO and G. CHENG, *Tactile-based manipulation of deformable objects with dynamic center of mass*, 2016 IEEE-RAS 16th International Conference on Humanoid Robots (Humanoids), 2016, p. 752-757, doi: 10.1109/HUMANOIDS.2016.7803358

The need for psychological profiling is ancient. The literary work "Psychological Types," authored by the Swiss psychiatrist and psychotherapist Carl Gustav Jung¹⁶⁶, is an essential bibliographic reference for professionals who work with profiling. For the researchers to elaborate a psychological typology, they need to classify based on each specific type of persona as¹⁶⁷: introverted or extroverted, and in attitudes in functions of consciousness that are thought, feelings, sensation, and intuition. Each of these items can have more or less impact for human beings in different ways.

Using computer models and some cognitive psychological profiling, Cambridge Analytica built a personality profile for each of the 250 million voters in the US election for Trump's presidential campaign. They got at least 5000 "data points" from each of them. Things like credit card spending, mobility, reading, programs watched, and most importantly, the likes given on Facebook. They knew the tastes, values, and fears of each voter, and from this, they were able to create personalized campaign messages tailored to each of them¹⁶⁸.

To understand how Cambridge Analytica works it is recommended to watch a talk that its CEO, Alexander Nix, gave in March 2017 in Berlin at the "Online Marketing Rockstar". The 42-year-old Brit, explains that CA uses three methodologies that, used together, change the way political marketing is done. They are Behavioral Sciences (Psychology), Data Analytics (Big Data), and personalized advertising. For CA, demographics (gender, age, religion, race) affect the way people see the world, but personality is the key to why people buy or vote in a certain way. According to this approach, personality determines decision-making¹⁶⁹.

To classify individuals according to personality type, CA uses the Big Five model, which refers to the five personality factors by the lexical method, based on a linguistic analysis¹⁷⁰. They

¹⁶⁶ C. DUNNE, «Prelude», JUNG, C., *Wounded Healer of the Soul: An Illustrated Biography*, Continuum International Publishing Group, (2002), p. 3, ISBN 978-0-8264-6307-4

¹⁶⁷ C. G. JUNG, *Psychological Types*. Princeton, New Jersey, Princeton University Press, ISBN 0-691-01813-8, 1971

¹⁶⁸ J. DUSSEL, «Cómo ganar elecciones contando "me gusta". Usando modelos computacionales y psicología cognitiva, CA pudo construir un perfil de la personalidad de cada uno de los 250 millones de votantes en las elecciones de EE.UU.», Pagina 12, Online:<<https://www.pagina12.com.ar/104359-como-ganar-elecciones-contando-me-gusta>>, (Site consulted on December 5, 2020)

¹⁶⁹ *Id.*

¹⁷⁰ A. RICHTERICH, «How Data-Driven Research Fuelled the Cambridge Analytica Controversy. PARTECIPAZIONE E CONFLITTO», North America, 11, sep. (2018). Available at: <<http://sibaese.unisalento.it/index.php/paco/article/view/19554>> (Site consulted on May 2. 2021)

are: Agreeableness, conscientiousness, extraversion, neuroticism or emotional instability and openness to experience.

It is worth noting that today, the Big Five personality traits are the most scientifically accepted and commonly used personality measurement. The Big Five method is not new, much less the use of psychological models in the science of persuasion. CA's great innovation is in the methodology. They took a computer model created by Michal Kosinski for the Centre for Psychometrics at Cambridge University and applied it to political marketing.

In 2012, Kosinski¹⁷¹ generated his model: with 68 "likes" from a Facebook user, he could predict, with a low margin of error, his skin color (95% correct), his sexual orientation (88% correct), and his Democratic or Republican Party affiliation (85% correct). Intelligence, religion, alcohol and tobacco consumption could also be predicted. By analyzing only 10 "likes" Kosinski's model was able to evaluate a person better than a co-worker, with 70 "likes" he could do better than a friend, and with 300, better than his partner.

In addition to psychology, CA uses big data - large sets of stored data. Every time we do something, we leave "fingerprints" that are recorded, collected and analyzed¹⁷². You can order different types of information about a person to understand their views: demographic data (age, gender, religion...), attitudinal data (what car they drive, what magazines they read, what media they consume, what hobbies they practice, what movies they watch), and behavioral data (how many contacts or photos they have on Facebook, how many calls they make, what time they wake up...).

This data is cross-referenced using computer models, and an individual profile is created according to a personality model. This makes it possible to generate one-to-one communication. Knowing what each of the recipients want to hear in advance, it is possible to create unique and individualized messages.

¹⁷¹ M. KOSINSKI, D. STILLWELL and T. GRAEPEL, *Private traits and attributes are predictable from digital records of human behavior*. PNAS April 9, 110 (15) 5802-5805, edited by WACHTER, K., University of California, Berkeley, CA, and approved February 12, (2013), Online: <https://doi.org/10.1073/pnas.1218772110>

¹⁷² C. CADWALLA and E. GRAHAM-HARRISON, « 50 million Facebook profiles harvested for Cambridge Analytica in major data breach », The Guardian. The Cambridge Analytica Files. Cambridge Analytica. Sat 17 Mar 2018. Online: <<https://www.theguardian.com/news/2018/mar/17/cambridge-analytica-facebook-influence-us-election>>. (Site consulted on May 20, 2021)

At the talk in Berlin, Nix, the CEO of Cambridge Analytica¹⁷³, said that they started working for Trump in June 2017. Based on previous information, they learned that there were possibilities to convince many voters in Wisconsin, a traditionally Democratic state, to vote for the Republican party. To capture them, they first identified which issues they were interested in (gun rights, immigration, the economy). They then sub-segmented according to their personality to bring customized messages to them. For example, for those who turned out to be gun owners, they created different types of messages according to how they were identified in the Big Five personality model.

For the "very responsible and not very emotionally unstable," a rational message based on fear was sent: a text about the importance of security accompanied by a photo of a thief breaking in¹⁷⁴. On the other hand, those who were identified as "conservative" (who care about traditions, family, habits) the text sent started with "Since the birth of the nation," accompanied by a picture of a silhouette of a father and his son hunting with rifles under a beautiful sunset. In Wisconsin, Trump ended up winning 50,000 votes. According to Nix, "In elections that are won by a minimal margin, this technology can make a difference."

Radicalization

As explained in the topic above, mass manipulation is most effective if it is focused on profiles, each profile with a specific, targeted approach. We also point out the importance of fake news for the creation of a parallel reality that holds extreme ideals or ideas that would hardly be accepted in a neutral or average environment¹⁷⁵.

In these environments, manufactured to persuade people of ideas considered extreme, success is more easily achieved if the information circulated can reach the emotional, and anger is the easiest feeling to provoke in a human being. In this way, the radicalization of people moved by hatred, resentment and/or fear is achieved more quickly¹⁷⁶.

¹⁷³ J. DUSSEL, prev. cited, note 176.

¹⁷⁴ *Id.*

¹⁷⁵ S. L. DE VICTORIA, «Media Manipulation of the Masses: How the Media Psychologically Manipulates», PsychCentral. February, (2012), <<https://psychcentral.com/blog/media-manipulation-of-the-masses-how-the-media-psychologically-manipulates#1>> (Site consulted on September 10, 2021)

¹⁷⁶ R. L. THOMPSON, *Radicalization and the Use of Social Media*, Journal of Strategic Security 4, no. 4 (2012), p. 167-190

This evaluation and categorization model is used by the media, companies, and governments for many purposes. As we have seen before, knowing your target audience dramatically increases the percentage of success of manipulation, whether it is to sell a product, a positive image, an idea, or even an ideology.

Psychological phenomenon

Extremist acts and the process of radicalization has been drawing the attention of researchers around the world since 2001. Radicalization is a process of developing extremist beliefs, emotions, and behaviors. Extremist beliefs are deeply held convictions that oppose the fundamental values of society, the laws of democracy, and universal human rights by advocating the supremacy of a particular group (racial, religious, political, economic, social, etc.). Extremist emotions and behavior can be expressed both in non-violent pressure and coercion and in actions that deviate from the norm and demonstrate contempt for life, liberty and human rights.¹⁷⁷

A complete pathway into the psychological mechanism involved in the process of radicalization is offered in order to get a broad picture relative to current research in the field. From this point on, a rational emotional and behavioral conceptualization of radicalization has been developed, bringing together all the concepts and knowledge in the field. A complete and clear conceptualization is crucial for the development of prevention/intervention programs and best practices in dealing with this process that has been spreading in recent years. The final part deals with guidelines for prevention/intervention programs from a rational emotional and behavioral perspective, and also from a European policy perspective. To radicalize is to separate, therefore, it is important to make the target of manipulation feel unique and a misunderstood genius, by dehumanizing and objectifying the other people that are different from him. The radical person tends to be moved primarily by feelings, mainly of hatred. In fact, it is much easier to move a person through emotions than through arguments and facts.¹⁷⁸

The use of media to radicalize people is an old strategy. Examples of this include, the imposition of beauty on female bodies, redirecting money to the maintenance of standards, sending them to the mercy of male financial control, meritocracy, blaming the low salaries given to black

¹⁷⁷ S. TRIP et al., *Psychological Mechanisms Involved in Radicalization and Extremism. A Rational Emotive Behavioral Conceptualization*, *Frontiers in psychology*, vol. 10 437, 6 Mar. (2019), doi:10.3389/fpsyg.2019.00437

¹⁷⁸ *Id.*

people, poor people, etc.¹⁷⁹ Alternatively, all these narratives, including the illusion of class mobility are used to drive away class consciousness and fragment the population into other niches, usually religious, conservatives, defenders of "families," those considered to be "men of property," against the "gay dictatorship," the "feminazis," the communists, scientists and teachers who want to indoctrinate the youth or, in another perspective, the progressives, minority rights activists, and scientists against "proto-fascism."¹⁸⁰

Practical usability

Radicalization is widely used to make mass manipulation because it is easier to manipulate emotions than logical argumentation. Furthermore, the primary goal of the fake news strategies used by the extreme right in the case at hand is radicalization, sectorization.¹⁸¹ This is done inside the social networks, by producing wholly false news and mainly distorting facts. When the reader starts from an indisputable fact, it is easier to believe that everything else is also true.

Speaking specifically of the Brazilian reality, the informatization of the majority of the population happened in a unique way, differently from the majority of countries that first had cable internet in their homes, the access to social media was made with cell phone chips and through carriers that had Whatsapp plans.¹⁸²

In fact, in Brazil, most operators have unlimited plans with Whatsapp, Facebook, and Instagram, the source of information for these people is limited by television and social media, making gathering and alienation easier. So, what happened was the systematic disposal of distorted news on Whatsapp groups forcing the reader, little by little, to believe he is cornered and to believe that the only way out is to react with violence. Moreover, it feeds a dichotomy between left and right, conservatives and activists, reducing the political stage, which is full of nuances and colors, to two opposing sides like in a soccer match.

Thus, we conclude that, in order to achieve the objective of putting an extreme right-wing party in power, it is necessary that a portion of the population believe they are in danger and this group is the only one able to save them, even if this group has many radical ideas. The more terrified

¹⁷⁹ S. TRIP, et al., prev. cited, note 185.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² *Id.*

a population feels, the more tolerable will be to extreme and violent ideas. Fake news is used to reach certain profiles, immersing them in a parallel reality of dangers created solely to radicalize, making the debate dual between 'good' and 'evil', making the citizen feel obliged to choose one side and seeing the opposite as completely wrong since it symbolizes the evil to be fought, undermining any chance of dialogue.

In order to prevent or alleviate this chaotic scenario, laws were designed to solve each of these problems and this is what we will list below.

How the regulatory system regulates these practices

After presenting some of the vocabulary, scenarios, and logic that permeate fake news, we will go into the notions that are related to the norm *stricto sensu*. Finally, bearing in mind the violation of legal goods such as the moral and physical integrity of individuals or legal entities, it is becoming crystal clear that we need to regulate and punish this kind of offensive behavior.

In this line of reasoning, both the Canadian and Brazilian legal systems protect the right to physical, mental, and data security, which are the targets of the conduct described in this paper.

The Canadian legal system has already been dealing with cybersecurity for much longer than the Brazilian legal system. It, therefore, has a maturity that the young Brazilian legal system does not yet have. It can help the Brazilian legislator understand the possible mishaps that the law has not yet passed since Canadian law has a huge framework and variety of situations that the traditional law does not have, to adapt to the growing creativity of our people.¹⁸³

Data protection and information security

The General Law of Personal Data Protection (LGPD - Law 13.709/18) provides for the treatment of data of human beings, both by physical and digital means, recognizing the purpose of the protection of this data/information for the protection of rights, such as freedom of expression and communication, privacy, honor, image, informative self-determination and free development of personality¹⁸⁴. Furthermore, the law recognizes the effectiveness and promotion of fundamental human rights as a basis for the protection of personal data¹⁸⁵.

¹⁸³ Melissa LUKINGS and Arash Habibi LASHKARI, “Understanding Canadian cybersecurity laws: The foundations”. It World Canada. (2020) Online:<[http:// https://www.itworldcanada.com/blog/understanding-canadian-cybersecurity-laws-the-foundations-article-1/440299](https://www.itworldcanada.com/blog/understanding-canadian-cybersecurity-laws-the-foundations-article-1/440299)> (Site consulted on August 30, 2021)

¹⁸⁴ Art. 2

¹⁸⁵ Art. 5 For the purposes of this Law

I - personal data: information related to identified or identifiable natural person;

II - sensitive personal data: personal data about racial or ethnic origin, religious conviction, political opinion, membership of a union or organization of a religious, philosophical or political nature, data concerning health or sex life, genetic or biometric data, when related to a natural person;

III - anonymized data: data concerning the holder that cannot be identified, considering the use of reasonable and available technical means at the time of its treatment;” (...)

The law protects situations that exclusively concern data processing operations, that is, those "that refer to the collection, production, reception, classification, use, access, reproduction, transmission, distribution, processing, filing, storage, elimination, evaluation or control of information, modification, communication, transference, diffusion or extraction"¹⁸⁶. It is clear from the descriptive list of what is understood by data treatment that innumerable activities involving personal data will suffer from the limitation and scrutiny of the law.

There are, however, some relevant exceptions to the application of the LGPD, listed exhaustively in Article 4, namely: Processing by natural persons for private, non-economic purposes; processing for exclusively journalistic, artistic or academic purposes; processing for the sole purpose of public security, national defense, state security or activities of investigation and prosecution of criminal offenses,¹⁸⁷ and processing of data originating from outside the national territory and which are not the object of communication, shared use of data with Brazilian processing agents or the object of international transfer of data with a country other than the country of origin, provided that the country of origin provides a degree of protection of personal data adequate to the provisions of the LGPD.

In relation to the hypothesis foreseen in the sole purpose of public security, the LGPD refers to the need for approval of specific legislation, which shall provide for proportional measures strictly necessary for serving the public interest¹⁸⁸. The principle of due legal process and other principles provided for in the LGPD must be respected. It is expected that the coming legislation will be even more rigorous in protecting the sensitive data of the people who will be subject to it, considering that the treatment of this data is related in great measure to the objectives of protection of the State itself and of public interests. One should aim to limit the treatment of this data, in order

¹⁸⁶ Art. 5, X

¹⁸⁷ Rodotà reveals that "the most widespread forms of limitation, which go as far as sacrificing the protection of privacy in favor of other interests, considered temporarily or not as prevailing, are well known and in many cases are foreseen in the legislation on databases. They concern above all interests of the State (internal or international security, police, justice) or relevant individual and collective rights (traditionally, the right to information, above all as freedom of the press; and more and more intensely the right to health, above all in its collective dimension)" (RODOTÀ: 2008, 70)

¹⁸⁸ Art. 4 This Law does not apply to the processing of personal data:

(...)

§ 1 The processing of personal data provided for in item III shall be governed by specific legislation, which shall provide for proportional and strictly necessary measures to serve the public interest, subject to due legal process, the general principles of protection and the rights of the holder provided for in this Law .

to avoid their possible use for purposes that do not comply with the republican foundations of the Democratic State of Law.¹⁸⁹

Regarding the principles applicable to the processing of personal data, their provision is recognized in Article 6 of the LGPD, with the aim of restricting the activity of processing personal data, requiring compliance with them in order to recognize the lawfulness of the activity. The following principles are foreseen in the law: purpose, adequacy, necessity, free access, data quality, transparency, security, prevention, non-discrimination, accountability and responsibility.¹⁹⁰ Of the foreseen principles, two are of special relevance when processing sensitive data, namely, the principle of purpose and the principle of non-discrimination.

Under the principle of purpose, data must be processed for certain purposes, which must be revealed to the data subject in advance, in an explicit manner and without it being possible to use it later for another application. For Doneda, "this principle has great practical relevance: based on it, the restriction of transfer of personal data to third parties is founded, in addition to which it is possible to stipulate a criterion to evaluate the reasonability of the use of certain data for a certain purpose (otherwise it would be abusive)".¹⁹¹ Still based on the principle of purpose, Maria Celina

¹⁸⁹ It is recognized that the use of personal data by the State may generate a reduction in the guarantees of protection of fundamental rights. It is enough to recall the case of Edward Snowden and the National Security Agency (NSA) and the misuse of data collected by the agency itself with the aim of building profiles of people who could be linked to terrorist activities, to realize the potentially harmful uses to a democracy. On the Snowden case, see, for all, Glenn Greenwald, *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State*, Metropolitan Books, 2014.

¹⁹⁰ Art. 6, Law 13,709/18: Personal data processing activities must observe good faith and the following principles: I - purpose: carrying out the processing for legitimate, specific, explicit purposes informed to the data subject, without the possibility of further processing in a manner incompatible with these purposes; II - adequacy: compatibility of the processing with the purposes informed to the data subject, according to the context of the processing; III - necessity: limitation of the processing to the minimum necessary for the realization of its purposes, with a scope of data that is pertinent, proportional and not excessive in relation to the purposes of the data processing; IV - free access: guarantee, to the data subjects, of easy and free consultation on the form and duration of the processing, as well as on the completeness of their personal data; V - data quality: guarantee, to the data subjects, of accuracy, clarity, relevance and updating of the data, according to the need and for the fulfillment of the purpose of its processing; VI - transparency: guarantee, to the data subjects, of clear, precise and easily accessible information about the performance of the processing and the respective processing agents, observing commercial and industrial secrets; VII - security: use of technical and administrative measures capable of protecting personal data from unauthorized access and accidental or unlawful situations of destruction, loss, alteration, communication or dissemination; VIII - prevention: adoption of measures to prevent the occurrence of damages due to the processing of personal data; IX - non-discrimination: impossibility of processing for illicit or abusive discriminatory purposes; X - accountability and rendering of accounts: demonstration, by the agent, of the adoption of effective measures capable of proving the observance of and compliance with the rules for the protection of personal data, including the effectiveness of such measures.

¹⁹¹ Danilo DONEDA, *Da privacidade à proteção de dados*. Rio de Janeiro: Editora Renovar, 2005. p. 216;

Bodin de Moraes, in her presentation of the work by Stefano Rodotà, understands that the treatment of data and especially its collection "cannot be taken as a 'net thrown overboard to catch any fish'. On the contrary, the reasons for collection, especially when dealing with "sensitive data", must be objective and limited".¹⁹² The measure of this objectivity and limitation will be determined precisely by the legitimate purpose of the treatment, which is conditioned to "preventive communication to the interested party on how the information collected will be used; and for some categories of especially sensitive data it establishes that the only admissible purpose is the interest of the person considered".¹⁹³

In relation to the principle of non-discrimination, the use of personal data for illicit or abusive discriminatory purposes is prohibited. The legislator, by relating the discriminatory use to the qualities of illicitness and abuse, seems to recognize the possibility of distinctive treatment, as long as it is licit and not abusive. That is to say, it seems that it would be legitimate for the data operator to carry out a discriminatory treatment, in the sense of differentiation, without leading to excluding consequences that could be considered illicit. Thus, for example, it would be legitimate for a data operator that is pricing a car insurance service to treat differently the data of women between the ages of 35 and 45 and mothers, with the purpose of offering a value that reflects the risks of damage usually caused or suffered by this particular group of people. In other words, discriminatory data processing is possible, as long as it is not characterized as unlawful or abusive, which will be determined according to criteria defined both by the express rules of civil¹⁹⁴ and criminal law, and by principles such as that of objective good faith. What is being questioned is whether this segregated treatment - provided it is licit and not abusive - may also be carried out when sensitive personal data is involved, a type of data which must be protected as a priority. Considering that:

[...] collecting sensitive data and social and individual profiles can lead to dis-crimination; hence, privacy must be seen as "the protection of life choices against any form of public control and social stigma" (L. M. Friedman), as the "vindication of the limits that

¹⁹² M. C. B. MORAES, Apresentação. In: RODOTÀ, S. *A vida na sociedade de vigilância: privacidade hoje*. Rio de Janeiro, Renovar, (2008), p. 9

¹⁹³ S. RODOTÀ, *A vida na sociedade da vigilância – a privacidade hoje*, Organização, seleção e apresentação de MORAES, M. C. B. Tradução, DONEDA, D. e DONEDA, L. C. Rio de Janeiro, Renovar, (2008),

¹⁹⁴ See articles 186 and 187, of the Brazilian Civil Code, which define the illicit act.

protect each individual's right not to be simplified, objectified, and evaluated out of context" (J. Rosen)¹⁹⁵

For purposes of regulating data processing activities, the Brazilian General Law of Data Protection (LGPD) categorizes and protects personal data and sensitive personal data differently. For the purposes of the LGPD, personal data is composed of information related to an identified or identifiable natural person¹⁹⁶ and sensitive personal data refers to "racial or ethnic origin, religious belief, political opinion, membership in a union or organization of a religious, philosophical or political nature, data concerning health or sex life, genetic or biometric data, when linked to a natural person".¹⁹⁷ Although this specific law gives a broad definition of sensitive personal data, its legal treatment is already known in the Brazilian legislation since the enactment of the Law of Positive Registration - Law 12.414/11 - which in its article 3, paragraph 3, II, prohibits notes in databases used for credit analysis of "sensitive" information, such as those pertaining to social and ethnic origin, health, genetic information, sexual orientation and political, religious and philosophical beliefs.¹⁹⁸

This principle of non-discrimination is one of the most relevant, as far as the treatment of sensitive data is concerned. This is the fundamental point when faced with the potentially damaging use of sensitive data, due to its discriminatory capacity, whether by private entities - i.e. providers of products and services - or by public entities. Some emblematic cases expose the enormous difficulty faced in relation to the improper handling of this sensitive data. Cohen reports some of the improper handling of sensitive data that generates discrimination and abusive segregation within consumer relations. According to the author:

“consumer data can be used for many purposes to which consumers might not so blithely agree: employment decisions and classifications by health insurance providers that exclude or disadvantage genetic or medical “have--nots”; employment

¹⁹⁵ RODOTÀ, . prev. cited, note 198, p.12.

¹⁹⁶ Article 5, I, LGPD

¹⁹⁷ Article 5, II, LGPD

¹⁹⁸ In a search conducted on 11/20/18, using the terms of Law 12.414/11 as a search parameter, the Superior Court of Justice has 1 Precedent (550), 2 repetitive decisions and 10 decisions that deal with the theme related to the credit scoring system. The decisions, in general, recognize the consumer's right to have access to the data that was used by the financial institutions or banks to deny the right to credit. See, for all, in this sense, the judgment of Special Appeal 1.304.736/RS, Reporting Justice Luis Felipe Solomon, Second Section, judged on 24/02/2016.

or housing decisions based on perceived personality risks; employment or housing decisions based on sexual or religious preferences; and so on".¹⁹⁹

In a similar vein, Rodotà sustains that profiling based on sensitive personal data may generate discrimination [...] either because personal data, may become sensitive if they contribute to the elaboration of a profile; or because the individual sphere itself may be harmed when one belongs to a group of which a profile with negative connotations has been drawn up".²⁰⁰ For the Italian author, "(...) to ensure fullness to the public sphere, strict conditions are determined for the circulation of this information, which is given a very strong "private" status, manifested mainly by the prohibition of its collection by certain subjects (for example, employers) and by the exclusion of legitimacy of certain forms of collection and circulation".²⁰¹ The Brazilian General Law of Data Protection follows this trend by establishing specific limitations for the processing of sensitive data.

It is important to recognize that the aforementioned law was strongly influenced by the European community law, from the 1995 Data Protection Directive to the European Union's General Data Protection Regulation (GDPR), in force as of May 2018. Is true that Brazilian law is quite inspired by European regulation. In its Article 9(1) and (2), the GDPR establishes a very strict regime, prohibiting, as a rule, the processing of this type of personal data. However, it exempts this prohibition in ten circumstances, ranging from the protection of vital interests of the individual to reasons of substantial public interest, without, however, exemplifying or specifying what would these hypotheses precisely be.

As a way to protect the holders of sensitive data more intensely, the GDPR has more narrowly qualified the consent of the holder of sensitive data, now requiring that, in addition to being express, the manifestation of consent must be free, explicit, unambiguous, informed and specific. In the "recitals" of the GDPR, explanation states that personal data which is, by its nature, particularly sensitive from the point of view of fundamental rights and freedoms merit specific protection, since the context in which they are processed could involve significant risks to fundamental rights and freedoms. Furthermore, comment of the GDPR states that "(...) the

¹⁹⁹ Julie COHEN, *Examined Lives: Informational Privacy and the Subject as Object*. 52 Stan. L. Rev. 1373-1438, 2000.

²⁰⁰ RODOTÀ, . prev. cited, note 198, p. 56.

²⁰¹ RODOTÀ, . prev. cited, note 198, p. 64.

controller must (...) protect personal data in a manner which takes account of the potential risks to the interests and rights of the data subject and in a manner which prevents, for example, discriminatory effects against individuals on the grounds of racial or ethnic origin, political opinion, religion or belief, trade union membership, genetic or health status or sexual orientation, or which prevents the measures from having such effects”.

At first, the LGPD requires a strong foundation for the consent of the data subject in order to admit the processing of personal data. This means that the processing of personal data will be allowed when there is a free, informed, and unequivocal manifestation by which the data subject agrees with the processing of his personal data for a specific purpose²⁰². In addition, the LGPD establishes important restrictions when faced with the processing of sensitive data, and in relation to consent, establishes the need for it to be given in a specific and separate manner, for singular purposes as well²⁰³. Thus, and according to Rodotà, it is recognized that the consent of the holder of sensitive data must be evaluated unless we are facing a "vulnerable contractor", characterized precisely by the absence of substantial freedom at the time of determination of the will.²⁰⁴

However, the LGPD allows the processing of sensitive data without the need to provide the data subject's consent when it is indispensable for the shared processing of data necessary for the implementation, by the public administration, of public policies provided for in laws or regulations²⁰⁵, as well as other cases that largely refer to public interests. In the latter case, the consent of the holder of the sensitive data, whether generic or specific, would be waived as a result of the weighing of interests carried out by the law, which at first glance, considers more relevant and preponderant the interests of a public nature in relation to the interests of the holder, even if these have the quality of a fundamental right. However, criticism must be made to this legislative position, especially if we consider that the protection of the content of sensitive personal data is fundamental for the full exercise of fundamental rights, such as equality, freedom and privacy.

As explained in the previous topic, Canadian data protection legislation is divided into four main instruments, the most relevant of which is the Personal Information Protection and Electronic

²⁰² Art. 5, XII, LGPD

²⁰³ Art. 11, I, LGPD

²⁰⁴ RODOTÀ, S. *Elaboratori elettronici e controllo sociale*, Bologna, II Muli-no, (1973), p. 90

²⁰⁵ Art. 11, II, b, LGPD

Documents Act (PIPEDA), which is a federal law applicable to private sector organizations that collect, use, or disclose personal information in the course of their business activities.²⁰⁶

In any case, in order to guarantee the autonomy of the Canadian provinces to legislate on matters within their competence, PIPEDA foresees in section 26(2) the possibility of the non-application of its text in provinces that have data protection legislation substantially similar to the aforementioned federal law. This is the case in the provinces of British Columbia, Alberta²⁰⁷, and Quebec, where the application of PIPEDA is restricted to those sectors whose regulation falls under exclusive federal competence, such as banking, transportation and telecommunications.²⁰⁸

This exemption, however, is not absolute. The organizations and entities located in these provinces will only be exempted from the application of PIPEDA in those transactions that take place within the province in which they are located. Thus, the application of PIPEDA subsists in the aforementioned provinces when international and interprovincial data processing activities or transfers are carried out by the organizations that are subject to the law in question. As for the public sector, the Privacy Act of 1983 is the Canadian federal law that regulates the processing of personal data by federal government agencies. Under this Act, personal data is only to be processed by government entities as long as there is a direct relationship to the policy or activity of the entity in question.²⁰⁹

The Canadian Privacy Commissioner of Canada is the Canadian entity responsible for overseeing compliance enforcement of both the Privacy Act and PIPEDA.

Thus, we can infer that the data protection offered by the Canadian system is more extensive, in the sense that it requires transparency in the use of data and the availability of terms

²⁰⁶ Commercial activities are defined as: *Any transaction or any regular course of conduct that is of a commercial character including the selling, battering or leasing of donor, membership of other fund-raising lists*, Cf. Grupo de trabalho do artigo 29, Opinião 2/2001 sobre a adequação do canadiano PIPEDA, adotada em 26 de janeiro de (2001), WP39, p. 3

²⁰⁷ *Alberta - Personal Information Protection Act (PIPA Alberta); Colúmbia Britânica - Personal Information Protection Act (PIPA British Columbia) e Privacy Act do Québec*

²⁰⁸ Divisão da sociedade da informação, Anexo à resposta ao Ofício nº 259/2015/GAB-SAL-MJ (Processo nº 08027.000032/2015-11), Informações recebidas de Embaixadas do Brasil no exterior, Online:<<http://pensando.mj.gov.br/marcocivil/wp-content/uploads/sites/2/2015/04/18-Canad%C3%A1.pdf>> (Site consulted on August 30, 2021)

²⁰⁹ *Id.*

of use that are understood by the average user. It is also concerned with the liability for the misuse of this data.

Mass Manipulation

The current state, economic, and legal conjectures are no longer the same as before. In this perspective, the State is increasingly being called upon to respond to problems that were in recent times not even perceived by theoreticians and scholars²¹⁰.

As could not be otherwise, the new problems that have appeared on the horizon have demanded a superhuman effort from governments and institutions, which in many instances do not even know how to deal with these new conjectures and changes. The phenomenon of information manipulation and fake news²¹¹ are there to show this difficulty in coping with contemporary themes.

It should be noted that access to information, an essential factor of opinion formation and decision making, goes hand in hand with democracy; it does not occur in places where the latter does not exist or is controlled and/or filtered by the State itself. Therefore, besides enabling more informed and reasonable choices, access to information is indispensable for the individual's perspective as a member of society and a responsible citizen. In fact, we usually search for a guarantee of our rights after being aware of these rights, that is, access to information is a right that precedes and enables the others.²¹²

In this respect, it is essential to emphasize the fundamental assumption for any Democratic State of Law to ensure its citizens' actual conditions and guarantees that enable them to formulate a free and enlightened opinion. For this purpose, the simple attribution of the right to direct or indirect participation in political and governmental decision-making or even the existence of

²¹⁰ D. DA ROCHA SOUSA and C. GORCZEWSKI, *A manipulação das informações e o perigo à democracia: a ameaça oferecida pelo acesso irrestrito a dados pessoais*, Indexlaw, Revista de direito brasileiro, e-ISSN: 2358-1352, (2020), <<https://www.indexlaw.org/index.php/rdb/article/view/5301/5119>> (Site consulted on August 30, 2021)

²¹¹ Here we will utilize Allcott and Gentzkow's (2017) definition of fake news i.e. "news articles that are intentionally false and apt to be verified as such, and that can mislead readers" (p.4, own translation). Guess, Nyhan, and Reifler (2018) speak of "a new kind of political disinformation" marked by a "factual dubiousness for profit" (p. 2)

²¹² M. GUIMARÃES, G. V. SOUSA and M. SILVEIRA, «Inciso XXXIII – Direito de acesso à informação». Politize. 21 de janeiro (2020), Online:<<https://www.politize.com.br/artigo-5/direito-de-acesso-a-informacao/>> (Site consulted on November 30, 2021)

procedural rules that organize the democratic game are not enough, as Norberto Bobbio²¹³ has well observed.

Alexis de Tocqueville, in his book "Democracy in America" already pointed out, when observing the flourishing American democracy, that a free press, which at that time was the only means for citizens to obtain information, was "the main and, so to speak, the constitutive element of freedom"²¹⁴. If Tocqueville were alive today, his observation would likely include the mechanisms of control of personal data and the fight against information manipulation as another fundamental point for this freedom. According to Tocqueville²¹⁵:

"When each one is granted a right to govern society, it is necessary to recognize him the ability to choose among the different opinions that agitate his contemporaries and to appreciate the different deeds whose knowledge can guide him. The sovereignty of the people and the freedom of the press are therefore two entirely correlative things."

The democratic method is configured as an institutional system that seeks freedom of expression. It enables political decision-making by the people, by allowing all individuals to acquire the power and prerogative to decide on the fate of the State. This decision-making can only be efficient and meet the desires of an authentic democracy when citizens are able to reconcile their positions and form their opinions based on their access to different information media.

In the same way, both the new theories of contemporary democracy and the theory of participatory democracy defend the argument that individuals who are part of these systems should receive some kind of "training" in the exercise of democracy and that this training should not be limited to the national political process.

²¹³ N. BOBBIO, *Kelsen et les sources du droit*. Revue Internationale de Philosophie 35, no. 138 (4) (1981): 474–86. Online: <<http://www.jstor.org/stable/23945334>>

²¹⁴ A. TOCQUEVILLE, *The Old Regime and the Revolution: The Complete Text, Volume 1*, Edited and with an Introduction and critical apparatus by François Furet and Françoise Mélonio, University of Chicago Press, Online: https://books.google.ca/books?hl=pt-BR&lr=&id=ctAqVkbNckIC&oi=fnd&pg=PR9&dq=+TOCQUEVILLE,+1998&ots=_WD8QxeX0R&sig=6llyH1PMZFcXRS1euz-v2oblZIM&redir_esc=y#v=onepage&q=TOCQUEVILLE%2C%201998&f=false (1998) p. 209

²¹⁵ A. TOCQUEVILLE, prev. cited, note 216, p. 215

In this same perspective, the theory of participatory democracy holds that this experience of participation enables the individual person to be psychologically better prepared to participate more effectively in the democratic process.

According to the republican conception, the status of citizens cannot be determined solely by a model of negative liberties that they can claim as particular persons. On the contrary, citizenship rights, participation rights, and political communication are primarily positive rights and essential to democratic practice²¹⁶.

Habermas²¹⁷ defends the construction of an authentic public sphere, based on civil society institutions and emancipationist social movements, where it is possible to establish a social space for debate in which communicative reasoning prevails, that is, the reason that develops intersubjectively, free from the ideological domination of the system and through the public examination of the arguments presented, which is only made possible when citizens, among other things, have access to efficient and impartial means of information. Therefore, the media is fundamental for achieving communication, which, in turn, is indispensable for the exercise of democracy.

It is worth noting that, nowadays, there is an ever-increasing amount of means of access and information itself, which is disseminated by printed, televised, and, above all, electronic media. This massive amount of data has the power to cause, paradoxically, disinformation and general ignorance to the extent that there is no filter or control of what is reported and disseminated.

The traditional media itself plays also sometimes a relevant role in the process of manipulation and, in the definition made by Habermas²¹⁸, "in the colonization of the world of life," by defining using its criteria what approach it will take to social reality. Thus, if, on the one hand, the access and exchange of information are helpful tools for political and democratic emancipation, on the other hand, it has become increasingly difficult for this information not to generate misinformation and manipulation.

²¹⁶ C. PATEMAN, *Participação e teoria democrática*, Rio de Janeiro, Paz e Terra, (1992). p. 65

²¹⁷ J. HABERMAS, *O Futuro da Natureza Humana: A caminho de uma eugenia liberal?* Tradução Karina Jannini. 2. ed. São Paulo, Marins Fontes, Tradução de: *Die Zukunft Der Menschlichen Natur: Auf Dem Weg Zu Einer Liberalen Eugenik*. (2010), p. 279

²¹⁸ J. HABERMAS, prev. cited, note 219.

Regarding this matter, one cannot ignore, as Dowbor²¹⁹ rightly notes, that the United States of America, one of the most well-informed and educated nations in the world, allowed itself to be led and influenced in large part by information that later turned out to be incorrect or even false²²⁰. It is thus evident that the veracity of information is as crucial as access to information.

For this reason, and considering the fact that, in any society, no matter how primitive or rudimentary it may be, information has the ability to dictate the course of politics, economy, as well as to shape social behavior, its vigilance and commitment to truth are increasingly essential. Certainly, the State, for its own survival, needs efficient mechanisms in the task of combating information that generates misinformation and transforms citizens into a mass of puppets at the service of a few or of private interests.

Contemporary society is commonly referred to as the information society, such is the informational capacity it possesses and the importance it has for politics, economics and technology. As seen previously, nowadays, the access to information is as important as the ability to know its veracity and origin.

The technological advances that have enabled real-time connectivity almost all over the globe have also brought new challenges and problems, from those relating to access, by electronic platforms, social networks, internet search engines and databases, to information that is often secret and that only concerns private individuals.

To get a better sense of the potential of this information, let's take the example of credit cards. By tracking spending on credit cards, operators can trace an extremely specific profile of their users, and it is even possible to know their physical movements, their personal preferences, and their plans. Similarly, Facebook and Instagram have access to all the information present in the smartphones of their users, their Internet searches, their tastes, network of friends, subjects of interest and so on, enough data to control and manipulate anyone.

²¹⁹ Ladislau DOWBOR, "A era do capital improdutivo: Por que oito famílias tem mais riqueza do que a metade da população do mundo?" São Paulo : Autonomia Literária, 2017. 320 p. ISBN: 978-85-69536-11-6;, p. 11

²²⁰ Dowbor points out that despite the evident ability of US citizens to inform themselves through countless means and to easily access the most diverse information, as well as having educational conditions above the world average, a large part of these citizens allowed themselves to be manipulated by false information or even information that had no proof or theoretical basis. DOWBOR, (2019), p. 11

The inevitable result of this massive collection is the creation of an extensive and detailed database about individuals, as well as the possibility of electronic monitoring practically during all hours of the day. Such facts have caused great concern when viewed from the standpoint of the right to privacy and the right to the protection of personal data of individuals, as Bioni²²¹ highlights.

The power, here understood as the ability to impose on others wills and desires, that this information offers is so great that data theft scandals have become increasingly common²²², and it is easy to see why, with unrestricted access to all this information companies can map and direct information to specific audiences, in order to direct them to choose from a simple product or services, to politicians, parties, government systems, social policies and so on. About this point Silveira²²³ argues:

“The guiding principle of the law is based on the perspective that every natural person must be assured of the ownership of his personal data and of being aware of its processing, since without it, the exercise of the fundamental rights of freedom, intimacy, and privacy would be at risk, besides being an essential factor for "the free development of the personality of the natural person: “Moreover, what use are democratic elections if learning algorithms anticipate who we will vote for? The scandal involving Facebook and Cambridge Analytica reveals to what extent it is possible, in a democracy, to promote the manipulation of the electorate using illegally obtained data (87 million Internet users had their data traded, without their knowledge, for the purpose of electoral manipulation). As we know, by collecting information from 300,000 internet users (through a survey/game), Facebook allowed the misappropriation of personal data of millions of people. In the UK, as far as we know, 1.1 million citizens were targeted by such appropriation. Now, if the difference between Remain and Exit was 1.3 million votes, it is legitimate to assume

²²¹ Bruno Ricardo BIONI, “Proteção de dados pessoais: a função e os limites do consentimento”. Rio de Janeiro, Forense, ISBN: 9788530988623. (2020), p. 127

²²² According to articles published recently on the UOL News website, companies such as Facebook, C&A and Boa Vista SPC were the target of cyber attacks aimed at stealing information.

²²³ A. SILVEIRA, *Princípios de Direito da União Europeia. Doutrina e Jurisprudência*, Coleção Erasmus, Ensaios e monografias, Linha de Direito e Ciências Políticas. 2ª edição atualizada e ampliada. Lisboa: Quid Juris, Sociedade Editora, (2011)

that the manipulation carried out may have been determinant in the results of the British referendum.”²²⁴

In this scenario, it is increasingly clear how freedom of expression, whether in relation to political preferences or other issues of general interest, is hindered and hampered, so that the real capacity of this expression is not reflected in the decision-making processes that affect the daily lives of citizens.

Because of this, the issue of data protection has gained increasing prominence worldwide. Recently, the Court of Justice of the European Union (CJEU), in a judgment known as the "Facebook case," clarified and put limits, based on directive 95/46/EC²²⁵, on the transfer and processing of a person's data stored on servers in other countries²²⁶. Directive 2016/680²²⁷ and the General Data Protection Regulation-GPDR similarly try to enable better prevention and seek to prevent possible manipulation of information from those who access this data, or even the use of this data for purposes other than those for which it was obtained.

In Brazil, the issue of access to personal information and data has been under study for some time, but it is much more related to access by public agencies and the tax authorities than to its treatment and protection. In an article published in the journal *Nomos* of the Federal University of Ceará, Gomes, Abraham and Pereira²²⁸ already asserted the limits and interpretations outlined by the Supreme Court -STF, in relation to banking secrecy and the privacy of the citizen

On the part of the Brazilian government, it was only with the institution of Law No. 13,709 of 2018 that this government began to address this issue

²²⁴ BRASIL, LEI Nº 13.709, DE 14 DE AGOSTO DE 2018. Lei Geral de Proteção de Dados Pessoais (LGPD).

²²⁵ Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regards to the processing of personal data and on the free movement of such data, OJ L 281, p. 31

²²⁶ In its judgment in Case C-362/14, the Court of Justice declared invalid the European Commission's decision which found that the United States ensures an adequate level of protection of personal data transferred to it. In the same judgment, the Court pointed out that legislation which does not provide any possibility for individuals to initiate legal remedies in order to gain access to personal data concerning them, or to obtain the rectification or deletion of such data, infringes the essential content of the fundamental right to effective judicial protection, a possibility which is inherent to the existence of the rule of law

²²⁷ *Id.*

²²⁸ Marcus ABRAHAM and Vitor Pimentel PEREIRA, *O sigilo bancário e a privacidade do cidadão: Alguns aspectos da jurisprudência do STF*, NOMOS, Revista do Programa de Pós-graduação em Direito da UFC, v 36 n. 1. São Paulo. (2016) jan-jun

in a more specific and detailed way, since the legislation until then only addressed satellite issues and not the treatment of data specifically.²²⁹ It is important to note that the figure of Habeas Data, although provided for in the constitutional text, does not offer sufficient mechanisms to combat this problem. The law seeks to treat and regulate the rules for the protection of personal data collected, both by conventional and digital means, by natural persons or public or private legal entities²³⁰.

It should also be noted that before this law, the issue of personal data was dealt with in a very sparse and generic way by the legislation, clear examples are Law no. 11.419/2006, which instituted the electronic process and reserved a topic to deal with the keeping and security of personal data, and Law no. 12.682/12, which provides for the preparation and filing of documents in electronic media.

The Superior Electoral Court - STE through Resolution N° 23.610 of 2019. also sought to address the issue, however, much more focused on the propagation of fake news and electoral propaganda, which was still insufficient to prevent their dissemination.

The guiding principle of the law is based on the perspective that every natural person must be assured of the ownership of his personal data and be aware of its processing because without it the exercise of the fundamental rights of freedom, intimacy and privacy would be at risk, besides being an essential factor for "the free development of the personality of the natural person"²³¹.

In this perspective, the law also requires that any natural or legal person who processes or has access to this information autonomously must obtain the consent of the data owners. Furthermore, they must also be guaranteed the possibility of revoking this authorization at any time.

²²⁹ Despite its lofty goal, the law received a lot of criticism. People considered it a bad copy of the European General Data Protection Regulation and thought it was lacking autonomous enforcement mechanisms, since the law assigned some key functions to a control body that had not even been established, and which, due to a legislative defect, was still not expected to be established.

²³⁰ Due to a flaw in the legislative process, the President vetoed articles 55 to 59 of Chapter IX concerning the creation of the National Data Protection Authority (ANPD) and the National Council for Personal Data Protection and Privacy, which are the bodies responsible for overseeing and enforcing compliance with the LGPD. The prospect is that the president will send another bill to Congress to correct this flaw so as to allow the ANPD to be properly established within the 18-month grace period.

²³¹ BRASIL, prev. cited, note 226.

Regardless of the means of collection, the Data Protection Law will be applied if: a) the processing operation is carried out in the national territory; b) the purpose of the processing activity is the offer or supply of goods or services or the processing of data of individuals located in the national territory; and c) the personal data object of the processing has been collected in the national territory, this data is considered collected in the national territory when the holder is located there at the moment of the collection.

Concerning the aspect of territoriality, Pinheiro²³² points out that the law also provides for extraterritorial application of its provisions. It is sufficient for this purpose that the personal data processed in another country has been collected within the Brazilian territory or if the object of commercial transaction, of offering goods or services, has occurred within the national territory.

The law also differentiates between:

- Personal data, understood as all information related to an identified or identifiable natural person, as we already said before;
- Sensitive personal data that is personal data about racial or ethnic origin, religious conviction, political opinion, membership of a trade union or organization of a religious, philosophical or political nature, data concerning health or sex life, genetic or biometric data, when linked to a natural person; and
- Anonymized data that is data concerning the holder that cannot be identified, considering the use of reasonable and available technical means at the time of its treatment. Thus, the data subject is every natural person to whom the personal data to be processed refers to.

Here it should be noted, once again taking into consideration the teachings of Bioni²³³, that the concept of personal data is a central element for the discussion on the legislation, and it should not be related only to privacy, since it crosses and interferes with other personality rights. Personal

²³² P. P. PINHEIRO, *Proteção de Dados Pessoais: Comentários à Lei n. 13.709/2018 -LGPD*. 2ed. São Paulo. Saraiva Educação. (2020). 152 p. <https://books.google.ca/books?hl=pt-BR&lr=&id=oXPWDwAAQBAJ&oi=fnd&pg=PT13&dq=Pinheiro+2018&ots=k8-sAwLJZL&sig=ZvW_PsDOLsmYHqYuy0dn13zIL2o#v=onepage&q=Pinheiro%202018&f=false>

²³³ BIONI, Bruno Ricardo. *Proteção de dados pessoais: a função e os limites do consentimento*, Rio de Janeiro, Forense, (2020), p. 68, ISBN: 9788530988623

data protection can even be considered a central element of a new personality right, a right linked to any and all information originating in and from the individual.

By treatment, the law²³⁴ refers to any operation performed with personal data, such as those referring to collection, production, reception, classification, use, access, reproduction, transmission, distribution, processing, filing, storage, elimination, evaluation, or control of the information, modification, communication, transference, diffusion, or extraction.

Article 6, in its subsections, further provides that the data subject must be informed of the purpose of the processing of their data and, in the event of changes in the purpose of the processing, which are not compatible with the original consent, the controller, whether an individual or legal entity responsible for the processing, must inform the data subject in advance of the changes that have occurred. The data subject may revoke his consent if he disagrees with the changes. In the same way, it imposes that the processing be limited to the minimum necessary to fulfill its purposes, with a scope of pertinent, proportional, and reasonable data.

The data subjects are also guaranteed easy and free of charge information about the form and duration of the processing and the completeness of their personal data. About quality, there is also an obligation to guarantee the data subjects the accuracy, clarity, and relevance of the data being processed and the update of the data as necessary and for the fulfillment of its purpose.

The legislator included an entire chapter in the law to deal specifically with security and good practices²³⁵, demonstrating its concern with this issue. In the same way, to meet the requirements of the law, and as already mentioned, the treatment of personal data can only be performed upon consent by the holder, except in the cases in which the data has already become manifestly public by the holder, the holder's rights and the principles provided by law being safeguarded²³⁶.

In the case of digital means, where most of the data today is collected, the means by which the holder will consent to provide his data must be very well structured and be able to guarantee

²³⁴ Art. 33-A. The application providers must expressly inform as users and users about the possibility of processing their personal data for a broadcast of electoral propaganda within the scope and technical limits of each provider, if they admit this form of advertising. STE Resolution N° 23.610 of 2019

²³⁵ Pursuant to the provisions of Chapter VII of Law 13,709/2018, more precisely from article

²³⁶ Pursuant to the provisions of § 4 of Article 7 of Law 13,709/2018

the integrity, authenticity, and availability of the records. On this point, it is essential to note that, in the case of electronic records, article 441 of the Code of Civil Procedure-CPC states that the production and conservation of electronic documents will comply with specific legislation. In this case, two laws deal with this issue, Law 11.419/2006, which instituted the electronic process, and Law 12.682/12, which deals with the production and storage of documents in electronic media²³⁷.

The processing of personal data of children and adolescents must be carried out in their best interest and with the specific and outstanding consent given by at least one of the parents or legal guardians.

In addition, the holder has also been assured the possibility of transferring his data to another processing controller, in which case, by the very spirit of the law, the transferring controller must share from all its records the data of the person who requested the transfer, and must not keep with him any backup or traceability of these.

At the end of the treatment, all data collected should be eliminated, which is seen more as a wish than as something that will be followed; after all, there are no mechanisms in the law, or the government itself, with the capacity to ensure this action. Furthermore, it would be naive to imagine that a real estate company, or even a company that sells its products to diverse consumers, would erase all its records of the data of clients who have migrated to other companies or who have ended their relationship.

Concerning the international transfer of data, article 33 of the law establishes the situations in which this will be allowed exhaustively. Therefore, by the very spirit of the law, one can conclude that the controller responsible for the transference from Brazil to abroad will be the responsible one, except when transferred to achieve public interest or when authorized by state authority, for this leakage.

Another important part is chapter VI, where the figures of the controller, operator, and person in charge were defined, in the same way as the European Union's data protection law. Thus, the controller is the natural or legal person, governed by public or private law, who is responsible

²³⁷ Law 11.419/06 establishes in articles 11 and 12, respectively, that the origin of the document and its signatory must be guaranteed, and that electronic documents must be protected by means of access security systems and stored in a medium that guarantees the preservation and integrity of the data.

for decisions concerning the processing of personal data; the operator is the natural or legal person, governed by public or private law, who processes personal data on behalf of the controller, and the commissioner is the natural person, indicated by the controller, who acts as a channel of communication between the controller and the data subjects and the national authority.

It is up to the operator to carry out the data processing according to the instructions provided by the controller; that is, the controller must define an information security policy and frequently verify whether it is complying with the legislation. In the same way, the law obliges the controller to indicate the person in charge and to publicly disclose the identity and contact details of this person.

Article 4 of the law sets forth the situations in which the provisions of Law 13709 will not apply. Of all the possibilities set forth therein, those in item III are the most problematic since they grant a large margin of exemption for the state. Regarding item III, the law says that these cases will be "governed by specific legislation, which shall provide measures to meet the public interest"²³⁸. However, there is no such specific legislation.

Finally, it remains to be highlighted that banks and financial institutions, private individuals who obtain extremely sensitive and vital information, were left out of the scope of the law, either by the carelessness or not of the legislator. By leaving them out, the law sees its effectiveness significantly reduced.

In addition, the presidential veto that excluded the administrative sanctions which consisted of partial or total suspension of the operation of the database, suspension of the exercise of the activity of processing personal data, and of partial or complete prohibition of the exercise of activities related to data processing practically annihilated the coercive forces of the law.

Fake News

Marcel Leonardi²³⁹, in an analysis before the Marco Civil da Internet, conceptualized the so-called internet service providers, electronic mail, hosting, content, and information providers.

²³⁸ BRASIL, prev. cited, note 226.

²³⁹ M. LEONARDI, «Responsabilidade dos provedores de serviços de Internet por atos de terceiros», In: SILVA, R. B. T. and SANTOS, M. J. P. (coord.). *Responsabilidade Civil: responsabilidade civil na Internet e outros meios de comunicação*. 2 ed., São Paulo, Saraiva, (2012)

The MCI, on the other hand, does not bring any specific definition of the providers, dealing basically with two species: the connection providers and the Internet application providers.

Leonardi's paper seeks to analyze the role of internet service providers and possible civil liability for the practice of fake news, with emphasis on internet application providers, which, with the advent of the Marco Civil da Internet, have undergone major changes and require further consideration.

On this subject, it is important to highlight Professor Pierre's Trudel²⁴⁰ conception of internet provider:

“In the context of the Internet, intermediaries are people, companies or organizations who are involved in the accomplishment of a task carried out between the point of dispatch of a document transmission and the point of final receipt. What all of these stakeholders have in common is that they do not exercise control over the information that passes through their technological environments. Thus, the intermediaries can be services for the conservation of technological documents, hosts, reference services for technological documents, search engines, service providers on a communication network. They may also be companies offering services for the preservation or transmission of technological documents, services for the transmission of technological documents or preservation services on a communication network of technological documents provided by a client.”

(...)

“The notion of intermediary on a network like the Internet can concern a wide range of services and entities. On the Internet, an entity can perform one or more of the functions necessary for communication or transmission information. The designations given by the actors such as ‘Internet service provider,’ provider of connectivity, simple carrier does not always cover the same activities.”²⁴¹

²⁴⁰ Pierre TRUDEL, *Introduction à la Loi concernant le cadre juridique des technologies de l'Information*, Cowansville, Éditions Yvon Blais, 2013, p. 189-190. L'auteur reprend ici notamment les appellations consacrées dans la Loi concernant le cadre juridique des technologies de l'information, RLRQ, c. C-1.1

²⁴¹ Free translation

Regarding the of provider's responsibility, Quebec law, as well as the Copyright Law, provides for the ISPs' lack of responsibility for the content that circulates through their networks. In fact, article 31.1 LDA provides that²⁴²:

“The person who, in the context of the provision of services related to the exploitation of the Internet or of another digital network, provides means for the telecommunication or reproduction of a work or any other subject of copyright by the intermediary of the Internet or another network does not infringe the copyright in the work or other object simply because it provides these means.²⁴³”

Regarding internet connection providers, there are no significant conceptual difficulties, and in the classical sense, connection providers are confused with the so-called access providers. This provider can be defined as the "legal entity that enables a terminal for sending and receiving data packets over the internet by its users through the assignment or authentication of an IP address, exercising an intermediary function between the user and the internet, enabling the latter's access to other services according to their interest and need"²⁴⁴. Before the enactment of the Marco Civil da Internet, the doctrine already mentioned that this kind of provider would not be responsible for any illicit content made available by third parties, since this provider exercises only the moderate activity between the user and the internet²⁴⁵ applications. These do not even have technical conditions to evaluate the information or the right to intercept them and stop any message²⁴⁶, which demonstrates similar positioning to that already used in countries of the European Union and the United States of America.

With the advent of the Marco Civil da Internet, this position has not changed because the legislature rightly chose to exempt the Internet service provider from any civil liability for damages arising from content generated by third parties, as stated in art. 18 of Law No. 12,965/14 - "The

²⁴² Nicolas VERMEYS, « C-11, la Loi concernant le cadre juridique des technologies de l'information et la responsabilité des intermédiaires techniques québécois : une dualité de régimes (in)utile(s) ? », in *Les Cahiers de Propriete Intellectuelle*. Octobre (2013) 25 *CPI*. Online : <https://www.lescpi.ca/s/798>.

²⁴³ LDA, par. 31.1(1)

²⁴⁴ W. G. G. FLUMIGNAN, *Responsabilidade civil dos provedores no Marco Civil da Internet (Lei n. 12.965/14)*. Dissertação de Mestrado. Faculdade de Direito, Universidade de São Paulo, (2018), p. 64.

²⁴⁵ The Superior Court of Justice has gone along with this idea, recognizing that the service provided by connection providers is a means activity and not an end activity, for which reason ICMS is not levied on the service provided, as stated in abstract 334.

²⁴⁶ C. R. GONÇALVES, *Direito Civil Brasileiro, vol. 4: Responsabilidade civil*, 8 ed., São Paulo, Saraiva, (2013), p. 103-105

Internet service provider shall not be held civilly liable for damages arising from content generated by third parties.”

This is due to the fact that the provider is responsible only for the transmission of the internet signal, not the monitoring of the information content.

At the core of internet application providers, there are more significant considerations because it has undergone several changes with the advent of the Marco Civil da Internet. The doctrine diverges as to the scope of these providers, since before the Marco Civil da Internet. While Marcel Leonardi²⁴⁷ understands that it would cover e-mail, hosting, and content providers, for Ronaldo Lemos²⁴⁸ it would cover several species of providers depending on the situation concretely presented²⁴⁹.

The Marco Civil da Internet changed the concept of the internet application provider by analyzing the law, which is defined as any legal entity that, through a terminal connected to the internet, provides a set of functionalities that can be accessed by users²⁵⁰.

Regarding the types of internet application providers²⁵¹, the Marco Civil da Internet did not specifically address either email providers or hosting providers²⁵².

About the content provider, which underwent significant changes in the scope of civil liability, it can be defined as any person, whether natural or legal, who uses services provided by other species of providers or by their servers to store information available on the network. As an example of this type of provider, one can cite the social networks that are widely used nowadays and in which the most significant number of occurrences of fake news is found.

Regarding the civil liability of internet application providers, before the enactment of the Marco Civil da Internet, the Superior Court of Justice had taken a position on the need for

²⁴⁷ LEONARDI, M., prev. cited, note 240.

²⁴⁸ LEMOS, Ronaldo. *Direito, tecnologia e cultura*. Rio de Janeiro, FGV, 2005

²⁴⁹ Note that Ronaldo Lemos refers to Internet application providers as “online service providers (OSPs).

²⁵⁰ FLUMIGNAN, W. G. G., prev. cited, note 241, p. 66.

²⁵¹ The service usually provided by the electronic mail provider consists of the possibility of sending messages from the user to its recipients, besides storing them in its systems according to the service contract, with access to the system through a unique username (login) and password (LEONARDI, 2005, p. 26).

²⁵² According to Erica Barbagalo (2003, p. 346), this provider makes “available to an individual user or to a content provider space in storage equipment, or server, for the dissemination of the information that these users or providers want to see displayed on their sites”.

extrajudicial notification to remove any content deemed unlawful (notice and takedown), which should be served within 24 hours²⁵³, under penalty of the content provider being jointly and severally liable with the perpetrator for the damage caused. However, for Minister Nancy Andrighi, the content provider would not be obliged to analyze the content of the complaint received within that period and would only have to promote the pages' preventive suspension in order to check the veracity of the allegations in a timely future moment²⁵⁴.

Moreover, the understanding prevailed that the request for the removal of illicit content from the Internet should be specific and determined, i.e., the extrajudicial notification made by the user could not be generic and undetermined and should be accompanied by data that would allow the punctual identification of the content, understanding, thus, that the user should inform the URL (Universal Resource Locator) of the range reported illicit²⁵⁵. However, there were judgments in the sense that the provider of internet applications should remove defamatory content disseminated by third parties regardless of the precise indication by the offended of the pages that conveyed the offenses²⁵⁶.

The enactment of the Marco Civil da Internet also led to discussions regarding the liability of Internet service providers and the term of data storage. For the liability and identification of any damage caused by third parties on the internet, it is essential that the providers preserve and provide the electronic records used in the illicit practice.

Before the Marco Civil da Internet, there was no specific regulation on the subject, which did not prevent the Superior Court of Justice from recognizing that content providers should store such records for a period of three years, in line with the Civil Code of 2002, which in its art. 206, §3, V stipulates this period as the statute of limitations for civil remedy actions²⁵⁷.

²⁵³ BRASIL, prev. cited, note 233.

²⁵⁴ BRASIL, Superior Tribunal de Justiça, REsp 1.323.754/RJ, Rel. Ministra Nancy Andrighi, Órgão Julgador: Terceira Turma, julgado em 19 jun. 2012, 2012a.

²⁵⁵ BRASIL, Superior Tribunal de Justiça, REsp 1.396.417/MG, Rel. Ministra Nancy Andrighi, Órgão Julgador: Terceira Turma, julgado em 25 nov. 2013, 2013a.

²⁵⁶ In this sense: BRASIL, Superior Court of Justice, REsp 1.175.675/RS, *Reporting Justice Luis Felipe Salomão, Judge: Fourth Panel*, judged on 08/09/2011; BRASIL, Superior Court of Justice, REsp 1.306.157/SP, *Reporting Justice Luis Felipe Salomão, Judge: Fourth Panel*, judged on 12/17/2013

²⁵⁷ BRASIL, *Superior Tribunal de Justiça, REsp 1.398.985/MG*, Rel. Ministra Nancy Andrighi, Órgão Julgador: Terceira Turma, julgado em 19 nov. 2013, 2013b

With the advent of the Marco Civil da Internet, the liability of providers, especially Internet application providers, is now guided by new rules.

In this sense, it is clear that the legislator has modified the civil liability system of Internet service providers to protect two types of privacy: ordinary or common privacy, which derives from art. 19 of Law No. 12,965/14, which mainly aims to ensure freedom of expression and prevent censorship; and qualified privacy, which derives from art. 21 of Law No. 12,965/14 and has as its main objective to ensure the intimate life of people who have their sexual life and bodies exposed on the World Wide Web without their permission. Civil liability for violation of ordinary privacy is clearly differentiated from extraordinary privacy with the advent of Law no. 12,965/14 and this fact is due to an increase in the so-called "revenge porn" with the leaking of intimate videos and photos.

In the core of ordinary privacy, the *caput* of art. 19 states that the Internet service provider would only be held civilly liable for damages arising from content generated by third parties after failing to comply in a timely manner with a specific court order determining its removal (judicial notice and take down). This command contradicts the previous position of the Superior Court of Justice that this notification could be extrajudicial (notice and take down). The creation of this litigation mechanism is harshly criticized by part of the doctrine, which even calls it unconstitutional because it violates consolidated user rights, as is the case of Cíntia Rosa Pereira de Lima²⁵⁸ and Anderson Schreiber²⁵⁹.

The only exception provided in the law is in art. 21, which stipulates that in the case of violation of qualified privacy, for example, If the content is legally shared or part of the criminal practice, the provider must remove it upon extrajudicial notification made by the participant or his legal representative, under penalty of being subsidiarily liable in case of noncompliance (and not jointly and severally as it was before the Marco Civil). The inclusion of this provision in the legal system occurred due to the increase in so-called revenge porn.

²⁵⁸ LIMA, C. R. P., *A responsabilidade civil dos provedores de aplicação de internet por conteúdo gerado por terceiro antes e depois do Marco Civil da Internet (Lei n. 12.965/14)*, Revista Da Faculdade De Direito, Universidade de São Paulo, (2016), p. 155-176, Online:<<https://www.revistas.usp.br/rfdusp/article/view/115489>>

²⁵⁹ SCHREIBER, M. "A controversa lei alemã que inspira projeto de lei das Fake News". BBC. 26 agosto 2020, online: <<https://www.bbc.com/portuguese/brasil-53914408>>. (site consulted on December 5, 2020)

Furthermore, both the judicial notification of art. 19 and the extrajudicial notification of art. 21 must contain, under penalty of nullity, clear and specific identification of the content indicated as infringement (art. 19, §1 and art. 21, sole paragraph). The Marco Civil does not expressly state that it would be necessary for the user to inform the URL of the reported illicit content, but it is understood that the same should occur, as was the understanding prior to its enactment²⁶⁰, which is the clear and specific identification addressed by the law²⁶¹.

Regarding the term of data storage, the Marco Civil da Internet brought another problem by not adopting the jurisprudential understanding prior to its enactment, by determining, in art. 15, that the internet application providers must preserve the records of access to internet applications for a period of only six months, and that this obligation would only be for legal entities that operate in an organized manner, professionally and with economic purposes. This may generate legal uncertainty regarding cybercrime when internet applications are used without economic purposes or created by individuals.

There is no doubt that the Marco Civil da Internet represents a step forward in the legal treatment of relationships arising from Internet use. However, the law is conflicting in some points with other laws that benefited users, and the judiciary must conduct a thorough analysis of the constitutionality of some provisions of this law.

Thus, Brazilian law does not hold the internet or service provider responsible for the practice of its customers, but requires it to save and make available any data that helps to hold the user accountable for using its services to commit crimes. On this subject, Canadian laws have some divergent points as we can see below.

²⁶⁰ BRASIL, Superior Tribunal de Justiça, REsp 1.308.830/RS, Rel. Ministra Nancy Andrighi, Órgão Julgador: Terceira Turma, julgado em 08 maio 2012, 2012b.

²⁶¹ The big problem involving this clear and specific identification of the content pointed out as infringing is that the user does not have the technical and structural capacity to investigate and analyze all the illicit content posted on the network. In the context of cyberbullying, for example, users usually hide behind false profiles (“fakes”) to make their identification and eventual accountability difficult, making it virtually impossible for users to determine the URL of all the content considered illicit and even making it difficult to identify who posted the content. FLUMIGNAN, (2017), p. 81-99

In Canada²⁶², the federal Charter of Rights and Freedoms (the "Charter") makes full provision for rights of expression.²⁶³ Freedom of expression is undoubtedly one of the rights most dear to Canadian society.²⁶⁴ Even before the Charter was enacted, it was said that only sedition, obscenity²⁶⁵ and criminal defamation²⁶⁶ were exempt from freedom of expression.²⁶⁷ Civil defamation and hate speech²⁶⁸ are also exempt.

In this context it is not difficult to imagine that even fake news can be protected under the Charter.²⁶⁹ More than 20 years before fake news appeared in virtual life, in response to an argument that false information should be banned, the Supreme Court of Canada said²⁷⁰:

“The first difficulty results from the premise that deliberate lies can never have value. Exaggeration—even clear falsification—may arguably serve useful social purposes linked to the values underlying freedom of expression... doctor, in order to persuade people to be inoculated against a burgeoning epidemic, may exaggerate the number or geographical location of persons potentially infected with the virus...”

All of this discussion arguably has intrinsic value in promoting political participation and individual self-realization. To accept the proposition that deliberate lying can never be covered²⁷¹ would be to exclude statements such as the above examples from the possibility of constitutional protection. We cannot accept that such was the intent of those who shaped the Constitution.²⁷²

²⁶² For an excellent comparison of the laws of defamation of the United Kingdom and Canada, see P. Schabas & A. Lazier, “Defamation Law in Canada and England: Emerging Differences” in D. Weisenhaus & S.N.M. Young, eds., *Media Law and Policy in the Internet Age* (Hart Publishing, 2017).

²⁶³ For example, *Saskatchewan (Human Rights Commission) v. Whatcott*, 2013 SCC 11; and *Zundel v. The Attorney General of Canada*.

²⁶⁴ For example, *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326

²⁶⁵ For example, *R. v. Butler*, [1992] 1 S.C.R. 452

²⁶⁶ For example, *R. v. Lucas*, [1998] 1 S.C.R. 439

²⁶⁷ For example, *Switzman v. Elbing* (1956), [1957] S.C.R. 285

²⁶⁸ For example, *Hill v. Church of Scientology*, [1995] 2 S.C.R. 1130

²⁶⁹ *Zundel v. The Attorney General of Canada*

²⁷⁰ Burshtein, S., *The True Story on Fake News*. *Intellectual Property Journal*, Toronto V. 29, N° 3, Aug (2017), p. 397-446

²⁷¹ By the right to free speech in the Charter

²⁷² *Zundel v. The Attorney General of Canada*, supra note 171, Justice McLachlin, at *R. v. Zundel*, [1992] 2 S.C.R. 731 at 754

A defamation claim may be filed to resolve a dispute involving false news that targets an individual or a company²⁷³, but does not apply to collective law²⁷⁴. Although defamation is a common law action, except in the province of Quebec, a provincial statute may be relevant to a claim²⁷⁵. To succeed in a common law libel action, a target must establish that:

- A statement is defamatory;
- The statement refers to the target, even if the target is not named; and
- The statement is published or communicated to at least one person other than the target.²⁷⁶

If these elements are established on a basis, then falsity and harm can be presumed.²⁷⁷ A communication is defamatory if it is intended to lower the reputation of the target in the estimation of members of society who intend to expose a person to hatred, contempt or ridicule.²⁷⁸ To avoid such harm, the standard for evaluating the statement is a reasonably attentive and informed individual.²⁷⁹ The communication must refer to the target or lead reasonable people who know the target to the conclusion that it refers to the target.²⁸⁰ There is no requirement of malice²⁸¹ or serious harm. A post online can be defamatory.²⁸²

Publication can be direct or indirect. No one is responsible for repetition or republication by others unless:

- That person implicitly or expressly requests or authorizes someone to communicate the statement to others;²⁸³

²⁷³ For example, *Barrick Gold Corp. v. Lopehandia* (2004), 31 C.P.R. (4th) 401 (Ont. C.A.); and *St. Elizabeth Home Society v. Hamilton*, [2005] O.T.C. 1074 (Ont. Sup. Ct. Just.), aff'd 2010 ONCA 280

²⁷⁴ *Malhab v. Diffusion Metromedia CMR inc.*, 2011 SCC 9

²⁷⁵ For example, in Ontario: *Libel and Slander Act*, S.O. 1990, c. L-12

²⁷⁶ For example, *Grant v. Torstar Corp.*, [2009] 3 S.C.R. 640

²⁷⁷ For example, *Grant v. Torstar Corp.*, *ibid*

²⁷⁸ For example, *Cherneskey v. Armadale Publishers Ltd.* (1978), [1979] 1 S.C.R. 1067

²⁷⁹ For example, *Colour Your World Corp. v. Canadian Broadcasting Corp.* (1998), 38 O.R. (3d) 97 (Ont. C.A.), leave to appeal refused [1998] 2 S.C.R. ix

²⁸⁰ For example, *Arnott v. College of Physicians and Surgeons of Saskatchewan*, [1954] S.C.R. 538

²⁸¹ *Hill v. Church of Scientology*, *supra* note 307

²⁸² For example, *Awan v. Levant* (2016), 133 O.R. (3d) 401 (Ont. C. A.), affg 2014 ONSC 6890

²⁸³ For example, *M.D.A. Marine Design Associates Ltd. v. British Columbia Ferry Services Inc.*, 2008 BCSC 1432; *Breeden v. Black*, 2012 SCC 19; and *Crookes v. Newton*, 2011 SCC 47

- The person to whom the original publication was made was under a duty to repeat or publish the statement;²⁸⁴ or
- Republication is the natural and probable consequence of the original publication.²⁸⁵

In this case, every republication or repetition of a defamatory statement is a separate tort.²⁸⁶ The single publication rule has been rejected in Canada.²⁸⁷

Undoubtedly the structure and architecture of social media networks facilitates such distribution.²⁸⁸ This may even be more evident in clickbait fake news. For a person to be liable for defamation by hyperlinking defamatory content, there must be explicit agreement with the content.²⁸⁹ If the website operator does not edit or comment on a defamatory posting, a link is not considered a posting and therefore, without more, is not defamatory.²⁹⁰

In Canada, the defense of fair comment is available for a statement of opinion, which includes any deduction, inference, conclusion, criticism, judgment, remark or observation that is generally incapable of proof.²⁹¹ To qualify as fair comment, the statement must be:

- On a matter of public interest;
- Based on fact;
- Recognizable as comment, although it can include inferences of fact;
- An opinion that any person could honestly express on the proved facts; and
- Not actuated by express malice.²⁹²

The factual basis of the opinion must be adequately disclosed or sufficiently stated with some notoriety, unless the facts are so notorious that they are already understood by the audience.²⁹³

²⁸⁴ For example, *Speight v. Gosnay* (1891), 60 L.J.Q.B. 231 (C.A.)

²⁸⁵ For example, *Breeden v. Black*, supra note 321; *Crookes v. Newton*, supra note 321; and *Pritchard v. Van Nes*, 2016 BCSC 686

²⁸⁶ For example, *St. Elizabeth Home Society v. Hamilton*, supra note 311; *Grant v. Torstar Corp.*, supra note 314; *Breeden v. Black*, supra note 321; and *Crookes v. Newton*, supra note 321

²⁸⁷ For example, *Carter v. BC Federation of Foster Parents Association*, 2005 BCCA 398; and *Shtaif v. Toronto Life Publishing Co. Ltd.*, 2013 ONCA 405

²⁸⁸ For example, *Pritchard v. Van Nes*, supra note 323

²⁸⁹ For example, *Crookes v. Newton*, supra note 321

²⁹⁰ *Id.*

²⁹¹ For example, *Ross v. New Brunswick Teachers' Assn.*, 2001 NBCA 62, 201 D.L.R. (4th) 75; *WICRadio Ltd. v. Simpson*, 2008 SCC 40, [2008] 2 S.C.R. 420; *Grant v. Torstar Corp.*, supra note 314; and *Baglow v. Smith*, (2015), ONSC 1175

²⁹² For example, *WIC Radio Ltd. v. Simpson*; *Grant v. Torstar Corp.* and *Awan v. Levant*.

²⁹³ For example, *WIC Radio Ltd. v. Simpson* prev. cited, note 289.

Even a hyperlink to the factual basis is insufficient unless the link is accompanied by a warning that the linked material contains facts relevant to the opinion.

The media outlet responsible for a matter of public interest can avoid liability when the publisher acts responsibly in investigating and reporting the matter, diligently attempting to verify the statement given relevant circumstances.²⁹⁴ The defense is not limited to professional journalists but extends to anyone who publishes material of public interest.²⁹⁵

To be a matter of public interest, the subject matter must reach a considerable number of people, or be about something that the public, or a segment of the public, has some substantial concern, affecting the welfare of the citizens, or be a matter to which considerable public notoriety or controversy has been attached.²⁹⁶ The public interest is not limited to governmental and political affairs, nor is it necessary that the target be a public figure.²⁹⁷

A number of factors may aid in determining whether a statement is made responsibly, including:

- The seriousness of the allegation;
- The public importance of the matter;
- The urgency of the matter;
- The status and reliability of the source;
- Whether the target's side of the story was sought and accurately reported;
- Whether the inclusion of the defamatory statement was justifiable; and
- Whether the statement's public interest lay in the fact that it was made rather than its truth.²⁹⁸

Distortion or sensationalism can undermine the defense of responsible communication.²⁹⁹ However, the tone of the content is not necessarily a factor.³⁰⁰ The defense removes the need for

²⁹⁴ Grant v. Torstar Corp., supra note 289; and Quan v. Cusson, 2009 SCC 62

²⁹⁵ Grant v. Torstar Corp., *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ Grant v. Torstar Corp., *Id.*

²⁹⁹ *Id.*

³⁰⁰ *Id.*

an inquiry into malice.³⁰¹ In most cases, a provider of fake news is unlikely to satisfy the responsible communication test.

In assessing the harm that defamation can cause, some common law decisions expressly recognized the potential for greater harm through publication made on the Internet³⁰² because it is instantaneous, seamless, interactive, blunt, borderless, far-reaching, ubiquitous, impersonal, and often anonymous.

In Quebec, where civil law applies, there is no specific cause of action for defamation. The general codified tort law³⁰³ applies whenever there is damage to reputation.³⁰⁴ For there to be liability for such interference, a statement must discredit the reputation of the target from the point of view of an average person,³⁰⁵ taking into account all the relevant circumstances.³⁰⁶ The statement may be malicious or the result of simple negligence without any intent to harm.³⁰⁷ Truth,³⁰⁸ fair comment³⁰⁹ and responsible communication are not per se defenses in Quebec, but are all factors that are evaluated in the contextual matrix to determine liability.³¹⁰ Quebec courts also consider the impact of the internet publication as an element of the factual array.³¹¹

Negligence, in common law, results from a lack of care in communicating.³¹² There is no need to prove an absence of good faith in making the statement.³¹³ It is sufficient if a statement is made without reasonable cause.³¹⁴ Damage to reputation is not enough; the consequences must reflect broader personal and economic harm.³¹⁵ The potential defenses to a defamation action are not available in a negligence action.³¹⁶

³⁰¹ *Id.*

³⁰² For example, *Barrick Gold Corp. v. Lopehandia and McNairn v. Murphy*, 2017 ONSC (1678)

³⁰³ Civil Code of Quebec, Article 1457.

³⁰⁴ For example, *Prud'homme v. Prud'homme*, 2002 SCC 85, [2002] 4 S.C.R. 663. 347 *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Gilles E. Neron Communication Marketing Inc. v. Chambre des notaires du Quebec*, [2004] 3 S.C.R. 95.

³⁰⁹ *Prud'homme v. Prud'homme*, *prev. cited*, note 301

³¹⁰ *Id.*

³¹¹ For example, *Lacroix c. Dicaire*, 2005 CarswellQue 10033 (C.S. Que.)

³¹² *Young v. Bella, id.*

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Dinyer-Fraser v. Laurentian Bank*, 2005 BCSC 225

³¹⁶ *Young v. Bella, Id.*

As a species of the tort of negligence, negligent communication relies largely on the close relationship between the maker of the statement and the target.³¹⁷ The relationship requires sufficient proximity between the parties to impose a duty of care between maker and target.³¹⁸ In the absence of such a relationship between the author or publisher and the target of a careless, but not malicious, publication of a false report, there is no liability for negligence.³¹⁹ There is no duty of care in negligence between an editor and the subject of his reports.³²⁰ The requirement of a close relationship between an author or editor and his target is not generally present in a false news situation.

For instance, the removal of a blogger's membership in the press gallery of a provincial legislature for the publication of fake news was upheld by a court.³²¹

In Canada, the provinces of Quebec³²² and Ontario³²³ have anti-SLAPP legislation.

A number of regulations³²⁴ made under the Broadcasting Act³²⁵ prohibit, among other things, the transmission of false or misleading news. However, in 2011, the Canadian RadioTelevision and Telecommunications Commission (CRTC) expressed concern³²⁶ that the ban could be invalid for violating the right to freedom of expression in light of a 1992 Supreme Court of Canada decision.³²⁷

In 2011, the CRTC proposed amendments to the to limit all regulations that ban news that a broadcaster knows is false and misleading only if it endangers, or is likely to endanger, the life, health or safety of the public.³²⁸ However, the extensive comments expressing concerns about the broadcasting of false or misleading news led the CRTC not to adopt the amendments.³²⁹

³¹⁷ *Id.*

³¹⁸ *Spring v. Guardian Assurance plc*, (1994) 3 All E.R. 129 (H.L.); *Dinyer-Fraser v. Laurentian Bank and Young v. Bella*

³¹⁹ *Guay v. Sun Publishing*, (1953) 2 S.C.R. 216

³²⁰ *Shtauf v. Toronto Life Publishing Co. Ltd.*

³²¹ *Thibodeau v. PEIHRC & Pate*

³²² Quebec Code of Civil Procedure, CQLR, c. C-25, Articles 54.1 through 54.3

³²³ Ontario Protection of Public Participation Act, 2015, S.O. 2015.

³²⁴ Radio Regulations, 1986, SOR/86-982, para. 3(d); Pay Television Regulations, 1990, SOR/90-105; para. 3(2)(c); and Specialty Services Regulations, 1990, SOR/90-106, par. 3(d).

³²⁵ S.C. 1991, c. 11.

³²⁶ CRTC, Broadcastings Regulatory Policy 2011-308.

³²⁷ *Zundel v. The Attorney General of Canada*

³²⁸ CRTC, Broadcasting Notice of Consultation, 2011-14

³²⁹ CRTC, Broadcasting Regulatory Policy 2011-308

Broadcasters are therefore prohibited from broadcasting false news, although there is no corresponding prohibition on print or online media in Canada.

The federal election law³³⁰ and most of its provincial counterparts³³¹ that regulate provincial and local elections have provisions that make the publication of false declarations an offence in certain circumstances.³³² For example, the federal provision envisions that no person shall, with the intent to affect the results of an election, knowingly make or publish any false statement of fact regarding the character or personal conduct of a candidate or potential candidate.³³³ As an example of provincial legislation, the Nova Scotia statute provides that a person who, during an election, knowingly makes, distributes or publishes a false statement of fact regarding the individual character or conduct of a candidate for the purpose of influencing the election is guilty of an offence.³³⁴

For nearly a century, the Criminal Code provided that a person who voluntarily published a statement, story, or news item that he knew to be false and caused or was likely to injure or tarnish a public interest committed an offence.³³⁵ The provision targeted a false statement of a fact³³⁶ rather than an unpleasant expression of opinion³³⁷ or recognizable satire.³³⁸ The public interest was not involved in the absence of violence.³³⁹

The provision was aimed at prohibiting the dissemination of false information that targeted important interests of society as a whole³⁴⁰ and hostilities between social groups.³⁴¹ However, in striking down the provision in 1992, just before the Internet age, a majority of the Supreme Court of Canada did not agree with this view and said that the offence was aimed at protecting the rule of law and state security.³⁴²

³³⁰ Canada Elections Act, S.C. 2000, c. 9

³³¹ For example, Nova Scotia; Elections Act, s. 2011, c. 5

³³² For example, Canada Elections Act, S.C. 2000, c. 9, ss. 486(3)

³³³ Canada Elections Act, S.C. 2000, c. 9, s. 91

³³⁴ Nova Scotia Elections Act, s. 2011, c. 5, s. 307

³³⁵ Criminal Code, R.S.C. 1985, c. C-46, s. 181

³³⁶ *R. v. Hoaglin* (1907), 12 C.C.C. 226 (Alta. T.D.)

³³⁷ *Id.*

³³⁸ *R. v. Kirby* (1970), 1 C.C.C. (2d) 286 (C.A. Que.).

³³⁹ *R. v. Carrier* (1951), 16 C.R. 18 (Que. K.B.).

³⁴⁰ *Zundel v. The Attorney General of Canada*

³⁴¹ *See: Cory and Iacobucci in dissent; but see contra: majority. Id.*

³⁴² *Zundel*, supra note 171; and see *R. v. Carrier*

The infringement was found by the court to be a violation of Canada's Charter of Rights and Freedoms³⁴³ on the basis that it violated the right to freedom of expression.³⁴⁴ The majority of the judges held that a court must be certain that there can be no justification for the protection of freedom of expression before a person is denied protection.³⁴⁵ Certainty may not be established for the falsity requirement because of the difficulty of conclusively determining total falsity³⁴⁶ and because false statements can sometimes have value.³⁴⁷

In concluding that there was no ostensible purpose for the provision,³⁴⁸ the majority said that the invasive nature of the provision exceeded its purpose,³⁴⁹ because no other free and democratic country had a similar provision,³⁵⁰ the provision was not necessary to fulfill any international obligation,³⁵¹ and the provision had rarely been used.³⁵² The majority said that the provision had a chilling effect on freedom of expression³⁵³ and did not have the same justification³⁵⁴ as the hate speech provision in the Criminal Code.³⁵⁵

However, a provision directed at false information remains operative in the Criminal Code.³⁵⁶ A person who, with intent to injure or alarm a person, transmits information that he knows to be false, or causes such information to be transmitted by letter or any means of communication, commits an offense.³⁵⁷ The application of this offense has focused on the alarming aspect for situations such as bomb threats³⁵⁸ and threatening telephone calls.³⁵⁹

³⁴³ Constitution Act, 1982.

³⁴⁴ Zundel, supra note 171.

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ *Id.*

³⁴⁹ *Id.*

³⁵⁰ *Id.*

³⁵¹ *Id.*

³⁵² *See*: for example, R. v. Hoaglin, supra note 387; R. v. Carrier, supra note 390; and R. v. Kirby

³⁵³ Zundel, *Id.*

³⁵⁴ *Id.*

³⁵⁵ Criminal Code, s. 319; and R. v. Keegstra

³⁵⁶ Criminal Code, R.S.C. 1985, c .C-46, ss. 372(1).

³⁵⁷ *Id.*

³⁵⁸ For example, R. v. R. (E.), 2002 BCCA 361.

³⁵⁹ For example, R. v. Fegan (1993), 13 O.R. (3d) 88 (Ont. C. A.).

It is possible to conclude that, even if freedom of expression is limited in the right to mental, emotional and reputational integrity in both laws, the way in which the law of each country deals with liability for the violation of this integrity is substantially different.

The most important point lies in the obligation of internet and service providers to give access to evidence when there is a violation of law, in this sense Quebec law has an important advance when they consider it unnecessary to prove the lack of good faith to constitute negligence in cases of defamation. Breaking the idea of anonymity and therefore irresponsibility is crucial to combat the spread of fake news.

Possible solutions to prevent or discourage fake news

Criminalization and consequences

At the core of fake news, the discussions involving the civil liability of providers become even more relevant, especially in light of the election period. As known, the election period is relatively short, and it is not reasonable to have to solicit the justice system every time there is fake news, this may even affect the outcome of the election. In this scenario, it is more reasonable to use the notification system used before the Marco Civil da Internet, i.e., the notice and take down, and not the system that was adopted by the aforementioned law, i.e., the judicial notice and take down. In fact, since the election period is a short period of time, the consequences can be disastrous if you have to every time wait for a court order to remove fake news.

The legislature itself seems to have realized that the Marco Civil da Internet is somehow insufficient due to the speed of propagation of content available on the internet. Indeed, there are bills that seek to change the legislation in order to adapt it to this reality.

In this scenario, the Bill n. 5.203 of 2016 stands out by seeking to include art. 20-A in the Marco Civil da Internet. The proposed wording mentions, briefly, that the application provider must make unavailable, within 48 hours after receipt of notification by the interested party or legal representative, of infringing content identical to the subject of a previous court order, expressly listing that the provider cannot be held liable for the consequences of any mismatch between the content.

When analyzing Bill n. 5.203/16, it can be noticed that the legislator finally noticed that illicit content made available on the internet has a very fast dissemination capacity and the consequences can be disastrous and irreparable. So much so that the very report of the Commission of Science and Technology, Communication and Informatics mentions that the user would be harmed if it were necessary to seek the judiciary for any illicit virtual infringement.

Another point that is criticized in the Marco Civil da Internet is that its article 15, when determining the period of six months of record-keeping of access to internet applications, did not observe two extremely important deadlines in Brazilian Law: the statute of limitations for the claim of civil reparation listed in the Civil Code of 2002 (art. 206, §3, V) (three years) and the statute of

limitations for claims for damages arising from the fact of the product or service of the Consumer Protection Code (art. 27) (five years)³⁶⁰.

This fact may seem irrelevant, but, in reality, it is not. It can generate several practical problems for both Internet service providers and users because the user will be harmed, as he will have difficulties to prove the allegation. In addition, in most cases, users do not have the technical capacity to produce all the URLs that contain illegal content. The application provider, in turn, will be harmed, because it will have difficulties to defend itself, since it relied on the period of six months listed in the Marco Civil da Internet to keep those records. Furthermore, keeping these records for a longer period would cost the provider more money.

For better elucidation, let's suppose for example, that a certain user is a victim of fake news and that this has caused him several damages since he had to hire lawyers and seek reparation for the resulting trauma. After the six-month period of art. 15 of the Marco Civil da Internet has elapsed and the trauma has healed, the victim decides to sue the authors of the illicit content in order to be compensated for moral and material damages. In this hypothetical situation, he may find it difficult to prove the alleged facts precisely because of the absence of a record in the database. In addition, the provider itself could have difficulty with his defense in the absence of the necessary information, especially with possible reversal of the burden of proof of art. 6, VII of the Consumer Protection Code or art. 373, §1 of the Code of Civil Procedure³⁶¹.

Clearly, the Marco Civil da Internet is ineffective in relation to fake news, which deserves attention in today's society, especially when it involves electoral issues. In fact, these news can influence the election and define it, and can cause enormous social damage when it involves public health. The legislation and the jurisprudence cannot turn a blind eye to such facts. They must use the system that is best suited in order to reduce as much as possible the negative consequences inherent to fake news, given that the Marco Civil da Internet proves to be insufficient and ineffective in combatting it as rigorously as necessary.

³⁶⁰ FLUMIGNAN, W. G. G. *Responsabilidade civil dos provedores no Marco Civil da Internet (Lei n. 12.965/14)*. Dissertação de Mestrado. Faculdade de Direito, Universidade de São Paulo, (2018), p. 144-145

³⁶¹ FLUMIGNAN, W. G. G. «O cyberbullying e o papel dos provedores de internet», In: XXV Congresso do CONPEDI, Curitiba. *Direito, governança e novas tecnologias I. Florianópolis: Conselho Nacional de Pesquisa e Pós-Graduação em Direito*, (2017), p. 152

In the 2018 presidential elections in Brazil, the Marco Civil da Internet's ineffectiveness and inadequacy against fake news became obvious. The Brazilian Judiciary was practically left with its hands tied in the face of something that, in the words of the OAS (Organization of American States), was "unprecedented".³⁶²

After such great repercussions of fake news in the 2018 election in Brazil, two bills on the subject were amended and these deserve to be highlighted: the Senate Bill n. 471/18 and the Senate Bill n. 533/18. Such bills have similar content and aim, briefly, to amend the Penal Code, the Electoral Code and the Internet Civil Framework, with the purpose of fighting the dissemination of false news, especially on the internet. These bills inserted a definition of fake news in the three legislations and created specific sanctioning regimes in the criminal, electoral and civil spheres.

When analyzing these bills on fake news, some considerations deserve to be made. These bills fail by trying to criminalize fake news, which should not be the main objective of a bill on the subject. Criminalizing the conduct, in principle, would not bring many practical benefits, because most of the time, the content is not even hosted in Brazil, which would make it difficult to punish those involved.³⁶³

Another plausible criticism is that the bills in question seek to insert removal and accountability mechanisms for content posted on the network by creating means to report content directly to the provider. However, according to experts, this could generate abuse and violate freedom of expression on the internet³⁶⁴. Moreover, more serious content that incites to suicide such as revenge porn, or content that involves false news about public health are not legally required to maintain specific reporting mechanisms, which in principle seems contradictory and unreasonable.

³⁶² PEDIRIVA, M., *O Brasil perante o sistema interamericano de direitos humanos: a responsabilidade internacional e o caso Damião Ximenes Lopes*. Trabalho de Bacharelado em Direito na Universidade Regional do Noroeste do Estado do Rio Grande do Sul, (2020)

³⁶³ According to some experts, the criminal type that the bills in question seek to create to combat fake news would be an undefined criminal type and would generate legal uncertainty, since it would be up to the judge to determine which conducts would seriously affect the truth and whether the public interest is relevant. In this sense: Instituto de tecnologia e sociedade do rio (ITS Rio). Technical Note on Senate Bills 471 and 533, Available at: <https://itsrio.org/wp-content/uploads/2018/12/Projeto-de-lei-do-senado.pdf>. Site consulted on: December 21, (2018)

³⁶⁴ ITS-Rio, 2018

Fake News: The Examples of Germany and France Data Checking Agencies

In June 2017, the German parliament passed a law with strict measures against social networks in case of hateful posts, child pornography, and fake news disseminated by users on the platforms. If platforms such as Facebook, Instagram, and Twitter do not delete such content, they may be fined millions of dollars.

The law, which became known as the "Internet Enforcement Act" or simply "NetzDG," provides, among other things, that social networks must remove content that explicitly violates German law within 24 hours of a report. For any other offensive content a time limit of seven days has been set. The main point of this law is that in cases of systematic violations, companies face million-dollar penalties of up to 50 million euros, and the directors of these companies can also be individually fined up to 5 million euros³⁶⁵.

Other countries have followed the German model. As an example, the British government even created a specific department to analyze fake news. France has bills aimed at preventing "the manipulation of information" during the election period³⁶⁶.

Critics of the German legislation, the French bills, and the stance of other countries argue that this hurts freedom of expression and would be a way to patrol people's thoughts and opinions on the internet. Nonetheless, the claim that laws aimed at fighting fake news and hate speech violate the freedom of speech deserves a better analysis.

The need to expose their opinions, thoughts, ideas and feelings, is inherent to human beings and they cannot be punished for sharing them. When expressing his thoughts in the virtual environment, the individual has a great power in his hands due to the speed of transmission and reach of the content available on the web. This content can reflect on society, on the political system and on social values. One should not underestimate the power of ideas, much less the ideas exposed in the virtual environment.

³⁶⁵ SCHREIBER, M., «A controversia lei alemã que inspira projeto de lei das Fake News». BBC. 26 agosto 2020, Online:<<https://www.bbc.com/portuguese/brasil-53914408>>. (Site consulted on December 5, 2020)

³⁶⁶ ESTADO DE MINAS. «Conheça as leis ao redor do mundo no combate às 'fake news'». Online:<https://www.em.com.br/app/noticia/internacional/2018/07/13/interna_internacional,973278/conheca-as-leis-ao-redor-do-mundo-no-combate-as-fake-news.shtml>. (Site consulted on November 17, 2020)

In this sense, it is clear that freedom of expression exercised by users on the web should not be absolute, and cannot offend other fundamental principles that constitute the foundation of the society in which we live, nor offend anyone.

Users, using the premise of freedom of expression, often manifest positions that offend the honor and image of people, either by clearly offensive messages and opinions (for example, racist, homophobic, xenophobic, etc.), or by using lies in order to offend someone or gain some advantage, as is the case of fake news.

As Cíntia Rosa Pereira de Lima³⁶⁷ explains, an environment conducive to the sharing of information and the manifestation of thought can be a threat to fundamental rights and guarantees, such as honor, privacy, intimacy and image (Article 5, X, of the Federal Constitution). In the virtual environment, a balance must be sought between freedom of expression, ensured both in the Federal Constitution and in the Marco Civil da Internet, and the protection of other fundamental rights and guarantees, also guaranteed in these laws which guide and act as true limits to the exercise of this freedom.

Aiming to balance and control the sources of information, the Brazilian legislator has prohibited anonymity in the manifestations of thought (art. 5, IV, Federal Constitution) and required that the individual be identified and held responsible for any damage caused to third parties³⁶⁸. Since the virtual environment offers greater speed and ease to communicate and exchange information, there is sometimes a supposed sense of "invisibility". To avoid being identified, one can insert information and content on many pages without prior control by using fake profiles ("fakes") on social networks.

This false sense of anonymity when coupled with the speed of information dissemination makes the Internet an environment ripe for damage, which is why the time factor takes on particular importance in virtual crimes. The more time we take to remove illicit content from the internet, the

³⁶⁷ LIMA, C. R. P., *A responsabilidade civil dos provedores de aplicação de internet por conteúdo gerado por terceiro antes e depois do Marco Civil da Internet (Lei n. 12.965/14)*, Revista Da Faculdade De Direito, Universidade de São Paulo, (2016), p. 155-176, Online:<<https://www.revistas.usp.br/rfdusp/article/view/115489>>

³⁶⁸ Freedom of expression and expression of thought often affect legal situations of other people to which the right of reply runs. Such rights are also listed in art. 5, V of the FC, ensuring the "right of reply, proportional to the offense, in addition to compensation for material damage, moral or image.

greater the damage and consequences, since the content can "viralize"³⁶⁹ quickly. This way it becomes virtually impossible to return to the status quo.

As can be seen, the line between freedom of expression, expression of thought and offenses, and defamatory content such as fake news is tenuous and, given the speed of content propagation on the Internet, it is even more important to have legislation that vigorously combats this type of virtual crime because the Marco Civil da Internet is clearly ineffective and insufficient for such.

The Brazilian legislator cannot keep ignoring clear ineffectiveness of the Marco Civil da Internet to deal with fake news. In this sense, it is necessary that Brazil adopts a law that combats fake news quickly and effectively that ensures a more rapid system than the current law because the time factor is paramount in this type of illicit offense in view of the serious consequences that may occur. It is essential for Brazil to draw from analyze other countries' legal systems that have more advanced legislation on the subject in order to produce a law that is effective and that seeks to respect the principles and guarantees enlisted in the Marco Civil da Internet³⁷⁰.

Stimulating Reading

It is believed that the search for answers to the previous sections can be resolved or at least reflected upon through the notions of critical thinking and digital literacy. These in turn are constantly inserted in the educational context, and in Portuguese language classes, they can be explored in depth when dealing with writing and reading on digital networks.

According to Coscarelli³⁷¹, "students need to know how to learn, know where to find the information they need, and have the autonomy to deal with this information, evaluating, questioning, and applying those that they judge useful and relevant".

In this way, critical thinking is understood "as the method behind critical reading, which seeks the careful examination of information, aiming to make decisions and generate decisions and

³⁶⁹ "Viralize" is a term used in the virtual environment that has emerged with the growth in the number of users of social networks and blogs. This word is used for content that gains great repercussions and disseminates rapidly on the web.

³⁷⁰ FLUMIGNAN, G. G., *Fake news under Brazilian Law Wévertton*, disruptive scientific review, Vol. II, number 2, Jul-Dec, (2020)

³⁷¹ COSCARELLI, C., «Alfabetização e letramento digital», In: COSCARELLI, C. and RIBEIRO, A. E. (org.). *Letramento digital: aspectos sociais e possibilidades pedagógicas*. 3. ed. Belo Horizonte, Ceale, Autêntica, (2017), p. 32

generate knowledge"³⁷². The origin of this idea stems from the notion of ethics, because without it, participants in virtual communities have no means of deciding what is "right" to be shared and produced.³⁷³.

Digital literacy can mean different things depending on the area where it is discussed, and this concept is used mainly in information technology/journalism and education. The concept varies between the idea of skills in the use of technological resources and frequent reformulations in the concepts of literacies, making explicit the need to go beyond knowing how to use computers and mobile devices. As Soares points out digital literacy can refer to "a certain state or condition that those who appropriate the new digital technology and exercise reading and writing practices on the screen acquire, different from the state or condition - of literacy - of those who exercise reading and writing practices on paper ³⁷⁴."

Several discussions took place about the factor of inclusion and exclusion of students since the introduction of ICTs in the school context. We hereby think that that the student should not learn how to use the "machines" themselves, without knowing how to use and behave on the web. We often forget that these students, if not most, do not have the resources that are primary and essential to understanding their online behavior.

Thus, it is of utmost importance that these students learn how these devices work, as well as the dynamics and the computer languages that constitute this space. They need to consider digital technologies not only as a support for content, but also as a place for the creation of genres of discourse, with their own particularities. In fact, it is possible to have a less alienated and automated view of these tools.

Still reflecting on the inclusion and exclusion that happens in this cyberspace, we wonder what could be considered inclusion in this context; it is understood as the sense in which the student

³⁷² LEITE, L. R. T. «Confiabilidade informacional: A filosofia da informação e o desenvolvimento da leitura crítica no ambiente virtual», Dissertação (Mestrado em Gestão de Unidades de Informação) – Universidade do Estado de Santa Catarina, Florianópolis, (2018), p. 84, Online:<<http://sistemabu.udesc.br/pergamumweb/vinculos/000050/0000500b.pdf>> (Site consulted on July 14, 2021).

³⁷³ GOULART, C., «Letramento e novas tecnologias: questões para a prática pedagógica», In: COSCARELLI, C. and RIBEIRO, A. E. (org.). *Letramento digital: aspectos sociais e possibilidades pedagógicas*. 3. ed. Belo Horizonte, Ceale, Autêntica, (2017), p. 42

³⁷⁴ SOARES, M., *Novas práticas de leitura e escrita: letramento na cibercultura*. Educação e Sociedade, v. 23, n. 81, dez. (2002), p. 151, Online:<<https://www.scielo.br/pdf/es/v23n81/13935.pdf>>, (Site consulted on December 5, 2020)

has access to the resource or is digitally literate and has enough knowledge of reading and writing for him to participate critically and actively in this online world. For Pereira³⁷⁵, "digital exclusion is a second-order exclusion that adds to and aggravates economic and social exclusion"; thus, it is stated that inclusion should also refer to digital literacy, because if these students are not ready to exercise their roles as citizens in online networks, they will be excluded economically and socially from the places of power that such knowledge provides them.

From this perspective, working on critical thinking in conjunction with digital literacy creates good citizens in the cyberculture society. Therefore, for a comprehensive training about the collective intelligence advocated by Lévy³⁷⁶, it is necessary for the subjects to understand where they stand between the lines of the web in order to be able to act ethically in the face of the shifts in power that occur in this scenario and to begin to take their place as autonomous protagonists.

As previously mentioned, education is understood in this work as a place for the construction of critical thinking, in the formation of subjects' freedom as citizens in society. In particular, in Portuguese language classes, which are the subject of reflection in this research, we begin with the notion of multiple teaching approaches, conceptions of language and reading.

Information verification is a term from the field of Information Technology and Journalism, used objectively in reference to the techniques used in textual verification, which for language specialists and/or 16 Portuguese teachers is configured in a more subjective way, in the ways of reading, in which the ways of reading and conceptualizing reading are variable in the field of linguistic possibilities.

Leite³⁷⁷ proposes through the studies of Floridi³⁷⁸ and Carraher³⁷⁹ a reformulation of the criteria of information verification, dividing them into technical and semantic dimensions.

³⁷⁵ PEREIRA, J. T., «Educação e sociedade da informação». In: COSCARELLI, C. V. and RIBEIRO, A. E. (orgs.). *Letramento digital: aspectos sociais e práticas pedagógicas*. 2ª ed. Belo Horizonte: Ceale, Autêntica, (2007), p. 18

³⁷⁶ LÉVY, P., *As tecnologias da inteligência: o futuro do pensamento na era da informática*, Trad. COSTA, C. I., Rio de Janeiro, Editora, p. 34, (1993)

³⁷⁷ LEITE, L. R. T., *Confiabilidade informacional: A filosofia da informação e o desenvolvimento da leitura crítica no ambiente virtual*, Dissertação (Mestrado em Gestão de Unidades de Informação), Universidade do Estado de Santa Catarina, Florianópolis, (2018).
Online: <<http://sistemabu.udesc.br/pergamumweb/vinculos/000050/0000500b.pdf>>

³⁷⁸ FLORIDI, L., *The philosophy of information*, Oxford, Oxford University Press, (2011)

³⁷⁹ CARRAHER, D. W., *Senso crítico: do dia a dia às ciências humanas*, São Paulo, Livraria Pioneira, (1983)

The technical dimension includes authorship, who wrote the text; source, from which journalistic medium; content, the way the text is written and its arguments; context, the day it is published, what is happening at that time and, replication, which other sources also share the content and how they do it³⁸⁰.

The semantic dimension refers to the types of information (primary, secondary, meta, operational and derived); the types of argumentation (fact, value, concept) and informativeness, characterized by the notions of emptiness and imprecision³⁸¹.

By approaching didactic reading, these dimensions are linked to the questions of interpretation, as a reading of the content, which refers to the semantic dimension; and the comprehension of texts, as a more comprehensive reading, towards the extralinguistic, referring to the technical dimension. Moreover, there is a possibility of dialogue of this proposed vision, with the approaches of reading and language, through the discursive perspective³⁸².

Indeed, through the technical/comprehensive dimension, subjects can reach the extralinguistic (authorship, source, context and replication) that relate to the semantic/interpretative dimension, relationships of utmost importance for a critical reading. In fact, according to Gregolin, "Discourse analysis can constitute a valuable working instrument in the teaching of Portuguese language, since it offers the means for reflection on the structure and generation of meaning of the text. Through discourse analysis, the teacher can lead students in discovering the clues that can lead them to the interpretation of meanings, to discover the structural and ideological marks of texts."³⁸³

In terms of the complexity of certain statements, news or other texts with contents about facts are some of the most analyzed, as Gregolin explains, "In newspaper news, it is common that the enunciator tries to build the objectivity effect and, for that, keeps the enunciation away from the discourse, as a guarantee of his "impartiality". The resources used are the use of the third person, in the time of "then" and the space of "there", and the use of direct speech to ensure the truth"³⁸⁴.

³⁸⁰ LEITE, L. R. T., prev. cited, note 396, p. 96.

³⁸¹ See: *Id.*, p. 97 - 104

³⁸² GREGOLIN, M. R. «A análise do discurso: conceitos e aplicações». Alfa, São Paulo, p. 13-21, (1995).
Online: <<https://periodicos.fclar.unesp.br/alfa/article/view/3967/3642>> (Site consulted on September 22 de, 2020)

³⁸³ See: GREGOLIN, M. R., prev. cited, note 398, p.20

³⁸⁴ *Id.*, p.19

It is explained that the perspective adopted in this research is one of the possible ones in the reading axis, without granting a superior or inferior value to other points of view and considerations, but together the informative/journalistic and educational area can contribute to the construction of knowledge regarding fake news. Thus, Leite's information verification³⁸⁵ can be understood in Portuguese classrooms in relation to the perspective of discursive understanding of Gregolin³⁸⁶'s statements.

Literacies and the role of the school

Still, when dealing with digital text and its meanings, Araújo and Vilaça³⁸⁷ are concerned with clarifying the complexity of the context of digital technologies in education, especially in the identification and categorization of textual genres that circulate in this network. They also consider the multimodality that requires the interpretation beyond the written word, but of the image, videos, and sounds.

Gualhano and Rodrigues³⁸⁸ also approach this multimodality through design culture as a form of argumentation and persuasion. For them, the design culture, which works with colors and letter styles, has the ability to draw more attention because the linguistic materiality through these styles may influence the reproduction of its content. In fact, we notice a tendency for the reader to focus on images and colors rather than on the full text. As often seen nowadays, the configuration of a superficial reading, for example, a flashy news headline, with images can increase the chances of its sharing.

These new textual practices are discussed in the context of language teaching, in general, not only in relation to the Portuguese language, taking into account the importance of language training for social practices in today's society. This brings to the forefront considerations of digital literacy and critical literacy; highlighting the need for comprehensive literacy, emphasizing the

³⁸⁵ See: LEITE, L. R. T., prev. cited, note 396.

³⁸⁶ See: GREGOLIN, M. R., prev. cited, note 398.

³⁸⁷ ARAÚJO, E. V. F. and VILAÇA, M. L. C. «Letramento digital e letramento crítico: repensando perspectivas para o ensino de línguas nas escolas», *Filologia*, (2018), Online: <http://www.filologia.org.br/xxii_cnlf/cnlf/tomo01/041.pdf> (Site consulted on July 14, 2020)

³⁸⁸ GUALHANO, F. A. and RODRIGUES, A. C. F. C., «Fake ou news?: Contribuições do letramento crítico em tempos hipermodernos», (2019), Online: <<https://www.even3.com.br/anais/vsemanadafacedufjf/171234-fake-ou-news--contribuicoes-do-letramento-digital-critico-em-tempos-hipermodernos/>>. (Site consulted on July 14, 2020)

importance of going beyond reading and writing, with active participation in the demands of the online environment.

This view is consistent with the arguments of Gualhano and Rodrigues³⁸⁹ when addressing the digital technological context. In this context, the need for digital literacy is made explicit, requiring students to be more attentive and critical as the contexts of interpretation are multiple and multimedia. They also emphasize the relevance of critical literacy by providing contextualized teaching, which consequently raises questions about the text and its context, in which several perspectives are put in dialogue, enabling the analysis of relations within social groups and their practices.

Ongaro³⁹⁰ discusses how young people in digital culture are responsible for communicative action in our society. Thus, they have the power to transform the world in various ways, an idea that is consistent with Araújo and Vilaça's (2018) discussion when explaining the dangers of manipulation by discursive resources, since the internet allows anyone to create content. Thus, online readers and creators need to be critical and responsible, as they hold in their hands the power to cause major impacts on society with the information they make available and propagate on the web.

However, Ongaro³⁹¹ recognizes and adds that these subjects on the networks do not act in a way totally removed from their roles as critical agents. He rather wonders to what extent much these young people by themselves manage and act responsibly and critically on the networks, if they have been and are guided, if they know certain dangers of the networks, if they know their rights and duties, and if the school prepares them for all these issues.

Recognizing in the same way that students have a certain power to act, Mozart Coelho³⁹² in "Digital Literacy: new perspectives for citizen practice", exposes the point of view that without

³⁸⁹ See: GUALHANO, F. A. and RODRIGUES, A. C. F. C., prev. cited, note 404.

³⁹⁰ ONGARO, V., «Educação em tempo de “fake news”»: Jovens estudantes na era da pós-verdade». (2019), Online:<<https://portalintercom.org.br/anais/pensacom2019/textos/viviane-ongaro.pdf>> (Site consulted on July 14, 2020)

³⁹¹ See: ONGARO, V., prev. cited, note 406.

³⁹² COELHO, M. A. N., «Letramento digital: Novas perspectivas para a prática cidadã». Revistas UNEB, (2018), Online:< <https://www.revistas.uneb.br/index.php/grauzero/article/view/6094> > (Site consulted on July 14, 2020)

going through moments like this in school, students learn from a very early age through the movements of the networks, that they have the power to act and say what they think.

Ongaro³⁹³, moreover, uses school as the central argument of his article, He addresses how education, is currently not equipped to transform these students into critical citizens, as it is still stuck in the traditional models of the 19th century and needs urgent alterations. He explains that it is not enough for schools to have computer labs, but that it is necessary to develop media literacy so that these students can effectively integrate into the digital society.

Coelho³⁹⁴ in agreement with the previous author, discusses digital inclusion that entails social inclusion. For him, since the digital world is so important, the school, when promoting social inclusion, must go beyond digital inclusion, because the individual not included in the digital world is automatically excluded from society in general. Digital literacy, therefore, is part of the essential language skills and is intrinsically related to the identities of the subjects in the web of power relations and interactions in digital spaces.

Coelho³⁹⁵ in seeking to reflect on the importance of digital literacy, recognized the challenges that the school has to acquire adequate material resources and to train teachers to deal with the digital world. As Ongaro (2019) recognizes, the school system needs a few changes. These include better communication with students, so that their demands are met, teachers that are more open to work with digital resources, and recognition that the insertion of information technologies in schools is not enough for literacy and that the use we make of them depends on the school's approach.

Francklin and Silva³⁹⁶ share similar ideas, when observing the market of literacy created by schools. They advance that this process is treated in a restrictive and arbitrary way, making it impossible for the student to be autonomous when facing situations that require greater criticality. Moreover, for them, it is important that the use of digital media makes them objects of study, not just means.

³⁹³ ONGARO, V., prev. cited, note 406. *Id.*

³⁹⁴ *See*: COELHO, M. A. N., prev. cited, note 408.

³⁹⁵ *Id.*

³⁹⁶ FRANCKLIN, Adelino and SILVA, Rafael M. J. da. «Leitura crítica de informações por meio das redes sociais: Análise de práticas pedagógicas no ensino médio da Rede Pública Estadual de Minas Gerais». 2019. In: Cadernos de Artigos 21º Seminário de Pesquisa e Extensão, 2019. (Site consulted on July 14, 2021)

Araújo and Vilaça³⁹⁷ also discuss the perspectives for language education in schools and offer a review of practices in the use of technology, which many researchers have reflected on, as there is a very large gap is very large, between what is expected from schools in terms of commitment to technologized language teaching and its actual effect on students.

Coelho³⁹⁸, in addition to expressing the need for change in schools, presents two aspects considered important for this proposed literacy practice, as possible solutions. The first is the horizontality of the teacher-student relationship/interaction, both being considered agents in this process. The second is the political component, which cannot be disassociated from literacy, at the risk of making it impractical for citizenship. For him "the educator can promote a political literacy concomitant to digital literacy" (p. 23), since the role of the school is to form citizens, therefore to be a space to prepare individuals to be in society. However, he highlights the current challenges in the national context, in which investments have been limited in education, by the constitutional amendment 55/201.

For Araújo and Vilaça³⁹⁹, this argument is also taken into consideration when they highlight that it is of utmost importance to form citizenship on the Internet and to be online with a critical mind in a complex context where social, ideological, political, and cultural aspects must be worked on.

Through their interviews with high school teachers from the State Public Education Network of Minas Gerais (REE/MG), Francklin and Silva⁴⁰⁰ concluded that there is a need for more adequate training in media literacy. These authors highlighted the low budget allocated to public education.

Nicácio⁴⁰¹ explains the role of education of the BNCC "our education needs to go in search of a '[...] integral human formation and for the construction of a fair, democratic and inclusive

³⁹⁷ ARAÚJO, Eliane V. F. de; VILAÇA, Márcio L. C. *Letramento digital e letramento crítico: repensando perspectivas para o ensino de línguas nas escolas*, XXII Congresso Nacional de Linguística e Filologia, Cadernos do CNLF, vol. XXII, n. 03, Textos Completos. Rio de Janeiro: CiFEFiL, 2018

³⁹⁸ See: COELHO, M. A. N., prev. cited, note 408.

³⁹⁹ See: ARAÚJO and VILAÇA, prev. cited, note 413.

⁴⁰⁰ See: FRANCKLIN and SILVA, prev. cited, note 412.

⁴⁰¹ NICÁCIO, G. F., *O letramento em cultura da informação como direito à formação cidadã*, Tese de dissertação de mestrado, (2019), Online:<<https://repositorio.ufmg.br/handle/1843/LETRBBPHDT#:~:text=Assim%20nasceu%20a%20pesquisa%20O,como%20direito%20%C3%A0%20forma%C3%A7%C3%A3o%20cidad%C3%A3.&text=No%20que%20se%20ref>

society' (BNCC, 2017, p. 7 apud NICÁCIO, 2019, p. 15)". He also demonstrated that students have the right to learn digital and media literacy as they promote citizenship.

Still for Coelho⁴⁰², political actions involve literacies. He discusses the relationship between digital literacy and politics, because for him it is a mistake not to associate these two fields. Indeed, according to him, as of now the student interactions on networks already converge with politics in several manners, both actively acting in a democratic way, and in identifying themselves with ideologies of political parties.

Moreover, in a specific section entitled "Digital literacy and doing politics", Coelho⁴⁰³ argues that information technologies significantly change and influence subjects when they perform political acts, expanding the scope of political movements that previously occurred only outside digital networks. These, in his opinion, are now part of the larger reality of people in their daily lives, who express their political ideas on the networks, the so-called digital activism.

Thus, digital literacy can be correlated to political actions, and the school community can conduct projects and classes that involve literacy in this way. The author emphasizes that this process is not so complicated and should be applied rigorously in education, since to make it possible it is often sufficient that the subjects have access to information, even through the news. He asserts that the most important thing in this case is communication and its strategies, not the rules of grammar.

In the following section, the author focuses on the importance and social responsibility of the school, a space for the formation of subjects capable of interpreting the information in the many means of communication on or off the internet, remembering the phenomenon of fake news so strong today. In this way, political organization, in a way a digital democracy, is possible through digital technologies.

Martins and Furnival⁴⁰⁴ also mention and agree that media and information literacy should not be detached from political discussions.

ere%20%C3%A0,leitura%20e%20produ%C3%A7%C3%A3o%20de%20not%C3%ADcias.> (Site consulted on July 14, 2020);

⁴⁰² See: COELHO, M. A. N., prev. cited, note 408. *Id.*

⁴⁰³ *Id.*

⁴⁰⁴ MARTINS, T. and FURNIVAL, A. C., *Desinformação e as fake news: Apontamentos sobre seu surgimento, detecção e formas de combate.* 2020. Online:

Strengthening of democratic institutions

For some time now, governmental institutions have been losing strength in the world. In general, the population doesn't feel realistically represented by its leaders, considers the parliament corrupt, and the judiciary distant and many times flawed. This feeling in Brazil is more and more flagrant due to the consecutive corruption scandals in the executive and legislative powers, besides the many cases in which the judiciary fails either because of its lengthy process or because it treats the white rich differently from the black poor⁴⁰⁵.

Thus, with people feeling abandoned and disoriented, populist figures have gained strength. Especially when they pose to be a kind of father or savior for the poor while patronizing the rich, aligning two seemingly opposing interests⁴⁰⁶.

When people lose faith in the official institutions, parallel institutions find fertile ground to proliferate. This is how parallel states with traffickers, or the militias are created, as well as an "independent" press that, being distant from media manipulation, are perfect traps for spreading fake news⁴⁰⁷.

The ruin of the institutions is due as much to the imbalance between the powers as to the state of corruption and detachment from the reality of most of the population. To demonstrate the imbalance between the institutions, we will start with the executive power and the issuance of provisional measures.

The hypertrophy of executive power

A provisional measure is a constitutional mechanism that allows the executive to legislate urgently and exceptionally. The constituent understands that some social events may require a speed that the legislative process does not offer, as in the example of an environmental disaster or an epidemic when the executive needs to be agile and efficient in managing the budget and

<https://www.researchgate.net/publication/342134682_desinformacao_e_as_fake_news_apontamentos_sobre_seu_surgimento_deteccao_e_formas_de_combate>. (Site consulted on July 14, 2020)

⁴⁰⁵ DESPOSATO, S.W., *Institutional theories, and social realities, and parties: a comparison of legislative politics in 5 Brazilian states*, Paper presented at LASA Annual Meeting, Miami, (2000)

⁴⁰⁶ MELO, M. A., *Crise federativa, guerra fiscal e hobbesianismo municipal: efeitos perversos da descentralização*, São Paulo em Perspectiva. São Paulo, Fundação Seade, v.10, n.13, (1996), p.11-20

⁴⁰⁷ MELLO, P. C. *A máquina do ódio: Notas de uma repórter sobre fake news e violência digital*. Companhia das Letras, 2020, p. 196, ISBN 8554517733, 9788554517731

demanding payments from its population in order to save as many lives as possible. Thus, the executive power issues provisional measures that act in the legal system as temporary laws that must be revised by the legislature⁴⁰⁸.

Democratic institutions must be protected by the principle of the separation of powers; however, the political regime determines the relationship between these powers. Thus, in the parliamentary system, we see the need for collaboration between the powers, since the Prime Minister, head of government, must count on the confidence of Parliament, the legislative power. The rationalization of the parliamentary system allowed the adoption of constitutional instruments to rebalance the relationship between the executive and the legislature, such as the motion of censure and the dissolution of the Assembly. The relationship of trust that is established leads to the affirmation of a flexible separation of powers. Indeed, governability is directly ensured by the relationship of trust when the leaders of the executive and the legislature belong to the same political party or to the same alliance; or by constitutional instruments of equilibrium, in a period of cohabitation of opposing political forces⁴⁰⁹.

In the presidential regime, the relationship between the powers will be one of independence and equilibrium. In this sense, we have identified constitutional instruments for controlling and blocking government action, of which the presidential veto and the need to convert into law the exceptional legislative activity of the executive are representative. It is true that the executive and the legislative branches seek to politically negotiate the conduct of a government policy, notably at the moment of composing the positions of ministers of the Republic. However, in Brazilian presidentialism, as in fact has been occurring in Latin American democracies,⁴¹⁰ the need for negotiation was diminished, since the possibility of reissuing provisional measures prevented the executive branch from seeking consensus in the legislative branch to obtain their conversion into law. The numbers are particularly revealing. Table I clearly shows how, in the New Republic, the executive branch used provisional measures to impose its government policies. It can thus be affirmed that the large number of re-issuances would represent a resistance of the legislative to government policy.

⁴⁰⁸ BRASIL, *Constituição da República Federativa do Brasil*. Brasília, (1988)

⁴⁰⁹ MENDES. G. F., *O poder Executivo e o poder Legislativo no controle de constitucionalidade*. Arquivos do Ministério da Justiça, Brasília, v. 48, n. 186, p. 41-90, jul.-dez, (1995)

⁴¹⁰ SARTORI, G. *A teoria da democracia revisitada*. São Paulo, Ática, (1994), p. 109

The lack of dialogue between government and opposition can lead to a situation of institutional rupture, since the democratic regime presupposes the search for consensus as a guarantee of respect for the will of the citizenry. Insofar as the government does not need to enter into dialogue with the opposition in order to put its governmental policy into practice, the democratic space for political decision-making is broken and the risk of oppression reappears, leaving the citizen with no other alternative but to resist - first of all through public demonstrations of repudiation of a governmental policy that is clearly far removed from popular expectations, which can go as far as the rupture with the constitutional state that was unable to ensure a democratic governmental policy.

In this perspective, the Brazilian Constitution faces the challenge of effectively imposing limits on the exercise of political power, compelling, on the one hand, a dialogue between government and opposition, but, on the other, ensuring that the expectations of the citizenry come to be met. The hope of realizing the constitutional promises of social and economic emancipation of the excluded Brazilian people is what can ensure the strengthening of democratic institutions, which therefore depend on constitutional instruments to limit power.

The judicialization of politics

In a democratic state, a political decision should be the result of a broad debate between government and opposition. In the Brazilian presidential system, however, the political game tends towards an all or nothing relationship, that is, the government tries to impose its policy, trying to avoid the democratic debate between the branches of government. In such a situation, the opposition and organized civil society have no choice but to resort to the justice system, in the hope of resisting a unilaterally imposed government policy. The judiciary thus assumes the task of arbitrator of the democratic debate, finding in the Constitution the parameter of its decisions. Political issues, unresolved by the democratic debate, will thus be brought before the judiciary through control of the constitutionality of laws and constitutional actions for the protection of fundamental rights⁴¹¹.

⁴¹¹ BONAVIDES, P. *Ciência política*. Helvética Editorial Ltda., (2000)

In this sense, Brazil has admitted the judicialization of politics since the first republican constitution of 1891, inspired by North America⁴¹². In fact, since then, the Brazilian judiciary has controlled the constitutionality of laws and acts of public administration, as well as the defense of fundamental rights through the constitutional action of habeas corpus. However, the degree of engagement of the judiciary depends directly on a democratic space, so that in periods of authoritarian constitutionalism, the control of constitutionality and the protection of citizenship rights become timid and excessively formalistic. The redemocratization of the country allowed the rediscovery of the Constitution and constitutional jurisdiction.⁴¹³

The judicialization of politics is not exclusive to Brazilian democracy. It is a phenomenon known to consolidate democracies and the fact that Brazil faces this problem signals the consolidation of our democratic institutions.⁴¹⁴

In fact, the so-called constitutional jurisdiction represents the institutionalization of a space to control the government's actions to avoid the arbitrariness committed by eventual majorities. The opposition, as well as the minority movements, find in the constitutional jurisdiction an arbitrator whose only concern should be the respect of social values - the idea of Law - that is consolidated in the constitutional text.⁴¹⁵

The current situation in Brazil has shown that the relationship between politics, the Constitution, and justice, which is established in constitutional litigation, encounters institutional difficulties to adapt to the new times. Thus, the American-inspired concrete and diffuse system of constitutionality review is experiencing serious dysfunctions that may severely compromise its exercise (a). On the other hand, the need to establish a constitutional jurisprudence (b) has not been understood, as it raises the serious fear of blocking judicial action in the face of an interpretation imposed by its highest organ, the Supreme Court.⁴¹⁶

⁴¹² HESPANHA, A. M., *A cultura jurídica europeia: síntese de um milênio*. Almedina; 1ª edição, (2012), p. 658

⁴¹³ DE ARAGÃO, J. C. M., *Judicialização da política no Brasil: influência sobre atos interna corporis do Congresso Nacional*, Centro de Documentação e Informação, Edições Câmara, cap. 1, (2013)

⁴¹⁴ MENDES, A., *O poder judiciário no Brasil*. (2005)

⁴¹⁵ NUNES JÚNIOR, F. M. A., «O Poder Judiciário e sua vinculação aos direitos fundamentais», LFG, 30 mar, (2010), Online:<www.lfg.com.br> (Site consulted on December 5, 2020)

⁴¹⁶ LIMA, F. D. S. *A separação de poderes e a constituição do Estado moderno: o papel do poder judiciário na obra de Montesquieu*, Revista Virtual da AGU, Brasília, ano VII, n. 63, (2007)

The constitutional actions of abstract control of rules in Brazilian constitutional law are divided into four distinct situations: (a) Direct Action of Unconstitutionality; (b) Declaratory Action of Constitutionality; (c) Action of Unconstitutionality by Omission, and (d) Action of Argument of Noncompliance with a Fundamental Precept.⁴¹⁷

In abstract control the question of unconstitutionality is appreciated independently of a concrete case. Therefore, its decision will produce *erga omnes* effects, binding all the public authorities, including the judiciary bodies. The question of unconstitutionality is thus resolved only once, thus avoiding the multiplication of identical cases before the Supreme Court, which would overload the court, and also avoiding, in the lower courts, diverging decisions due to a diffuse interpretation.

It is not, therefore, a matter of eliminating concrete and diffuse control, but of offering it a rationale that can strengthen its decisions on constitutionality control. It also avoids the adoption of a binding precedent, which is incompatible with both the Romanist legal system and the democratic principle of rule-making, since the higher courts would end up creating legal rules that would be outside the democratic process (the principle of separation of powers) and above the Constitution (insofar as it would offer a constitutional interpretation that could not be subject to political control).⁴¹⁸

Constitutional jurisdiction causes an institutionalization of the relationship between politics, the constitution and the justice system. In fact, it proposes a rereading of the principle of the separation of powers in which Montesquieu's classical thesis, would be strengthened by the participation of the judiciary in the defense of democratic institutions and citizenship rights, without losing the sense of limitation of political power through instruments of control between powers,⁴¹⁹. The judicial decision on political issues not solved by consensus between rulers or between them and the citizens would find in judicialization a possibility of supervision of governmental policy, using the Constitution as its norm-parameter.

⁴¹⁷ FERREIRA, P., *Princípio da supremacia da Constituição e controle da constitucionalidade das leis*. Doutrinas Essenciais de Direito Constitucional, vol. 5. (2011)

⁴¹⁸ MEDEIROS, A., «Judicialização ou ativismo judicial? Entenda a diferença!», Politize, (2016), Online:<<http://www.politize.com.br/judicializacao-e-ativismo-judicial/>> (Site consulted on December 5, 2020)

⁴¹⁹ MONTESQUIEU, *The Spirit of Laws*, at p. 151–52

The fact is that there is an abnormal interference of political and personal interests in the three powers, distancing them from the democratic spirit of the Constitution. This interference distances institutions from the population and encourages the emergence of media, security and parallel states that respond to the needs of the population.

Rulers must therefore accept that their powers are limited by the will of the Constitution. It is true that they have received, through the popular vote, a mandate to create new legal rules to achieve their government programs; however, these laws will only be valid to the extent that they comply with the Constitution. So let it not be said that the final say on the adoption of government policy is transferred to the judiciary, with the ghost of the judicial government reappearing. Well, the governor always has the final say, since he can, at the very least, amend the constitutional text, and thus obtain the implementation of his political decision. The Constitution requires only a consensus between government and opposition which will result in compliance with the more complex and rigorous legislative process for the approval of constitutional amendments.

The phenomenon of the judicialization of politics follows the natural evolution of the democratizing Rule of Law. In effect, the judicial decision, protected by legal reasoning and the institutional and personal guarantees of the judge, contributes significantly to the strengthening of democratic institutions. Constitutional jurisdiction and democracy walk hand in hand in search of the realization of the idea of Law. This idea finds in the Constitution not only a moment of declaration, programmatic and without legal force, but an aspiration of emancipation of the citizen who, by participating, seeks to influence the adoption of a government policy which basis is found in the Constitution.⁴²⁰

In the current context, Brazilian constitutional jurisdiction is going through a delicate moment of stagnation. On the one hand, the imposition of a governmental policy by presidentialism significantly increases the level of litigation before the courts, particularly before the Supreme Federal Court. On the other hand, the judiciary is unable to establish a constitutional jurisprudence that can guide the decisions of the courts throughout the country. This is indeed a question of constitutional technique that, at its core, conceals a political question that must be addressed quickly. In democratic constitutionalism, the judiciary must save its legitimacy. This legitimacy

⁴²⁰ STRECK, L. L. and DE MORAIS, J. L. B., *Ciência política e teoria geral do estado*. Livr. do Advogado, (2004)

cannot be obtained through the electoral process, as is the case with the executive and the legislative branches. The legitimacy of the judiciary lies in its capacity to protect the rights of the citizens and, above all, to resist the political pressure exerted by the government.

The function of the constitutional jurisdiction is to preserve the will of the Constitution in the face of eventual majorities that may violate citizens' rights. Its role thus defined demands a new constitutional engineering that will lead to a reform of the judiciary, first in the organization of the superior courts - perhaps with the adoption of a constitutional court. This court would have the task of redefining the entire structure of the Brazilian justice system. This would be achieved by opening the discussion on the admissibility of external control, as well as by revising procedures. In fact, by valuing procedural formalism, which used to be represented, in the authoritarian past as a tool of resistance we may compromise the strength of the decisions of Justice in the current democratic space.⁴²¹

Access to information as a fundamental right

From climate deniers to anti vaccine movements to elections crisscrossed by lies and manipulated information, it has become commonplace to refer to the amount of fake news disseminated in recent years as an epidemic. The term infodemic was even adopted by the World Health Organization in its efforts against misinformation during the covid-19 pandemic.

As already mentioned before, the way the digital world was popularized in Brazil is *sui generis*. Therefore, having access to the entire internet is essential for the population to be able to verify the data. Digital education, which teaches how to verify sources and identify fake news, deep fake and the other means of misinformation must be the subject of governmental advertising campaigns that constantly inform the population.

To guarantee the creation and maintenance of these public policies, we must first guarantee the right of access to information to all people as a fundamental right, since our constitution allows us to add rights but not to take them away.

By increasing access to information, the same vaccine principle could be used for this fake news epidemic. Researchers at Cambridge University in the UK decided to test whether, as with

⁴²¹ See: MENDES, A., prev. cited, note 430.

viruses, using "attenuated" doses of fake content could create "antibodies" against the online misinformation environment.⁴²²

"The idea is that if you do it preemptively, people create cognitive antibodies and that reduces the likelihood of being convinced by real-world fake news when they are exposed," explains Jon Roozenbeek, a researcher at the Social Decision-Making Lab in the Department of Psychology at the University of Cambridge.

Some of the vaccines developed by Roozenbeek and his colleagues are online games in which, in a few minutes, the player is encouraged to create and spread fake news. In *Go Viral!* or *Bad News* the user takes on the role of someone who wants to go viral at any cost, and is exposed to some of the key techniques for doing so, such as using network anonymity, exploiting the viewer's emotions, and spreading conspiracy theories.

The strategy of preemptive inoculation is also called "prebunking," a term derived from debunking. Roozenbeek believes that if you know the tricks used to fool people, you are less likely to fall for them.

In studies published in scientific journals such as *Big Data & Society*, the researcher and his colleagues subjected players to questionnaires and found that, overall, they became less susceptible to the famous "zap chains" and consequently shared less.

In a new study that will be published soon, a group analyzed the period of this inoculation against fake news and the need for booster doses. In an interview, Jon Roozenbeek also discussed the limitations of psychology in the face of algorithms used in social networks and the possibility of achieving herd immunity against misinformation.

Even if the idea is excellent and can really help the younger public to understand how fake news and conspiracy theories work, it would not be enough to eliminate this practice from everyday life, Jon Roozenbeek also concluded.

Encouraging the exercise of citizenship

⁴²² CAMBRIDGE university team, «Study of thousands of players shows a simple online game works like a 'vaccine', increasing skepticism of fake news by giving people a 'weak dose' of the methods behind disinformation», Cambridge University, Online:<<https://www.cam.ac.uk/research/news/fake-news-vaccine-works-pre-bunk-game-reduces-susceptibility-to-disinformation>> (Site consulted on October 1st, 2020)

Manipulation and misinformation are more problematic when people do not know how to look for reliable information, do not have a scientific culture and do not have a political interest. For this reason, it is extremely important to encourage the exercise of citizenship.

Every citizen needs to be aware of his political role in the community and that public heritage (not only physical, but also intangible and liquid) is nobody's heritage, on the contrary, it belongs to everyone, including himself. By considering the public as something that also belongs to them, citizens are able to appropriate these spaces and this heritage and to fight for their good management.

With the advent of the Internet it is easier to stimulate this important part of social life. A variety of public policies, virtual and otherwise, can help more people engage with the policies that directly affect them.

It is vital to make advertisements in the most diverse media, explaining and educating the population about basic concepts of politics, such as: What are the three powers, what is the competence of the municipal, state or provincial and federal executive, what is the meaning of public policies, what can be understood by left and right politics, etc. These basic concepts need to be in the collective consciousness so that the population can develop critical thinking. We believe that basic concepts of sociology and philosophy are also essential to achieve this goal.

Conclusion

This paper sought to analyze the current system used to combat fake news in Brazil, which has become increasingly popular in today's society, especially in the context of elections where fake news is used to damage the honor and image of certain candidates and to benefit others, which can directly influence the election results and generate irreparable damage to the victims, as well as in public health issues, such as in the anti-vaccine and pandemic movements.

Initially we understand how fake news works. We find that they can be done professionally and specifically to attract the attention of their target audience, with words, colors and layout designed to touch on some strong emotional theme and convey some credibility. In this way, each profile receives a type of news that seems real. We also realized that the more absurd the idea disseminated by this news, the more they need to touch the target's emotions, notably with fear and anger.

We also understand a little of the Brazilian political context in the outline proposed by this thesis. Mainly how the fake news collaborated to put and send the current government in power. We verified the creation of an office specialized in producing and disseminating fake news that collaborate to manage the government's image.

The creation of a parallel reality where the economy is stabilized, covid deaths could have been avoided with the widespread use of chloroquine, that the country's return to the hunger map only happened because the state governments implemented lockdown measures, which Brazil is free from corruption even with the scandal of purchases of vaccines above the price, among many other facts. A parallel reality that lives around 20 percent of the Brazilian population that still supports the president.

We can also verify that the professionalization of creation and dissemination of fake news is a tool to achieve mass manipulation. It was possible to observe how this manipulation is done and how it is applied.

Mass manipulation involves the creation of generic profiles in which the majority of the population can be classified. The intention is to identify how to play with the emotions of each type of person and gradually radicalize them.

After specifying, defining and explaining the cut that was chosen for this research, we started to identify which laws were applied. In this way, it was possible to verify the convergences and divergences between Brazilian and Canadian laws on data protection, mass manipulation and fake news.

As evidenced, the time factor takes on particular importance in this type of illegal act, because the longer it takes to remove the fake news, the greater the consequences for the victims and the greater the social damage. In the electoral context, it may even change the result of an election. Therefore, the system adopted by the Marco Civil da Internet is not effective in waiting for a trial, which, in most cases, is slow and insufficient to achieve the desired goal of rapidly removing the false news from the Internet.

In this sense, Brazil should look at countries that have more advanced debates and legislation on the subject, as is the case, for example, of Canada. It is necessary that the legislator does not turn a blind eye to this type of illicit act and to the obvious insufficiency of the current legislation that aims to fight it, and that a law is issued that effectively combats fake news, while respecting the principles and guarantees of the Marco Civil da Internet.

It is important to emphasize that an eventual legislation like this one does not aim to cancel freedom of speech, because this principle is not absolute. In this way, it is necessary to build a constant balance between the principles, favoring one over the other in each situation, so that we can always approach justice.

The premise of freedom of speech should not be used to manifest thoughts that offend the honor and image of people, either through clearly offensive messages and opinions (for example, racist, homophobic, xenophobic opinions, etc.), or by using lies in order to hurt someone or something, obtain some advantage, disseminate false information or simply spread various false ideas.

Therefore, a legislation aimed at effectively curbing such practices and respecting the principles and guarantees of internet use in Brazil would be welcome and extremely opportune in the current Brazilian scenario, responding to a tendency of the current society to combat these illicit virtual acts. Also in this sense, we believe that Canadian legislation has the necessary flexibility to satisfactorily hold the fake news user accountable.

It is still possible to conclude that even if we manage to implement laws that are efficient in punishing, curbing it is a much more complex task. Preventing fake news from spreading is how to try to prevent the spread of rumors. With the aggravation of this rumors, are being propagated by a loudspeaker capable of reaching millions of people per second.

Therefore, it is close to impossible to prevent fake news from exist, is possible to educate the population to make they less vulnerable. Teaching the population about existence, how they operate and how to identify a fake news, would decrease your range.

The algorithm that generates profiles, used to produce this news, exploits the ignorance and feeling of abandonment of the Brazilian population. It is necessary to alleviate these gaps so that the reach of fake news is reduced.

For many years, the use of animated programs that are shown on televisions installed in buses and stations helped to change behaviors and educate the population. Some examples are: The use of condoms, male intimate hygiene, intimate menstrual care, family planning, among many others. The Brazilian population is already used to seeing and absorbing information in this way, informing and educating the population about fake news can be done similarly.

In addition, we have in Fortaleza several free internet points provided by the government. It is likely that this project has spread to several other metropolis in Brazil. If the population has access to the internet as a whole, without the limitation of chat groups, it is possible to educate them to use fact-checking sites and identify reliable sources of information.

It is also important to highlight the low interest of social platforms in developing devices that identify, prevent or reduce the reach of fake news and hate speech. Since it is proven that the more emotional the user is the more engaged, he is on the platform, the longer he stays connected on the network and the greater the power that that platform has, not only in relation to retaining personal data but also influencing its users. Finding a legal or social solution that forces these platforms to develop these devices that helps quickly identify and hold perpetrators accountable is urgent.

In summary, we believe that as long as a legal system can provide a fair and quick response to conflicts and violations of rights it will be valid and important to compose the solution of the problem object of this thesis. But is vital to rebuild the image of a credible government, educate

about the content and engage the population in the context of citizenship, it seems to us to be a more definitive way to reach the solution of this problem.

Finally, we believe that the scope of this research has been successfully achieved. Even so, we feel the need to indicate a study focused on the possibility of putting this theoretical project into practice.

Do Brazilian free internet points offer a connection that is fast and stable enough to allow the population to have real access to the digital space? How can fake news be approached? Will it be done in a multimedia way? Through posters, comics, short videos played on the televisions of buses and stations? Is it possible to use mass manipulation profile studies to target this educational material and spread it the same way as fake news? How would legal changes be proposed to make our legal system more efficient? Is our legal community close enough to the population to understand and address their problems? Can this form of educational communication also be used to bring the population closer to democratic institutions?

If fostering hate and fear makes the individual more likely to become radicalized, the opposite is also applicable. The more stability and reliable a government system is, more skeptical a population tends to be and the obligation to rebuild and maintain strong and trustworthy institutions is also the role of each citizen, is a cycle. Each of us has a responsibility proportional to our degree of information privilege and not to spread fake news, to believe in science and to demand a clean and firm position from the government and the judiciary in the fight against disinformation.

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