



Liquid Democracy, Post-Truth and the Brazilian Electoral Process

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ABSTRACT

This article analyzes the phenomenon of liquid democracy, post-truth and the effects of fake news on the Brazilian electoral process and its interconnections with the right to freedom of expression. A literature search was carried out, combining the reflections elaborated by Bauman (2001), Levitsky and Ziblatt (2018) on the phenomenon of liquid democracy and the effects of fake news on the Brazilian electoral process. In the first session, a historical overview of the Brazilian political-electoral process was carried out. In the second section, we reflected on the concept of liquid democracy and how social networks and other contemporary means of communication can interfere in people's political positioning. In the third and last section, we sought to analyze how the Brazilian constitutional and electoral law has regulated the phenomenon of mass dissemination of fake news in the electoral process, since this type of phenomenon is capable of interfering in the electoral process, eliminating the parity of arms and the balance of candidacies. It is concluded that certain social actors are capable of taking fake news as truth if it is not verified in a timely manner, therefore, it is necessary to study what is the impact on their public and individual opinion.

RESUMO

Este artigo realiza análise do fenômeno da democracia líquida, da pós-verdade e os efeitos das *fake news* no processo eleitoral brasileiro e suas interconexões com o direito à liberdade de expressão. Foi realizada uma pesquisa bibliográfica, combinando as reflexões elaboradas por Bauman (2001), Levitsky e Ziblatt (2018) sobre o fenômeno da democracia líquida e os efeitos das *fake news* no processo eleitoral brasileiro. Na primeira sessão, realizou-se um recorte histórico do processo político-eleitoral brasileiro. Na segunda seção, refletiu-se sobre o conceito de democracia líquida e como as redes sociais e outros meios de comunicação contemporâneos podem interferir no posicionamento político das pessoas. Na terceira e última seção, buscou-se analisar como o direito constitucional e eleitoral brasileiro tem regulado o fenômeno da disseminação em massa de notícias falsas no processo eleitoral, já que esse tipo de fenômeno é capaz de interferir no processo eleitoral, eliminando a paridade de armas e o equilíbrio das candidaturas. Concluiu-se que determinados atores sociais são capazes de tomar como verdade uma notícia falsa se não for verificada em tempo hábil, portanto, é necessário estudar qual é o impacto sobre sua opinião pública e individual.

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Introduction

This study analyzes the phenomenon of liquid democracy and the effects of fake news on the Brazilian electoral process and its interconnections with the right to freedom of expression, since this topic has been providing intense debates in Brazilian society.

The election of Donald Trump (2016) and Jair Bolsonaro (2018) are reflections of the ability to alter reality through the distortion of the truth and the speed of dissemination of this disinformation during the electoral process, commonly known as fake news (Levitsky & Ziblatt, 2018).

The Polish philosopher Zygmunt Bauman (2001) understands that since the 1960s, most of the world's democracies have been undergoing a rapid and complex process of transition from a solid modernity to a liquid modernity; that is, contemporary democracies are undergoing a transition in which social, political, and economic relations are fragile, fleeting, and malleable. This complex transition process, especially in the aspect of political relations, has stigmatized the possibility of citizens deciding or delegating the use of digital tools to solve problems or to exercise the fundamental right of freedom of expression provided for in the Federal Constitution (1988) (Gonçalves, 2020).

Thus, in order to produce a debate consistent with the proposal outlined in this study, we opted for the paths of bibliographic review and qualitative research, combining reflections elaborated by Bauman (2001), Levitsky and Ziblatt (2018) on the phenomenon of liquid democracy and the effects of fake news on the Brazilian electoral process.

The present work is justified due to the fact that false information, in addition to compromising the parity of forces in the electoral process, obscures the information environment created by social networks and other means of communication that use the internet as a fertile ground for the exercise of freedom of expression (Basílio, 2021).

In turn, the objective of this article is to understand the phenomenon of liquid democracy, post-truth and the effects of fake news on the Brazilian electoral process and its interconnections with the right to freedom of expression. To achieve this objective, the following objectives were proposed: To make a historical cut of the Brazilian political-electoral process; reflect on the concept of liquid democracy and how social networks and other means of communication present on the internet interfere in people's political positioning; and, to analyze how Brazilian constitutional and electoral law has regulated the phenomenon of mass dissemination of fake news in the electoral process.

Methodological Procedures

The methodology used in this study is the literature review bibliographic research, based on the analysis of the works of Bauman (2001), Levitsky and Ziblatt (2018) about the

phenomenon of liquid democracy and the effects of fake news on the Brazilian electoral process.

In addition, as complementary references, legal books with themes related to the present study were selected, as well as a search for articles published in the SciELO databases (Scientific Electronic Library).

The keywords used in this research were: Liquid Democracy, Electoral Process, Fake News. Thus, the inclusion criteria used in this study refer to the selection of articles related to the keywords highlighted above in their combinations in Portuguese and English published in the SciELO database. On the other hand, articles that did not present combinations in Portuguese and English related to the keywords already highlighted and that were not published in the SciELO database were disregarded.

Therefore, a search was undertaken in the Scielo database, in which fifteen articles were found, of which only four were selected after the stages of selection by theme and abstract, and later, after reading the complete article.

Development

Historical Outline of the Brazilian Electoral Process

Throughout its political history, Brazil has known different electoral and party systems. Direct suffrage was introduced in the year 1881; however, elections held during the period of the Empire and the First Republic were characterized both by the exclusion of a percentage of the population from the right to vote, and by recurrent fraud and low voter registration. During the Empire, economic requirements were established for the exercise of suffrage, and from 1881 to 1888, anyone who could not read or write was excluded from the right to vote. This limitation included other regulations relating to social position (Amorim Neto et al., 2011).

It was in 1932 that the institutional bases for control and uniformity of electoral processes were created through the creation of the Superior Electoral Court (*Tribunal Superior Eleitoral* - TSE) and the Regional Electoral Courts (*Tribunais Regionais Eleitorais* - TRE). The electoral jurisdiction assumed responsibility for the preparation and control of electoral registers, the organization of elections, the counting of votes and the proclamation of elected candidates (Cerqueira, 2011). Thus, during the six decades of existence of the TSE and the administrative reforms carried out in this area, the right to vote has been gradually generalized. In 1932, along with the elimination of census suffrage, women were given the right to vote, and it was not until 1988 that the unrestricted right to vote was established for the illiterate. The Electoral Act of 1932 introduced compulsory suffrage, and in 1934 established the secret ballot. In 1946, voter registration became mandatory (Mainwaring, 1991).

The Federal Constitution of 1988 and the Electoral Law of 1989 regulate Brazilian law and the electoral system. Presidential elections are held every four years. At the national level, Congress is also elected. The Federal Constitution of 1988 states that suffrage is direct, secret

and universal. All Brazilian citizens over the age of 18 have the right to exercise it; it is mandatory for all those who are literate and optional for illiterate people and citizens between the ages of 16 and 18 or over 70. However, to be elected president, vice president, or senator you must be over 35 years old. For the position of deputy, the minimum age requirement is 21 years old. Illiterates cannot be elected according to the law (Cerqueira, 2011).

During the military governments, Brazilian electoral legislation was designed to ensure in every possible way the supremacy of the official party, which received all kinds of support from the government apparatus. The electoral system aimed to distort the citizen's vote to offer a majority in the chambers, but this did not in any way reflect the values of the votes obtained by the parties at the polls (Amorim Neto et al., 2011).

Political parties were required to have many requirements to be able to access the register and ensured the over-representation of the ruling party in the chambers. A method of indirect presidential election was also established for the 1985 presidential election, which unsuccessfully sought to establish an over-representation of the official candidate in the electoral college. However, with the defeat of the Social Democratic Party (*Partido Social Democrata* - PDS) in the presidential elections and the subsequent drafting of a new Federal Constitution, the emerging parties and forces decided to radically change the provisions on Brazilian elections (Amorim Neto et al., 2011).

In this way, a pure proportional electoral system was established for the composition of the Chamber of Deputies of the Bundestag, which would avoid at all costs the over-representation of any party. The intention was to establish a new plural chamber that would reflect the party composition of the country, provided that the presidential elections were fought directly under the two-round system. That is, if no candidate managed to obtain 50% of the votes in the first round, a second round would be held exclusively with the two candidates with the most votes (Cerqueira, 2011).

The combination of the two-round presidential electoral system with the excessive multi-party system resulting from the pure proportional formula has had devastating effects in Brazil. The rise of a president without a solid party base to support him in Congress led to a severe confrontation between the powers, which largely stalled the government's work for several months and led to the impeachment of President Collor (Mainwaring, 1991).

One of the main characteristics of the new Brazilian democracy is that it has a regulation on the use of the media that seeks to benefit all political parties equally. According to Brazilian law, each party has, for the first round, a total of 590 free minutes in the best moments of the television networks, which represents an important advantage to win the elections. In turn, for the second round, the two finalists are entitled to 20 minutes per day (divided into two blocks) on television and, in addition, the news programs have the obligation to dedicate ten minutes of coverage to each of the two campaigns (Cerqueira, 2011). These legal provisions on the free use of the media by parties during the election season are among the

most advanced in Latin America, and represent an important contribution to attempts to mitigate the advantages of rich parties at the expense of poor political organizations. However, it is important to note that parties have no restrictions on the time they can buy from radio and television networks with their own resources (Amorim Neto et al., 2011).

Article 17 of the Federal Constitution of 1988 guarantees the freedom to create, merge, incorporate, and extinguish political parties, provided that these entities commit to safeguarding national sovereignty, the democratic regime, the multiparty regime, and the fundamental rights of the individual. This article also prohibits parties from accepting financial resources from foreign entities and governments. Finally, it guarantees the right of parties to obtain public funds from the so-called “Party Fund” (*Fundo Partidário*) and free access to radio and television (Brasil, 1988).

Liquid Democracy, Media and Fake News: Between truth and post-truth

It is known that political participation emanates from more classical concepts such as representative, direct and participatory democracy and, although in recent years new criteria for participation have been emerging, for example, the liquid democracy object of this study, one cannot ignore a priori the basic ideas of democratic participation. Today, then, there is the loss of confidence, the repulsion to a corrupt and distant political class, generated in the citizenry the need for self-organization in order to face the social and economic complications of daily life; if, on the one hand, the target theme of democracy remains the same, that is, the citizen, on the other hand, seems to change the tool for the exercise of this constitutionally guaranteed freedom. Added to this is the disconnection of the merely political in order to rediscover the community (Gonçalves, 2020).

It is the citizen's obligation, then, even if briefly, to take a position on the democratic question, not only assuming the general criteria that identify it, but also examining the relationship between the concept of formal democracy and the most modern systems that pass through participatory democracy and are implemented with technological processes that were previously unknown. Liquid democracy, a concept derived from the theory of liquid modernity coined by Zygmunt Bauman, is therefore one of the consequences of a participatory democracy applied to specific cases (Bauman, 2001).

It should not be forgotten that, along with liquid democracy, positions such as participatory budgets, neighborhood assembly meetings, city meetings, which create and carry out participatory democracy, sometimes identifying it as the only shield of struggle against classical politics are known (Gonçalves, 2020).

At the center of these new positions are citizens who demand a more direct relationship with classical politics, seeking to favor a new politics based on what is known as “liquid democracy” whose participation is deployed through new technologies and, more specifically, through the internet. Thus, it is necessary to indicate the elements that characterize liquid

democracy, but it is interesting to try to define the concept of liquid democracy (Bauman, 2001).

Liquid democracy comprises the sum of direct and participatory democracy that develops through new technologies that manage to overcome the representative limit to which citizens are rejected and that identify with the current political class. In this sense, it can be said that the two figures can be compatible and complementary, that is, participatory democracy encompasses liquid democracy as a technical tool for the construction of a participatory politics (Levitsky & Ziblatt, 2018). Thus, it is possible to state that in a liquid democracy, citizens who wish to get involved in political life can do so, and those who choose not to get involved can go to the representatives. Similarly, any citizen or group of citizens can create a virtual representative, who will publish their intention to vote on behalf of the political or current party of opinion they represent (Amorim Neto et al., 2011).

The pillars of liquid democracy are, therefore, fundamentally two: The delegation of the vote and the construction of a Virtual Parliament (Amorim Neto et al., 2011). However, these two elements cannot be applied if the scenario in which they are to be promoted is not previously identified). The concern does not lie in the use of the internet to participate in a country's politics - technological advances are unstoppable and, sooner or later, virtual Parliament, if not a reality, will at least be a concrete possibility - rather some concerns about who and how the information stored in the information society that is catapulted into the knowledge society will be managed, filtered and used (Levitsky & Ziblatt, 2018).

The information society and the knowledge society turn out to be two fundamental aspects that, although sharing common elements, are characterized by being autonomous, and cannot therefore assume that the possible liquid democracy develops indistinctly in one of the two aspects. In our opinion, for liquid democracy to achieve any kind of result, a knowledge society free from servility is necessary (Amorim Neto et al., 2011). The only ones who will be able to achieve this independence will be the citizens who critically and selectively appropriate information and use it to actively participate in the construction of an individual political idea and then a democratic politics. It is about identifying a truly global civil information society as a conjunction with the knowledge society and the knowledge society (Gonçalves, 2020).

It is necessary to understand that the information society is a great holder where, thanks to new technologies, large amounts of information accumulate and quickly spread to the social community. The work ends when the news reaches its recipient and it is at this moment that the knowledge society must intervene to filter information and transform it into democratic tools for participation. In relation to information and knowledge, it is possible to affirm that the scientific-technological resources that emerged in the 20th century, from computers, enabled the transmission, storage and handling of information (Amorim Neto et al., 2011).

The internet and social media have amplified the way information is generated and socialized. Progressively, it has been realized that the information society is characterized by the central position of information and associated Information and Communication Technologies, both as factors of production and key products for economic success. The information society is also linked to the digital revolution, where there was a shift from electronic and analog technology to digital (Gonçalves, 2020).

The information society is shaped by four elements: Users (access content); infrastructures (allow access to content: Terminals, networks, server); content (information, products or services accessed); content support (training, consulting, design). In turn, the term knowledge society encompasses broader social, ethical, and political dimensions, since the evolution of the Internet currently makes it possible to transmit information in text, images, and sound; sending e-mails; communication on social networks, use of so-called smart mobile devices (Basílio, 2021).

To explain information in our days, Bauman's (2001) metaphor is used to consider this information, since the inclusion of Information and Communication Technologies (ICT's), "flowed" through one person to another person, from one person to a computer, from one computer to another, from one network to another. Thus, when interpreting Bauman (2001), he points out that fluids do not retain a form for a long time and are willing to change it. It should be noted that this metaphor is adequate to understand the nature of the current phase in many aspects, since information flows regardless of time, distance or formats, and with greater speed and portability (Levitsky & Ziblatt, 2018).

Thus, the product of the human mind is exposed through the creation of words, ideas, and concepts that are communicated and that have prevailed, both through writing and currently in digital form (Levitsky & Ziblatt, 2018). In what is communicated, there is an ethical dilemma that has been generated, giving meaning to the discourse that can be used, either as a tool of social domination, or that allows judgments to be made and to develop reflective capacity. In the congruence of the mental representation with the thing, the word truth is distinguished (Bauman, 2001).

In this way, news and the transmission of the truth cease to have ethical value and become a commodity, where what is valuable is not the true content of the information, but the impact it produces. With this fact, the context of spectacle of journalistic discourse is created, which means an action that produces scandal or strangeness (Levitsky & Ziblatt, 2018). It should be noted that the consequence of this is to conceive of citizens as consumers and information as an intangible commodity and not a nutrient for public opinion. The consequence is the passive subjects, detached from reality, on which they no longer operate. With this, any type of information, true or not, spreads and goes viral (Basílio, 2021).

Sometimes, it's not necessary to play content, but it's enough to share it or give it a like. Through these processes, anyone becomes an author, in an informational field for which only

one device is required. However, to elucidate the truth of all types of circulating information, it is necessary to analyze facts and argue evidence, because with social networks information is received or sent that responds to needs, hobbies, interests or opinions and bubbles are created where it is possible to live without going out or exposing oneself to divergent opinions. In today's society, with the presence of the internet and the intense use of social networks, one of the challenges is the analysis of objectives, argumentation of data and facts that make up information (Levitsky & Ziblatt, 2018).

In the contemporary world - where there is a greater amount of information that communicates and establishes cooperation instantaneously, and where those who receive and forward it without interpreting it or establishing its veracity, so that emotion and personal beliefs dominate the formation of public opinion about objective facts (Basílio, 2021). In this context, one word stands out: Post-truth, since post-truth can be a lie that is assumed as truth and even a lie assumed as a lie, but reinforced as a belief or as a fact shared in society (Levitsky & Ziblatt, 2018).

In the meantime, post-truth and disinformation are synonymous, but post-truth is an affluent of the techniques, methods, and conditioning factors of disinformation. Therefore, post-truth consists in the relativization of truthfulness, in the trivialization of the objectivity of data and the supremacy of emotional discourse, sustaining emotional and shared beliefs, despite the facts that demonstrate the objective and rational; privilege it over what is heard, read or seen and that agrees with our ideologies (Levitsky & Ziblatt, 2018).

With post-truth, there is a fertile field for conspiring, creating agitation, provoking suspicion or hostility from social groups. Recently, acts of political mythomania, alternative truths, and false facts were seen in the 2018 elections in Brazil (Basílio, 2021). In the political sphere, lies or half-truths have always been easily managed, but now the response to the political and economic *status quo* has introduced sentimental and emotional elements into its false messages, endowing them with a comprehensive force, since digital access has also generated a different way of producing information. An example of this is citizen journalism and open access as a possibility to publish outside editorial spaces (Levitsky & Ziblatt, 2018).

Information technologies have made it possible to channel collective intelligence and spread fake news; they have changed the way information is consumed and assimilated. Today, one of the indicators of a country's development is the measurement of internet use. However, connectivity without a thoughtful use of information leads to more misinformation (Levitsky & Ziblatt, 2018). An example of this is the fact that social networks represent the ideal means to disseminate information without attachment to the truth, subjecting information to emotions and not to reasoning. The immediacy is amplified before weighing the verification of facts, data, information, which makes it difficult to build an opinion, to the knowledge (Gonçalves, 2020).

The acceptance of what happens on social networks makes it difficult to recognize the false from the true. Fake news gives rise to the express acknowledgment of its existence, and from this, debate and controversy about it arises. It should be noted that a relevant aspect is the origin of the information. A new story takes a few seconds to be broadcast on social networks and travel around the world accompanied by photos, videos or sounds; it all comes in an incessant stream to YouTube, Instagram, Facebook, Twitter, among other social networks (Levitsky & Ziblatt, 2018).

The problem with so much information is knowing what's false and what's true, whether it's real or not, whether it really happens or whether it's old news; that's why it's increasingly important to check if it comes from a reliable source. Facebook and Google have made changes to their algorithms to prevent false information; for this, smarter algorithms and very fast computers are used (Levitsky & Ziblatt, 2018). It is therefore considered that there is information with truth, which is what is used for decision-making, but there is also post-truth. Knowing both is vitally important for creating critical analytical societies that make decisions. Therefore, it is necessary to integrate logical reasoning processes that allow us to analyze the information, explain it, question it, before disseminating it through emotional elements (Gonçalves, 2020).

Thus, the antidote to manipulated trends in digital networks requires an ethical and professional commitment from librarians to guide users in verifying information and being cautious with the information they disseminate. At this point, technologies themselves, such as the internet, would facilitate the transmission of lies or manipulated truths. This manipulation of truth would not remain exclusive to the realm of political or social interaction, since it could even be linked to teaching and academic practices (Levitsky & Ziblatt, 2018).

Thus, government action (and government discourse) should be analyzed not so much in terms of the rulers, but in terms of the exercise of power that will guide much of the government's behavior (and discourse) as an action of power and capacity for domination. In the same way, it can be understood that it is impossible to understand the complexity of all, and so diverse, environments and levels in which politics is carried out, so that it is possible to understand, or have information about, all of them. With the above, it would be understood that there are agreements, actions and decision-making totally unaware of the citizens (Levitsky & Ziblatt, 2018).

Another element that would be worth delving into a little more in his analysis is that of the politician who makes politics, and the politician who lives from politics. Related to this, it has been argued that “[...] those who do politics aspire to power; to power as a means for the fulfillment of other extremities (idealistic or selfish) or for power 'for power's sake', to enjoy the feeling of prestige it confers” (Weber, 1997). At this point, sociologist Max Weber (1997) argues that it is not wrong for politicians of this nature to exist, but warns of the need to have a professional body in the exercise of government called the bureaucracy, which while having

clear government channels and regulations, serves as a counterweight to the exercise of power or a balance of forces between autocracy and the professional public service of government.

This analysis by Max Weber (1997), for the specific case of post-truth, is not exhausted with the discussion of the professional or the person who makes a living from politics, as it also sheds light on the political discourse that is not always, nor necessarily, linked to the truth. These elements are linked to the idea that underpins the very concept of post-truth. What these elements try to show is that acting, and therefore political discourse, are not always linked to the virtuous idea of ethics and truth, so trying to associate truth with political discourse, as is constantly seen in post-truth analyses, is decontextualized from a concrete reality (Weber, 1997).

At this point, based on the analyses that have been carried out under the post-truth approach for many years, political discourse is more related to the emotion of the discourse than to an attachment based on truth. From these perspectives, it is possible to perceive the fundamental importance of the internet to inform, especially young people, where the use of these technologies represents the first place in the way they obtain information, since young people have become a privileged object of study in the field of reflection on the social and cultural impact of the use and consumption of ICTs. They are the digital generation, the vanguard that represents the future, but also the sector of the population most vulnerable to the risks posed by these technologies (Gonçalves, 2020).

The above is not free of problems, now associated with the almost exclusive use of these technologies to be informed, since the question of the quality of the information being consumed, its veracity and the pluralism that may or may not present and contain must be taken into account. Well, it seems that information is increasingly being like “on-demand” information, where you select the profile and trend of the information you want to know and leave out information, which may be more true or transcendent, because it doesn't coincide with the ways in which the author intends to approach that content or news analysis (Levitsky & Ziblatt, 2018).

In addition to this discussion, it is necessary to locate the type of politician who emits public discourse, where, on the one hand, there is the ethical politician who seeks the collective good and, therefore, will be willing to do “politics”, both for social improvement and for the reduction of public problems. On the other hand, one can see a type of politician who lives by and for power, who is more likely to carry out “subpolitics” in order to entrench or perpetuate himself or his group in power (Gonçalves, 2020).

Currently there is a tendency, especially in the political and public administration spheres, to issue opinions, speeches and messages that are more linked to emotionality, sensitivity and sentimentality, than in an attempt to address the objective is the truth of public affairs. The main danger of this type of discourse, or post-truth, lies in the fact that its content is generating public opinion and collective action that impacts the internal development and

international relations of nations. An example of this can be seen crystallized in the results of the two most talked about post-truth cases: That of BREXIT, in England and the European Union, and the victory of Donald Trump and Jair Bolsonaro, in the presidential elections for the governorship of the United States and Brazil, respectively (Levitsky & Ziblatt, 2018).

These ways of dealing with information reflect the behavior of individuals who have no commitment to the ethical behavior established by society or by a specific group; they are against the internationally required integrity of scientific, scholarly, and social work, as well as the recording, dissemination, and use of knowledge (Levitsky & Ziblatt, 2018). Thus, along with the indiscriminate use of post-truth in news, notes, and open-use data, the severity of this scenario is greater in academic, scientific, economic, and political media, among others; above all, it affects knowledge, science, the training of new generations and decision-making that harm the development and functioning of a country (Basílio, 2021).

In view of this, the role of specialists in the treatment and study of information is increasingly strengthened, since their role not only ends in the study of phenomena such as this, in order to understand them, but also to propose alternatives for improvement, either through the creation of tools, services and mechanisms that bring the population closer to more reliable sources of information or the direct link to generate policies that enable the existence of more and better informed individuals, capable of identifying reliable sources on post-truths, and thus reversing the result left by the political discourse (Levitsky & Ziblatt, 2018).

These actions, attitudes and behaviors also generate insecurity and distrust of the environment where someone develops, because if there are no consequences and impunity is privileged, coexistence will become difficult and annoying. In this sense, we will be building the foundations of a society where: a) the differences are more significant, b) impunity distances the citizen from reliable educational processes, supported by true knowledge, and c) this access to information and reliable, quality knowledge will only be close to the elites or reserved for privileged groups (Basílio, 2021).

Constitutional Law, Electoral Law and the “Fake News” Phenomenon in the Brazilian Electoral Process

The consumption of information about politics by the Brazilian population has undergone a significant change since the beginning of the 21st century and, especially, during the 2010s. During this period, the use of social networks was boosted, which made the media consumption of the Brazilian population significantly more diverse and open if we consider the scenario of the late 1980s, in which television dominated by *Organizações Globo* stood out. This change in pattern can be explained by advances in the connectivity of the population and

their access to devices connected to the internet, on the one hand, and in the offer of free internet applications, on the other (Gonçalves, 2020).

Such applications are the so-called “internet platforms”, technology companies based on the sale of advertising and access to digital audiences in a targeted way to personal data. Unlike mass media companies, these platforms have opened up new possibilities of communication to citizens, which has significantly reduced the cost of producing and circulating content. In them, individual users compete for attention with newspapers and magazines - traditional or independent - and establish dynamics of content distribution and circulation (Basílio, 2021). These dynamics combine, on the one hand, structured business decisions based on the architecture of their products and algorithms, and, on the other, interactions and spontaneous behavior of users in specific arrangements that depend on the service in question. These arrangements find criticism in the possible effects they have in terms of the formation of opinion bubbles and echo chambers among their users and the decontextualization of the information that circulates there depending on their architecture (Levitsky & Ziblatt, 2018).

In 2018, two business groups stood out in terms of reach and audience in the digital environment: Alphabet and Facebook. In the case of Alphabet, Google's holding company has controlled the main websites accessed by Brazilians for at least five years - its search platform and its video platform, YouTube. In the case of Facebook, its apps (Instagram and WhatsApp) are the most popular in Apple's and Google's own digital stores, and appear in searches as preferred platforms for Brazilians to search for information and conversations about politics (Gonçalves, 2020).

It is also relevant to observe the context of internet access in Brazil. Today, mobile phones are the main way to access the internet. When considering the income factor, a survey by the Center for Studies on Information and Communication Technologies (*Centro de Estudos sobre as Tecnologias da Informação e da Comunicação - CETIC apud Gonçalves, 2020*) showed that 80% of people in classes D and E depend exclusively on cell phones to navigate. This access, however, is precarious, since data traffic has a high cost for this portion of the population. In the absence of mobile data availability, a large part of the population accesses the internet through applications offered by operators without a discount on the franchise, such as Facebook and WhatsApp. The practice, called zero rating or zero rating, prevents the individual from having enough mobile data to visit sites such as journalistic pages outside of social networks in case of doubt or desire to verify information.

Thus, these platforms began to act as prominent intermediaries of political debate and information consumption, adding distinct characteristics of their operational logics and

patterns. In general, it is possible to perceive in the analysis of the relations between the most significant political processes in the country that occurred at the beginning of the century that such intermediaries had a significant presence. In 2005, for example, in the referendum on the prohibition of the sale of firearms in Brazil, Bernardo Sorj pointed to the subversion of communication made on mailing lists, as emerging in the victorious “no” campaign. Later, the demonstrations of June 2013 turned social networks such as Facebook into a kind of “cauldron” of a society in political turmoil. The 2014 elections marked the moment of the emergence of new forms of political organization and communication outside of official campaigns precisely on these platforms (Gonçalves, 2020).

At the same time, political-electoral processes with an important digital component have also focused on other contexts, bringing new debates around the responsibility and role of these platforms. If previously its liability for damages or problems created by third-party generated content was reduced in the name of expanding freedom of expression and access to information, processes such as the 2016 United States (US) presidential election and the 2017 referendum to leave the United Kingdom from the European Union have reshaped this terrain. Between the financial and confidence crisis of “professional” journalism and the network propaganda strategy, a debate was born - about the controversial shadow of the term fake news - about how platforms could or should mitigate practices of disinformation, veiled propaganda and political manipulation that take advantage of their tools. In this sense, the platforms have developed different strategies, but with touchpoints. The pressure imposed by academics, activists, governments and the media has led to a series of actions directed in a more or less discreet way by each company (Levitsky & Ziblatt, 2018).

Facebook, which was in the crosshairs of electoral courts, the press and civil society due to the role that the company had played in the US elections, and especially after the Cambridge Analytics scandal, held meetings, executed some changes and carried out some actions of specific emotions. For example, in July 2018, the platform deleted 196 pages and 87 accounts in Brazil from the network. Most of these accounts were linked to the right-wing Free Brazil Movement (*Movimento Brasil Livre* - MBL), according to the movement itself. In a statement, the platform explained that it was “a coordinated network that was hidden with the use of fake Facebook accounts, and hid from people the nature and origin of its content with the aim of generating division and spreading misinformation”. Similar actions took place in August, September, and October, which impacted both right-wing and left-wing groups (Gonçalves, 2020).

On another front, Facebook supported actions by fact-checking entities in Brazil, such as the Comprova Project, made up of 24 news organizations. In November, the consortium announced that it had received more than 20,000 reports of false information and published

these findings to help people distinguish between what was true and false based on fact-checking strategies. At the same time, the debate on disinformation had repercussions in the Brazilian Congress and Electoral Courts, which generated legislative initiatives to combat this phenomenon, even before the 2018 elections. In this context, numerous proposals have been added to make the intermediary liability standard more flexible (Basílio, 2021).

The platform protection rule, in force in the Brazilian Civil Rights Framework for the internet (Law No. 12,965/2014) - to allow the removal of content that fits certain waves of fake news and promote the criminalization of users who share information of this type. Such proposals were unsuccessful. In order to account for the cheapening of campaigns, the 2017 mini-electoral reform silenced the issue while changing articles of the electoral legislation to allow, for the first time, paid advertising on the internet (in the impulse mode) and to reconcile the performance of the Electoral Justice campaign with the protective model of freedom of expression of the Civil Rights Framework for the Internet mentioned above (Gonçalves, 2020).

In the Judiciary, the movement was also ambiguous. On the one hand, the Superior Electoral Court (*Tribunal Superior Eleitoral* - TSE) organized an advisory council on the subject, with the intention of preparing against the practices widely reported by the press, with reference to the case of the United States. This group had the participation of civilian and military government entities and was concerned and criticized by civil society organizations because its discussion process was not transparent and for fear of monitoring and censorship. On the other hand, the same TSE regulated the 2017 mini-electoral reform and gave a more comfortable legal arrangement to freedom of expression on the internet than before, with platforms having a significant influence on this process (Gonçalves, 2020).

This does not mean that the Electoral Court dissociated itself from its powers of expanded protection of the electoral process, but it had an impact based on the sophistication of its jurisprudential criteria for electoral magistrates in cases of sponsored voter manifestation and the establishment of new parameters for newly created provisions, such as the promotion of content. In fact, no election in Brazil has taken place under the same electoral rules since the promulgation of the Constitution. These mini-reforms maintained the general structures of Brazilian federalism and its proportional and bicameral electoral system, but gradually transformed content limits, temporary or formal, for the competitors of these lawsuits. In the early 2010s, this scenario began to find turning points (Amorim Neto et al., 2011).

From the regulatory perspective of campaign financing, for example, anti-corruption investigations - such as *Lava Jato* - and the decision of the Federal Supreme Court (*Supremo Tribunal Federal* - STF) - such as the Direct Action of Unconstitutionality (*Ação Direta de*

Inconstitucionalidade - ADI), No. 4,650 - put an end to the possibility of corporate financing of campaigns, a prohibition that became valid in 2018 (Gonçalves, 2020).

The Brazilian electoral law is a very particular branch of national law, which is updated in each action through resolutions and infra-legal acts that are issued by the Electoral Justice itself. The historically central concept in this branch of law is that of electoral propaganda, as it delimits the scope of the intervention: As a general rule, it would be possible to state that the electoral law does not act on this communication, which cannot be framed as electoral propaganda. Like all legal institutes, electoral propaganda has a technical meaning that is formulated from a specific context, when the context changes, the law can adapt or lead to obsolete and stop solving the problems for which it was drafted (Cerqueira, 2011).

The concept of electoral propaganda has its roots in the 1950s, in the first Electoral Code (Law No. 1,164), and refers to the actions of candidates and parties on the radio and in street campaigns. Then, in 1962, a reform established the first rules of proportionality in broadcasting, and throughout the 1960s and 1970s, more detailed regulations on permitted content emerged, mainly taking into account the centrality that television began to acquire in Brazilian society (Levitsky & Ziblatt, 2018). With the consolidation of the previous legislation in the 1997 Elections Law, it became clear that electoral advertising referred to the free schedule of electoral propaganda, other broadcasts and street events, but with a focus on the former, with the idea that radio and television vehicles, because they have great influence on public opinion, they can unbalance the electoral game (Amorim Neto et al., 2011).

It was in the 2000s and 2010s that specific provisions on the internet began to emerge in electoral legislation. In the 2002 campaign, the use of the network for political communication purposes was identified, and in 2009 with the approval of Law No. 12,034/2009 marked the moment when the electoral law effectively came to regulate the internet, with liability of suppliers in case of abuse, spam and prohibition of paid advertising on the internet, prohibition of hiring agents to offend the honor of candidates (Law No. 12,891/2013, electoral mini-reform) and the protection of the Electoral Justice over content on the network, in a broad way (Basílio, 2021).

In 2017, an electoral reform allowed, as an exception to the rule banning paid advertising on the internet, the boost of content on the platforms. Defining electoral propaganda in the new context has become a much more complex task. The internet enabled the emergence of mass self-communication, and ensured the economic and technical viability of new media that diluted the contours of professional journalism (Levitsky & Ziblatt, 2018). Along with this phenomenon, non-professional communication - or communication organized in new terms - has gained ground and the freedom of expression of citizens has become a point

of relevance, in relation to the establishment of regulations on what can and cannot be done in these spaces (Gonçalves, 2020).

Concretely: What is propaganda in this new context? And more specifically, what is paid advertising? Influencers who receive money to manifest themselves in one position or another doing paid advertising, are prohibited by law, as was the case with the online mobilizations that took place during this period. Someone who supports a candidate, who uses his economic power to promote messages of praise on Facebook, doing electoral propaganda? If so, this would be prohibited, since the boost was only allowed for campaigns, parties and candidates, something that was at the center of the discussion with the case of Luciano Hang, a businessman who was fined for promoting content related to former President Jair Bolsonaro.

Or, what is the extent of the ban on election advertising on polling day (“exit polls”)? What can citizens do in their personal capacity? Is it forbidden to try to convince each other on Twitter, Facebook, WhatsApp? Should the role and responsibility of internet platforms, which provide the framework for possible electoral irregularities, be equated with that of television stations, for example? The definitions of the classical doctrinaires are based on the idea that electoral propaganda is a set of techniques that are used to influence the voter, but they seem to presume situations in which communication is given by the mass media and the propagandist is the candidate or people directly linked to the campaign (Levitsky & Ziblatt, 2018).

In this sense, the expansion of the concept, however, can have strong implications for the freedom of expression of individuals. The challenge is to think of an electoral right that links the objective of equal opportunities with the individual rights to information and expression. A possible way out of this dilemma is to abandon the concept of electoral propaganda in the case of communication via the internet, and to focus on harmful behaviors instead of content, in addition to expanding the possibility of responsibility for behaviors beyond the campaigns themselves, to include agents who act in coordination or synergy (Amorim Neto et al., 2011).

In this sense, the General Personal Data Law (*Lei Geral de Dados Pessoais - LGPD*, Law No. 13,709) was approved in 2018 and came into force only in 2020, and will be a regulatory instrument to inhibit abuses in the exchange of personal data. But, as mentioned earlier, the electoral law also has some incipient guidelines in this regard, considering electronic registrations as assets (article 57-E of the Elections Law) and vetoing their donation from certain sources, in turn campaigns must have mechanisms for voter registration (Gonçalves, 2020).

In 2014, the TSE also banned “electoral telemarketing”, with the justification of violation of electoral privacy, through a resolution. These rules do not explain the complexity of the digital universe, where “registers” are lists that are drawn up by cross-referencing voters personal data from various sources on the internet. There are doubts about how mass shootings on WhatsApp fall into the categories of violations provided for in electoral legislation (Basílio, 2021). It makes sense that the LGDP, more appropriate to contemporary uses of data, should be considered and referenced in TSE resolutions and in the Elections Law.

Therefore, it is possible to state that the elements presented about the effects of WhatsApp's architecture on public debate highlight the need to understand the effects of the existence of obscure mass communication tools for a healthy environment of democratic debate. Despite WhatsApp's intrinsic dark character, steps can be taken to mitigate its negative effects. One of them would be to give public visibility to the number of times a certain content circulates to understand its impact (Gonçalves, 2020).

Another interesting measure would be to make it possible to identify those responsible for the circulation of messages that violate the Civil Code or electoral legislation. Miguel Freitas research, presented in the article cited by Gonçalves (2020), shows that it is possible, at the same time, to maintain edge-by-point encryption that protects users privacy and make it possible to identify those responsible for illegal messages, using the identification records of messages already generated (and not encrypted) by WhatsApp (Gonçalves, 2020).

However, some of the measures necessary to contain the negative effects of its architecture have already been discussed and implemented by the platforms. Examples of Facebook's actions taken before the Brazilian elections demonstrate the learnings of the U.S. electoral process. In the case of the Brazilian elections, it was announced that the limit of sharing resources would be reduced (from 20 to 5) and it was defined that users could not be included in new groups without their consent (Amorim Neto et al., 2011).

These processes depend on the self-regulation of platforms and the normative and regulatory capacity of parliaments and electoral bodies to protect and promote rules that ensure the effective and balanced functioning of democracies, while protecting freedom of expression and the foundations that keep public debate healthy. The measures taken indicate companies concern about the loopholes that their platforms offer to generate disinformation in electoral processes. The problem is that companies have failed to move forward. Just as the strategic use of Facebook in bad faith caused significant damage to the electoral process in the United States, the same happened with WhatsApp in the Brazilian elections (Basílio, 2021).

Conclusions

Companies, which have de facto power to play an active control role in disinformation, were reluctant to do so. And the guys who tried to regulate them on the legal side of the state didn't have much success. The alliance of these three actors has managed to conquer an important place in this conversation, even with proposals and results exported from other countries, but they have high costs, long processes and result in some ambiguous cases.

Since the declaration of the Covid-19 pandemic in 2020 by the World Health Organization (WHO) to date, we have seen new activity on this front from all the actors involved. This period has been marked by the continuous automation of all processes and the adoption of “emergency” practices around false information or misinformation about the virus. This involved the removal of content even from the presidents of some countries in our region.

In addition to the questions posed throughout this study, perhaps the most fundamental question is whether there is more democracy in disinformation or to determine the merits of new and more aggressive measures to combat it in order to protect democracy. Thus, in general terms, each section of the present study was concluded with the objective of analyzing and exposing a different panorama of the route researched throughout the study.

Thus, in the theoretical aspect, it is evident that there is an agreement among the authors who are cited with what is posed as the central problem of this study: To understand the relationship permeated by the concept of liquid democracy and the effects of fake news on the electoral process. Similarly, the cited authors serve to give consistency to the research, since a workspace that goes from the general, such as the information society, the Brazilian electoral process and the internet, to the more particular, such as social networks and fake news.

In addition, in the body of the work it is evident that the nature of social networks makes it easier to debate any type of issue or problem, this is noticed by different social actors. However, the influence of fake news on public opinion ends up damaging the image of social networks, as on many occasions, they are used with the intention of tarnishing the personal image of people, companies and, in particular, politicians and political parties.

Thus, this study contributed to the understanding of the space of social actors and, more precisely, their participation and influence in the disinformation scenario. Through the data collected, it was possible to realize that the influence of actors, repeatedly, is independent of the category, so that, in many cases, the fake news of an ordinary citizen can have a greater influence and repercussion on social networks than a media or influencer with a solid fan base. However, this fake news will only be remembered and replicated for a short period of time, unlike fake news released by political actors and/or companies, as they tend to spread more quickly through users of the social networks, which makes them have a great interaction.

These fake news stories tend to be impressive, either because of unusual facts or because they are illustrated with images or videos. In the same way, in most cases, they do not even have proper spelling. Currently, there are few media outlets that make use of the fact-checking methodology. The communication media that put them into practice are little replicated, representing between 1 and 11% of interaction compared to Facebook, WhatsApp, Instagram and Twitter, the main vehicles for the dissemination of fake news.

It is concluded that users of this social network are more attracted to fake news: a) because it presents unusual facts; b) due to the amount of interaction from other users, and; c) the imagery or audiovisual characteristics that usually accompany these fake news. In terms of legality, within the Brazilian territory, there is no law or regulation that regulates or controls the so-called “social networks”, although there are no limits and freedoms within social networks.

Throughout the development of this research, and thanks to its analysis; the author of this study came across different perspectives that can be submitted to analysis in future research, seeking to understand the historical deconstructionism of characters and organizations, that is, how disinformation affects and persists in the collective imagination, especially of less enlightened subjects, which comprises a significant portion of the population, therefore, it is necessary to study what is the impact on their public and individual opinion.

As for the limitations of the present study, it focuses on the Brazilian context, not addressing, in depth, how the phenomenon of fake news and its effects on liquid democracy manifest themselves in other countries; the analysis of the legal regulation of the phenomenon of fake news in the Brazilian electoral process is limited, and it is necessary to carry out future research in order to demonstrate the role of legal regulation (laws, jurisprudence and legislative proposals) in confronting this phenomenon; and, last but not least, the present research does not address possible solutions or recommendations to mitigate the negative effects of fake news on liquid democracy, restricting, at this time, the identification of the problem.

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