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THE SUR FILE ON INTERNET AND DEMOCRACY

Internet penetration rates continue to climb year on year, with an estimated 54.4 per cent of the world's population online at the end of 2017. Compared to the year 2000, when just 5.4 per cent of us were online, this represents a staggering growth of over 1000 per cent in just over 8 years.¹ 2018 is a bumper election year – with elections taking place in various countries around the world including Brazil, Colombia, Costa Rica, Egypt, Mexico, Russia and Turkey. While most of us would acknowledge that the Internet is indeed having an impact on democracy, harder to articulate is perhaps exactly how this is happening. The contributions to the Sur File on Internet and Democracy do exactly this, unpacking the various ways that the web is weaving its way into the democratic process around the world. The overarching message that comes across in all texts is that policy makers – both in the public and private spheres – are falling behind and this needs to be urgently addressed to ensure we harness the positive elements of the Internet and limit the negatives.

TAMING THE BEAST

Kicking off the Sur File, **Renata Ávila (Guatemala)** argues that before examining questions of privacy and security, we need to take a step back and take a more macro view and recognise that we are at risk of entering a new colonial age, that of digital

colonialism. Global South countries in particular are increasingly held hostage by a small group of countries and companies who possess the majority of technological knowledge. To avoid this from happening, Ávila calls for urgent action to be taken both at the national, regional and international level to ensure that less powerful countries retain their digital sovereignty.

Echoing the need for urgent action at different levels, **Ted Piconne (US)** focuses on how governments and the private sector are struggling to keep up with digital technology specifically in relation to free and fair elections, human rights, and Internet governance. He offers a concrete set of policy recommendations, including action points for civil society, that he sees as imperative to harness the benefits of technology.

Anita Gurumurthy and Deepti Bhargur (India) analyse how the misuse of algorithms by public and private actors are threatening the democratic process – both during elections but also in more mundane, but no less worrying, ways in the day-to-day running of government. This, they argue, is having a disastrous impact on citizens' rights, for example access to welfare provisions. Recognising that there is also much to be gained from algorithms in the context of democracy, the authors appeal for urgent revision of corporate and public policies to guarantee the appropriate use of algorithms.

NET NEUTRALITY

Jonathan Perri (US) from the petitioning website Change.org, offers an institutional reflection on the organisation's campaign for net neutrality. It marked the first time the site had run its own petition, reflecting the importance of the issue both for the site and for citizen participation as a whole. He explains how the petitioning website used its well-known brand to build a large network of net neutrality supporters and how they are

still working to put pressure on the US Federal Communications Commission to reverse the decision.

The future of net neutrality is not clear. Offering some hope on the matter, **David Kaye (US)** – the United Nations (UN) Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression – explains in an interview with the Sur Journal how net neutrality is a critical component of democracy. It guarantees access to information, a central tenant to freedom of opinion and expression, which in turn is fundamental to a functioning democracy. He also touches on the question of fake news. He sees the solution as needing to be as much about increased media literacy and support for independent journalism as any legislative one, which can be open to abuse by repressive governments that use the issue as a guise to crackdown on freedom of expression.

(ANTI) SOCIAL MEDIA

For **Marcio Ribeiro** and **Pablo Ortellado**, fake news is a concept that is under dispute and, to some extent, inadequate to define the current and complex phenomenon that involves various disinformation technologies and a growing polarisation of the public sphere. Through an analysis of social media behaviour during the trial of former Brazilian president Lula da Silva in January 2018, the authors reveal the emergence of a hyperpartisan media that produces hostile and extremely polarised information, while transforming and limiting the political debate in Brazil into a clash between two narratives.

In asking whether social media is good or bad for democracy, **Cass Sunstein (US)** sees the issue of group polarisation at the crux of the matter. Social media platforms increasingly seek to offer users material that is most relevant to them, which, evidence shows, simply results in polarising users' opinions. Additionally,

he argues such an approach robs us of key principles of self-government including being exposed to content we were not expecting and the ability to determine fact from fiction. He appeals to social media giants to stop pursuing this route and set us free from our echo chambers.

While the question of misinformation and propaganda has been a problem for a number of years, **Lucy Purdon (UK)** argues that it has only garnered worldwide attention following the 2016 US elections and the Brexit referendum in the UK. She highlights, for example, how inflammatory social media content fuelled the violence during the 2013 Kenyan elections, yet the issue received little or no press attention. Furthermore, she explains how Global North political consulting firms are also interfering with Kenyan elections (largely out of the spotlight in comparison to their increasingly prevalent role in the North). Their willingness to harvest users' social media data in a country that lacks sufficient data protection is particularly alarming. The data pool that these companies can draw from set to increase as biometric voter registration is introduced without any proper framework on how this data is managed.

PARTICIPATION

The article by **Mariana Valente** and **Natalia Neris (Brazil)** discusses the paradoxical course of the relationship between feminism and the internet. Changes both in feminism and in the growth and reach of the internet have enabled new forms of activism and organisation for women, but this, in response, has also given rise to new types of misogynist violence. On International Women's Week in Brazil, Facebook served as a platform for the female authors to analyse the polarisation of the Brazilian public sphere into hate discourse against women and a strong feminist counter-discourse. Feminising the internet is a task that presents enormous challenges for the current feminist agenda in a context of concentration of online activity and poor digital security.

Reem Al Masri (Jordan) describes how important Facebook's live streaming service is for activists in Jordan, given that the state makes it almost impossible for open protest. Simultaneously however, this presents a dilemma for activists; many would prefer to follow the global calls to leave the platform, following the Cambridge Analytica scandal. However, the service remains the only realistic outlet for protest in the country.

ESSAYS

Addressing state violence in Brazil, a group of researchers together with the *Mothers of May Independent Movement* presents the results of research that aims to clarify the **Crimes of May (Brazil)** in 2006 in the Baixada Santista coastal area of São Paulo state. The article exposes the rights violations reported by the families of the victims and reveals a systematic violence perpetrated by the state, which has neglected investigations, shelved cases, denied access by the families to information and even attempted to criminalise the victims to avoid prosecuting those responsible for the crimes. Justice, memory and reparation are the focus of this article that gives visibility to the struggle of the families that for years have contended with impunity and the denial of rights by the state.

Nathalia Oliveira and Lucia Sestokas (Brazil), drawing on the work developed by the Land, Labor and Citizenship Institute (ITTC) in Brazil, discuss the impact of drug policies on incarceration in various countries. Given the increase in the female prison population in Brazil and its correlation with the country's failed drug policy, they call attention to the need to analyse the intersections between drug policy, the judicial system and the specifics of gender in order to reduce inequalities and guarantee women's rights.

CONVERSATIONS

In an interview with Sur Journal, Juan **Pablo Bohoslavsky (Argentina)** – the UN's Independent Expert on the effects of foreign debt and other related international financial obligations

of States on the full enjoyment of all human rights, particularly economic, social and cultural rights – explained why it is important for states to undertake a human rights impact assessment when conducting economic reform policies. Given that governments are implementing austerity measures at an alarming rate, there is a particular urgency for such impact assessment to ensure that the rights of the most vulnerable are taken into account.

Recognising that one of the struggles that the human rights movement is currently facing is how it communicates to different, often more critical audiences, the Sur Journal is committed to showcasing new and creative forms of dialogue. We are therefore delighted to include photographs of the work of 8 artists who competed for the 2017 **Hong Kong Human Rights Arts Prize** run by the Justice Centre Hong Kong.

IMAGES

In a posthumous publication and as a way for us to recognise and honour a tireless human rights defender in Brazil, we have the privilege to feature a text written by **Marielle Franco (Brazil)**. It is the transcript of an oral statement made in 2017 containing data from her master's research, in which Marielle vehemently criticises Rio de Janeiro's UPPs (Police Pacification Units) that in practice have only escalated the militarisation of the city and, as a result, increased the criminalisation and violence in the favelas, where the main victims are black youth.

VOICES

The Oxfam scandal was a defining moment for the NGO sector. In her op-ed for Sur Journal, **Deborah Doanne (UK)** argues that the sector has two choices – either to continue unchanged or to see the scandals as an opportunity to disrupt the sector and its existing systems. Doanne calls on Global South organisations to play a central role in this reorganisation to ensure that old power balances are addressed.

NOTES

1 • See <https://www.internetworldstats.com/stats.htm> and <https://www.internetworldstats.com/emarketing.htm>.

• • •

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As ever, the members of the communication team from Conectas deserve great credit for their dedication to this issue.

THE SUR FILE ON INTERNET AND DEMOCRACY



DIGITAL SOVEREIGNTY OR DIGITAL COLONIALISM?

Renata Ávila Pinto

DEMOCRACY AND DIGITAL TECHNOLOGY

Ted Piccone

DEMOCRACY AND THE ALGORITHMIC TURN

Anita Gurumurthy & Deepti Bharthur

BUILDING A MOVEMENT FOR NET NEUTRALITY

Jonathan Perri

“NET NEUTRALITY IS PART OF THE OVERALL STRUGGLE FOR HUMAN RIGHTS IN A DIGITAL AGE”

Interview with David Kaye

FAKE NEWS: WHAT IT IS AND HOW TO DEAL WITH IT

Márcio Moretto Ribeiro & Pablo Ortellado

IS SOCIAL MEDIA GOOD OR BAD FOR DEMOCRACY?

Cass Sunstein

A VERY SECRET BALLOT

Lucy Purdon

ARE WE GOING TO FEMINISE THE INTERNET?

Mariana Valente & Natália Neris

ONLINE PUBLIC ENGAGEMENT IN JORDAN

Reem Al Masri

DIGITAL SOVEREIGNTY OR DIGITAL COLONIALISM?

Renata Ávila Pinto

- *New tensions of privacy, security and national policies* •

ABSTRACT

Beyond tensions of privacy and security, we are witnessing today a real confrontation between control and freedom, not only of the individual, but of entire populations and regions, enhanced by technologies and massive collection and analysis of data – from predicting and influencing behaviours, to the automation of public services and the ability to fully control and disrupt those services, even remotely. From gaining access to a global communications platform to losing the ability to protect the rights of those who are interconnected through those platforms. Are we witnessing a new form of digital colonialism?

This article focuses on regional, national, and community solutions to restore control and ownership on key information and communications infrastructures – the only possible first step to fix the current massive violation of privacy rights. It will later suggest some local measures to experiment with and advance alternatives at different levels of intervention and action, including proactive policy, capacity building, and new designs inspired in a set of values and principles different from those of the dominant actors in the market.

KEYWORDS

Surveillance | Technology Sovereignty | Digital colonialism | Free software | Privacy | Data control | Economic espionage | Indigenous peoples

Every digital application that can be used for surveillance and control will be used for surveillance and control.

Professor Shoshana Zuboff¹

1 • Defining the problem: digital colonialism and technological feuds

A simplistic analysis of the current situation of tensions between privacy and security (the prevalent narrative in media) will probably state the following: States are spying on national and foreign citizens and the trend will only increase as they acquire cheaper technologies, proportional to their military and technological power. The private sector does it too, but not with inherently bad intentions or political purposes. What the private sector is concerned about is the “experience” of the user and the maximum capture of their data and how to offer the best products and services. Collateral damage, such as the abuse of Facebook data, by companies like Cambridge Analytica, is the exception to the rule.² As for the people, they are not really concerned about their government spying on them. They are somewhat concerned about private sector surveillance, but they are willing to allow it, especially if that enables them to enjoy “free” services or improve their overall experience. This is despite the fact that privacy awareness is gradually increasing and rules are slightly improving in some regions, especially in Europe for example after the entering into force of the General Data Protection Directive (GDPR), patching a broken system of systemic privacy erosion and data extractivism.

Beyond this simplistic analysis, however, the situation is more complex and involves an additional element that is often overlooked. The power of surveillance and the concentration of the data gathered by both public and private mechanisms is focused on a small number of actors, public and private, based mainly in one jurisdiction and leading to a rapid erosion of state sovereignty and democracy.

Never before has a small sector had so much power over the entire World, to monitor the present and predict future behaviours of not just individuals, but entire populations. The problem is more alarming when we consider how the public and private sectors are merging in joint ventures in a quest for global domination, penetrating every government, every citizen movement, mediating every action in every connected person’s life through digital devices and data collection.

Information communication technologies (ICT), artificial intelligence innovation and the ability to deploy systems and infrastructure rapidly in emerging markets, are concentrated in just a few countries, which are now engaged in a race to be the number one.

On top of that, those countries and companies have three elements that most developing nations and even middle-income countries currently lack. The first element is resources,

both capital resources (ownership and control of cables and servers and data) and intellectual resources (the most advanced technicians and research institutions). The second element is the current domestic and international legal architecture, which blocks small countries from adopting policies that favour the production and purchase of goods and services produced domestically, with the threat of legal proceedings in international courts for adopting anti-competitive measures. This limits the ability for developing and middle income countries to research and innovate; the current patent and copyright system artificially restricts the sharing of knowledge and the ability to innovate at a rapid pace. Such restrictions will only increase, with little possibility of reversal, due to the new group of Free Trade Agreements the Trans Pacific Partnership (TPP), Transatlantic Trade and Investment Partnership (TTIP), and Trade in Services Agreement (TISA). Some of the provisions of the new generation trade agreements even consider tighter privacy laws and policies in a country as a barrier for trade, disregarding the superiority of human rights laws over any other law.³

The third element, readily accessible to only a small group of countries, is the availability of financial capital to experiment and design new models, via either public funds, venture capital or public private partnerships. Those countries are investing heavily in research and development, not only to maintain their dominant position in the industry and to aggressively expand to as many markets as possible, but also to explore innovative ways to integrate information technology in every aspect of the public administration, the private sector, their defence and security, and the application of citizen rights.

The scenario is radically different for developing countries, where austerity is the norm, and where digital inequality is soon going to be a very visible problem including education and research gaps leading to absolute technological dependence. These countries represent a relatively easy terrain to dominate and there is a race to do so by big technology companies, particularly between the United States of America (US) and China, as Europe lags behind and their companies struggle to compete with their US and Asian counterparts.

Therefore, the world's offline populations are the disputed territory of tech empires, because whoever gets them locked into their digital feudalism, holds the key to the future. Tech giants are, without doubt, heavily influencing the way campaigns, governments, and politics operate.

They also influence politics and policy to shape global standards to serve their business models,⁴ increasingly based in data collection, monitoring, and pattern identification –inevitably eroding the privacy of many people. Beyond Brussels⁵ and Washington, tech giants are currently engaged in aggressive pushes to invest in areas which traditionally belonged to the state or other specialised agencies and providers. Now two California-based technology companies (Facebook and Google), a space giant in California (SpaceX) and a satellite company in New Jersey (OneWeb) are engaged in accelerated races to connect the disconnected.⁶ These companies are providing critical infrastructure for citizens in exchange for their personal data and becoming potential

recipients of advertising. In most of the countries, neither the government nor private investors can compete with the speed and resources these major companies have for providing connectivity to under-served areas.

These corporations, one of which usually represents the user's first digital experience, often combine their programmes with the provision of hardware, software, and limited content, giving neither citizens nor the state much choice. New users are typically subjected to private, long-term agreements, which allow the entities full access to any of the user's data. This is compounded by the fact that we are usually talking about territories with absent or limited privacy and data protection. The contracts also often contain severe penalty clauses in case of breach. This situation enables new and disguised forms of exploitation and subordination.

Rapid digitisation programmes are relying heavily on mobile technologies to plug new users into the increasingly commercialised Web. This approach differs from initial programmes, such as One Laptop Per Child, which advocated for the development of creative capacities and literacy for the poor to be able to fully develop the ability to code, create hardware, and even build skills in robotics.⁷ Such early programmes stand in contrast to current programmes which only allow users to access a previously installed set of websites, block any ability to create – since it is only possible to do so much with a mobile phone. In addition, they increase the risk of surveillance and profiling of disadvantaged populations, because mobile phones in several countries are linked to a registered SIM card.⁸ The monitoring and monetisation of all users' activities online is the main motivation for the quasi-philanthropic efforts to connect the next billion, and therefore get hold of their data. User data is the basic raw material for machine learning and artificial intelligence, when combined with sophisticated algorithms and computational power of the concentrated tech conglomerates.

In most cases, current connectivity policies provided by external corporate actors – as well as some international charities associated with or close to telecommunications or technology companies – disregard the creative power and autonomy of people or the local community. The devices, software, and hardware are often designed for personal consumption instead of creation or collective uses. All programmes act with urgency to connect as many people as possible, as fast as possible, neglecting considerations like content, long-term sustainability, or basic literacy on important issues such as privacy and security online. When the critical infrastructure is provided by someone else, it is difficult to improve or enforce enhanced settings for privacy since the infrastructure and equipment is often designed to serve the purposes of countries where massive surveillance is the norm.⁹ In her article “Dark Google”,¹⁰ Professor Shoshana Zuboff explains the reasons behind the rush to connect the global poor in a particular way. She also warns of the dangers of revolving doors between the largest companies and their governments, which might be tempted to use technology to their geopolitical advantage:

Google, Facebook, and others shifted to an advertising model that required the covert capture of user data as the currency for ad sales.

Profits rapidly materialized and motivated ever more ruthless and determined data collection. The new science of data mining exploded, driven in part by Google's spectacular success.¹¹

And there are experiments already taking place along those lines. For instance, during the former leftist government in Argentina, YCombinator,¹² a venture capitalist fund, supported and funded an emerging opposition political party, a situation that in 2018 could cause unprecedented scandal now it has finally become apparent that technology has the potential to alter politics. The experiment was not successful – the party in question no longer continues as a registered political party – but it demonstrates the possibilities of Silicon Valley intervening in foreign politics. The Zunzuneo Case in Cuba showed how governments are increasingly relying in the tech industry to push for a new form of intervention.¹³ And then the Cambridge Analytica scandal, shaking the Western democracies since early 2018, simply confirmed that not even the most powerful countries in the World are immune to such interventions.¹⁴

Indeed, it is not only a problem of the least developed and more disconnected countries. Increasingly, governments from middle income countries are actively involving companies to assist them to suppress some forms of speech they consider a threat to the security of their countries. Legitimate speech is being monitored and suppressed if the platform the material is published on agrees with the government that such content is harmful, even if the material is produced abroad and intended for different audiences.¹⁵ (For examples, see Online Censorship Project: <https://onlinecensorship.org>.) Furthermore, governments are increasingly falling victim to attacks on key systems, assets, and individuals, such as the recent attack on proprietary software in Ukraine's power grid¹⁶ or the targeted hacking of the accounts of high-rank officials in various countries in Latin America.¹⁷

Entire nations and their industries are fully dependent on critical infrastructure, software, and hardware provided by a handful of companies based in a small group of countries. Almost every activity is mediated by our interaction with technologies and services offered by an increasingly concentrated conglomerate. Looking at the case of software and hardware, it is increasingly alarming, and it is one of the most urgent questions to address when discussing security of our information and communications infrastructure.

Despite recent revelations about the capabilities and practices of intelligence agencies, few global leaders, (all of whom are well aware of the problem) are taking any real steps towards solutions that are designed to respect universal human rights effectively and which are also compatible with a global, interconnected world, and that are affordable, reliable and scalable. Furthermore, any efforts in that direction are precipitously labelled as Internet fragmentation or balkanisation of the Internet.

Most of the key elements that enable any individual, corporation, or government to connect to the Internet are concentrated in the jurisdiction of California. Most of the

companies are US companies, with the majority of the capital coming from the US. In a troubled geopolitical environment, this concentration of tech companies could result in a lawful but illegitimate suspension of products and services to a foreign government or key industries in another country.¹⁸

Commercial organisations are susceptible to political pressure – as proven by the WikiLeaks case when Visa, MasterCard, American Express, Western Union and PayPal blocked payments to the organisation.¹⁹ Consumer defences are weak and expensive to enforce, and even for European Union citizens, there is often no remedy in such circumstances, which was the case for Wikileaks²⁰ and also during the Catalanian crisis of 2017.²¹ In the case of a government, sanctions could severely disrupt day-to-day business. Dependency on certain technologies to manage public administration are widespread as few companies in the world, located in even fewer countries, fulfil the requirements to provide governments with the software and hardware they need to conduct public affairs at an affordable price that fits the increasingly uniform public procurement rules, which generally favour the lowest-priced option. The result is a scenario whereby governments are heavily dependent on key infrastructure from a small set of providers – providers that are generally susceptible to secret orders, political pressure, and suspension of services due to sanctions. And when considering replacing a provider in favour of a national provider who might offer lower pricing, the government faces severe penalties.

As technology continues to penetrate the core activities of each and every branch of the government, the government itself becomes more vulnerable than ever, relying on key infrastructure they do not control. Any local or national government is certainly less free when the market is “free” although in reality dominated by quasi-monopolies.²² When we discuss digital technologies on a massive scale, we find a set of companies which grew out of subsidies and heavy funding from a government, which at the same time dominated and continues dominating the rules of international trade.²³ These rules severely erode the freedom of public procurement offices to either choose more expensive local alternatives or subsidise their local industries.

The dependence on foreign technology only increases when dealing with critical infrastructures. On 14 April 2008, Microsoft announced²⁴ the company would no longer provide security update to their Windows XP operating system. The announcement left thousands of state systems completely vulnerable because they relied on it to operate crucial infrastructure, such as the entry system at the border of a Latin American nation. While a similar situation in the physical environment – a border full of holes and weak controls – would likely result in a Congressional inquiry, the level of awareness on crucial technology infrastructures let this issue remain unresolved way for months.

Several governments rely on communications infrastructure that are completely located in the cloud (i.e., in foreign data centres under foreign-applicable laws). Furthermore, those services are provided under constantly changing terms of use and arbitrary suspension of services.

The problem is not only about dependency on a foreign provider or applicable laws to digital data; the problem is also about the absence of public policies to address the issue at all levels. The situation of digital domination, close to colonialism, still fails to fill the top priorities of the global political agenda. Almost forty years after the invention of the Internet, the ability of politicians and social leaders to understand the dimensions of the problem still falls short.

2 • Exploring spaces of resistance and technology sovereignty

Latin America led the early steps towards digital sovereignty in the early 2000s. A few countries took adequate steps to be ready to replace foreign providers with local ones. Although in India the use of open source software by the state has been mandatory since 2005,²⁵ Latin America countries such as Brazil²⁶ and Venezuela²⁷ (Decree No. 3.390 2004) were even earlier, enacting laws in 2004 establishing free software migration of government data. Similar initiatives followed in Ecuador (Decree No. 1014 2008),²⁸ Uruguay²⁹ (Law No. 19.179 2013) and Bolivia³⁰ (Supreme Decree No. 1793 2013). In all of these countries, the shift was combined with strategies to increase free software literacy among primary school children, developing projects such as Plan Ceibal in Uruguay and Canaima in Venezuela. The Latin American countries had enough human capacity to produce domestically at least part of the software that they needed, even exporting some production, while simultaneously investing in building capacity. As a way to circumvent the US embargo, Cuba developed its own operative system, Nova. Cuba did this not only because of the embargo but also as a way to control their own systems. Such adoption was vital, as the country has restrictions to access software licenses and security updates provided by the largest providers. Full migration to free software was announced by Russia recently, as a way to pre-empt the impact of current and upcoming sanctions.³¹

But simply adopting free software is not enough for a state to build a comprehensive policy that guarantees technology sovereignty over its communications. In attempting to replace either proprietary or dominant choices, governments and community initiatives are finding growing challenges to meet user expectations, in terms of both speed of delivery and quality of the user experience. Sustainability is also among the challenges, as is reaching mass adoption, unless dictated by law and a resourced public policy implementation as in Plan Ceibal, where the entire education system was migrated to open source software (and hardware). In the case of hardware and equipment, a group of medical doctors are deploying 3D printing machines to provide Gaza hospitals, affected by Israeli blockades, with stethoscopes.³² Similar models could be explored by other countries who remain reliant on other states for key equipment. Developing new models allowing for domestic production is particularly important after the numerous revelations of implants and security holes enabled by foreign providers to permit foreign espionage, compromising the security of users.³³

Indian scholar Sunil Abraham also points in that direction, highlighting the importance of developing technologies that take human rights into consideration in

their design, and including code that cannot be restricted by copyright law or used as a tool of resistance against certain laws, which would lead to further tensions. Abraham describes how “code could be used to resist regulation through law, thereby converting both the software and hardware layers of devices and networks into a battleground for sovereignty between the free software hacker and the state.”³⁴

As people across the globe gain access to the most sophisticated personal technology they have had access to since television, a new generation of developers and creators are emerging. The next generation of technologies, produced outside the tech giants, might bring the solutions we are looking for, provided that they are designed, developed, and distributed taking into consideration a different set of values, societal behaviours, and dynamics. But such creative power might be blocked if we do not stop the current direction of technology architecture that restricts creativity rather than enabling it and which encourages consumption, and centralises power.

Once technological autonomy is achieved, individuals and communities can embed their principles in the way they choose to communicate. As stated by the Maori indigenous peoples, when considering the urgent need for indigenous people to develop their own ICT policy: “...the deliberate replacement of local technologies with Eurocentric values-laden, profit-driven technologies has been part of the colonising agenda for many centuries”.³⁵

Constant innovation also plays a key role in resisting and defeating technological domination. Thinking beyond the market is something that developed nations are already doing. As Dr. Francesca Bria states:

*Alternative forms of public and common ownership for platforms will help to create a more democratic economy, transcending the logic of market-based, rent seeking, privatized network systems. Too often this leads to decisions based on short-termism, value extraction, and the appropriation of common resources for private gain. A much longer-term approach to technology, economy and politics is required where public resources and assets are owned, managed and distributed for the collective good. This task is about building XXI century democracy.*³⁶

For middle-income and low-income countries that are still struggling to catch up and realise the potential of new technologies – and at the same time avoid violations of their citizens’ rights – there are a number of options that need to start to be deployed with urgency. Most of these options exist in medium-to long-term national and regional commitments at multiple layers and involving a fluid collaboration between the governments, citizens, and national companies. At the constitutional level, countries must ensure that they keep the ability to legislate and regulate emerging technologies and

their impact on fundamental rights of their citizens. Constitutions should be amended so as not to permit the executive's engagement in international commitments that would strip the government of its ability to enforce rights domestically. Constitutions should also guarantee that the state exercises autonomy and control over critical technology infrastructures³⁷ and key positions³⁸ in important assets and industries.

In parallel, it is also necessary to develop a state-funded strategy for digital sovereignty. This should cover all aspects, including modifying the curricula to develop the human resources needed for the next 50 years; investing heavily in funds like CAPS and other research and development initiatives so local experiments can be conducted; taking into consideration the specific needs, skills, and vision of each country; and proactively investing resources in social applications of technology. Exchange of skills, information, and research within the Global South could be encouraged and funded.

In the meantime, the simple regulation of open standards, free software, openly available hardware, and transparency of algorithms could be developed, at least for the state purchases and practices. Bolivia did this recently,³⁹ under the leadership of the indigenous Vice Chair of the Bolivian Parliament, Nelida Sifuentes and under the advice of Richard Stallman.⁴⁰ Achieving equal rights for all and effective remedies against mass surveillance for citizens in the Global South will only be achieved with funded, long-term, and comprehensive changes in policy, technology, and politics towards autonomy and sovereignty. This will gradually enable a culture of digital dignity with human rights standards embedded in protocols at the regional and international level.

3 • Conclusion

It is necessary therefore that global leaders – especially those advocating for equality and social justice – become aware of the dangers that the rapid digital commodification represents for the vulnerable people around the world and its impact on democracy and dignity.

As the scholar Dan Schiller warns:

*For most of the world's peoples, whether profitable growth for capital may be renewed, and by whom, are far less important than the consequences of digital commodification for employment and exploitation and inequality; for the prospect of democratic self-government; for the ravaged environment; and for the character and quality of cultural services needed to sustain meaningful lives. The shocks of digital commodification are writing a new chapter in capitalism's long history of violent dislocation. This makes discussion of strategies for social alternatives essential, indeed, urgent.*⁴¹

To start addressing global digital inequalities and embrace a future that places digital autonomy and human dignity at its core, social innovation should be encouraged and institutionalised at the community and citizen level to guarantee its scalability and permanence. Autonomous and linguistic communities should be encouraged to develop their own technology and digital content and to preserve and export their cultures to the digital environment. Public policies should be enacted to guarantee that the adoption of new technologies at a massive scale does not create further inequality, exclusion, or imposition of values and practices that are foreign to the host communities. Instead, it could be an opportunity to rescue and develop further local knowledge. Rooted in the local, in the decentralised and in the digital commons logic: those are the characteristics of the policies that will defeat digital colonialism.

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DEMOCRACY AND DIGITAL TECHNOLOGY

Ted Piccone

- *The unique challenges that digital technology is presenting to democratic governments and how they, together with civil society, need to respond* •

ABSTRACT

Democratic governments are facing unique challenges in maximising the upside of digital technology while minimizing its threats to their more open societies. Protecting fair elections, fundamental rights online, and multi-stakeholder approaches to internet governance are three interrelated priorities central to defending strong democracies in an era of rising insecurity, increasing restrictions, and geopolitical competition.

The growing challenges democracies face in managing the complex dimensions of digital technology have become a defining domestic and foreign policy issue with direct implications for human rights and the democratic health of nations. The progressive digitisation of nearly all facets of society and the inherent trans-border nature of the internet raise a host of difficult problems when public and private information online is subject to manipulation, hacking, and theft.

This article addresses digital technology as it relates to three distinct but interrelated subtopics: free and fair elections, human rights, and internet governance. In all three areas, governments and the private sector are struggling to keep up with the positive and negative aspects of the rapid diffusion of digital technology. To address these challenges, democratic governments and legislators, in partnership with civil society and media and technology companies, should urgently lead the way toward devising and implementing rules and best practices for protecting free and fair electoral processes from external manipulation, defending human rights online, and protecting internet governance from restrictive, lowest common denominator approaches. The article concludes by setting out what some of these rules and best practices should be.

KEYWORDS

Democracy | Internet | Human rights | Cybersecurity | Elections | Governance

1 • What the evidence tells us

a - Free and fair elections

Cyberattacks from authoritarian governments and non-state actors pose a clear and increasing threat to democracies across the world through their interference in free and fair elections. These attacks take many forms and can undermine and destabilise democratic processes and governance in numerous ways.

There are at least four ways in which cyberattacks can influence elections: (1) manipulating facts and opinions that inform how citizens vote, for example through fake social media accounts, bots and propaganda, (2) interfering with the act of voting (e.g., tampering with voter registration rolls), (3) changing the vote results, and (4) undermining confidence in the integrity of the vote.¹ These threats have emanated from countries like Russia and China and, in the past few years, have targeted nations across the democratic West. For example, the Netherlands' General Intelligence and Security Service specifically named Russia, China, and Iran as national security threats due to cyberattacks.² The United States of America (US) Federal Bureau of Investigation (FBI) and Department of Homeland Security (DHS) released multiple statements in 2016 detailing Russia's ties to recent attacks and leaks with the intent to influence US elections.³ In May 2017, French President Emmanuel Macron accused the Russian official media of disseminating deceitful propaganda and fake news with the intention of influencing the election results in favour of his opponent.⁴

Similar attacks are becoming increasingly frequent, with more hackings of public and private enterprises; the disruption of internet communications of the lower house of the German parliament; and the spread of disinformation campaigns and false news before the Italian constitutional referendum and the US presidential election.⁵ Cyberattacks serve as both a direct and indirect threat to the integrity of the democratic process as they are often motivated by an intention to undermine popular support for democracies, their legitimacy, and their soft power.⁶

Manipulation of information sources for political discourse and decision-making is particularly insidious and difficult to combat. Distinctive characteristics of contemporary forms of Russian propaganda, which can feature polarising content delivered quickly through both social and traditional media, continuously and repeatedly with little commitment to objective reality or consistency, can be difficult for independent media and governments, let alone citizens, to counter.⁷ Non-state actors from the radical right and the left, and those engaged in terrorism, are also exploiting the open nature of the internet for multiple purposes, including influencing public opinion before and during elections.⁸

b - Human rights online

The internet can be a tool for both protecting and violating human rights, with direct implications for individuals' cyber and physical security. The diffusion of digital

technology has vastly expanded citizens' opportunities to exercise their rights to freedom of expression and association, to participate in civic life, and to hold public officials accountable, all essential ingredients for holding free and fair elections. Recent technological advances also have helped shed light on human rights abuses committed across the world. Victims' groups now post, livestream, and crowdsource videos and photos of abuses on YouTube and other platforms, in hope they eventually may be used as evidence in accountability proceedings. Human rights investigators used satellite imagery to expose abuses in North Korean political prisons, ethnic cleansing in Myanmar, and potential mass graves in Burundi that otherwise could have gone undiscovered.⁹

Recent years, however, have also seen an ongoing deterioration of human rights online, despite clear declarations from the United Nations General Assembly and the Human Rights Council that offline rights established under international human rights law also are protected online.¹⁰ International law essentially guarantees the same rights to privacy and security of one's online data as they would to the files in their home. For example, mass internet surveillance, practised even in established democracies, is a direct breach of the security of an individual's personal data, as is vague legislation with significant discretionary authority to monitor one's digital life.¹¹ Internet service providers and telecommunications companies are falling dramatically behind in offering consumers hardware and software products that adequately protect them from a multitude of cyberattacks.¹² The rise in the availability of licit and illicit trade of sophisticated cyber weapons and surveillance tools is facilitating these kinds of attacks, as seen in the worldwide "WannaCry" ransom attacks by hackers in 2017.¹³

Malicious exploitation of technology also can affect the physical security of individuals and of states. For starters, the increased digitisation of the past two decades has created a "chilling effect" on free speech, where citizens in certain countries feel less safe to assert their opinions, knowing that their personal data are monitored or archived.¹⁴ Through location tracking, social media, and internet shutdowns, online security problems become physical ones as well, allowing opponents of democracy and human rights to threaten the physical safety of their alleged targets.

Internet shutdowns and other internet restrictions by governments on their own populaces are widespread, with more than 60 documented shutdowns in the first nine months of 2017,¹⁵ justified on grounds of either "national security" or "public order."¹⁶ These digital blackouts are particularly dangerous for human rights. For example, after both the bombing of the Istanbul airport and the detainment of 11 pro-Kurdish lawmakers in 2016, the Turkish government cut access to social media sites and messaging services such as Facebook, WhatsApp, and Twitter in order to block the circulation of news or photographs relating to these events.¹⁷ These shutdowns did not restore order, but instead violated basic rights and provoked fear and confusion among citizens.

Not only do internet shutdowns impair democratic governance through the suppression of free speech and normal government functions, they also can cause panic and raise public

health concerns.¹⁸ Such breaches also undermine the international rules-based system for internet governance, and encourage state competition in developing intrusive legal codes and offensive cyber capabilities. Lastly, it is important to point out that deteriorating online rights are not only a tactic of authoritarian regimes, but of democratic governments as well. The lack of effective regulatory or oversight mechanisms of private companies' role in protecting citizens' data is another element of the dilemma.

Despite these cyber threats to human rights, some countries have been at the forefront of adopting laws and codes of conduct to protect their citizens' online rights. In Brazil, the 2014 *Marco Civil da Internet* (Civil Rights Framework for the Internet) law "guarantees the right to free expression, protects users' privacy, precludes liability for web content generated by third parties, and preserves Internet neutrality."¹⁹ Also in 2014, the Tallinn Agenda for Freedom Online was established, in which the members of the Freedom Online Coalition, including states like Canada, Ghana, and the Netherlands, pledged to promote human rights online and committed to the transparency of their governments' use and protection of citizen data. Respect for these principles, including among signatory states like Mexico and Kenya, is, however, an ongoing challenge. The Council of Europe has approved a promising Internet Governance Strategy for 2016-19 that highlights building democracy online, protecting human rights, and ensuring online safety and security.²⁰ These laws, strategies, and coalitions represent promising strides for human rights, and though they are not without problems, they are steps in the right direction.

c - Internet governance

Internet governance serves a crucial role in protecting human rights and sustaining healthy democracies across the globe. The internet was founded on principles of decentralised self-organisation and trans-border information flow and is run mostly by private actors as a network of networks. However, growing assertion of internet regulation by nation states, and fragmentation across jurisdictional and territorial boundaries, increasingly threaten these principles. If one country's internet access is restricted, for example, it interferes with the rest of the world's access. More than 40 governments, including China and Russia, have enacted restrictions on information, data, and knowledge on the internet.²¹ According to Freedom House's 2017 Freedom on the Net study, less than 25 per cent of internet users reside in "free" countries where there are no major obstacles to access or restrictions on content.²²

The term internet governance also refers to the international protocols governing global interoperability of the internet. The ongoing debate on internet governance models had been centred on the US desire to continue the internet's multi-stakeholder approach in which private, social, and governmental sectors are included in the governance model.²³ Because the US was the site of much of the internet's growth and innovation, it has had significant influence over its governing authority, the Internet Corporation for Assigned Names and Numbers (ICANN); this has led other countries to question whether the multi-stakeholder approach is overly biased to the advantage of the US government and private sector.²⁴

To address these concerns and in the spirit of preserving an open internet, in September 2016 the Obama administration decided to not renew the US contract with ICANN, thereby relinquishing its predominant influence and making ICANN independent.²⁵ Nevertheless, countries like Russia, India, and China still criticise the multi-stakeholder model and advocate for a state-centric multilateral approach, which would give them greater influence because international institutions, like the United Nations, would govern the internet.²⁶

Proponents of the multi-stakeholder approach, particularly in the private and non-profit sectors, fear that if a state-led multilateral model of governance were enacted, serious losses in internet freedoms and innovation would occur. The multilateral approach gives countries that do not share the same democratic values a larger say in the internet's governance, thereby allowing undemocratic tools of censorship and national internet sovereignty to be introduced more widely. China and Russia already censor the internet that they can control within their borders; giving them decision-making powers in global internet governance could lead to violations of the fundamental principles on which the internet was founded.

Brazil introduced another approach incorporating both multi-stakeholder and multilateral principles in which the private, social, and governmental components are included, along with other stakeholders such as academia and elected nongovernmental representation; this process would be governed in turn by a body that would allow countries equal say in the decision-making process.²⁷ Though this approach combines both governance models, it is unlikely that it will be adopted without widespread international support. As such, internet governance has increasingly become an issue on which democracies and autocracies take opposite sides, and one which, scholars argue, is of vital importance to the future safety, openness, and resilience of the internet itself.

2 • Policy implications and recommendations

In light of the current and future threats to democracy and human rights posed by irresponsible and disruptive uses of digital communications, the time for human rights defenders to mobilise on questions of digital technology is now. It is imperative that governmental actions do not take a narrow view of security in which national security, counterterrorism, and sovereignty are held above all else. Such strategies, although potentially powerful in the short term, are more likely to contribute to a deterioration of global and national security in the long term.

Protect democratic processes. The environment for free and fair elections and public opinion formation should be made more secure from foreign influence and hacking. Proposals, as in the US, to “designate the election system as ‘critical infrastructure,’ a move that would require cybersecurity protections for voting machines to be beefed up,” would be a good start.²⁸

- To ensure the integrity of their elections, democracies should update their election systems and use devices that are not connected to a digital network,²⁹ or have manual backups to digital systems. Cybersecurity should be continuously updated for sensitive polling place technologies related to voter registration lists, voting, and results tabulation.
- Countries should consider adopting open electoral data principles that allow electoral contestants and the public to verify the integrity of such processes as a further safeguard and as a means to establish public trust in them.³⁰
- Democratic governments should work urgently to detect and punish state-sponsored and so-called “patriotic” hackings in order to stop and deter future interference in democratic systems.³¹
- They should also develop protocols to facilitate cross-border cooperation to prosecute hacking of elections infrastructure and draft a code of conduct with pledges of non-interference in each other’s elections. Protecting the role of independent media from unfounded attacks is also of growing urgency.
- Democracies should work to build consensus in international forums that a deliberate cyberattack on critical election systems infrastructure is tantamount to a physical attack on its territory, violates international laws of sovereignty and non-interference in domestic affairs, and justifies responses of self-defence.

Protect human rights online. The international community should implement and promote existing human rights laws and mechanisms, and be relentless in upholding offline rights online.

- First and foremost, democracies should set a positive example by respecting such rights themselves.³² Legislation such as Brazil’s *Marco Civil de Internet*, or the European Union’s new General Data Protection Regulation, and multi-stakeholder initiatives privileging security and openness such as the Freedom Online Coalition, are examples of concrete laws and initiatives that should be expanded upon and supported.³³
- States, in partnership with civil society and the private sector, should coordinate positions to strengthen UN resolutions and mechanisms aimed at developing proper norms and monitoring, like the UN General Assembly and Human Rights Council resolutions on internet and privacy sponsored by Germany (A/C.3/71/L.39/Rev. 1 of November 2016) and Brazil (A/HRC/32/13 of July 2016).
- It is critical that private sector companies in the internet ecosystem establish much more rigorous systems, products, and protocols for protecting citizens from intrusions by states and non-state actors.

- Policies governing restrictions on content on the web and digital communications must be carefully crafted with participation by all relevant stakeholders and in accordance with international human rights law such as freedom of expression and right to privacy and due process.

Push for open internet governance. Democratic nations should take a more active and unified stance in internet governance debates, since the historical *laissez-faire* approach can no longer be sustained.³⁴ They should advocate that internet governance be based on values of an open, diverse, neutral, and universal internet. It should embody four key principles: (1) shared leadership, (2) the free flow of information and data while protecting intellectual property and individual privacy, (3) multi-stakeholder approaches involving emerging and established internet powers and an active civil society and private sector, and (4) industry-led approaches to counter cyberattacks.³⁵

Establish a code of internet governance. A coalition of like-minded states should establish a cybersecurity working group composed of experts from government, industry, and civil society to draft and propose a voluntary code of internet governance. This code should reflect the shared values of strengthening democratic governance and transparency, promoting human rights, protecting citizens' data, and advocating on behalf of the multi-stakeholder model.

- Strategies to be considered when adopting this code should be the Council of Europe's 2016-2019 Internet Governance Strategy and the 2014 Tallinn Agenda for Freedom Online, as well as other current models.
- The working group could help coordinate specialised education and training for policymakers on the complex relationship between human rights and digital technology and look at ways to assist members with developing a stronger cybersecurity capacity for protecting democratic processes.
- Upon establishing such standards, the working group should consider consequences for blatant offenders, including conditioning bilateral cooperation on cybersecurity compliance. They must pose the question: how should democracies address nations that attempt cyberattacks on their core democratic processes?

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DEMOCRACY AND THE ALGORITHMIC TURN

Anita Gurumurthy & Deepti Bharthur

- *Issues, challenges* •
and the way forward

ABSTRACT

In the current moment of democratic upheaval, the role of technology has been gaining increasing space in the democratic debate due to its role both in facilitating political debates, as well as how users' data is gathered and used. This article aims to discuss the relationship between democracy and the "algorithmic turn" – which the authors define as the "central and strategic role of data processing and automated reasoning in electoral processes, governance and decision making." In doing so the authors help us understand how this phenomenon is influencing society – both positively and negatively – and what are the practical implications we see as a result.

KEYWORDS

Algorithms | Democracy | Elections | Governance

Democracy is at a turning point. On the one side, refreshing experiments in decentralisation and the horizontalisation of political processes are reinventing the boundaries of democracy, whether it be the rise of youth in formal politics in India and Mexico,¹ the reclamation of community self-governance in urban spaces such as in the case of the networked Spanish municipalities,² or the rise of a new DIY (Do it Yourself) citizen ethos.³ On the other, a range of developments – unanticipated electoral mandates that have stunned the pundits such as the US presidential election of 2016; an expanding trust deficit between state and citizen in many parts of the world⁴ and reduced faith in institutions of democracy;⁵ the quest for extra-institutional possibilities of leadership outside traditional venues of action such as government, unions, political parties etc;⁶ the polarisation of the public sphere, and a disconcerting collusion between the techno-capitalist class and the technocratic informational state – point to new challenges for democracy.⁷

With the invisible hand of technology increasingly revealing itself, citizenship itself is at a crossroads. Manipulated masterfully by data-driven tactics, citizens find themselves increasingly slotted into the respective sides of an ever growing and unforgiving ideology divide. However, with the ability to mobilise 140 characters and a handy hashtag, they have also managed to appropriate the digital landscape as a decisive frontier for all shades of civic engagement. From the #FeesMustFall movement student uprisings in South Africa⁸ to the protests against sexual violence against women and girls in India⁹ the online world seems to have secured its place as the stage for civic-public action.

This essay explores the role of the algorithmic turn – what we define here as the central and strategic role data processing and automated reasoning – basically, deployment of digital intelligence tactics – in electoral processes, governance and decision making – in relation to the democratic transition underway. We first discuss the ways in which digital intelligence is influencing and dictating voter behaviors and outcomes. Second, we look at the increasing role of data and algorithms in governance and policy decision processes and the implications for citizen rights. Lastly, we bring to fore some questions on the governance of such technological integration in democratic processes.¹⁰

1 • Your vote, their tech! How Big Data and big tech are making and unmaking elections

From the somewhat simplistic studies of the early days of mass media technologies such as the role of radio, film and newspapers in war time¹¹ to more recent work that has looked at the role of cell phones and Big Data¹² in elections,¹³ technology's ability to diffuse key messages and propaganda by vested interests has been long acknowledged.

However, the tools and tactics of public sphere manipulation we are witnessing today are unprecedented. The unethical use of Big Data and machine learning¹⁴ to “game” the public sphere in pernicious ways marks a new point of departure. For example, through the intense

level of surveillance of voters afforded through digital tools, Artificial Intelligence (AI) allows political influence to move from public campaigns to private sentiment,¹⁵ a shift that repositions electoral politics from a spectacle that is overt to a script that is covert.

Also, as the Internet has grown, so has misinformation. It is often claimed that we live in times of “post-truth”. What this means is that as the virality, speed and reach of digital information increases, a mind-boggling multiplicity of narratives emerge that displace singular and authoritative grand narratives. The fact that we can choose which communities we want to be connected to means that the received wisdom of societies – the common knowledge and norms shared across communities – break down.¹⁶ In this flux, social and political sentiment of individuals and communities becomes vulnerable to manipulation and gaming.

In March 2018, as this piece was being written, the Guardian published the explosive news about how Cambridge Analytica, a once obscure data analytics firm, had – through harvesting Facebook users’ data - engineered victories for the Brexit Leave campaign in the UK and the Donald Trump campaign in the United States’ presidential elections.¹⁷ The exposé reveals not merely the large scale of manipulation of users that the techno-paradigm makes possible, but the real implications of behavioural and psychographic profiling and targeting of voters on actual electoral outcomes. The firm’s unscrupulous tactics included scraping (a form of automated data collection) and exploiting user data from Facebook without informed consent and offering monetary incentives for participating in quizzes that were cleverly disguised psychological probes.¹⁸ Further, this data was used to engage in polarized messaging and fake news dissemination.

Twitter assumed centre stage in the Mexican political theater in 2012. The failure of mainstream media to report on drug violence owing to threats from cartels had meant that Mexican citizens were already dependent on Twitter for news and updates. Campaigners for the parties in the general election, capitalised on this, spamming the network with thousands of bots¹⁹ that worked round the clock to promote particular new topics and make the trending topics list aligned with the interests of the campaigners, flooding the space with pointless “flame wars”²⁰ that left no scope for deep engagement.²¹ What we see is that the technological structures of the day built into the media platforms widely used and abused in everyday politics directly have a bearing on how political processes and outcomes are shaped.

The 2017 French presidential elections showed just how extensive the use of bots can be. In May 2017, the Oxford Internet Institute conducted an analysis of the #MacronLeaks hashtag, which involved a data dump of the then presidential candidate’s email correspondence. It found that 50 per cent of the Twitter content consisting of leaked documents and falsified reports was generated by only three percent of the total number of Twitter accounts. These bot accounts were pushing out 1,500 unique tweets per hour garnering an average of 9,500 retweets. The study concluded that over 22.8 million Twitter users were exposed to this information every hour on election day in France.²²

Older practices such as gerrymandering – the manipulation of the boundaries of an electoral constituency so as to bring political advantage for a particular party²³ – have found new impetus in the predictive power of Big Data. Gerrymandering has been shown to contribute to increased political polarisation,²⁴ with disproportionate impacts on the poor. Elected leaders in such polarised constituencies typically tend to avoid taking up issues about economic inequality.²⁵ What may be inferred from the above discussion is that while data based electioneering can potentially bring new efficiencies and effectiveness to organising and campaigning, the fact that the technological platforms that define the public sphere today are controlled by the elite does not bear well for the system of electoral democracy as a whole. In theory, the digital intelligence extracted from data cuts down on human resource intensive work, allows for grassroots organisers to optimise their canvassing and can mitigate the distortions of big capital in elections by allowing candidates to reach their constituencies over social media, at literally no cost. However, if the Cambridge Analytica or the MacronLeaks episode shows us anything, it is that we are headed for a vastly different future, one in which voter behaviour is being manipulated towards particular outcomes that may reflect neither a democratic mandate nor informed choice.

These developments pose a crisis for the public sphere. Borrowing from Dewey, “publics” in a democracy are created through “indirect, extensive, enduring and serious consequences of conjoint and interacting behavior”.²⁶ Gamed by capital and technology, the very formation of publics is at risk today, with citizen interaction driven into information echo chambers that reinforce and amplify deep bias, resulting in a banality that prevents deliberation and posing particular risks, especially to already marginalised populations.

2 • Algorithm see, algorithm do

While elections are flashpoints – newsworthy by their very nature - the everyday practices of democracy, routine and largely unremarkable, rarely grab the same kind of media attention. However, it is often the structures and practices of everyday citizen-state interaction that become critical in furthering the kind of institutional change that can ultimately contribute to make democracy transformative.

Undoubtedly, there are advantages and efficiencies that digitally mediated governance can afford, such as easier access to information and entitlements for the citizen, and greater transparency and responsiveness for state institutions. E-government arrangements can also help achieve the objectives of participatory governance. The rise of an online network of municipalities in Spain is an excellent example that demonstrates this.²⁷ However, when state-citizen engagement goes online into digital modalities and governance architectures become digitalised, they do pose administrative and legislative challenges, with significant implications for citizen rights.²⁸

Today, around the world technologies of calculation and regulation are being deployed to enact and regulate their subjects – citizens, migrants, consumers, students, colleagues and many more.²⁹ Algorithms define the information to be acted upon, engage in “social sorting”³⁰ and create autonomous repertoires of action and reaction. “Algorithms ‘govern’ because they have the power to structure possibilities,” notes Ananny.³¹ Napoli even argues that algorithms have come to take the place of institutions “because of their power to structure behavior, influence preferences, guide consumption, produce content, signal quality, and sway commodification.”³²

The state itself can be read as an algorithmic assemblage, a complex web of technical actors, autonomous technologies and layers of data coming together to prevail over the ostensible fallibility and inefficiency of human intent. Data in this equation is not merely a source of knowledge, it becomes knowledge itself.³³

Consider, for example, Singapore. First developed to detect bird flu outbreaks, the Risk Assessment and Horizon Scanning (RAHS) system in Singapore – which pools data from an exhaustive set of private and public databases – has become the primary decision making tool of the state – from immigration policy, economic forecasts, school curriculum to gauging the nation’s “mood” using Facebook.³⁴ This highly centralised, all encompassing system of surveillance does not find a comprehensive counter in citizen privacy frameworks.³⁵ Chinese social media giant Baidu has partnered with the military on the China Brain project, to create a system of social credit and ranking for citizens based on their social media engagement³⁶ which will mean that the social media activity of citizens can be monitored and surveilled through state sanction and have a direct impact upon their freedoms.

Notably, welfare decisions are increasingly turned over to data-driven decision making in India, Australia and the US, creating large-scale exclusions in a matter of a single click with punishing consequences for the poor and the marginalised.³⁷ As Ananny notes, algorithms are “embedded within the sociotechnical structures; they are shaped by communities of practice, embodied in standards, and most visible when they fail.”³⁸

Global data regimes, whether state led databases such as the RAHS, or privately held by platform corporations are the latest in a line of systems that citizens do not get to vote for, but which end up shaping the significant policies that affect their lives. Global data partnerships have thus seen the large-scale infiltration of data capitalists into hitherto public systems. As a result of this, public infrastructure becomes reconfigured into privately held data enclaves. This poses serious concerns for public good and citizen accountability.³⁹ Critical sectors such as education have metamorphosed into covert sites of data mining by programmes. Examples include Google Apps for Education (GAPE)⁴⁰ and Pearson’s Learning Curve for large-scale modelling and predictive analytics,⁴¹ both of which pose new ethical challenges to institutional practices. This shift is also visible in health care, with ambitious “smart medicine” projects such as IBM’s Watson.⁴²

As data enabled decision making becomes normalised within public services and governance systems, it promotes a centralisation of authority and power. Facts are selectively mobilised to position political intent as techno-managerial objectivity, while local discretion and flexibility to deal with contextual claims of marginal citizens is eliminated.⁴³ In India, for instance, machine-based decision making on entitlements on the basis of data sets that were incorrect, resulted in the large exclusions of people from welfare benefits. While hiccups in any system are to be anticipated, what made the issue untenable in this case was the fact that no recourse to technological failure or glitches were factored in, leaving citizens, many of them critically dependent on the schemes, disenfranchised on the basis of a completely automated decision, working on flawed data. Algorithmic welfare management, referring here to the practice of deploying technological and data based solutions to process and approve entitlements, uses the myth of the sanctity of data – positing it as a necessary and unfailing means to plug leakages and redeem democracy from undeserving citizens free riding on public resources.⁴⁴

So far as the evidence goes, the algorithmic turn in democracy, the manifestations of which have been discussed in earlier sections, is embedded in the rise of global to local structures of authoritarian capitalism, geared to preserve a neo-liberal consensus even if local interests are at peril.⁴⁵ Fragmenting societies insidiously, disenfranchising marginal citizens systematically, and generating political distractions relentlessly, the technological assemblages based on data and digital intelligence present immense and urgent challenges for the future of human societies.

The legitimacy of the algorithmic turn has been aided by a meta narrative of techno-modernity that all nations must embrace. Cast as neutral tools of economic progress and social advancement, digital technologies have acquired an aura of ungovernability. Big tech corporations often present AI tools that learn and adapt rapidly as an autonomous force far too complex to be understood completely. However, in a rapidly unfolding datafied world, the integration of digital intelligence needs to be rooted in frameworks of accountability, where social intent guides the appropriation of technology

3 • Watching the watchmen – need for new frameworks

In light of recent events and developments emanating from the Frankenstein Internet of today, digital corporations have come out with public statements about better standards and industry norms for privacy. Google has revealed a set of AI principles – that will ostensibly “take into account a broad range of social and economic factors, and...proceed where (Google) believe(s) that the overall likely benefits substantially exceed the foreseeable risks and downsides.”⁴⁶ The principles, coming as they are in response to public pressure and discontent of employees, may seem like a good first step, but whether the company is upholding its ethical commitment or not will be based on Google’s own assessment.⁴⁷ Platform companies such as Facebook⁴⁸ have also committed to developing ethical standards

and AI and design based solutions for countering the above discussed problems of runaway technology. Bodies such as the Institute of Electrical and Electronics Engineers (IEEE) are actively working to develop standards and guidelines for ethical AI.⁴⁹ While this is a welcome move, the democratic project in this moment of flux needs an overhaul of institutional norms and cultures. Deliberating and debating the ethics that are adequate to the twenty first century techno-paradigm needs to be followed by non-negotiable and preeminent steps to translate ethical reflections into clear norms and institutional frameworks and oversight.

For one, the public sphere today is in immediate need of fortification against the disruptions of big capital and technology if we are to correct the derailment of democratic processes. Policies that can effectively govern misinformation and social engineering are needed to ensure that the spirit of deliberation and political engagement is preserved. Some countries such as Malaysia,⁵⁰ Ireland⁵¹ and Germany⁵² have responded to this crisis with legislation that can counter the spread of fake news and platform misuse through punitive measures. Others such as the US are pushing for greater transparency on online political advertisements with proposed legislation such as The Honest Ads Act.⁵³ The wave of proposed regulation and legislation is a welcome sign that countries have woken up to see the writing on the wall. However, the fine line where platform vigilance can easily turn into institutional censorship will be the slippery slope one needs to watch out for.

There is thus, a slow but growing consensus that solutions are needed, in ways that enrich citizens' social capital rather than infringe on their rights. Critical thinking and discerning consumption of meaningful content, in a technoscape full of falsehoods remains an important challenge and policies that advocate critical media and digital literacy in schools and institutions in this context will be a positive move.⁵⁴

Policymaking must move from being reactive to actively future-proofing democracy against the autocratic tendencies and function creep of datafication and algorithmic governance. In the absence of clearly articulated norms and policies, algorithmic assemblages, being integrated rapidly into governance frameworks today, risk becoming stand-ins for policy.

Algorithms are limited when it comes to exhibiting nuance, negotiating trade-offs, or exercising the necessary discretion when needed.⁵⁵ This lack of flexibility completely evacuates citizen rights to meaningful representation and participation. As an important building block of democracy in the digital age, digital intelligence needs to be imagined, calibrated, tested and recalibrated recursively through the prism of citizen rights within institutional frameworks of transparency and accountability.

We therefore need sound and well developed "technological due process"⁵⁶ that can ensure fairness and preserve the domain of participatory rule making. The right to peer into the algorithmic black box, demand explanations and challenge automated decision making are critical to realise the right to be heard in the context of digitalised governance. The Right to Explanation in the EU General Data Protection & Regulation⁵⁷ and the City of New

York's decision to put in place a task force to examine "automated decision systems" in public administration are some positive moves in this direction.⁵⁸ Furthermore, algorithmic accountability needs to be complemented with strong data protection frameworks that protect citizen rights, allow them control over their data and prevent unethical and unscrupulous data driven techniques and profiteering. Policies must strike the right balance between the concern for individual privacy-personal data and considerations of data as a collective good-having public value. This means some dimensions of data and digital intelligence are treated like public resources and subject to appropriate public oversight. This is non-negotiable if data driven governance is to truly reflect democratic intent, foster inclusive development and guarantee citizen rights.

Ultimately, it is human intent that determines the democratic design or lack thereof in any given technology.⁵⁹ Digital intelligence and algorithmic assemblages can surveil, disenfranchise or discriminate, not because of objective metrics, but because they have not been subject to the necessary institutional oversight that underpins the realisation of socio-cultural ideals in contemporary democracies. The innovations of the future can foster equity and social justice only if the policies of today shape a mandate for digital systems that centres citizen agency and democratic accountability.

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BUILDING A MOVEMENT FOR NET NEUTRALITY

Jonathan Perri

- *How and why Change.org built a campaign* •
to protect neutrality of the internet

ABSTRACT

Change.org's net neutrality campaign was launched in June of 2017, ahead of the United States' (US) Federal Communications Commission vote to end to the net neutrality protections put in place by the Obama administration in 2015. It marked the first time Change.org had launched their own petition in support of a policy issue and became a central place for people throughout the US to take action with over 2 million people signing the petition. This institutional reflection highlights how Change.org used its brand, and digital organising expertise to build a community of engaged net neutrality supporters.

KEYWORDS

Net neutrality | Campaign | Change.org



1 • Introduction

One of the most popular and contentious issues in the United States (US) over the last year has been net neutrality. Specifically, the debate has been centred around Federal Communications Commission (FCC) Chairman Ajit Pai's plan to end the net neutrality rules put in place by the Obama Administration.

Pai is a former attorney for Verizon and was designated chairman of the FCC by President Trump in January of 2017. Within one year he was able to get his proposal passed by the FCC in a 3-2 vote across party lines. In the year leading up to that vote, Change.org launched a digital campaign to drive petition signatures, FCC comments, and phone calls to members of Congress in support of keeping the protections in place.

2 • Background on net neutrality

Net neutrality is the principle that everyone has equal access and delivery of the things we use the internet for: sending emails, watching movies, streaming music, or signing petitions on Change.org. To enforce this, internet service providers (ISPs) like Verizon, Comcast, and AT&T were classified under Title II of the Communications Act by the FCC in 2015, which prevented them from blocking or censoring content, throttling apps, or creating paid "fast lanes" for those who can afford it.

FCC Chairman Ajit Pai's proposal sought to end net neutrality by reclassifying ISPs so they would not be subjected to such regulations. The change is concerning for many people, organisations, and companies who care about the internet being equally accessible to all. At Change.org, we were particularly concerned about the potential for a big cable company to block their consumers from viewing a website, an online petition for example, if they disagree with it (should it be directed at them, for example).

We frequently see petitions directed towards corporations asking them to change business practices, including ISPs. Jennifer Tyrrell, a Cub Scout leader who was kicked out of her troop because she was gay, successfully petitioned AT&T, whose chief executive officer sat on the Boy Scouts of America board, to urge the organisation to allow LGBTQ leaders and troops.¹ Nearly 200,000 people used a petition to convince Verizon to end early contract termination fees for victims of domestic violence who shared accounts with their abusers.² Thousands of consumers signed petitions opposing the attempted Comcast and Time Warner merger.³

Without net neutrality, those ISPs would have the power to block their customers from visiting those petitions or slow the delivery of websites run by the organisers behind them, significantly impacting petitions, fundraisers, and educational content. To be more explicit, the internet has provided marginalised communities like people of color, people with disabilities, or economically disadvantaged individuals with a platform to make their voices heard and to organise like nothing in history ever has. Ending net neutrality puts all of this at risk.

3 • Why net neutrality is important

Beyond the impact on free speech and censorship, net neutrality is important for innovation and small businesses because it provides an even playing field for start-up companies who are competing with already established corporations. This is where the issue of “paid fast” lanes comes in. This means Verizon or Comcast can decide to charge a company like YouTube or Amazon, or one of their smaller new competitors, for faster access to users. If your company can not afford to compete with Amazon or YouTube, you will end up in the slow lanes, effectively killing any chance of your company succeeding.

Last year, the Associated Press asked seven major ISPs if they plan to establish fast and slow lanes after the net neutrality rules were reversed and not a single company could rule out the possibility. So this concern is very real. Fight for the Future has been bringing together small businesses to put pressure on Congress about this and over 6,000 people have signed their letter.⁴

The end of net neutrality also has global implications. While the FCC may be an American commission deciding American policy, some countries who look to US for guidance or inspiration around policy could choose to follow this path. And because there is such a lack

of competition in the US between ISPs, it is quite possible that if fees for companies like Spotify or Amazon become more expensive here, that cost is likely to be passed on to the customer regardless of where they live.

Furthermore, the FCC's move will simply set us behind the European Union, which put in place strong net neutrality protections in 2015 that require companies to handle all internet traffic equally.⁵



4 • Change.org Campaign

Change.org is the world's largest online petition platform. We have over 200 million users around the world who use our free petition tools to start and sign campaigns for any issue they find important. We decided as a company that it was important to take a stance in support of net neutrality. We joined the Battle for the Net,⁶ a coalition of organisations who are truly the experts and pioneers on the fight to save net neutrality like Fight for the Future and Demand Progress,⁷ and we launched our own petition to the FCC and Congress – **the first time we've ever done this.**

It may sound odd that this is the first time Change.org has used our own tool to launch a petition, but as an open platform, we don't take positions on many issues. We believe that

is best left to the millions of people who use our site and that it is our mission to provide a free platform that empowers them to tell their own stories to make a difference in the world. At the same time, we recognise that as the world's largest online petition site, we cannot continue that mission if people do not have access to an open internet, free from censorship and we are particularly positioned to speak out about this.

We also know that our users value net neutrality. Large numbers of Change.org users have long demonstrated their interest and support for internet issues related to privacy, freedom, and censorship. Hundreds of thousands of them take action every year to protect those values dating back to 2011, when 130,000 people signed a Change.org petition to convince Electronic Arts to oppose The Stop Online Privacy Act (SOPA).⁸ In 2013, 180,000 signed Daniel Jabbour's petition to stop the Cyber Intelligence Sharing and Protection Act (CISPA).⁹ In 2015, almost 100,000 people joined a successful petition started by the Student Net Alliance to save net neutrality.¹⁰

On 12 July 2017 we participated in the internet-wide Day of Action organised by Battle for the Net,¹¹ alongside companies like Amazon, Kickstarter, Netflix, and Twitter. At this time, our petition had been signed by about 110,000 people. For the day of action, we put up a 24hr homepage banner, increased our social media engagement, and directed signers to contact their members of Congress using Battle for the Net call tool.

The day of action was likely the largest online protest in history – generating over 2 million comments to the Federal Communications Commission, millions of emails to Congress, and at least 100,000 phone calls to Congressional offices.¹² The attention also doubled the signature count on our petition. All in one day.

5 • FCC Vote

Pai's proposal was always controversial among Americans who largely support net neutrality even across political lines. Millions of comments were filed against Pai's plan but he ignored concerns from citizens and experts alike. Given the overwhelming concern from the public about Pai's approach, the FCC Chairman missed an opportunity to work toward a better, bipartisan solution, while carrying the real potential to hurt free speech on the internet at a time when organisations and individuals are building some of the most important and exciting movements in history.

As the FCC vote grew closer, our petition became one of the most central places for people to take action. The petition was massively popular on Twitter with many verified accounts sharing it. One of the biggest drivers of signatures was Khloe Kardashian tweeting it to her 25m+ followers.¹³ We kept signers engaged with email updates asking them to share the petition, tweet directly at the FCC and Ajit Pai, and to make phone calls to Congress.

6 • Soon our petition hit 2 million signatures

The team at Battle for the Net built a fantastic call tool powered by Twilio that we emailed to signers on multiple occasions for Congressional call-in days to add pressure on members of Congress to push back against Pai. If you have not used a call tool like this before it makes calling your representative incredibly easy. With a few clicks from your desktop or mobile, your phone is connected to your representative's office without ever dialing a number. The page provides a phone script to help guide your conversation. Not enough people contact their representatives so tools that make that process easier are incredibly important and this is definitely one of them. We drove upwards of 15,000 phone calls to Congressional offices using the Battle for the Net call tool.

Members of Congress then began interacting directly with the Change.org petition using our Decision Makers feature.¹⁴ We are the only petition platform that allows the people being petitioned, in this case Congress, to actually respond to the people signing the petition to them. These messages are sent directly from the member of Congress to the supporter and it is a unique experience for petition signers because it shows them that their message is being heard. Responses were submitted from Senator Cory Booker, Representative Zoe Lofgren, and Senator Ron Wyden amongst others – all encouraging signers to continue fighting for net neutrality.

On 14 December 2017, the FCC approved Pai's measure to remove net neutrality rules in a 3-2 vote. Doing so removes the Title II designation, preventing the FCC from putting tough net neutrality rules in place even if it wanted to. And, it turns out, the Republicans now in charge of the FCC really do not want to. The new rules largely allow internet providers to do anything. They can block, throttle, and prioritise content if they wish to. The only real rule is that they have to publicly state that they are going to do it.

7 • The fight is not over

The petition has grown to over 2.3 million signatures and we continue to keep these Change.org supporters informed and engaged. I send out a monthly newsletter that compiles news, calls to action, and information from our partner organisations. The main call to action has been pushing members of Congress to support a Congressional Review Act, a resolution introduced in late February by Senator Ed Markey (D-MA) that would reverse the FCC's decision if passed by Congress.

This resolution has gained significant support in both the Senate and the House but particularly in the Senate where only one more vote is needed. Fight for the Future has been instrumental in building support among members of Congress, including Republicans, to make this happen. Unfortunately, time is running out for the resolution to be passed.

Despite the frustrations of trying to win against the FCC, this has been a fun campaign

in the sense that the people and organisations we have been working with are incredibly passionate and knowledgeable. We were even approached by Burger King who explained that they would be producing a video about net neutrality. The video would take a comedic approach to educate people about what net neutrality is and the impact of the FCC decision. We loved the idea and agreed to have them make the call to action for their video be signing our petition. Within a day this video had millions of views on Facebook and our partnership was covered extensively in the media.¹⁵

8 • How states are taking action

The fight has now shifted more to the state level. Dozens of states are now aiming to pass their own protections for net neutrality through executive orders or legislation. A few have already succeeded including Montana and Oregon. Over 20 attorneys general have signed onto a lawsuit challenging the FCC's rules. That lawsuit was initiated in January by Attorney General of New York, Eric Schneiderman.

To adapt to this, we utilised our movements feature¹⁶ to encourage our petition signers to start and sign local petitions. A movement page allows for many people to launch their own petitions regarding the same issue in one place. It is especially great for distributed or localised campaign efforts where you want petitions started in every state, or even more locally, and allow constituents to directly put pressure on their representatives. A great example of this would be efforts to pass plastic bag bans at the country level. Having one big national petition does not make sense there but making it easy for people to start small petitions directed at the city council does. That is what we did for this issue and right now there is currently a Change.org petition started by someone in every state asking their lawmakers to protect net neutrality by passing legislation or joining the lawsuit against the FCC.

9 • Conclusion

In a historic vote in May 2018, the US Senate passed a resolution that seeks to reverse the FCC's plan to end net neutrality.¹⁷ The resolution must now be passed by the House of Representatives. Fight for the Future has been instrumental in building support among members of Congress, including Republicans, to make this happen. Time is running out for the House to pass the resolution.

This month we launched an "I support net neutrality" t-shirt campaign¹⁸ with proceeds going to fund an educational discussion panel about the state of net neutrality that we will livestream to our followers and share with people afterward.

If you'd like to get involved, sign our petition¹⁹ and also head over to Battle for the Net²⁰ and sign up there as well. Both places will provide you with up to date information and ways to take action. This fight is not over.

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“NET NEUTRALITY IS PART OF THE OVERALL STRUGGLE FOR HUMAN RIGHTS IN A DIGITAL AGE”

• Interview with David Kaye •

By Oliver Hudson

The question of net neutrality has recently garnered world-wide attention following the December 2017 decision by the United State's Federal Communications Commission to repeal many of the landmark protections which the Obama administration had put in place. Despite the headlines, it is a topic that many of us fail to fully understand – both in terms of the wider impacts the FCC's decision might have around the globe and also how it relates to human rights more broadly. In this interview, David Kaye - the United Nations' Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression - explains to the Sur International Journal on Human Rights how net neutrality is central to his mandate – and to democracy. He offers hope, however, that the decision may not have lasting negative consequences and that there is still an important role for civil society to protect it. Corporations too, he notes have an increasingly important place in ensuring the freedom of expression and opinion – but while on the one hand many are supporting net neutrality, in parallel they are launching initiatives, such as data caps and basic internet services, that threaten our freedom of expression and opinion in other ways. Kaye also discusses the important role that corporations, along with governments, have in combatting disinformation, propaganda and fake news – especially by supporting and developing a strong independent media. With the advent of increasingly sophisticated technology however, he ponders whether we will ever be fully able to defeat this concerning trend.

Conectas Human Rights • Can you explain to our readers how your mandate has an important role in the discussion surrounding net neutrality?

David Kaye • Sure. My mandate was created in the early 1990s. It focuses on the protection of the right to freedom of opinion and expression. That means I have a role in both online and offline issues. I address issues related to, for example, the protection of journalists in offline spaces, but also the protection of environments for freedom of expression - including online space. As the digital age has progressed, different issues have arisen that make it clear that states have the obligation both not to restrict freedom of expression directly, but also to ensure that they are not interfering with environments that facilitate the freedom of expression. In online space, that means ensuring that states do not overregulate platforms that provide for freedom of expression, that they don't overregulate the infrastructure that allows people to communicate. Over the last seven years, my predecessor Frank La Rue, and now I, have tried to focus on how freedom of expression issues play out on online space. Not just in relation to the platforms that we use every day, related to search, email and other forms of communication, for example, but also the online infrastructure - and that's how we get to issues of net neutrality.

Conectas • Can you explain to our readers how the questions of democracy and net neutrality are so closely interrelated?

D.K. • Democracy is not formally a part of my mandate. My mandate involves protecting the right of freedom of opinion and expression in the context of Article 19 of the International Covenant on Civil and Political Rights. Regarding the right of freedom of opinion, this means protecting everyone's right to freedom of opinion without interference – and that's an absolute right. Protecting the right to freedom of expression includes protecting the freedom to seek, receive and import information and ideas of all kinds, regardless of frontiers and through any media. At the inception of Article 19, and its precursor in the Universal Declaration of Human Rights, which is also Article 19, it was well understood that access to information and the freedom to seek and share information are fundamental aspects of democratic life. In fact, if you look at other sources of human rights law and freedom of expression, such as the European Convention on Human Rights, it directly connects democratic society to various fundamental human rights, including freedom of expression.

That leads us onto the question of net neutrality. Our Internet service providers and telecommunications companies should not be the ones – whether they are private actors or whether they are owned or operated by the state – deciding what kind of information or what content individuals should be receiving. That would have a distorting effect, not only on democratic life, but also access to information, whether we're talking about entertainment, information, ideas or news. Net neutrality and democracy are just as inextricably linked to one another as freedom of expression and democracy are.

Conectas • Internet service providers argue that abolishing net neutrality would allow them to offer cheaper plans to users. Considering that universal access to the Internet, particularly

in parts of the Global South, remains an obstacle, do you think that we should keep on pursuing equal access, even if that means access to the Internet may remain prohibitively expensive for some users?



D.K. • This is a really important question. There are two separate ways of thinking about it. The first is to think just about expanding access to the Internet locally, particularly in the developing world and rural areas that are outside of the main areas of connectivity around the globe, which may be in developed countries as well. I believe strongly that access to the Internet has become fundamental to people's ability to enjoy freedom of expression. It is also essential to accessing information today and to expressing oneself. If it is true that that it is so essential, this means that governments have the obligation to ensure Internet access. That means that governments should be devoting more resources to ensuring broader access – particularly in the developing world. In addition, governments in the developed world should be providing support to the developing world to expand that kind of access. This is embedded in the Sustainable Development Goals.

The second part to consider is whether it is really going to be too expensive to allow for network neutrality. I don't think that's true. But let's assume that it were true for the moment, I could imagine a kind of transitional period in which some forms of the Internet are made available to people even while the overall Internet may not be accessible. I would see that as something temporary and very much subject to change, because otherwise you end up providing people with limited access to information rather than full access, to which they are entitled.

Conectas • In Brazil, service providers often place a data cap on broadband Internet usage. Within such packages, service providers not only offer different Internet speeds to users (500 Mbps, 1 Gbps, 2 Gbps and so on), but also limit the amount of data to be consumed in one month (100 Gb, 150 Gb, etc) – suddenly dropping Internet speed or stopping it altogether once the user reaches his or her limit. On one hand, this is not discriminating against specific kinds of platforms or content. However, in practice, written content is favoured over, for example, videos. In your opinion, do practices like these go against net neutrality, impacting access to information and limiting free speech?

D.K. • I think this is an example of where data caps need to be looked at really quite closely. If service providers have a legitimate technical reason to cap broadband Internet usage – for example, if they do not cap data on broadband usage it will make it harder for everyone to receive information – then that may be a legitimate reason. However, I'm not convinced

that such technical reasons are actually legitimate. I don't know the situation in Brazil, but often service providers put on data caps simply so they can charge users more.

Caps favour one form of media over others, which really interferes with principles of net neutrality and principles of access to information of any kind of media. So, whether we say it limits free speech or not, it certainly limits people's access to information and can be very problematic. Service providers need to work with governments in order to ensure they are able to provide broad access, doing away with these kind of data caps. Over the long term, I'm confident that this is likely to happen.

Conectas • Facebook's Free Basics service can be seen as a way to increase access to information for those who can least afford it. However, it is also criticised for being anti-competitive and favouring certain US companies and penalising Facebook's rivals. How do you see initiatives like these from a net neutrality perspective?

D.K. • This is another good question. There are several elements we should talk about when we talk about something like Free Basics. The first thing is that while a service like Free Basics offers free content, it limits the content to what is often referred to as a "walled garden" of that platform's resources and what is accessible through that platform. This is problematic because it gives the illusion of full access to Internet, when that's not really true.

The second thing to note is that sometimes services like this are offered with the argument, "We're going to increase access to information where people can't afford it", when in fact, people already have access to information. This was true in India, for example, where Free Basics was introduced. And many people in India were quite upset about it, because it was really anti-competitive. There was already fairly widespread access to the Internet across India – not everywhere, but it was accessible – and the Free Basics service essentially competed with the broader access and the broader services that were available. Such services can therefore serve to blur the lines between accessibility and competitiveness, and so it can be deeply problematic.

The final point is to remember that on the one hand, services like Free Basics have an underlying "good will" about them. They offer Internet access to those who cannot access it. Yet they are this "walled garden". I would rather see companies like Facebook and Google provide broad infrastructure that enables users around the world – particularly those in places where the Internet may be less accessible – to have viable access to the entire Internet. These companies have the resources necessary to assist everybody without reserving their competitive advantage. I'm deeply concerned about programmes like Free Basics.

Conectas • What impact will the December 2017 decision by the United States' Federal Communications Commission's (FCC) on killing net neutrality have globally, especially in the Global South?

D.K. • I think it's particular impact may be the model that it introduces to the rest of the

world. That said, I'm not totally certain that the US killing net neutrality will definitely have a negative impact around the world. The US's global "brand" is in competition with other "brands" around the world. For example, within the EU, countries like The Netherlands and others have really embraced net neutrality. In those environments, it has been shown to be a huge benefit to European users. To the extent that other states see the benefit of network neutrality in Europe, hopefully countries will adopt that model, and not the FCC's recent model. So, there may be a kind of values competition between what users are getting in Europe versus what companies are getting in the US. Therefore, I don't think it's a simple – "the FCC does this, so this will have a negative impact". There will be a real competition over what the Internet stands for over time.

Conectas • What do you see civil society's role as being in protecting net neutrality – especially following the crushing blow of the FCC's decision, which came after years of civil society pressure - and have you seen or are you witnessing examples of best practice in that regard?

D.K. • Civil society plays a really important role. Maybe the best example is the role played by civil society in India in promoting net neutrality. There, we have seen a deep engagement by think tanks, public policy-oriented institutes, academics, lawyers and even by the court to protect individual access to the Internet and protect net neutrality. That has been really essential. It's been great to see how civil society has acted in just a variety of spheres – in terms of legislative lobbying, research and litigation.

We also need to remember that some companies have been very strong proponents of net neutrality. Google is a good example. My hope is that those companies, which are really the ones that are visible to the public and that tend to be seen in a more positive light than, for example, a person's Internet service provider, will engage with civil society in order to promote net neutrality.

Conectas • Do you still see hope for net neutrality rules, or was the FCC's decision the first nail in the coffin for the principle?

D.K. • In the US, the future for net neutrality is not set in stone. Members of Congress on both the Democratic and the Republican side have really been sceptical of the FCC's decision on net neutrality. So, there is still hope for net neutrality in the United States. And as I was saying earlier, net neutrality has been embraced by many, many countries outside the United States. So, to the extent that those countries can promote their vision of net neutrality and their vision of broad access to the Internet, there is still serious hope for net neutrality worldwide. Now, there are other models of Internet regulation promoted by countries like Russia, China and some others that are deeply problematic. When we are talking about net neutrality, we have to recognise that it's part of the overall struggle for human rights in a digital age.

Conectas • It is impossible to talk with you and not discuss the question of fake news. How does fake news, disinformation operations and targeted political propaganda

challenge the concepts of freedom of expression and opinion and how are you addressing these concerning trends?

D.K. • Disinformation and propaganda are often designed to interfere with the individual's ability to access information. It happens in a number of different ways. It can happen by essentially crowding out traditional or legitimate sources of information. It can work to throw confusion into actual legitimate debates. It has a number of functions that are tantamount to interference with freedom of opinion and freedom of expression.

There is though a considerable amount of research that remains to be done around disinformation online: how it operates, exactly how big of a problem it is. It is clear that the nature of the problem is serious - but the extent of it remains a bit open at the moment. So, we need to be very careful about how we approach issues of disinformation and propaganda. It's important for the companies whose platforms are being abused with disinformation and targeted political propaganda to be transparent and disclose as much information as possible about the use of their platforms, to be extremely open to researchers so that we can have accurate research. It's also essential for companies to be really clear about the rules that they are adopting around such issues such as how they configure information. For example, if you're searching information and you get 10 results, how are you able to assess what's legitimate and what's fake? Not all users are sophisticated consumers of the news and of information. And sometimes, even the sophisticated user has a hard time discerning fact from fiction. The more that the companies can share about this, the better.

The other side of this is what governments are doing to regulate the issue. They need to tread really cautiously, for a couple of reasons. First, for many, many years – decades even - authoritarian regimes have used rules and policies against the dissemination of false information in order to limit access to information, dissent and government criticism. That's deeply problematic and I don't want to see democratic governments essentially feeding into the process of validating that kind of approach of authoritarian governments.

The other thing I'm concerned with is democratic governments using this moment – even if in good faith by trying to protect their democratic space – and essentially using disproportionate measures and focusing on the prohibition and the penalty for disinformation, rather than thinking about what they can do to support traditional forms of media and journalism. I would like to see governments devoting more resources to media literacy, by funding media literacy programmes, for example. I would like to see them dealing more with the concentration of the media, ensuring that companies are not limiting access to information from smaller sources of information or independent voices. It is difficult for governments to actually fund independent media, but they should be promoting independent media in very explicit ways to ensure it is protected as it is the best way to counter to disinformation.

Conectas • What do you anticipate the future holding for fake news – have we seen the worst of it, or is the worst of it still to come?

D.K. • I hate to end up on a downer, but I'm afraid that technology is moving in such a way that it is going to make it easier for disinformation to work, and harder for individuals to discern fact from fiction. This is certainly the case with the deeply troubling manipulation of video, audio and text – which is making it harder to identify independent, verifiable sources of news. Since we do know that the future is going to bring us serious challenges, it's important for governments, philanthropies and the media itself to be prepared for how they are going to address questions of false information. How is the independent press going to deal with and report on fake information and how technology is being distorted in order to undermine information and freedom of information? This is a really serious challenge for governments and for civil society moving forward. There are many organisations that are attempting to meet that challenge but it's an open question as to how successful we will be.

• • •

Interview conducted by Oliver Hudson (Conectas) on 23 May 2018
Questions by Oliver Hudson (Conectas) and Thiago Oliva (Internet Lab)



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FAKE NEWS: WHAT IT IS AND HOW TO DEAL WITH IT

Márcio Moretto Ribeiro & Pablo Ortellado

- *From fake news to hyper-partisan media* •

ABSTRACT

The term “fake news” began to be widely used in the press coverage of the 2016 US presidential elections. There is much debate in the social sciences and communications fields about the applicability of this concept. We believe that the term “hyper-partisan media”, which is used in part of the literature, provides a better understanding of the phenomenon. We also argue that it is important to understand that hyper-partisanship emerged as a result of the polarisation of the public sphere. In this article, we analyse the dissemination of hyper-partisan news one week before the judges’ vote in the trial of former president Lula at the TRF-4 (Tribunal Regional Federal da 4a região, or the Federal Regional Court of the 4th Region). We show how the headlines of the stories that were shared the most on social media during that period fit into one of the two polarised narratives currently dominating the Brazilian public sphere. We conclude the article with an assessment of possible approaches to regulation on this issue.

KEYWORDS

Fake news | Polarisation | Hyper partisanisation

The concept of “fake news” is highly disputed and there is no broadly accepted definition for it in academic literature or media discourse. Even though we find earlier references to it, it was in the press coverage of the 2016 United States (US) presidential elections that the use of the term, with its current meaning, became widespread. It was adopted to refer to news sites that disseminated false information on Hillary Clinton on social media and whose impact is said to have contributed to Donald Trump’s victory.¹

Today, the literature is divided up between those who defend the use of this concept, which was shaped by the political debate and news coverage, and those who believe that since it is so unprecise and leads to misunderstandings, it would be better to find a more appropriate term. We list below some of the most influential definitions to illustrate the nature of the debate.

An official Facebook report written by Weedon, Nuland and Stamos defines fake news as follows:

The term “fake news” has emerged as a catch-all phrase to refer to everything from news articles that are factually incorrect to opinion pieces, parodies and sarcasm, hoaxes, rumors, memes, online abuse, and factual misstatements by public figures that are reported in otherwise accurate news pieces. (...) We’ve adopted the following terminology to refer to these concepts: (...) News articles that purport to be factual, but which contain intentional misstatements of fact with the intention to arouse passions, attract viewership, or deceive.²

In the most commonly quoted study on this issue, Alcott and Gentzkow define “fake news” as:

articles that are intentionally and verifiably false, and could mislead readers. (...) Our definition includes intentionally fabricated news articles (...) It also includes many articles that originate on satirical websites but could be misunderstood as factual, especially when viewed in isolation on Twitter or Facebook feeds. (...) Our definition rules out several close cousins of fake news: 1) unintentional reporting mistakes (...); 2) rumors that do not originate from a particular news article; 3) conspiracy theories (these are, by definition, difficult to verify as true or false...); 4) satire that is unlikely to be misconstrued as factual; 5) false statements by politicians; and 6) reports that are slanted or misleading but not outright false.³

Finally, in a recent article in the Science journal, Lazer et al. define “fake news” as:

...fabricated information that mimics news media content in form but not in organizational process or intent. Fake-news outlets, in turn, lack the news media’s editorial norms and processes for ensuring

the accuracy and credibility of information. Fake news overlaps with other information disorders, such as misinformation (false or misleading information) and disinformation (false information that is purposely spread to deceive people).⁴

We can say, then, that in the debate on the term's value for analytical purposes, there is considerable controversy over at least two points: i) whether the “fake news” concept should refer only to news content that has been proven false⁵ or whether it should also refer to other tactics to misinform and deceive others, such as exaggeration, omission, information taken out of context and speculation;⁶ and ii) whether the concept should only include false content that has been produced intentionally or whether it should also include any kind of verifiable factual error, even if unintentional, such as a simple error made when verifying the facts.

The choice of one definition or another should not be made arbitrarily. Instead, it should be guided and informed by the analysis of what has been commonly called “fake news sites”. And if we examine how these websites function, we will see that what best defines them is not the publication of fake news – which only happens occasionally – but rather the production of “combat information” in the form of news reports.

This combat information may be merely a clipping from the daily news selected to prove one's point, a news report with a sensationalist headline, a fact mentioned out of context, an exaggeration of a story or some speculation on an event or an issue that is presented as factual information – and sometimes, it can even involve lies. Several of these tactics to distort facts are not limited to the so-called “fake news sites”; they have also been used by mainstream media. This is why it is impossible to trace a clear line to separate bad news outlets from trustworthy ones, the truth from lies.

It would perhaps be better to look at the context in which “combat information” has been produced, by both alternative and mainstream news sources, and reflect on how the fabrication of facts and other distortive practices are the result of a broader process of lowering editorial standards to respond to a polarised political environment. We believe that this is why a portion of researchers and analysts have abandoned the concept of “fake news sites” and referred to the phenomenon as the emergence of a “hyper-partisan” media.⁷

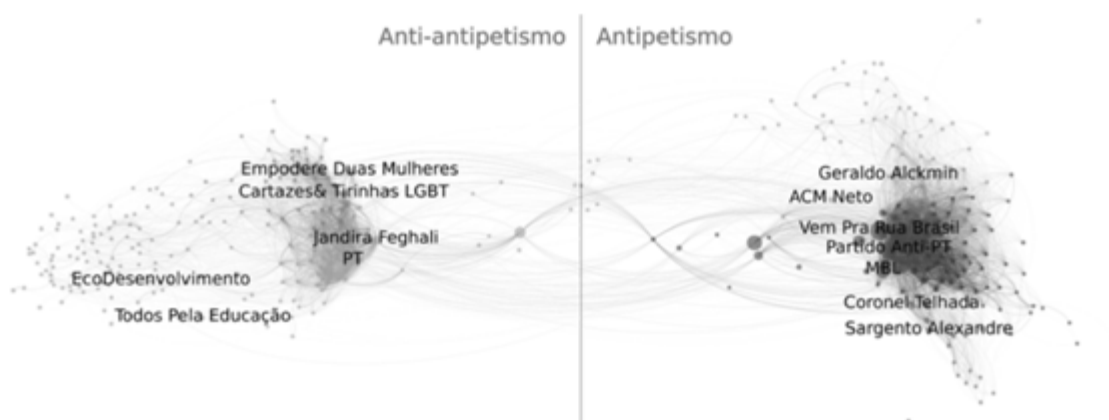
1 • The polarisation of the public sphere and the emergence of hyper-partisanship

Brazilian academic literature has addressed the issue of political polarisation more from the angle of voters' party preferences than from the perspective of the alignment of political views.⁸ In the US, however, a lengthy debate in the field of political science has shown that while there has been a polarisation of political opinions or positions in that country, this phenomenon is probably limited to people who are more involved in and who identify more strongly with political parties.⁹ It should be noted that even though individuals who are more engaged and more partisan are a minority in society, they are precisely the ones who interact

the most in the political debate, which German sociology has called the political public sphere.¹⁰ Therefore, when we look at society as a whole, polarisation is a limited phenomenon; but when we consider the public sphere, where private individuals discuss political issues outside the realm of the state, political polarisation is a dominant phenomenon.

Even though there are not many studies in Brazil on the polarisation of political views and positions, the analysis of social media gives a solid indication of the polarisation of public opinion in the country that is contaminating the entire public sphere. When we analyse the patterns of interaction of the 12 million Brazilians who like posts on the top 500 political pages, we note that since the first half of 2014, they have closed themselves off into two separate circuits. On one hand, we find the pages of left-wing parties and politicians amalgamated with the websites of feminist, black and LGBT movements and human rights NGOs; on the other hand, we find the pages of right-wing parties and politicians, together with those who defend economic liberalism and moral conservatism. When we examine the pattern of the users' interaction, we find that they form two clusters (see figure 1 below) with very few connections between them. This clearly confirms that the users have become polarised.

Figure 1: Pattern of Facebook users' interaction with the top 500 political pages, March 2016



Source: Elaborated by the authors based on Facebook API

2 • Polarised narratives in the Brazilian debate

The dispute over the significance of the Workers' Party's (*Partido dos Trabalhadores* often referred to using the acronym PT) historical role and the impeachment of former president Dilma Rousseff are at the heart of the feud that has polarised the

public sphere in Brazil. On one side, there is the anti-PT movement, which is made up of liberals, conservatives, people who glorify the military, political parties from the current government's base of allies and a number of people and groups who see corruption in general, and the Workers' Party in particular, as the country's biggest problem. The narrative shaping this side of the dispute claims that the PT hijacked the Brazilian state to pillage public resources and replaced the party's political project with a plan to remain in power. It alleges that the party sought to stay in office by resorting to a series of schemes, such as forming alliances with large corporations that took advantage of resources from the Brazilian Development Bank (BNDES), bloggers who received advertising funds from the federal government, artists who obtained public funds via the Rouanet Law¹¹ and social movements whose members received privileges disguised as social programmes. It also argues that this corruption has not only set off an unprecedented crisis of ethics, but it is also the main cause of the economic crisis and the fiscal deficit. To face this historical challenge, Operation Car Wash is said to have been launched as a virtuous process of persecuting criminals, which has had to face resistance from the National Congress, the media and the business sector.

In opposition to the anti-PT groups, another side has been formed, this time by social movements, NGOs, opposition parties and individuals and groups who identify with the left. The narrative that shapes this side goes like this: under the guise of an anti-corruption discourse, what truly moves the anti-PT side is their aversion to the poor who made major advances during the Lula and Dilma administrations. Discontent with the social and electoral success of the PT governments, these sectors of the business class, the judiciary, the conservative middle class and the media were the driving force behind a partial and abusive investigation that pretended to be fighting corruption in the Brazilian state, but actually only persecuted the main left-wing political party in Brazil. Then, as if that was not enough, they staged a parliamentary coup to illegitimately overthrow President Dilma and, shortly after that, they arrested and convicted former president Lula, who was leading the opinion polls for the 2018 presidential elections. Having ousted ex-president Dilma and dashed the PT's hopes of winning the elections, the coup organisers implemented a regressive agenda, which includes measures such as the elimination of social rights and the privatisation of public assets.

These two structuring narratives serve as a reference for hyper-partisan news sites when they produce combat headlines to fuel the public debate. To illustrate this dynamic, we gathered all of the headlines produced by 96 news sites, plus the ones produced by or shared on nearly 500 Facebook pages selected as the most popular pages focused on national politics, between 21 and 27 January 2018. This was the week of the trial of former president Lula in the second instance court (the federal regional court, commonly referred to as TRF-4) in the case on the apartment in Guarujá.¹² The sites studied produced close to 13,000 articles that together accounted for a little less than 12 million shares. We analysed the 150 headlines on national politics with the highest number of shares during the period. This sample, though small, was shared 3.5 million times, or 29 per cent of the total shares during the period.

The main topic of the week was the trial of former president Luiz Inácio Lula da Silva in the second instance court. Other issues that received broad media coverage that week can also be easily inserted into one of the two narratives in the dispute. For example, three stories alerted readers about politicians being investigated by Operation Car Wash, who if elected, would have privileged jurisdiction. On the other hand, the decision of the Supreme Court president, Carmen Lúcia, to suspend Cristiane Brasil's as the Minister of Labour was celebrated by the left who saw in Cristiane Brasil an antagonist to labour rights.

Some articles reported the refusal of the writer Marcia Tiburi to give an interview with MBL (*Movimento Brasil Livre* or Free Brazil Movement) activist Kim Kataguiri. For some, Tiburi's decision was correct and exemplary, since "there is a limit to everything" and that limit would be the fascism of those who defended the coup. The other side criticised what it interpreted as a contradictory attitude by the author of the book "How to Talk to a Fascist?"

In another example, perhaps even more illustrative of the hyper-partisan dynamics of sharing in social networks, two headlines deal with the campaign promoted by the media network Globo: *O Brasil que queremos* (The Brazil that we want). Both claim how the population would respond to the campaign. In one, the defiance would be to show not what the country wants, but what is not wanted, namely a country ruled by corrupt politicians. The other article sees defiance in those who sent videos to the station declaring that they want a Brazil *sem golpe* (without the coup).

The headlines related to the trial of ex-president Lula in the second instance court that were shared the most can also be easily grouped into two narratives. On one side, the unusual speed with which an investigation against José Serra¹³ was conducted and filed appeared to corroborate the theory on the persecution of the PT. The other side argued that the TRF-4 gave a "display of composure, efficiency and justice". One side praised the activists who went to Porto Alegre to defend the former president, while the other described the protest as a "waste of money". One side urged the people to take to the streets and warned that the imprisonment of the PT leader "would set the country on fire", and the other echoed the message of Attorney General Raquel Dodge, who stated that Brazil was experiencing its "greatest moment of institutional stability since 1889". One side shared messages where actors, activists and soccer players showed their support for the ex-president, whereas the other shared messages from people commemorating the ruling against him.

Of the headlines analysed, 67 can be categorised in the "coup" narrative category and were shared 1.494 million times, and 45, as part of the anti-PT narrative, which account for 1.308 million shares. In other words, more than two thirds of the headlines analysed, which represent close to 80% of shares, are aligned with one of the two narratives that structure the national political debate (table 1).

Issue	Number of articles	Number of shares (thousands)
TRF4 (coup)	49	1041
TRF4 (anti-PT)	38	1016
Cristiane Brasil (coup)	7	265
Operation Car Wash (anti-PT)	4	154
Lula's candidacy (coup)	4	85
Márcia Tiburi (coup)	5	82
Lula's candidacy (anti-PT)	2	74
Globo's campaign (anti-PT)	1	53
Globo's campaign (coup)	1	21
Márcia Tiburi (anti-PT)	1	11
Other issues	38	724

It is in this polarised context marked by heated political debate that the techniques of selecting, distorting and fabricating facts emerge. As we can see below, in general, it is not a question of lies, strictly speaking, but rather of various levels of distortion. We analyse below four headlines that concretely illustrate the nature of the issue:

“PT deputies will resign collectively if Lula goes to jail”¹⁴

During the impeachment process against ex-president Dilma Rousseff, a group of 17 lawyers linked to the OAB (*Ordem dos Advogados do Brasil*, or the Brazilian Bar Association) in the state of Espírito Santo resigned collectively in response to what they interpreted as censorship of the directors of the association who had criticised Judge Sérgio Moro.¹⁵ At that time, another version of the story attributed the lawyers' quotes to PT deputies saying the congressmen would resign if Dilma were to be impeached.¹⁶ A third version of this article published on the The Folha newspaper website¹⁷ began to circulate the week of the ruling on Lula's case in the second instance tribunal. This time, it was said that the deputies were threatening to resign if the ex-president were convicted. The headline was reproduced by people on the anti-PT side to celebrate the fact that the imprisonment of Lula would get rid of other leaders who they said were also corrupt.

“New York Times: Partisan, Moro pushes Brazil's democracy in the abyss”¹⁸

In August 2017, The New York Times published a profile of Judge Sérgio Moro.¹⁹ Then, months later, during the week of the TRF-4 vote, the “Notícias Brasil Online” website evoked this article again with the headline “The New York Times Newspaper Praises Judge Sérgio Moro And Says That The Judge Has Become The Face Of Accountability in the Country”.²⁰ The “Notícias Brasil Online” article was shared 88,000 times. In January 2018, an opinion piece by Mark Weisbrot, also published in The New York Times under the title “Brazil's Democracy Pushed Into the Abyss”,²¹ was the subject of a series of articles published by alternative left-wing media outlets (Brasil 247, Revista

Fórum, Sputniknews, lula.com.br and Falando Verdades). Together, these articles totalled 123,000 shares. In both cases, the article in question was taken out of context and in the latter case, the headlines suggested that the criticisms of Moro reflected the newspaper's editorial line when, in fact, it was a mere opinion piece.

"PT activists outraged in Porto Alegre: they didn't pay us and stole everything, even the sandwich filling"²²

The article affirms that a woman apparently named "Mrs. Angelina" complained on Facebook that she did not get paid for participating in a protest in defence of Lula, as promised. Shared 34,000 times, the article supports the anti-PT narrative, which claims that protestors who support Lula have been paid to do so.

"Brazilian army appalled with the cost of Lula's trip to Africa. PT leader has already blown R\$3.1 million in taxpayer money"²³

The Brazilian army's website contains a section with clippings from the daily news. On 17 January, one of the items posted in this section was an opinion piece by Bernardo Bittar published by the "Correio Braziliense" newspaper under the title, "Lula's trip to Ethiopia cost public coffers over R\$30,000". In the column, the author criticises the fact that former presidents continue to have the support of advisors who are paid with public funds. In the case of Lula, the author estimated that R\$3.1 million had already been spent. The article published by "Imprensa Viva" considered the decision to select this text and include it in the daily clipping as proof that the army was outraged with the cost of the trip. Furthermore, the site opted for including the total amount spent on advisors since the end of Lula's mandate in the title.

3 • Regulatory responses

Much of public debate today takes place on social media platforms such as Facebook and Twitter. The majority of the content that circulates on them is produced by news sites. Yet, an article's reach depends primarily on users, as they are the ones who decide what to share with their "friends" and "followers". The proliferation of so-called "fake news" is intimately linked to a dynamic in which the polarisation of the public sphere turns the public debate into a confrontation between two narratives. Regulating the production and sharing of fake news would be one way of mitigating this risk. Yet, what can be done and what are the risks of regulating the digital public sphere?

According to a typology established by the lawyer Lawrence Lessig, individuals are subject to the constraints imposed by society, the state, the market and technology. Thus, there are four possibilities for regulating behaviours: intervening in the perception of social norms; altering and enforcing laws; adjusting prices and fees; and modifying the architecture, which, in the digital environment, corresponds to making changes to the application's code.

Lessig anticipated that for the internet, there is a risk that the fourth option, which is much less permeable, would be too tempting and overlap the others.²⁴ In the case of fake news, this option corresponds to the development of algorithms that help identify fake news. It may be possible to develop algorithms that use a base of examples and enable machines to do this task. This algorithm would replicate the biases of this base of examples at a larger scale, which would make constructing it a delicate task, especially in a context of intense polarisation. Moreover, as we are dealing with a relationship between language and the world, a software, which does not have access to the world, cannot assess the accuracy of a fact. This leaves us with indirect measures for evaluating content: format, occurrence of words, the dynamics of sharing. At best, an algorithm would only be capable of identifying something that has the format of a fake news report established according to a model produced by individuals with these biases.²⁵

The legislative alternative would be to somehow punish the producers and/or disseminators of fake news. In an article posted on 11 May, the *Pública* news agency found 19 draft bills going through the Chamber of Deputies and one in the Senate that aim to criminalise the production and sharing of fake news.²⁶ The proposals apparently assume that the production or sharing of false news is an intentional act that seeks to contaminate the debate and bring harm to an individual or a group. The empirical analysis that we discussed in the sections above, however, suggests that the nature of the phenomenon is different. The public sphere is split into two poles that develop reductionist narratives to explain the delicate national political context. The dissemination of fake news is mainly done by users who are more involved in this dispute. Therefore, it is not a deliberate attempt to deceive someone, but rather to convince others that what appears obvious to the person disseminating the information is correct or true.

With regards to the economic dimension, we can think of information as a good that typically has a high fixed cost and a very low marginal cost. This difference became even more striking with the advent of digital technology. Moreover, once the depreciation costs necessary to create an information product for more than one company have been covered, competition between companies drives the price down to the marginal cost, which is zero in the digital world.²⁷ In the case of producing news, the fixed cost varies according to the quality of the product. This environment has allowed media channels that produce news with little or no budget and very low quality standards to proliferate, generating a competition among media outlets whose impacts are detrimental to the political environment. What is more, the excess information that circulates on the internet competing for readers' attention creates a situation where users have little capacity to discriminate what is worth reading and sharing from what is not.²⁸

As a result, on social media, media outlets with professional writing teams compete for readers' attention with sites that have little or no concern with verifying the facts, for example. One way to regulate via the market would be to charge for access to news articles in order to artificially increase the marginal cost and pay news producers to cover the cost

of remunerating their team of journalists.²⁹ The assumption behind this proposal is that the public would reward them for the quality of the journalism. What our analysis suggests, however, is that part of the interest in consuming and disseminating news in a polarised society is to support pre-established narratives, regardless of the quality of the work to investigate or verify facts that is required to produce the news.

Finally, the dissemination of false or unverified content may or may not be considered socially acceptable or unacceptable behaviour. If the problem of the spreading the so-called fake news is a social phenomenon, the solution must also be social. Perhaps the best regulatory approach would be to intervene directly in the public debate to increase social awareness on the damaging effects that the prevalence of combat information and the lowering of editorial standards of news sites have on the public sphere.

There is a need to shift the social responsibility for fake news, which is normally placed entirely on malicious actors who are out to “deceive the public”, to all of us who engage in political debates. The problem does not lie only with hyper-partisan media operators acting in bad faith, but rather with all of us who collaborate in the degradation of the public sphere by transforming the public debate into a thoughtless information war in which sharing low quality news materials is a socially acceptable act.

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IS SOCIAL MEDIA GOOD OR BAD FOR DEMOCRACY?¹

Cass Sunstein

ABSTRACT

While acknowledging that, on balance, social media can have a positive effect on democracy, the author also examines the other side of the argument, specifically the perils of polarisation. In doing so, he offers a critical view of certain aspects of the policies of social media companies that seek to offer a “personalized experience” which he argues risks keeping users in an “information cocoon”. However, he notes that there are other policies that counter this trend, which instead seek to keep users informed, and which must be pursued in order to ensure that social media is a tool that can make democracy work better.

KEYWORDS

Social media | Democracy | Polarization

On balance, the question of whether social media platforms are good for democracy is easy. On balance, they are not merely good; they are terrific. For people to govern themselves, they need to have information. They also need to be able to convey it to others. Social media platforms make that tons easier.

There is a subtler point as well. When democracies are functioning properly, people's sufferings and challenges are not entirely private matters. Social media platforms help us alert one another to a million and one different problems. In the process, the existence of social media can prod citizens to seek solutions.

Consider the remarkable finding, by the economist Amartya Sen,² that in the history of the world, there has never been a famine in a system with a democratic press and free elections. A central reason is that famines are a product not only of a scarcity of food, but also a nation's failure to provide solutions. When the press is free, and when leaders are elected, leaders have a strong incentive to help.

Mental illness, chronic pain, loss of employment, vulnerability to crime, drugs in the family – information about all these spread via social media, and they can be reduced with sensible policies. When people can talk to each other, and disclose what they know to public officials, the whole world might change in a hurry.

But celebrations can be awfully boring, so let's hold the applause. Are automobiles good for transportation? Absolutely, but in the United States alone, over 35,000 people died in crashes in 2016.

Social media platforms are terrific for democracy in many ways, but pretty bad in others. And they remain a work-in-progress, not only because of new entrants, but also because the not-so-new ones (including Facebook) continue to evolve. What John Dewey said about my beloved country is true for social media as well: "The United States are not yet made; they are not a finished fact to be categorically assessed."

For social media and democracy, the equivalents of car crashes include false reports ("fake news") and the proliferation of information cocoons – and as a result, an increase in fragmentation, polarization and extremism. If you live in an information cocoon, you will believe many things that are false, and you will fail to learn countless things that are true. That's awful for democracy. And as we have seen, those with specific interests – including politicians and nations, such as Russia, seeking to disrupt democratic processes – can use social media to promote those interests.

This problem is linked to the phenomenon of group polarization³ – which takes hold when like-minded people talk to one another and end up thinking a more extreme version of what they thought before they started to talk. In fact that's a common outcome. At best, it's a problem. At worst, it's dangerous.

1 • The Perils of Personalization

A little over a year ago, an important Facebook post stated, “The goal of News Feed is to show people the stories that are most relevant to them.”⁴ It drew attention to Facebook’s “core values,” which require an emphasis on “what content is most important to you.”⁵

The post emphasized, “Something that one person finds informative or interesting may be different from what another person finds informative or interesting.” That’s true. The post added, “as News Feed evolves, we’ll continue building easy-to-use and powerful tools to give you the most personalized experience.”

Really? I hope not. From the standpoint of democracy, that’s a nightmare.

Instead of creating “the most personalized experience,” consider three principles for the communications environment in a system that aspires to democratic self-government.

First, citizens should be exposed to materials that they would not have chosen in advance. Serendipity is a good thing. Unplanned, unanticipated encounters are central to democracy itself. Such encounters often involve topics and points of view that people have not sought out and perhaps find quite irritating – but that might change their lives in fundamental ways. They are important partly to ensure against fragmentation, polarization, and extremism, which are predictable outcomes of any situation in which like-minded people speak only with themselves.

Second, many or most citizens should have a wide range of common experiences. Without shared experiences, a heterogeneous society will have a much more difficult time in addressing social problems. People might see each other as strangers, foreigners, possibly even enemies. Common experiences, emphatically including the common experiences made possible by social media, provide a form of social glue. Societies need such things.

Third, citizens should be in a position to distinguish between truth and falsehood – and to know when democratic processes are being manipulated. In democracies, of course, it is fair for people to disagree about what the truth is. But if people are knowingly spreading lies, and if nations are attempting to disrupt other nations, some process should be in place to enable citizens to have access to the truth.

2 • An Experiment in Colorado

To explore the issue of polarization, bear with me for a moment and consider a small experiment in democracy that I conducted with some colleagues over a decade ago.⁶ We brought about sixty American citizens together and assembled them into groups, generally consisting of six people.

We couldn't have known it at the time, but in a way, we were testing the same effect that social media has on the political process. Members of each group were asked to deliberate on three of the most controversial issues of the day: Should states allow same-sex couples to enter into civil unions? Should employers engage in affirmative action by giving a preference to members of traditionally disadvantaged groups? Should the United States sign an international treaty to combat global warming?

As the experiment was designed, some groups were "liberal" and others were "conservative" – drawn from residents of Boulder and Colorado Springs. (There was no mixing.) It is widely known that Boulder tends to be left-of-center and that Colorado Springs tends to be right-of-center. The groups were screened to ensure that their members conformed to these stereotypes. People were asked to state their opinions individually and anonymously (by writing them down in private) both before and after fifteen minutes of group discussion, and also to try to reach a public verdict before making their final anonymous statements as individuals.

The results were simple and disturbing. In almost every group, members ended up with more extreme positions after they spoke with one another. That's group polarization in action.

To offer a little more detail: Discussion made same-sex unions more popular among liberals; discussion made such unions less popular among conservatives. Liberals favored an international treaty to control climate change before discussion; they favored it more strongly after discussion. Conservatives were neutral on that treaty before discussion; they strongly opposed it after discussion.

Mildly favorable toward affirmative action before discussion, liberals became strongly favorable toward affirmative action after discussion. Firmly negative about affirmative action before discussion, conservatives became even more negative about affirmative action after discussion.

The experiment also made both liberal and conservative groups more ideologically homogeneous – and thus squelched internal diversity. Even in their anonymous statements, group members showed far more consensus after discussion than before. It follows that discussion helped to widen the rift between liberals and conservatives on all three issues. Before discussion, some liberal groups were, on some issues, fairly close to some conservative groups. The result of discussion was to divide them far more sharply.

Here's my point: Every minute of every day, the Colorado experiment is being replicated on social media, and in countless nations. Your Facebook friends may be a lot like one of the Colorado groups (only a lot bigger). On your Twitter feed, you might follow people who think like you do. As you read what they have to say, you'll end up more entrenched in your position. For many users, social media platforms are creating the equivalent of the Colorado experiment, and with damaging results for democracy.

Of course that isn't happening to everyone. Many social media feeds have a diversity of view; many people don't use social media to engage about politics at all. But if something like the Colorado experiments is happening to hundreds of millions of people, we might not understand each other – and the project of self-government, which is always hard, will get a lot harder. In many nations, that's happening today, and it will happen tomorrow. And while social media platforms are hardly responsible for the problem, they are not doing enough to help. What's more, the problem is compounded if self-interested people, companies, and nations are knowingly spreading lies to those who – they think – are especially likely to believe them.

3 • Better Architecture

These claims should not be misunderstood. By emphasizing the problems posed by knowing falsehoods, polarization, and information cocoons, I do not mean to suggest that things are worse now than they were in 1960, 1860, 1560, 1260, or the year before or after the birth of Jesus Christ. Information cocoons are as old as human history. The concern is not that things are getting worse. It is that the increased technological capacity for self-sorting and for personalization is creating serious problems. What social media platforms do is to make certain kinds of targeting and certain kinds of self-sorting, and especially self-sorting among hundreds, thousands, or millions of strangers a lot easier – easier than it has ever been. We have had plenty of targeting and echo chambers before, but targeting people who are especially likely to believe specific falsehoods, and one-click echo chambers, are something new.

Nor do I mean to suggest that with respect to polarization, social media are worse than newspapers, television stations, social clubs, sports teams, or neighborhoods. Empirical work continues to try to compare various sources of polarization, and it would be reckless to suggest that social media do the most damage. Countless people try to find diverse topics, and multiple points of view, and they use their Facebook pages and Twitter feeds for exactly that purpose. But still, countless people don't.

The good news is that social media platforms are hardly a finished fact to be categorically assessed. They are very much a work in progress.

The uses of Facebook, Twitter, Instagram, and others depends on a variety of factors, including individual choices, relevant algorithms, social norms, and the architectural judgments of the platform designers themselves. A News Feed, or anything like it, can promote information cocoons, or discourage them. Platforms can provide safeguards in the event that democratic processes are being intentionally disrupted or harmful falsehoods are spreading; it can help people find out what is true. (Of late, Facebook has been doing exactly that.⁷)

It could do much more. It could continue to focus on reducing personalization and more on producing information to people, expanding their horizons and potentially counteracting polarization.

It could find ways to work on issues of civility. It could promote a focus on substance, rather than who is on whose team, or which team is best. It could change its News Feed in ways that could combat rather than promote fragmentation. Recent work such as “Related Articles” points in exactly the right direction, with the inspiring, even defining words: “One of our main goals is to support an informed community on Facebook.”⁸ There’s much more to consider, but the recent work is an impressive start.

Much more is being done in this vein. To take just one example, Read Across the Aisle,⁹ an app, gives you an assortment of diverse news sources. As you read, it tells you whether you are going “blue” or “red” – and the slider moves more to the left, or to the right, if you’re living in an echo chamber. The whole goal is to help people to live outside it, and to escape any kind of filter bubble.

In the coming years, we will inevitably see a lot of experiments designed to help social media to counteract the recent threats and to make democracy work better. No one can predict what is on the horizon. That’s excellent news – and it has the advantage of being true.

As with automobiles, so with social media: We’re a lot better off with them than without them, but aggregate judgments are an obstacle to improvement. So John Dewey gets the last word: “I would not minimize the advance scored in substitution of methods of discussion and conference for the method of arbitrary rule. But the better is too often the enemy of the still better.”

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A VERY SECRET BALLOT

Lucy Purdon

- *A case study on the electoral process in Kenya* •

ABSTRACT

This essay focuses on elections in Kenya and analyses the use of technology and the exploitation of personal data in both the electoral process and campaigning. We only need to look to Kenya's election history to understand why it is important. The 2007/2008 election resulted in violence that killed over 1,000 people and displaced over 600,000. The 2013 election was relatively peaceful, but marked the rise of online "hate speech" that exploited ethnic tensions. The 2017 election result was annulled and rerun amidst great tension and a death toll of at least 33 people, while targeted online political adverts played on national fears of further violence. The essay concludes with an outline of the expected minimum protections and safeguards, which can be applied globally.

KEYWORDS

Kenya | Election | Voting | Politics | Biometric | Technology | Data | Profiling | Adverts | Campaigning | Targeted | Hacking | Security | Databases | Misinformation | Propaganda | Data protection | Data analytics

2018 is a bumper election year: Brazil, Colombia, Mexico, Pakistan, Zimbabwe and reportedly Thailand are due to have either general or presidential elections. The security and transparency of electoral processes is under global scrutiny. From the rushed adoption of biometric voter registration, the concerns over the security of voter registers and voting systems themselves, all the way to the phenomenon of targeted political advertising and misinformation campaigns on social media, there is much to distract voters from the single most important democratic question: Who will best represent you and your country?

This essay focuses on elections in Kenya and analyses the use of technology and the exploitation of personal data in both the electoral process and campaigning.

We only need to look to Kenya's election history to understand why analysis of the topic is important. The 2007/2008 election resulted in violence that killed over 1,000 people and displaced over 600,000. The 2013 election was relatively peaceful, but marked the rise of online "hate speech" that exploited ethnic tensions. The 2017 election result was annulled and rerun amidst great tension and a death toll of at least 33 people, while targeted online political adverts played on national fears of further violence.

This essay is based on an investigation by Privacy International during the 2017 presidential elections into the origins of two controversial online campaigns and the involvement of western data analytics companies.¹ This essay also draws on research published by the Centre for Intellectual Property and Information Technology (CIPIT) at Strathmore University in Kenya, in partnership with Privacy International, analysing the adoption and implementation of biometric voter registration.² In addition, the essay reflects the advocacy and policy work undertaken by Privacy International following the Facebook/Cambridge Analytica scandal that unfolded in March 2018, which again put the spotlight on Kenya's 2017 election.

1 • Biometric voter registration

When the Kenyan government announced the adoption of biometric voter registration (BVR) and authentication in the 2011 Elections Act, the motivations were reasonable. The recommendation to move to a new registration system was made by the Kriegler Commission, which was set up to investigate the Kenyan electoral system following the post-election violence of 2007/2008.³ The Kriegler Commission's report also provided a technical note on the features of biometric voter systems.⁴

It was thought that a BVR system, including voter fingerprints, in addition to verification at the polling station, would ensure one person one vote and avoid accusations of irregularities at the ballot box. The results could be transmitted directly to the electoral body, avoiding any tampering. There were concerns that votes were being cast on behalf of dead people who were still on the voter register. The Kriegler Commission estimated there were "probably" 1.2 million deceased persons included in the register in 2007,⁵ but there are no available numbers

to support the claim that votes were being cast on their behalf either in that election or subsequent elections. This concern continued with George Morara, chairman of the Kenyan National Commission on Human Rights (KNCHR) saying prior to the 2017 election that “In Kenya, people say the dead come back to vote, and then return to their graves.”⁶ But, was there an alternative, less expensive and intrusive solution than a BVR? Would a reformed birth and death register have solved the problem? This was never discussed.

Before embarking on such data intensive and potentially intrusive initiatives, governments need to ask, why do this at all? What problem is a biometric database, for example, trying to solve? How will it succeed? What are the consequences if it fails?

One major concern is that governments are keen to implement initiatives that collect a lot of personal data, but lack consideration for securing the personal data those projects generate. Biometric systems are one example of data-intensive systems that are potentially very intrusive. The concern from human rights advocates in South Africa, for example, is that when these systems are adopted in the absence of strong legal frameworks and strict safeguards, biometric technologies pose grave threats to privacy and personal security, as their application can be broadened to facilitate discrimination, profiling and mass surveillance.⁷ Another concern is that the varying accuracy and failure rates of the technology can lead to misidentification, fraud and civic exclusion, a central factor in the ongoing challenges we are currently seeing played out in India’s Supreme Court regarding the Aadhaar biometric scheme currently underway in India.⁸

In the case of Kenya, the technology failed massively during the 2013 election, and polling stations had to rely on the manual register to identify voters. In 2017, the system performed relatively well compared to the 2013 debacle,⁹ but as this essay will explore, the extent to which biometric technology has improved the credibility of democracy and Kenyan elections is still a contested claim, given a variety of other factors.

2 • Security of voter databases

Voter registration databases are often poorly secured and vulnerable. Data breaches occur globally, and the numbers involved are staggering. The personal information of over 93 million voters in Mexico,¹⁰ including home addresses, were openly published on the internet after being taken from a poorly secured government database. This can be highly sensitive information given the context; in Mexico for instance up to 100,000 people are reportedly kidnapped each year.¹¹ Similarly, the personal information of over 55 million Filipino voters were made publicly available online, the biggest data breach in the Philippines’ history.¹²

Research undertaken in Kenya to uncover whether the 2017 voter database was shared with third parties – and if so by whom – revealed the register was openly available for sale with no protections or safeguards. Consequently, voters received unsolicited text messages from

candidates, identifying the receiver by name, constituency and even local polling station.¹³ Already, we see that these technological applications are far from restoring much needed trust.

3 • The problem with the lack of data protection

Kenya does not have a comprehensive data protection law which would compel any entity – public or private – to respect fundamental data protection standards. This would include detailing what is collected, the purpose of collection, how it will be stored and with whom it will be shared. Under new data protection laws in Europe for example, entities must also provide the legal basis for collection and obtaining informed consent from the individual, in particular for the processing of sensitive personal data, such as biometric data. Without appropriate data protection laws, individuals are left vulnerable to excessive data being collected about them, without their consent and used in ways they are not aware of. When companies collect data in countries with insufficient legislation and share it with third parties, it is unclear what standards they, and these third parties, are holding themselves to, if any. Where data is generated, individuals should be able to find out which organisations and companies hold what kinds of data about them and what they use it for. Having a law on the books is one thing, but it must also be effectively implemented. An essential part is an independent authority which is properly resourced and able to investigate complaints.

Would data protection have helped the situations outlined in this essay? It might have made the Kenyan government think twice before implementing the system the way they did. It would make it easier for Kenyans to exercise their rights and get answers, such as finding out what data was collected, how it was used, how long it was stored, and with whom it was shared.

The next two sections explore this issue in a different context.

4 • Misinformation and Propaganda

In countries across the world, the spread of misinformation and propaganda during election time has been a problem for decades, however it received little international attention or concern. Frustratingly, when it recently became a problem in the United States of America (US) during the 2016 presidential election and also in Europe around Brexit, it suddenly had a title: “fake news”.¹⁴

The second decade of the 21st century saw social media hailed as sparking revolutions and bringing about democratic change.¹⁵ But less attention was paid to the political and social tensions amplified by the same spaces. Silicon Valley failed to predict, comprehend or even attempt to understand what was happening around the world, nor heed repeated warnings that content designed to stir up ethnic tension posted on their platforms had a real world effect. In Kenya for example, text messages, blogs and radio had already been found to have

played a role in the post-election violence of the 2007/2008 elections.¹⁶ The 2013 Kenya election was also rife with divisive and inflammatory content on social media, where it found an outlet following tighter controls on print media and telecommunications.¹⁷

Online space is a magnet for all come election time. Political campaigning has always been a messy affair and while data driven political campaigns are not new, the granularity of data available and the potential power to sway or suppress voters through that data is, particularly through targeted political advertising online.

5 • Targeted Political Advertising Based on Data Analytics

Political campaigns around the world have quickly turned into sophisticated data operations. The way in which data is used in elections and political campaigns is potentially highly privacy invasive, raises important security questions, and has the potential to undermine faith in the democratic process.

Social media platforms make money from targeted advertising, based on the user information they collect, including demographic information, location and detailed interests.¹⁸ In the same way that online advertising targets people based on interests, personality and mood to ultimately sell products, political parties persuade you to buy what they are selling come election time.

In short, this means that companies, many of which you have probably never heard of, are able to learn about your habits, personality, sexual interests, political beliefs and more to make predictions about your personality and behaviour. This is known as “profiling”.¹⁹ Profiling generates highly sensitive inferences and predictions about people’s personality, behaviour and beliefs. Voters are ultimately being profiled based on information they did not necessarily know they had given up. This is especially concerning when sensitive information, such as political beliefs or personality traits are inferred from completely unrelated data using profiling.

Political parties contesting elections directly employ data analytics and digital media firms, who are adept at profiling, to run their online campaigns. These firms, in turn, may work directly with online platforms, like Facebook, to craft micro-targeted political messages that are designed to influence the way you vote, based on information collected and inferred about you. They frequently rely on commercially available data from data brokers, or publicly available records and data that is accessible online to build highly intimate profiles, including conclusions about your personality, fears and emotional state. Targeted campaign messages and adverts can then flood online search results and social media feeds. The 2016 Trump presidential campaign, for example, used up to 40-50,000 variants of the same online messages every day in order to target different groups of people.²⁰ But the details behind this process are often unclear – exactly who these companies work for, what they do, how they do it, what data they collect and how successful they are, are all closely guarded secrets.

In early 2017, Privacy International investigated a report that the United Kingdom (UK) based data analytics company Cambridge Analytica was discreetly working for the ruling Jubilee Party in the run up to the Kenyan presidential elections. We wrote to the company in May 2017 to ask for clarification on its role and how, as a British company, it was adhering to data protection laws when Kenya has none.²¹ We were concerned that the potential data gathering could be extremely intrusive, including sensitive personal data such as a person's ethnicity. In countries where there is history of ethnic tensions resulting in political violence, such as Kenya, campaigning based on data analytics and profiling is untested ground, fraught with great risk. We received no response.

Our sources confirmed that Cambridge Analytica was indeed working for the Jubilee Party, gathering survey data to aid the campaign and managing the image of the President. Around the same time, two inflammatory online campaigns, The Real Raila and Uhuru For Us, targeting the Kenyan opposition began circulating online in Kenya. Their creation was claimed by "a group of diverse and concerned young Kenyans", and played heavily on Kenya's violent past elections and fears of any future violence. The Real Raila campaign claimed that opposition candidate Raila Odinga's administration would "remove whole tribes".²² As these videos dominated Google searches and flooded Twitter, Facebook and YouTube accounts across the country during 2017, Privacy International conducted an in depth investigation²³ into the origins of the videos.

As it had already been established that Cambridge Analytica was working for the Jubilee Party, we expected some involvement on the part of the company in the creation of the videos. However, Privacy International's investigation revealed that Harris Media LLC created the videos, a Texas based agency that uses data analytics to create political campaigns. On this occasion, targeting was done through judicious use of Google AdWords, where paid-for ads for the campaigns were displayed above Google search results for many Kenyan election-related search terms, such as "Kenyan election date".

However, it was only in March 2018, following the investigations by The Guardian newspaper and Channel 4 News in the UK that Cambridge Analytica was catapulted to the top of the news agenda. A whistleblower came forward describing the "harvesting" of Facebook profiles to target voters during the 2016 US presidential election.²⁴ A Channel 4 News undercover investigation secretly filmed Cambridge Analytica employees boasting about their involvement in elections, including in Kenya. Mark Turnbull, the Managing Director of Cambridge Analytica Political, a subsidiary of Cambridge Analytica, confirmed this and more in the undercover video,

*We have rebranded their entire party twice, written their manifesto, done two rounds of 50,000 surveys, huge amount of research, analysis, messaging and then we'd write all the speeches and stage the whole thing, so just about every element of his campaign.*²⁵

Further Channel 4 News reporting that focused on Kenya also highlighted the spread of the online videos²⁶ detailed in our earlier investigation. What remained unanswered however was exactly what kind of data was collected on Kenyan citizens, from what sources and what Cambridge Analytica's specific involvement was. We do not know, for example, what data may have been collected or shared by either Facebook, other platforms, or other data analytics firms working in Kenya during the elections.²⁷

However, the scandal spawned a wave of welcome analysis and discussion on corporate behavior and a lack of safeguards for personal data all over Africa.²⁸ This currently unfolding story is indicative of a powerful and opaque corporate ecosystem behind targeted online political advertising which thrives on our personal data – either to sell us soap or persuade us who to vote for.

6 • Transparency in political campaigning

In countries with a history of political violence, it should not be “business as usual”. Ethnicity in Kenya, for example, is still a sensitive issue and elections are a time of heightened tension. Therefore, at the very least, companies in this ecosystem must be transparent about their role in online political campaigns. Kenyan electoral laws do not clearly require candidates to acknowledge campaigns or adverts they have funded. The companies involved are not forthcoming about their role. It is essential for political campaigns to be run in a transparent and accountable way, particularly when the stakes are this high in a country like Kenya. Currently, targeted online political advertising is neither.

It is not controversial to demand that political parties be transparent about the marketing campaigns they have funded, how they have developed targeted messages, or with which companies they have worked. When it is not transparent who has funded or created campaign adverts, there is no accountability.

Healthy democracies are not just about voting. Kenya is only one country where biometric voter registration and authentication exists with challenges, and it will take time to untangle the web of companies exploiting personal data for campaigns paid for by political parties. The difficulty, of course, is that those that benefit are political parties themselves. Why would they change a system that helps them get into power?

Kenyans must wait a few years until the next election. For all those with elections this year, protect it by demanding transparency and proper protections, from registering to casting your vote. It counts, more than ever.

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ARE WE GOING TO FEMINISE THE INTERNET?

Mariana Valente & Natália Neris

- *The role and impact of online activism* •
for feminisms in Brazil

ABSTRACT

For social movements, the internet has become a powerful tool. Feminisms have been appropriating it since the 1990s, which is when they began formulating a cyberfeminism that affirmed the exceptional nature of the digital world. Changes over the past 20 years have made the internet part of our lives and our lives are part of the internet. Today, the world wide web is a medium for feminist media. It is the stage for online mobilisations via hashtags and organising street protests. And it is the infrastructure for the formulation of new ideas and the production of a feminist counterpublic that challenges the discourse of the dominant public sphere. Through the internet, feminists have revitalised the debate, revamped practices and succeeded in forcing mainstream media to pay attention to their demands. Based on an analysis of shares on Facebook during the week of International Women's Day in 2018 in Brazil, we present an overview of the reach and the clash between discourses and counter discourses. Our findings point the way to an agenda for research and actions, which involves everything from how platforms function to policies on digital security and access to the internet and knowledge.

KEYWORDS

Feminisms | Online activism | Gender and internet

There is nothing new in the fact that the internet is central to social mobilisations today. It would also appear that one only has to have been on the internet, and paid attention, for close to a decade to notice that agendas related to racial, sexual and gender minorities and their voices have found new and broader spaces for their expression and dissemination.

Furthermore, it no longer makes sense to talk about a “virtual world” or “cyberspace”, as opposed to a “real world”, like it once did.¹ With the advances of digital technology in different aspects of our lives and the constant use of instant online forms of communication that many people do not even associate with the internet, these stagnant divisions do not reflect the way people experience and appropriate technology. This also goes for activism and social movements for which there is a strong connection between their online and offline forms of action. Brazilian feminisms are an excellent example for understanding the paradoxes involved in the use of the internet for social mobilisation in the late 2010s, due to their vastness and diversity.

Feminists’ struggle to influence and define the agenda of the media and communication processes is also nothing new. Since at least the second wave,² the movement’s organising process has involved reflecting critically on the media and developing alternative media channels to disseminate information on certain issues and give voice to the marginalised. In Brazil, since the 1970s, newspapers such as *Brasil Mulher* (1975-1979), *Nós Mulheres* (1976-1978) and *Mulherio* (1981-1987) have played this role.³ The internet reinforced these practices, yet via its own physical structure and logic, which allow for communication of “everyone with everyone” – in the highest form of what Castells calls “mass self-communication”.⁴ Sending messages via the web is decentralised and reception is fragmented. In addition to its use as “feminist media”, the internet and the web applications designed for it have permitted the creation of new formats for interaction: meetings, exchanges and connections take place regardless of people’s geographic location among individuals who share the same interests, but who may never meet in person. In fact, the internet has made transnational exchanges possible. This has had impacts on the transnationalisation of feminism, which Nancy Fraser claims is characteristic of a “third wave”.⁵ In spaces built on affinities, such as Facebook groups created to discuss feminist issues, challenges to the hegemonic meanings of gender identities and sexualities multiply and become fragmented. This reflects, but also affects, the intensity of social changes we are currently experiencing: in the realm of multilateral communications, the possibilities of encountering new meanings for the world are infinite.⁶

Feminist mobilisations via the internet began in the 1990s under the umbrella of *cyber-feminism* – a set of intellectual and artistic products influenced by Donna Haraway’s metaphor of the cyborg.⁷ These works were linked to the digital culture and have been said to be, *a posteriori*, excessively optimistic: the internet was, in itself, believed to have enormous potential for the liberation of women.⁸ From the 2000s on, the relationship between feminism and the internet became more diversified and complex,⁹ as it incorporated discussions on intersectionality, women’s participation in technological development¹⁰ (including digital) and the extension of discrimination and violence to women’s lives online.

Twenty years later, the internet has become an important element for a broad range of feminist coalitions and generated major debate. Furthermore, the connections between digital networks and the street is central for understanding the state of the feminist movement in Brazil and, we dare say, perhaps everywhere else. Based on a database built to register feminist protests in the country from 2003 to 2017, which has over 400 entries, Medeiros and Fanti identified nothing less than a “return to the streets” in 2011 with the emergence of the SlutWalk.¹¹ This movement was born in Toronto, Canada when, in the midst of attacks on women at a university campus, a police officer stated that to prevent violence, women should stop dressing like sluts. In April 2011, a protest was held to defend women’s autonomy over their bodies and sexuality. The movement rapidly spread around the world, with SlutWalks being organised everywhere, including Brazil. The use of the internet and social media was key in the organisation, mobilisation and dissemination of information on these protests. It was always closely linked to physical spaces: the marches were organised locally in each city, involved the occupation of public space and used the body as territories of political expression.¹² It is no surprise that SlutWalk is being broadly studied and serves as the reference for many feminisms today.¹³

These mobilisations are highly publicised and covered by mainstream media. There are also blogs and social media pages fulfilling the function of feminist media that are also the object of research and analysis. Examples include *Blogueiras Feministas* (Feminist Bloggers),¹⁴ o *Lugar de Mulher* (A Woman’s Place),¹⁵ the *Feminismo Sem Demagogia* (Feminism without Demagogy) Facebook page and Moça, *Você é Machista* (Girl, You’re Sexist).¹⁶ But the internet has also played a role in a less visible kind of social organising. For example, Medeiros¹⁷ conducted an ethnographic study that shows that social media was key for the founding of feminist groups in the outskirts of the city of São Paulo, and sometimes fulfils the crucial task of enabling people to overcome geographic limitations. The group of women graffiti artists, the M.A.N.A Crew (Mulher Atitude Negritude e Arte, or Women Attitude Negritude and Art) was started when two of its leaders met on Instagram. One lived in the Ermelino Matarrazo district and the other, in Cidade Tiradentes – areas located in the periphery of São Paulo, nearly 20 km from one another. Also, even though the planning of the First National March of Black Women held in Brasília in 2015 was done during an in-person meeting, it was through their communication on social media that the organisers and other women activists mobilised activists from all over the country.¹⁸

As we stated above, in addition to serving as a medium for feminist media and its usefulness for the coordination of meetings and actions that take place offline, social media itself is a space for activism and debate¹⁹ and these interactions have renewed practices and discourses. Lawrence and Ringrose²⁰ observed, for example, the development of a culture of denunciation that is particular to social media: by weaving connections and raising voices that previously did not have a media structure to amplify them (due to media concentration and the practice of broadcasting a very limited range of voices), women can quickly expose sexism and misogyny in culture and behaviour and react to violence and male domination. One of the popular forms of this kind

of mobilisation are campaigns that use hashtags to organise reporting: in Brazil, this was the case of the *#MeuPrimeiroAssédio* (*#MyFirstHarassment*), *#MeuAmigoSecreto* (*#MySecretFriend*), *#EuNãoMereçoSerEstuprada* (*#IDoNotDeserveToBeRaped*), and *#NãoPoetizeOMachismo* (*#Don'tPoeticiseSexism*) campaigns.²¹

Thus, while we recognise that online mobilising is intimately linked to action on the streets, it is clear that for the feminist movement, social media functions as *centres for the elaboration of discourse*, as Medeiros points out.²² The internet is providing the infrastructure needed to promote *direct and immediate* access to debates and texts. By doing so, it is substituting what was said to be a central characteristic of the previous cycle of Brazilian feminism identified as *institutional feminism: mediation* by “external” feminist technical advisory groups, such as specialised NGOs.

The relationship between women and their rights and the internet has, however, proven to be extremely paradoxical: social media has also become a hostile space imbued with extreme risks for women. Women are disproportionately affected by trolls²³ and online aggression,²⁴ and gender violence practices such as the non-consensual dissemination of intimate images (NCII) – a phenomenon known as *revenge porn*²⁵ – have reached alarming levels. Violence against women on the internet has taken on multiple and multifaceted forms.²⁶ There is also plenty of evidence that they are more common and have more severe consequences when they affect black and indigenous women, people living with disabilities, lesbians, bisexuals and transsexuals. For years, the debate held at the intersection between digital rights and feminisms discussed which aspect should be prioritised: the opportunities for emancipation that the internet offers social movements, or the violence and risks involved in the use of social media.²⁷ Over the past five years, it gradually became clear that it is not a matter of choosing one or the other, but rather recognising that one *and* the other are both present.

This was due to a change not only in discourse, but also in the internet itself. Thanks to advances in technology, over 20 years, the internet ceased to be a mere set of forums and chats for most people. It now allows people to create true *digital selves* who are individualisable and enriched with an abundance of images, videos and precise information on location, preferences and activities. We can call this change *embodiment*: while the online experience in the 1990s could be dissociated from the material existence of the people who communicated on the web to a certain extent, the digital world later penetrated people's bodies and people's bodies entered the digital world. This brought questions of identity and sexuality to the centre of people's experience on social media, which is inseparable from their experience outside of it.²⁸ And discrimination and violence against women's bodies easily found their double in the digital world.

This paradox can be more easily understood if we adopt Nancy Fraser's perspective on the public sphere, which is a criticism of Jürgen Habermas's earlier formulation of the concept. Fraser argues that there is no one, single public sphere that contemplates all the discursive

exchanges in any given society – nor would it be desirable to have only one – but rather a plurality of publics that compete with one another. And, throughout history, there have always been what the author calls *subaltern counterpublics* – that is, alternative discursive arenas in which members of subaltern groups invent their counter discourses and “formulate oppositional interpretations of their identities, interests and needs”.²⁹ This was the case of US feminists at the end of the 20th century who organised their own means of communication, publishing houses, book stores, academic programmes, conferences and meeting places and developed a language that conveys demands and works to reduce inequality – terms such as “rape culture”, “double day” and “sexual harassment” come to mind. This space for elaborating collective self-definitions is also a reality for black women. According to Patricia Hill Collins, in *safe spaces*, “Black women ‘observe the feminine images of the ‘larger’ culture, realize that these models are at best unsuitable and at worst destructive to them, and go about the business of fashioning themselves after the prevalent, historical black female role models in their own community’”.³⁰ Hill Collins identified these safe spaces in writing, music (especially in blues) and black women’s relationships with one another in the 20th century in the United States.

Today, on social media, feminist demands are being formulated according to the logic of a subaltern counterpublic, which although it has not been generalised, it does negotiate with the hegemonic public sphere and other counterpublics in its quest to expand continuously. And, in this negotiating process, confrontations and reactions occur.

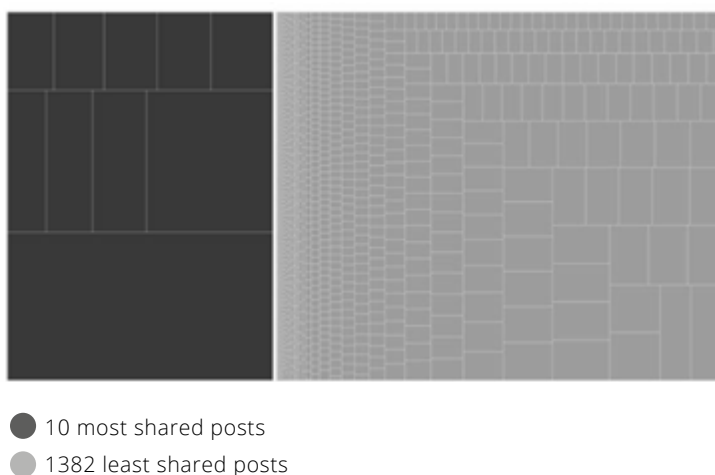
The coexistence of these public spheres on the internet is not transparent, as one might think. One of the reasons for this is the “filter bubble” – a concept elaborated by Eli Pariser³¹ to explain how algorithms personalise the experience on digital platforms and work to expose people mostly to content that is close to their preferences and opinions. It is in this context that observations of interactions on social media gain importance. Using data from the Political Debate in the Digital World Monitor from the University of São Paulo,³² we conducted a study on communication on gender issues on Facebook during the week of International Women’s Day (March 8) in 2018 – a period in which the debate on issues related to women and their rights intensifies. The Political Debate in the Digital World Monitor gathers information on posts shared on over 500 Facebook pages that focus on the political debate in Brazil, which it then classifies into two categories. The categories are a reflection of how the researchers for the project have come to understand, based on the data, the current polarisation in the country’s political debate: on one hand, there is the anti-PT (Workers’ Party) side formed by liberals, conservatives, people calling for military intervention and political parties from the current government’s base of allies; on the other hand is the anti-anti-PT side, made up of NGOs, opposition parties, left-wing groups and social movements, including the pages of the feminist, anti-racist and LGBT movement. This polarisation can clearly be observed from the activity on these Facebook pages, as individuals who follow some pages also follow others from the same side, but rarely follow pages from the opposite side.

Many individuals who like posts on pages defending liberal positions on the economy also like posts on pages with conservative positions on customs. On the other hand, the ones who like posts on left-wing pages also like posts on feminist pages. One group of pages is distanced from the other: it is very rare that someone who likes content shared on a liberal page in economic terms also likes posts on a feminist page.³³

Resorting to a simplification, we identified one pole as “progressive” and the other as “conservative”. Feminist pages were included in the progressive pole – in other words, individuals who engage with them also engage on other issues from this field. The Political Debate in the Digital World Monitor also collects news shared on Facebook from 96 news sites.

We filtered all the posts from pages and news shared that week containing the words “woman”, “feminism”, “gender” and “harassment”,³⁴ and obtained 1,382 posts³⁵ and 625 shares of news reports.³⁶ As feminist researchers and members of networks of human rights defenders, we expected to find a series of debates on women’s rights on the progressive side and to be able to map the issues that mobilised the subaltern counterpublic that discusses feminism on the internet the most. The results showed a completely different picture: even during such a particular week, the debate was divided between the two poles and the pages that stood out the most were actually from the conservative side, which, largely treated feminists’ demands with irony.

The first important observation to be made on the patterns of the debate is that while we are talking about a large number of posts with different content being shared, their reach varies greatly. The number of shares for each post varies from 14,175 shares to only 1; the number of times the ten most shared posts was shared is practically the equivalent of the total shares for the 1,382 remaining posts.³⁷ The graph below helps to visualise these proportions:



The majority of the posts with the highest number of shares came from pages not on the progressive side, but rather the conservative side: Jair Bolsonaro Presidente 2018 (Jair Bolsonaro for President 2018),³⁸ followed by Socialista de Iphone (Iphone Socialists), Movimento Brasil Livre (Free Brazil Movement), Movimento Contra-Corrupção e Anti-PT (Anti-corruption and Anti-PT Movement). Three of the posts shared the most came from pages on the progressive side: Brasil 247, Dilma Resistente (Dilma Resists) and Manuela D'Ávila.



Post with over 6,000 shares (post with the second highest number of shares)

Translation of text in post:

Congratulations, girls!!!

Translation of text in image:

Being a woman is not being a man. It is about being a mother and not a father. Because a father is not a mother and a mother is a woman. Because a woman is never a father. A father is not a woman because the woman was not the father. But a father is not a mother either. Happy Women's Day!



Post with over 2,000 shares (post with the third highest number of shares)

Translation of text in post:

Congratulations to all the great women in this country!

Translation of text in image:

CONGRATULATIONS TO ALL THE GREAT NOT YOU (repetido nas 4 fotos) WOMEN IN OUR BRAZIL!

ARE WE GOING TO FEMINISE THE INTERNET?



Post with over 1,000 shares (post with the fourth highest number of shares)

Translation of text in post:

So that women never forget this character...

By the way,

who get women pregnant? The stork?

Translation of text in image:

WOMEN

"Women should earn less because they get pregnant"

REMEMBER

Just a reminder



Post with over 1,000 shares (post with the fifth highest number of shares)

Translation of text in post:

If you are a woman who gets pregnant and breastfeeds, take a close look at these women!

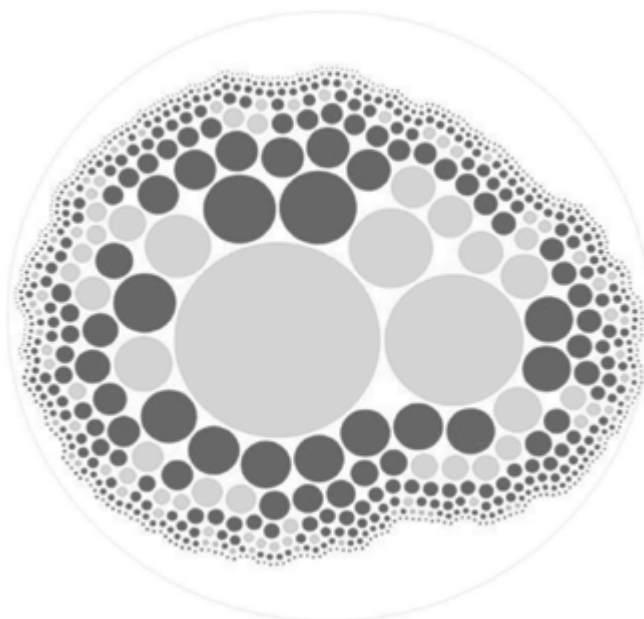
Translation of text in image:

Senators who voted in favour of pregnant women working and breastfeeding in unsanitary conditions

In addition to the concentration of the impact of posts from conservative pages, one can also note that during that week, the debate on women was largely monopolised by issues that have more to do with the political polarisation affecting Brazil than ones related to women's rights *per se*. The second most shared post is a meme satirising former president Dilma Rousseff, which contains a confused and poorly articulated statement on what it means to be a woman. While the meme in question is a joke about the way she talks, it is actually mocking the women's agenda by evoking the only woman president Brazil has had on March 8. The third most shared post separates women who "deserve to be congratulated" from those who do not based on their position in the polarised political field: the ones from the conservative camp are the real women who should be celebrated. Even on the progressive side, the post with the most shares are the memes celebrating women politicians who voted a certain way, or campaigning against conservative candidates who attack women's demands. None of the most shared posts transcend the focus on individuals and this short-sighted polarisation.³⁹

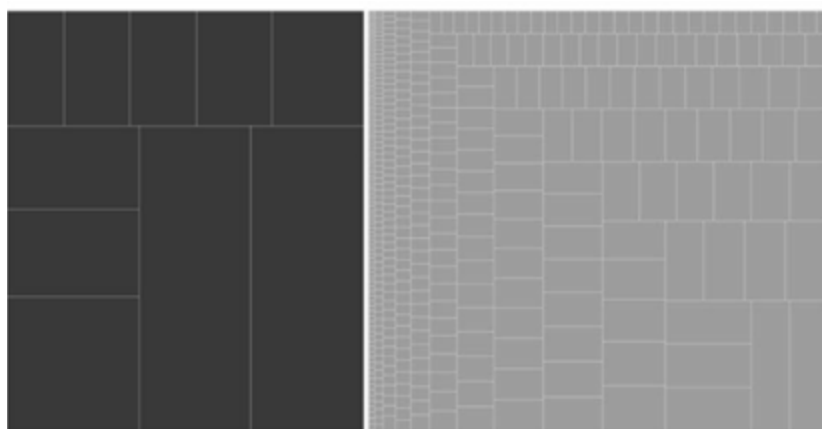
When we separate the posts according to the political spectrum of the pages, as classified by the Political Debate in the Digital World Monitor, other patterns appear. Much more content was

produced by pages from the progressive side, which engaged in more intense activism during the period. This was what we expected, as feminist pages are part of this group. Even so, the posts from conservative pages got many more shares (and, in fact, appear at the top of the list):⁴⁰



- Posts from pages from the conservative side
- Posts from pages from the progressive side

In the case of the sharing of news reports, we also observed – though to a lesser extent – that shares were highly concentrated in only a few links:



- 10 news items shared the most
- 615 news items shared the least

The most shared news reports came from mainstream media outlets, namely the Estado de São Paulo, G1 (Globo), R7 (Record), Veja and BBC Brazil websites.⁴¹ The two news items that were circulated the most got a little over 47,000 shares. The articles were about the launch of Barbie dolls made in the image of three famous women (Frida Kahlo, Amelia Earhart and Katherine Johnson) and a list from the BuzzFeed website with testimonies on inequality in the labour market shared by women in response to a question launched by the Ministry of Labour on Twitter. The third news item with the most shares told the story of a woman pilot who flew the presidential plane, which had a little over 24,000 shares; the fourth reproduced the story on the launch of the Barbie dolls, and the fifth presented the historical origins of March 8. Therefore, topics related to women's rights and structural issues (femicides, transphobia, inequalities on the labour market, approval of laws to combat violence and the trajectory of black women) shared space with an article with commercial content. In any case, contrary to what happened in the debate generated by Facebook pages, the media is still strongly influenced by feminist activism.

The observation of patterns of communication on Facebook during the week of the 2018 International Women's Day concretises a part of the discussion on the relation between feminist activism and the internet. On one hand, there is the power of online activism and its capacity to influence mainstream media, whose content is then shared on the internet. On the other, hegemonic (and anti-equality) discourses on women and their demands continue to have considerable reach in the conversations between Facebook page administrators.

Even though more counter discourse content was produced, conservative narratives continue to be heard more. It should be said that in addition to the reasons rooted in society, what is at stake here are the issues related to specific ways of circulating information on the internet, or how they are or can be manipulated by actors from the field of communications. We know that algorithms determine the reach of the information posted and that, on a platform like Facebook, increasing one's reach has to do with mastering a certain kind of language that "goes viral" and with using financial resources to boost content and pages. We also know that these rules lack transparency and are formulated with little interference from users. This kind of interference happens occasionally when the public manages to exert considerable pressure and affect the companies' public image. In a context where online activities are highly concentrated on a few platforms, as in the case of Facebook for social media and YouTube for videos, the boundaries of the digital debate also remain concentrated in only a handful of corporate actors.

Another point is that content on individual women in these pages' posts leads to a proliferation of misogynous hate speech in the comments in the form of swearing, attacks and disqualifications. Our observations indicate that women communicators in the broad sense of the term – that is, activists, journalists, actors and politicians – have been the prime target for this type of violence, regardless of whether they are talking about feminism or not.⁴² The platforms, for their part, are finding it a major challenge to define and ban hate speech, as the sectors defending conservative agendas that infringe the freedom of expression can capitalise

on demands for censorship – which victimises us as women once again. What is more, even if the challenges are big, the platforms are private and lack transparency, and the raising of our voices is increasingly met with virtual attacks, we believe that we cannot give up these spaces, which have allowed this subaltern counterpublic to grow. This means we must fight for these spaces and demand that the platforms adopt gender-sensitive policies, reflect on and formulate digital security measures for subaltern groups, invest in real access to the internet for women, especially black and indigenous women, and take policies of access to knowledge seriously. This is the broad agenda of research and actions needed to feminise the internet and that we hope to continue to build with different men and women actors.

NOTES

1 • The reference to *cyberspace* used to be very popular, starting with the works of influential theorists such as Pierre Lévy. In a series of books, Lévy described and analysed “cyberspace” as an element that introduced communication ‘for everyone with everyone’ and that would lead to the emergence of a collective intelligence thanks to the use of a series of intellectual tools, devices and technologies. He also developed the “virtual” concept based on the works of Gilles Deleuze. See Pierre Lévy, *O que É o Virtual?* (São Paulo: Editora 34, 2004); Pierre Lévy, *Inteligência Coletiva: Para uma Antropologia do Ciberespaço* (São Paulo: Loyola, 2009); Pierre Lévy, *Cibercultura* (São Paulo: Editora 34, 2011).

2 • The division of the feminist movement into “waves” is common in the literature on this subject. The “second wave” in Brazil is said to have begun in the 1970s. Its predecessor was the period that went from the end of the 19th century to the 1930s during which Brazilian women won, for example, the right to vote and organise themselves to obtain better working conditions (Fabíola

Fanti, “Mobilização Social e Luta por Direitos: Um Estudo Sobre o Movimento Feminista,” PhD thesis (Universidade Estadual de Campinas, Instituto de Filosofia e Ciências Humanas, 2016).

3 • Tainan Pauli Tomazetti and Liliâne Dutra Brignol, “O Feminismo Contemporâneo a (Re) configuração de um Terreno Comunicativo para as Políticas de Gênero na Era Digital” (Anais da Alcar, UFRGS, Porto Alegre, RS, 2015); even though our article does not address this specific topic, it is important to highlight that historically, the concern with the elaboration of their own narratives about themselves has been central for black activism. This can be seen, for example, in the movement’s intense effort to produce newspapers since the late 19th century (Natália Neris, “A Tradição de se Expressar: As Letras e as Lutas de Negras e Negros nos Meios de Comunicação no Brasil,” in *Desafios à Liberdade de Expressão no Século XXI*, Artigo 19 (2018): 20-23). The same holds for LGBT activism, especially since the era of the military regime (Flavia Peret, *Imprensa Gay no Brasil entre Militância e Consumo* [São Paulo: Publifolha, 2012]).

4 • Manuel Castells, *A Galáxia da Internet: Reflexões Sobre a Internet, os Negócios e a Sociedade* (Rio de Janeiro: Zahar, 2003).

5 • "Today, accordingly, feminist claims for redistribution and recognition are linked increasingly to struggles to change the frame. Faced with transnationalised production, many feminists eschew the assumption of national economies. In Europe, for example, feminists target the economic policies and structures of the European Union, while feminist currents among the anti-World Trade Organization protestors are challenging the governance structures of the global economy. Analogously, feminist struggles for recognition increasingly look beyond the territorial state. Under the umbrella slogan, "women's rights are human rights", feminists throughout the world are linking struggles against local patriarchal practices to campaigns to reform international law" (Nancy Fraser, "Mapeando a Imaginação Feminista: Da Redistribuição ao Reconhecimento e à Representação," *Revista Estudos Feministas* 15, no. 2 [2007]).

6 • Fabiana Poços Biondo, "Liberte-se dos Rótulos: Questões de Gênero e Sexualidade em Práticas de Letramento em Comunidades Ativistas do Facebook," *RBLA* 15, no. 1 (2015).

7 • Donna Haraway, "A Manifesto for Cyborgs: Science, Technology, and Socialist Feminism in the 1980s," *Socialist Review* 80 (1985): 65-108.

8 • Judy Wajcman, "Feminist Theories of Technology," *Cambridge Journal of Economics* 34, no. 1 (2010): 143-152.

9 • Carolina Branco de Castro Ferreira, "Feminismos Web: Linhas de Ação e Maneiras de Atuação no Debate Feminista Contemporâneo," *Cadernos Pagu*, no. 44 (2015).

10 • See, for example: Judy Wajcman, "Reflections on Gender and Technology: In What State is the Art?," *Social Studies of Science* 30, no. 3 (2000): 447-64; Graciela Selaimen, "Mulheres Desenvolvedoras de Tecnologias - O Desafio das Histórias Invisíveis que Moram entre Zeros e Uns," in *Internet em*

Código Feminino, Graciela Natahnson (Buenos Aires: La Crujía Ediciones, 2013).

11 • It is not that there were no street demonstrations in the previous period. There were protests, but they were different in nature: their numbers were low and the large majority of them were organised by the Workers' Party (PT), which is usually called "campo democrático-popular" (Jonas Marcondes Sarubi de Medeiros and Fabíola Fanti, "A Gênese da "Primavera Feminista" no Brasil: A Emergência de Novos Sujeitos Coletivos," [project presented to the Esfera Pública e Cultura Política do Núcleo Direito e Democracia do CEBRAP subgrupo, 2018]).

12 • *Ibid.*

13 • For example: Raquel Costa Goldfarb, "Sim, Eu Sou Vadia: Uma Etnografia do Coletivo Marcha das Vadias na Paraíba," PhD thesis (presented in the area of gender studies at DINTER - UFSC, IFPB, IFPE, IFAL, 2014); Carla de Castro Gomes, "Corpo e Identidade no Movimento Feminista Brasileiro Contemporâneo: O Caso da Marcha das Vadias" (Anais do 40o Encontro Anual da Anpocs, Caxambu, MG, 2016); Camila Carolina Hildebrand Galetti, "Corpo e Feminismo: A Marcha das Vadias de Campinas/SP," master's thesis (Departamento de Sociologia da Universidade de Brasília/UnB, 2016); Tainan Pauli Tomazetti, "Movimentos Sociais em Rede: A Marcha das Vadias - SM e a Experiência do Feminismo em Redes de Comunicação," master's thesis (Graduate Programme in Communications at the Universidade Federal de Santa Maria - UFSM, RS, 2015); Laís Modelli Rodrigues and Caroline Kraus Luvizotto, "Feminismo na Internet: O Caso do Coletivo Marcha das Vadias e Sua Página no Facebook," *Colloquium Humanarium* 11, special edition (July-December 2014).

14 • Laís Modelli Rodrigues, "Blogs Coletivos Feministas: Um Estudo Sobre o Feminismo Brasileiro na Era das Redes Sociais na Internet," master's thesis (Graduate Programme in Communications at the Faculdade de Arquitetura, Artes e Comunicação, Universidade Estadual Paulista "Júlio de Mesquita Filho", 2016); Ferreira,

"Feminismos Web," 2015.

15 • Daniele Ferreira Seridório, Douglas Alves Graciano, Eduardo Magalhães, Guilherme Henrique Vicente and Josiane de Cássia Lopes, "Movimento Feminista em Rede: Análise do Blog e do Facebook 'Lugar de Mulher'," *Pensamento Plural*, no. 17 (2015).

16 • Nícia de Oliveira Santos and Jordana Fonseca Barros, "O Movimento Feminista no Facebook: Uma Análise das Páginas Moça, Você é Machista e Feminismo sem Demagogia - Original" (work presented at the Simpósio Internacional de Tecnologia e Narrativas Digitais, UFMA, São Luís, MA, 2015).

17 • Jonas Marcondes Sarubi de Medeiros, "Microsociologia de Uma Esfera Pública Virtual: A Formação de Uma Rede Feminista Periférica na Internet" (Seminário FESPSP Cidades Conectadas: Os Desafios Sociais na Era das Redes, São Paulo, SP, 2016).

18 • Renata Barreto Malta and Laís Thaíse Batista Oliveira, "Enegrecendo as Redes: O Ativismo de Mulheres Negras no Espaço Virtual," *Gênero* 16, no. 2 (2016): 66.

19 • Castells, *A Galáxia da Internet*, 2003.

20 • Emilie Lawrence and Jessica Ringrose, "From Misandry Memes to Manspreading: How Social Media Feminism is Challenging Sexism" (A Collaborative Critical Sexology and Sex-Gen-in-the-South seminar, Critical Sexology, United Kingdom, 2016).

21 • In her research, Malcher (2016) focussed on this issue and identifies a paradoxical aspect of the debate: by transmitting simplified messages, hashtag campaigns have the power to reach individuals who do not identify with "traditional" feminist ideas, but they also reduce the struggle, as they reduce the complexity of the problems addressed. One example of this type of campaign was the one that used the *#EuNãoMereçoSerEstuprada* (*#IdoNotDeserveToBeRaped*) hashtag. It was launched in response to a study by IPEA (Instituto de Pesquisa Econômica Aplicada) that revealed that 65 per cent of Brazilians agreed with the

statement that a woman who shows her body deserves to be attacked. Starting with a photo posted by activist Nana Queiroz, thousands of women (including celebrities) began sharing photos of themselves with a sentence written on their body or on a sign, or only the hashtag in the attempt to address mainstream media. The paradox is that while the simplicity of the message makes it easier for different groups to adopt it, it also means that it can be rapidly voided of meaning: when IPEA announced that it had made a mistake and that "only" 26 per cent of Brazilians agreed with that statement, the debate rapidly lost momentum (Beatriz Moreira da Gama Malcher, "*#Feminismo: Ciberativismo e os Sentidos da Visibilidade*" [Anais do 40o Encontro Anual da Anpocs, Caxambu, MG, 2016]). This does not mean, however, that it did not leave a legacy.

22 • This concept is used by Medeiros (Jonas Marcondes Sarubi de Medeiros, "Movimentos de Mulheres Periféricas na Zona Leste de São Paulo: Ciclos Políticos, Redes Discursivas e Contrapúblicos," PhD thesis [Faculdade de Educação da Universidade de Campinas, 2017]) in the sense that Sader (Éder Sader, *Quando Novos Personagens Entraram em Cena: Experiências, Falas e Lutas dos Trabalhadores da Grande São Paulo (1970-80)* [Rio de Janeiro: Paz e Terra, 1988]: 142-3) developed for the term to discuss the origins of new meanings for social movements. These centres are spaces where experiences are reworked to give them a new meaning.

23 • Kirsti K. Cole, "'It's Like She's Eager to be Verbally Abused': Twitter, Trolls, and (En) Gendering Disciplinary Rhetoric," *Feminist Media Studies* 15 (2015): 356-358.

24 • Emma A. Jane, "'You're a Ugly Whorish Slut' - Understanding E-bile," *Feminist Media Studies* 14, no. 4 (2012): 531-546.

25 • The term is problematic and should be dropped from the public debate. The practice is not pornography (which should be understood as legal and consensual, and may be related to

pleasure), nor is it related to revenge (which is absent in the majority of cases and, even when the term is evoked in discourse, it establishes a link between a violation of sexual autonomy and a previous act of the victim). Our study on NCII in Brazil analysed all the legal rulings on the issue handed down by the São Paulo Court of Justice up until 2015 and identified that over 90 per cent of the victims who filed complaints were women (Mariana Giorgetti Valente, Natália Neris, Juliana P. Ruiz and Lucas Bulgarelli, *O Corpo é o Código: Estratégias Jurídicas de Enfrentamento ao Revenge Porn no Brasil* [InternetLab: São Paulo, 2016], accessed July 5, 2018, <http://www.internetlab.org.br/wp-content/uploads/2016/07/OCorpoOCodigo.pdf>). Even though NCII can affect men and women, the consequences are felt mainly by women (and also by other people with sexual orientations and identities that are considered dissident).

26 • “Violências de Gênero na Internet: Diagnóstico, Soluções e Desafios. Contribuição Conjunta do Brasil para a Relatora Especial da ONU Sobre Violência Contra a Mulher,” Coding Rights and Internetlab, 2017, accessed July 5, 2018, http://www.internetlab.org.br/wp-content/uploads/2017/11/Relatorio_ViolenciaGenero_UNU.pdf.

27 • While this is the focus of the recent debate among civil society organisations and the public policy field, there is a historical version of it, with its own terms, in feminist epistemology. In the 1970s, feminist sociology of science began to study the *impacts* of technology on women and radical and socialist feminists interpreted technology as an extension of patriarchal power. Harding (Sandra Harding, *The Science Question in Feminism* [New York: Cornell University Press, 1986]) observed that feminist critiques of science went from discussing the uses of technology and its risks and opportunities to debating how science, which appears so steeped in masculine endeavours, can be used for emancipatory ends (Judy Wajcman, *Technofeminism* [Oxford: Polity,

2004]). For Harding, in this process, the “woman question” in science was transformed into the “science question” in feminism.

28 • Larissa Pelúcio, “O Amor em Tempo de Aplicativos: Notas Afetivas e Metodológicas Sobre Pesquisas com Mídias Digitais,” in *No Emaranhado da Rede: Gênero, Sexualidade e Mídia; Desafios Teóricos e Metodológicos do Presente*, Larissa Pelúcio, Heloísa Pait and Thiago Sabatine (São Paulo: Annablume, 2015).

29 • Nancy Fraser, “Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy,” in *Habermas and the Public Sphere*, org. Craig Calhoun (Cambridge: MIT, 1992).

30 • Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (New York, London: Routledge, 2000).

31 • Eli Pariser, *The Filter Bubble: What the Internet Is Hiding From You* (New York: Penguin Press, 2011).

32 • We thank Pablo Ortellado and Marcio Moretto Ribeiro for providing us access to the project data.

33 • Bernardo Sorj, Francisco Brito Cruz, Maíke Wile dos Santos and Marcio Moretto Ribeiro, *Sobrevivendo nas Redes: Guia do Cidadão* (São Paulo: Plataforma Democrática, 2018).

34 • The choice of the word *assédio* (harassment) was linked to the researchers’ hypothesis that the harassment issue has been unifying different demands for equality and the elimination of all forms of violence against women defended by Brazilian feminists in the debate on the internet.

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of shares based on proportions. None of the most obvious criteria, such as the “ten posts shared the most” or “the fifty stories shared the most”, appeared to make sense. This is because the difference in proportions did not fit into quantitatively similar brackets: the number of shares obtained by the post shared the most more than doubled that the amount obtained by the second on the list; the second post shared the most, for its part, exceeded the third runner up more than three times, and so on, with significant variations in the number of shares from one post to the next.

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ONLINE PUBLIC ENGAGEMENT IN JORDAN

Reem Al Masri

- *How Jordanian opposition movements navigate between the state violating their right to free speech and data-sharing violations of Facebook* •

ABSTRACT

In February 2018, Jordanians took to the streets in the cities of Theeban, Assalt and Al Karak following the International Monetary Fund guided government decision to raise taxes on 164 commodities and abolish bread subsidies. Amidst a total absence of local media coverage, these demonstrations evolved into daily livestreamed debates on Facebook. The political and economic realities of Jordan were discussed which resurrected the 2011 and 2012 demands for a constitutional monarchy, as well as accountability for both the existing regime and also the intelligence department. However, while Jordanians were participating in and watching nightly live-streamed debates, in parallel global campaigns were calling on users to delete Facebook in reaction to the latest data breach scandal following Cambridge Analytica's involvement in the Trump campaign, which gained access to the data of millions of Facebook users. This article explores the conflicting relationship that political movements in soft repressive regimes, like Jordan, have with Facebook due to on the one hand the local restrictive media environment and on the other the global criticisms of Facebook's data sharing violations.

KEYWORDS

Jordan | Live-streaming | Media freedoms | Privacy | 2018

1 • Introduction

*Oh god almighty...We want this traitor on trial
What a disgrace, what a disgrace, they sold Jordan for a dinar*

These were the chants of dozens of Jordanian demonstrators in Theeban, a village 70 kilometres east of Amman, four days after the Jordanian government's decision to abolish bread subsidies and to impose taxes on 164 commodities, which took effect in February 2018.¹ What started as a spontaneous protest to the International Monetary Fund (IMF)-guided decision,² developed into daily protests and public discussions that spread to the cities of Assalt and Karak³ (and which were ongoing at the time of writing this article).

The demands of the protesters have changed since they started. The protests now cover a range of topics including calling for the resignation of the Prime Minister, discussing the return to a constitutional monarchy, demanding an elected government, limiting the King's executive authorities, debating Jordan's neoliberal policies, and advocating for the trial of businessmen on allegations of corruption. These are demands that have not been heard in a demonstration since the 2011 and 2012 demonstrations following the Arab Spring.

However, these demonstrations are not televised, nor covered through local news websites. Instead, demonstrators are live-streaming them on Facebook. These Facebook accounts represent an important archive of the protests and public discussions across Theeban, Assalt and Karak that have taken place since February 2018. While in recent months Facebook users worldwide are facing calls to leave the platform over privacy concerns related to the use of their data by the social media giant, Jordanians from these three areas were ensuring, on daily basis, that their phones are sufficiently charged and have enough data credit for a one-hour livestream on Facebook.

This article explores the conflicting relationship that political movements in soft repressive regimes, like Jordan, have with Facebook due to on the one hand the local restrictive media environment and on the other the global criticisms of Facebook's data sharing violations. It first explores how the Jordanian state attempted to repress online mobilisation while simultaneously promoting the "openness" of Jordan's digital content economy to an international audience. Then, by drawing on interviews with live streaming activists, it explores how these activists navigate between the state's restrictive laws on local online media and Facebook's data-sharing violations in order to raise the profile of the demands of the February 2018 demonstrations.

2 • The Internet Paradox in Jordan

The internet penetration rate in Jordan reached 87 per cent and mobile penetration reached 168 per cent in 2016.⁴ By 2017, Jordan ranked fifth in Facebook penetration rates across

the Arab region (after UAE, Qatar, Bahrain and Kuwait) with 60 per cent of its population having a Facebook account.⁵ These impressive statistics are the result of a decade of neoliberal policies, from which the information communication technology (ICT) sector was the first to benefit. The government, for example, fully liberalised the telecom market,⁶ and promoted Jordan as a regional ICT hub.⁷ Especially after Yahoo's acquisition of Maktoob in 2009⁸ and then Amazon's acquisition of Souq,⁹ the Jordanian government paraded Jordan as a hub for Arabic online content in the MENA region. Such initiatives contributed to Jordan having one of the lowest internet connectivity costs and highest penetration rates in the Arab region.¹⁰

Accompanying this growth of the internet was the decentralisation of information production and opinion sharing. Until the mid-nineties state-owned media¹¹ was the only source of information. However, blogging communities and private news websites exploded in numbers in the decade before the Arab Spring. In 2006, the Jordan Planet blog aggregator was popular for curating entries of local blogs on a wide spectrum of political and social topics,¹² and websites like Ammon News was the first of hundreds of e-news websites to publish original local news. As the penetration rate of social networking sites rose after the Arab Spring, new processes of political engagement and mobilisation were formed. From the debates on social media networks corresponding to the demands of the 2011 and 2012 nationwide demonstrations, discussion groups emerged like the HashtagDebates¹³ and Jordan's Cafe Politique¹⁴ that gathered periodically to talk about topics like the constitutional monarchy and the accountability of the intelligence department. These meetings were tweeted, posted on Facebook and live streamed by volunteer production companies that later archive them on YouTube.

This surge of online dissent put the Jordanian state in a dilemma. On the one hand, it needed to promote the narrative of Jordan's open neoliberal ICT environment for international investors, yet on the other, it wanted to control the rapidly decentralising media that these very policies were creating. In order to achieve this dual narrative, the government intensified its demonisation of local media websites describing them as, for example, "damaging the reputation of the citizen."¹⁵ This narrative paved the way for the Press and Publication amendments in September 2012¹⁶ that require local websites to obtain a license to publish, or else, face a blocking order from the Media Commission. The following year, the Media Commission blocked hundreds of local websites. In parallel, the narrative promoting Jordan's liberal communication sector also intensified. The Ministry of Information and Communication Technology (MoICT) launched its Jordan ICT Strategy 2013-2017 promoting Jordan's digital content sector and for foreign direct investment.¹⁷

To its international audience, the state continued raving about the potential for entrepreneurship in the digital content scene through international conferences.¹⁸ Internally however, it increasingly took advantage of security incidents to further criminalise online spaces, especially when they mediated nationwide criticism on its failure to handle security events. In 2016, for example, after the state charged the well-known writer Nahed Hattar with blasphemy, he received online death threats that

eventually led to his assassination.¹⁹ Public reactions on social media networks ranged from rage against the police department's inaction towards Nahed's death threats reports to incidents of religious hate speech. Several months later, a terrorist attack took place in Karak that resulted in a 14-hour security operation with 10 casualties with no official public statement. Social media however was awash with videos broadcast from the site, demonstrating the ill-preparedness of the police. After these two incidents, official calls for the need to monitor social media escalated.²⁰ State-media presented social media as a "chaotic [and] unruly²¹ place" and "a weapon against internal security."²²

In May this year, the government crowned these narratives by proposing amendments to the Cyber Crimes Law which would make "the posting or reposting of hate crimes" on the internet a criminal offence, carrying a prison sentence of between one to three years, and a fine of between JOD 5,000 - 10,000 (\$7,000 - \$14,000).²³ These amendments are still waiting to be reviewed by the Parliament. Disproportionate and vaguely defined, the proposed penalties for online "hate crimes", rather than pursue any legitimate aim, will in fact reduce public engagement with social media, the only outlet for documenting national debates given the stifling environment on political parties, the administrative banning of public meetings,²⁴ and the crack down on demonstrations.²⁵ One can easily predict the likely trajectory of these proposed amendments by looking at the state's history of using cyber-crime laws and anti-terrorism laws to persecute political opposition. In 2016 and 2017 alone, dozens of citizens and journalists were prosecuted for crimes including "undermining the regime" and "changing the governance of the country or "disrupting relations with a neighbouring country" for posts they had made on social media.²⁶ For example, in October 2017, an activist was prosecuted by the state security court for critiquing the regime's position of allowing an Israeli killer of two Jordanians in the Israeli Embassy to return to his country without a trial.²⁷ And in July 2017, the State Security Court held a poet under investigation for publishing a poem on his Facebook page condemning Jordan's position of boycotting Qatar, along with the other Gulf States.²⁸

These realities are clearly detached from the "open access society" aspiration that the government envisioned in its strategy, Reach 2025, launched in the 2016 MENA ICT Forum with the aim to "make Jordan relevant in the global digital economy". Such a narrative discards the reality of local controls on the internet. At the beginning of 2018, the Media Commission announced it had issued 175 licences to local news websites since the passing of the Press and Publications Law in 2012.²⁹ Meanwhile however, the Media Commission sends weekly internal blocking requests to internet service providers.

It took major local news websites thirty days to report on the Karak set-in that started in February 2018. None of the participants that livestreamed daily from Karak, Assalt and Theeban can launch a blog or a community website given that the Press and Publications Law requires any "news publishing website" to have at least five full-time employees³⁰ and an editor in chief who has been a member of Press Syndicate for at least four years.³¹ Trying to fill the gap of media coverage, some protestors reached out to international

agencies to transmit the events of these protests to a wider audience. However, to Sabri, the live-streamer from Theeban, their coverage does not reflect the “true” story, as “they want to depict us hungry”. According to Sabri, one agency approached him to create a story on the February demonstrations by only asking to speak to retired and unemployed protestors, ignoring his requests to interview those with political demands. Sabri opposed their coverage because “I did not go on the street because I was hungry, but because the state is subjecting me to injustice. I don’t have a right to choose in this country, election law is unfair and I demand a constitutional monarchy.”

3 • Live-Streaming: “new opportunities for people to come together”

With local media unwilling or unable to broadcast their protests together with the governmental restrictions to start their own online platforms, activists like Rami and Sabri sought an alternative outlet for their protests. This came in the form of Facebook’s low cost livestreaming service when, on 6 April 2016, Mark Zuckerberg announced with pride that its new live-streaming feature will be accessible to all users.³² In a Facebook post, he celebrated that “today anyone with a phone now has the power to broadcast to anyone in the world... it’s [live-streaming] going to create new opportunities for people to come together.” While it was another attempt by Zuckerberg to increase profits by centralising web services, live-streaming was “what prevented the authorities to crack down on us” said Sabri, an activist who took part in the protest in Theeban in 2016. Sabri helped set up “The Tent for the Unemployed Youth of Theeban”, an open sit-in for twenty days after Zuckerberg’s live streaming announcement. For protesters inside the tent, live streaming was an integral tool in the communication strategy “because we were demonised at the beginning” by the government. As well as the media coverage of the tent, “everything was live-streamed” including discussions and talks from visiting supporters from other parts of Jordan as well. Just as the livestreaming kept the tent standing, it was also the reason behind its removal by the police forces on the fifty-seventh day.³³

While the number of participants in such demonstrations or protests do not exceed tens or hundreds, online live-streaming views can reach up to ten thousand, with one video of a protest in Assalt even reaching 140,000 views after police arrested an activist for “undermining the regime” because of his participation in these protests. The setup of sound speakers and microphones evolved as live-streaming became an integral part of these daily protests. In addition to protesting, these demonstrations are becoming “a platform for raising awareness on different societal issues” says Hani, the main organiser from Assalt who keeps his eyes moving between the streaming cameras and the gathering crowds around him. The audience interacts instantly with speakers. Sometimes expressing their support from different areas of Jordan, and other times expressing anger for the decision to cut off live-streaming as “no one has the right to cut us off from what is happening in our country” according to one follower living abroad. When considering why this online support has

not translated into a larger physical presence, one needs to remember the realities of public transportation which “is not available after 6pm in Karak, for example” according to Rami. For Hani, however, while live-streaming filled the gap in main stream media coverage, it also discouraged people to join the demonstration as they can access the material from home.

4 • Activists’ dilemma:

Facebook, Cambridge Analytica and the Jordanian Streets

Narratives attempting to explain the unpredicted and contagious nature of mobilisation during the Arab Spring and its relation to social media platforms has evolved over time. Reactive discourses that gave agency to social media platforms in “unleashing the revolution in Egypt and Tunisia”³⁴ have been countered by ones that now dismiss the role of social networking platforms in political mobilisation and urge us to look at the offline modes of political organisation.³⁵ These two competing narratives soon receded after the social movements in the Arab region began to fragment and new forms of oppression began to unfold in countries where these revolutions took place. Emerging scholastic calls are now exploring the intersection of social media with pre-existing physical networks of affiliations and solidarity.³⁶ For example, in a review that assessed civic engagement on social media following the 2011 revolution, Egyptian scholars highlighted that “with more people and players coming online, online spheres started mirroring the offline ones, rather than informing and influencing them.”³⁷

Narratives towards the role of social media in social and political mobilisation have also evolved with the business models of social media platforms becoming increasingly visible through the design and features enabled by these platforms. They have introduced new policies and tools to maximise profit opportunities to share the data of online users and communities. For example, in 2014, and in order to improve its ad-targeting, Facebook applied its “real-name policy” asking all users to authenticate their identities. In doing so, it jeopardised politically and socially vulnerable communities. Facebook has constantly modified its algorithms to increase paid content reach, by, for example, prioritising the organic visibility of posts to family and friends only. This has also affected the reach of political mobilisation and created hierarchies dependent on the financial status of users. For fear of governments blocking the platform (like Iran, Syria, and Turkey), Facebook aligned its “content take down policies” and data sharing practices with local restrictions on speech. For example, Facebook constantly blocks the profiles of Palestinian activists who voice anti-Israeli government opinions.³⁸

Consequently, Facebook has built structures and put algorithms in place that can also be used by third parties for political manipulation. While election campaigns have always found Facebook an important platform to gain support, Facebook’s data-sharing policy with third party applications allowed the public relations company Cambridge Analytica to illegally collect the data of millions of users in the United States, and use them to benefit

the Trump campaign. The latest scandal, involving Cambridge Analytica,³⁹ ignited a global campaign to delete Facebook and questioned the business models of internet corporations that capitalise on their users' personal data.⁴⁰

Despite these controversies social media penetration rate has reached 90% of internet users in Jordan.⁴¹ Social media platforms, in particular the Facebook live-streaming tool, have become the only public sphere for Jordanians to mobilise and express their opinions online given the limited physical spaces for mobilisation and civic engagement. This leaves activists in the country in a dilemma – to continue to use the service knowing that the business ethics and practices of the company contradicts their own principles, or leave the platform and risk reducing the impact of their protests.

Although Facebook enabled Rami to mediate narratives from Karak that had been ignored by mainstream media he acknowledges that the platform nevertheless “violates my personal life and privacy”. However, activists such as Rami resist the global calls to leave the platform. “It is currently the only available option that delivers my voice” Rami says, despite the fact he was administratively detained a year earlier by the governor of Karak for a Facebook post critiquing the King's authority. “Facebook violates my privacy, but the state is constantly violating my privacy” says Mohammad from Assalt. Being aware of Facebook's data sharing violations, most live-streaming activists minimise sharing personal information about family and friends and realise that even though the live-streaming gave them some control over the narrative, the content is not theirs, “I can easily lose the page, or it can be hacked” according to Sabri, who experienced exactly this when his account and page were hacked by unknown entities.

Despite activists' critiques of the Jordanian state and the regime, which social networking platforms are facilitating, there has not yet been any attempt to restrict access to Facebook, or any international platforms, or require their licensing in the same way that local online media outlets are required. This approach should be understood within the Jordanian state's general approach to cracking down on opposition in the years following the Arab Spring. While the state disperses demonstrations and bans public meetings, it generally resorts to soft-oppressive approaches with minimum cost on its international human rights records and its international narrative promoting Jordan's free and open digital content market. In addition, it must also be noted that the Jordanian state has used Facebook for its own interests. Created following the Arab Spring, the social media accounts of the royal court and the personal accounts of members of the royal family on Facebook and Twitter are promoted as an attempt to demonstrate Jordan's willingness to communicate with their people and the openness of its online digital sphere.

5 • Conclusion

During the wave of protests in 2011 and 2012, social media platforms and blogs provided snippets of decentralised information about demonstrations – both text, photos and

videos. However, time-lagged reporting and documentation allowed the official narrative to demonise protesters. In contrast, live-streaming of discussions and protests now prevent the state from contaminating the message of protests as the demands and calls are clear “in front of God and his creatures”, according to one of the daily speakers in Assalt. In one of the live-streamed videos from Karak, one speaker criticised the Jordanian state’s neoliberal policies that eventually led to the privatisation of its natural resources and properties.⁴² He counts on his fingers, while the public around him repeats “Potash, Phosphate, electricity, water and communications.” Little did the state anticipate that its neoliberal policies, which first benefitted the ICT sector, would result in the decentralisation of narratives and of the online media scene. Today, the Jordanian state attempts to develop a formula through which it promotes its ICT sector and Jordan’s “knowledge economy” as a worthy international investment, while maintaining an internal, repressive narrative of the internet as a space for “fools and innocents”.⁴³ Consequently, Jordanian activists – such as those in Assalt, Karak and Theeban – must navigate a complex path between these policies of a repressive neoliberal state, and the globally controversial policies of a communications giant, Facebook. And until the existence of a real alternative they must, ironically, rely upon the latter to challenge the former.

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ESSAYS



STATE VIOLENCE: SEEKING ACCESS TO JUSTICE

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Fernanda de Magalhães Dias Frinhani
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DRUG POLICY IS A WOMEN'S ISSUE

Lucia Sestokas & Nathália Oliveira

STATE VIOLENCE: SEEKING ACCESS TO JUSTICE¹

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Javier Amadeo • Aline Lúcia Gomes
Débora da Silva • Valéria Silva

• *Analysis based on the narratives of victims' families* •
about the 2006 May Crimes, in the Baixada Santista area of São Paulo

RESUMEN

This article examines human rights violations resulting from state violence, in crimes in the Baixada Santista area of São Paulo in 2006. The article forms part of the study State violence in Brazil: research into the May Crimes of 2006 from the perspective of Transitional Justice and Forensic Anthropology, carried out by the Centre for Forensic Anthropology and Archaeology at the Federal University of São Paulo – CAAF/UNIFESP. It focusses on the narratives of victims' families and analyses state violence and the denial of access to justice, information and to memory. It concludes that there was consistent denial of justice in the lack of investigation and the premature filing of inquiries. The families were denied the right to information and were mocked, persecuted and slandered. It points to the fundamental need to make the stories and the struggle visible so they are not forgotten and so they cease to be excluded from the protection of rights and access to justice.

KEYWORDS

State violence | Human rights | May Crimes | Independent Movement of the May Mothers

1 • Introduction

Ten years ago, the Special Rapporteur on extrajudicial, summary and arbitrary executions, Philip Alston,² pinpointed state violence in Brazil as being in habitual violation of human rights. The state is not authorised to carry out extrajudicial executions, depriving individuals of their lives. On the contrary, it owes its citizens protection from being the victims of murder and the assurance that those accused of such crimes will have the right to appropriate legal procedures and full defence.

However, the Brazilian state has been responsible for numerous acts of violence, amongst them, those committed by policing organisations. Abusive practices often have the support of the public,³ who live in fear given the high rates of criminality and their distrust of the protracted criminal justice system.⁴

According to the 2017 Human Rights Watch (HRW) report, “abuse committed by the police, including extrajudicial executions, contributes to the cycle of violence that jeopardises public security and put police lives at risk.”⁵ The 11th Brazilian Annual Meeting on Public Security in 2017⁶ revealed that in 2016, 4,222 civilians were killed by the police and that 437 police officers were killed, most of whom were off duty. The justification for the killings is the protection of society.

Data shows that violence is recurring in Brazilian society and has been specifically affecting poor, young, black people on the periphery of the urban centres,⁷ indicating a veritable genocide of this population. State violence occurs when (i) guarantee of access to basic rights is denied (ii) there is blatant use of force by the police (iii) access to the legal system is impeded and (iv) families are denied access to information and to the right to preservation of their memories.

In May 2006 we saw an increase in rights violations, which could be described as a “scenario of exception to the rule of law in a democratic state”.⁸ The 2006 May Crimes, according to research into the subject,⁹ totalled 564 deaths by firearms in the period 12 to 26 May, in the state of São Paulo, mainly in the capital and the metropolitan region and in the area of Baixada Santista.

Studies and testimonies claim that the crimes were the result of confrontation between members of the criminal organisation *Primeiro Comando da Capital* (First Capital Command) or PCC as it is commonly referred, and state security forces. However, data shows that this confrontation occurred only at the beginning of the period, on 12 and 13 May.¹⁰ There is evidence of an official decision to carry out reprisals in response to the attacks between 14 and 20 May.¹¹

According to the CONDEPE (State Council for the Defence of the Rights of the Human Person) report, during this period there was an increase in the total number of deaths (mostly of young men) resulting from gun shots, compared with previous years, with an

increase in the average number of shots per victim (4.7), a large number of these being to lethal areas of the body. Most of the deaths followed a pattern which is specific to death squads and there is evidence of police or ex-police participation.¹²

The study looks at the rights violations reported by a number of families of the victims of the May Crimes of 2006, above all, family members of the *Movimento Independente Mães de Maio* (Independent Movement of May Mothers). Research was carried out in an institutional collaboration between the Centre for Forensic Anthropology and Archaeology (CAAF) at the Federal University of São Paulo (Unifesp) and the Latin American Centre, School of Interdisciplinary Area Studies at the University of Oxford, UK. Funding was also received from the Newton Fund, a British government initiative run by the British Council in Brazil, for economic and social development through science, research and technology.¹³

The aim of the research was to re-analyse the so-called 2006 May Crimes, by means of an interdisciplinary proposal, working in conjunction with the social movement, in order to provide a new perspective on events.

The May Crimes have been the subject of a number of studies, with results that point to agents of the state as the main perpetrators of the actions that led to the deaths of hundreds of people. Therefore, the study in question sought to refine the data with a view to contributing to clarifying the circumstances of the crimes and re-opening the debate on the role of the state in investigating the crimes and condemning those responsible.

The studies looked into 60 cases of people murdered by firearms (executions by civilians and by state agents) between 12 and 20 May 2006, in the metropolitan region of the Baixada Santista, in the state of São Paulo, Brazil. The analysis used different methodologies and cross-referencing from several data sources: I) a bibliographic and document analysis (Police Reports, Autopsies and Police Inquiries); II) analysis of media reports (local news and national media); III) elaboration of geographical maps on the spatial dynamics of the crimes; IV) forensic analysis of the cases of the victims by means of 3D reconstruction of medical images (ballistic reports) and V) construction and analysis of narratives based on the testimonies of victims' families, including the social context, life history, circumstances of death, procedures after death and information on the judicial process.

In this sense, the research represented an innovative methodological approach. Significant data and concrete responses to the issue that underpins the investigation were gathered and these strengthened the arguments of social movements and the communities affected on a daily basis by state violence. The research results provided the means for an interpretation of the 2006 May Crimes that returned to the view that these crimes were civilian executions and noted the absence of qualified investigations into identity and judgement of culpability. These mechanisms showed that guidelines and/or orders, as well as the lack of them, created an operational mode that gained unofficial legitimacy, as demonstrated in the number of deaths classified as "deaths resulting from police intervention".

In this article we seek to present one of the aspects analysed in the study:¹⁴ substantiation of state violence as a negative influence on access to justice by families of the victims of the 2006 May Crimes, based on narratives¹⁵ constructed within the research process, with particular attention to information on judicial processes.¹⁶

2 • Structural Violence in Brazil: an analysis of inequality, exclusion and domination

The discussion on state violence in Brazil derives from the debate on structural violence. This leads to inequality in a nation that does not extend full citizenship to all areas of society. State violence evokes a society marked by colonisation and slavery, by the legacy of a military dictatorship and by the challenges of building a democracy on the mechanisms of transitional justice.

Structural violence¹⁷ reveals forms of domination stemming from contradictions between those who wish to maintain privileges and those rebelling against oppression. The current democratic guarantees in Brazil, based on the constitutional gains of 1988, do not prevent the continuation of what is referred to as structural violence.

In addition to this process of the constitution of social and dynamic structure and of Brazilian political culture, marked by violence and inequality, it is important to stress the specific functioning of the state at different points in history.

Human rights violations during the years of dictatorship in Brazil triggered denouncements against Brazil at the Interamerican Human Rights System, during the period in question and after political openness.

Denouncements of cases of arbitrary imprisonment, torture and murder¹⁸ made during the dictatorship were submitted to the Interamerican Commission on Human Rights from 1970 to 1974. Although there were a small number of cases, these usually pertained to the murder or detention of a large number of people.¹⁹

Despite political openness and the 1988 Constitution, Brazil did not succeed in breaking the structure of violence spawned during the dictatorship “when torture and murder became state policy”.²⁰ Change in corporate culture is not possible if there is no change in organisations.²¹

Following the end of the dictatorship a reproduction of the same patterns of violence was seen. In data from 2007, Brazil was denounced to the Interamerican System for 34 cases of police violence, from 1982.²² These denouncements refer to abuse and violence by police incurring the murder of innocent victims and insufficient response to the violations by the Brazilian state. The request is the same in all cases: “condemnation of the Brazilian

state to prosecute and punish agents responsible for the violations committed, as well as compensation for the victims”.²³ In other words, guaranteed access to justice.

The pattern of violations perpetrated by the police and denouncements to the Interamerican System led to some legislative progress, such as changes to Decree nº 1001/69 (Military Penal Code), set out in Law 9299/1996, with the provision that crimes with intent to kill, committed by military staff against civilians, should be tried in regular legal courts;²⁴ the Federalisation of Human Rights Crimes, in Constitutional Amendment nº 45/2004; Law 12527/2011 (regulating access to information) and Law 12528/2011 (National Truth Commission).

*Despite positive changes in the political and legal scenario, failure to effectively control illegal violence is conspicuous: torture of suspects and criminals in police precincts, ill treatment of prisoners and detainees in closed institutions, targeted killings by military police and death squads with the participation of state agents. Impunity is a common denominator in the repeated occurrence of these violations. This is ensured by government inefficiency and omission, particularly within the administration of states. This failure to enforce the law weakens the validity of constitutional guarantees, perpetuates the illegal cycle of violence and impedes strengthened legitimacy of the democratic government as a supporter of citizenship.*²⁵

The democratic state of law in Brazil has proved to be tolerant/complicit of violations of the human rights of historically excluded populations and has been incapable of reducing social violence and of holding guilty parties responsible. It has contributed to victims’ and their families’ increased sense of impunity and of exclusion from the ‘category of citizens’ and violates rights, with state agents using excessive force (torture, arbitrary imprisonment and murder committed by state agents). In addition, it fails to implement public policies to ensure basic social rights and denies victims and their families access to justice and to the truth.

3 • The Judicial Process and Access to Justice Data Analysis of the 2006 May Crimes Victims

Access to justice is a fundamental human right. Through access to justice everybody has the right to have their demands accessed by judicial powers, within a reasonable amount of time.²⁶

The American Convention on Human Rights also upholds access to justice by means of Judicial Guarantees (article 8.1) and Judicial Protection (article 25.1) in both cases these safeguards cite the reasonable duration of a lawsuit.

Brazil has been denounced in the Interamerican Human Rights System for denying access to justice. In the nine denouncements against the Brazilian state at the Interamerican Court

of Human Rights, Brazil was called to answer for violation of articles 8.1 and 25.1 – Judicial Guarantees and Judicial Protection – of the American Convention of Human Rights, as well as other mechanisms, particular to each case.

From the perspective of Penal Law, access to justice covers all stages of the process: establishments of facts (police investigation); denouncement (Public Prosecution); defence (lawyers or public defenders) and the conclusion of the action, the sentence (judiciary). A number of norms and principles must be observed throughout each of these phases, such as the principles of legality and full defence, reasonable duration of the lawsuit and legal equality for all.

Through analysis of the May Crimes from the point of view of the victims' families,²⁷ in terms of procedures, it can be inferred that denial to access to justice occurred at each of these stages. In the investigation phase,²⁸ police neglected to collect elements of proof, such as surveillance tapes and ballistics reports, in contravention of the mechanism in article 6 of the Code of the Penal Process, which outlines procedures to be followed by the police authorities.

[...] I went to the precinct to find out whether the chief of police was going to retrieve the surveillance tape from the petrol station, because I wanted to know which police officer had approached my son. [...] it was extremely difficult for the chief of police to get the surveillance tape from the petrol station. The surveillance tape was only retrieved after I put a lot of pressure on the District Chief of Police. (D.M.S)

[...] We asked for his body to be exhumed six years later, because this was in the request for federalisation, because my son was buried with a bullet lodged in his spine. Think about it, how could a person be murdered and the most important part of the investigation of a crime against a life, the bullet so a ballistic examination can be done, is simply left in the body. (D.M.S)

The analyses also indicated that in some cases there was some difficulty in identifying the victims. As they were not identified, they were buried in unmarked graves, making it even more difficult to prove a crime had taken place. This strategy is also used to strip the dead youth of “any emotional, family or community context”.²⁹

[...] My brother-in-law reported it to the police. That was when they asked for his identification document. I said I didn't have it, he had gone out with it on him. We went to the police station to ask for Rodrigo's ID and they said they didn't know anything about it, that he didn't have his ID on him. Why did they say that? Because they took his body far away, didn't they? They hid his ID so they could bury him in an unmarked

grave, something like that. There were two from Santos who were buried in unmarked graves. (M.A.C)

A number of testimonies highlight the fragile nature of investigations, which compromises the search for the truth, particularly when a long time has passed since the incident. Even the search for witnesses appeared to be precarious and inconsistent. In some cases, not even the family were heard:

They reported it to the police so they could investigate. They said it doesn't matter when it's a massacre. It's just another poor person's son, you know. Nobody got in touch for a statement. Not from the police, they really only made the report so he could be buried, because of the bureaucracy. We wanted to make a police report so they would investigate. They practically said that as it was a massacre and nobody would know who had killed him. So they didn't contact us. (R.M.)

[...] nobody came to ask me anything. One time the police came round asking what he was like. (M.A.C)

[...] He asked what had happened, because it was going to be filed and there was no investigation. That was all he could say because they had a report that they had made when they spoke to the owner of the pizza restaurant who said he knew nothing, but unofficially, not making a statement signing a document saying: I saw nothing. It was just them relating conversations they'd had with people in the neighbourhood, saying that they didn't know anything. That was the investigation that they made. (V.L.A)

[...] He said he was going to investigate, but until this day no investigator has been round asking questions. The one who investigated was me, myself. Nobody knocked on the door, nobody asked anything, they said nothing, absolutely nothing. The only one who investigated at all was me. None of these crimes were investigated, none of the May Crimes were investigated. (V.L.G)

The way in which the police force is structured impedes the process of investigation, for example the chief of police responsible for cases is constantly changing, as one family member explained.³⁰

[...] we went to speak to the chief of the precinct, we went to the Brazilian Bar Association (OAB) to speak to a human rights lawyer and we also went to speak to people at the police station

who still hadn't called us in. There was nothing there. The precinct chief picked up the phone and called the chief of the 5th District where the police report had been sent and told us to go and talk to him. So we went there. The chief of the 5th District, was then moved to a different area. They sent him somewhere else. Another chief came along and immediately went on holiday. The person who was standing in for him ended up taking João's statement. A few days later we were called into the 5th District. I said – maybe things are moving along. In any case I'll go in and see if they want any more information from us. So off I went to speak to the clerk. When I got there he was on holiday and the substitute clerk spoke to me. He said everything's fine and that was that. Nothing else happened. (V.L.A)

Negligence during police investigations is a common occurrence, as can be verified by the low rate of crime resolution. According to 2011 data, the clarification rate for murder in Brazil varied from 5 per cent to 8 per cent.³¹ Poor quality forensics and investigation mean that unless a crime is flagrant, it is unlikely it will be resolved or that the guilty parties will be punished.³²

As a general rule, the victims' background is not a requirement in the legal process, except when there is suspicion of criminal involvement.³³ In the May Crimes investigations, previous history was constantly brought to bear, pointing to an attempt to invalidate the victims and justify their violent deaths. Families were repeatedly required to prove that their offspring were good people, that they worked, did not use drugs.

[...] And when we mentioned our children's' good behaviour to the prosecutor who came, because Dr Marilu Pena at the OAB Human Rights Commission has already been asked to request retraction because they say our children are all criminals. (D.M.S)

[...] They called in Júlio, who is an investigator, police chief Dr Pereira was there, he asked me questions about Ana Paula, about Ed Joe, whether she had any enemies, an ex-boyfriend, an ex-husband, how much she owed, if she owed drug dealers money. (V.L.G)

[...] I kept answering that he was a good lad, hard working, didn't use drugs. (M.A.C)

[...] The lab report said that he hadn't used anything, not even alcohol, nothing. I said – where's Mateus' lab report? He replied – It's there. I said – No! The chief of police, a different one.

He asked for the case to be filed saying that his death was probably because of a drug debt. They must have killed Ricardo by burning the file. (V.L.A)

Prosecutors often alleged that there was nothing they could do given the lack of proof, placing responsibility in the hands of the investigative police. In general, culpability for state violence is attributed to the actions of the military police who are in charge of ostensible policing. It is, however, necessary to widen the focus of violence to the Public Prosecution, to Judicial Power and even to those in government, legislators, the media and society as a whole.³⁴

[...] The prosecutor said he died because he was in the wrong place at the wrong time. He's a good lad, his file is here. It says that he didn't use drugs, he didn't have a criminal record, nothing. It's going to stay here for the next twenty five years. If you find out who killed your son come here. But when I was in the court room they wouldn't let me say it was the police. They didn't want me to say anything. (M.A.C)

[...] at the public prosecutor's office he said: but nobody knows who it was! We can't prove anything. You carry out your own investigations, bring the people here to make statements, to be witnesses, because nobody knows anything and there's no way to find out. They were wearing masks. How can we find out who they were? And he kept messing us around. [...] until I went there to demand a response and he said: The case is being filed. I said: But there's nothing and it's already being filed? He said: Well, if you want to take a look ... (V.L.A)

The Public Prosecutor's Office failed to carry out its role, telling some family members to carry out work, that is, in principle, the duty of the investigative police or the Public Prosecutor's Office itself.³⁵

And the prosecutor wanted me to do the investigation. [...] João got really upset and the prosecutor said: Let's do this then, sir (to the father), you go there and request a copy of Mateus' lab report, then go to the school and ask for a certificate to prove he was attending classes. (V.L.A)

The Police and Public Prosecutor's Office negligence in seeking the truth and facts means families now doubt the existence of institutions that guarantee the general public's rights and justice.

[...] we had to keep asking Dr ... (Public Prosecutor) to do the work of putting pressure on the Attorney General. [...] they

didn't put enough pressure on them, because the public defender thinks the Public Prosecutor's Office defends the general public and they don't. They may defend the Public Defenders but they don't defend us. (D.M.S)

[...] We started to look at their cases. The person who did Ricardo's police report was the same person who did police reports for several other boys who were killed. Very strange, isn't it? (V.L.A)

In the repeated absence of a response about the crimes, victims' families turned to the Brazilian Lawyers' Organisation (OAB) and the Public Defender's Office, but they often faced indifference.

We were also treated with indifference at the Public Defender's Office with regards to the Defender's agreement with the OAB. [...] the lawyer or the defender who took up the case left it in his living room at home for nine months and the copy of case was filed. [...] we saw a number of different people who had the case and then after a while they would pass it on to someone else and they would then do the same. [...] (D.M.S)

However, at other times, the Defender's Office and the OAB paid attention to the families' requests and tried to protect their rights:

[...] And then he presented Dr. Maffezoli who started to look after the cause, but he didn't lodge the request and the time limit was nearly up. Then a lawyer who is a friend of ours and of one of the Mothers, because she worked with him and we knew him too, asked Dr. Maffezoli to lodge the request for moral damage because time was running out, which is what happened to Vera and other mothers. So in the end Dr. Maffezoli did lodge the request, but under pressure from Dr. Sérgio Cunha, the lawyer, and only then we managed to get it. (D.M.S)

Many report the idea of justice as being remote from the reality of their lives, although they strongly wished for it:

[...] I don't expect justice in Brazil in the hands of this legal system, because there's a double standard. There is discrimination of class and of race and I hope for a reform of this system which is worth nothing in Brazil, because it sees really well, but it only sees the periphery and the favela, black and poor people. I

hope that the denouncement that we made at the Interamerican Supreme Court of Human Rights, no matter how long it takes, but that Brazil is condemned for the deaths our children, because someone ordered this crime [...]. (D.M.S)

[...] At the time when it happened to Rodrigo I imagined and hoped for so much from the legal system. But I don't expect anything any more. [...] maybe one day?? [...] I'm not going knocking on anyone's door to find out what's happening with my son's case. They filed the case two months ago. The prosecutor said: your son's file is here, all here. When you want to find out who did this to him come and see me. (M.A.C)

[...] If it's up to my dad we won't try to find out anything else about the case. I've always been a rebel. I've also wanted things to be fair. When I was a child I wanted to study Law. But I've calmed down because of my dad. he's the father right? He's the one who had to chase this. But my dad thinks it's best to leave everything in God's hands. (R.M)

[...] These days, ten years on, we still hope that one day a door will open, that something will happen and everything will be cleared up. I would like that, because we always have the feeling that nothing was done, that nothing happened. They killed him, they simply killed him and that was it. He's just a name, a number and nothing else. (V.L.A)

[...] in all these boys' stories I blame the police and society who accept the deaths of these young people. So, I don't see how it will end like this, if people just accept it? Because we don't have to stop them. We have to stop the people who give the orders. Because nobody goes out with a gun, randomly shooting whoever they want to. Someone gives the order. So who is in charge of the people who give the orders, who has this power? (V.L.G)

It is important to stress that the work of the May Mothers, a group of family members who joined together to fight for the right to the resolution of the crimes to which their relatives fell victim, transformed their private pain into a public cause. Lack of faith in the efficacy of the legal system has caused the families intense suffering. For some this suffering weakened their will to fight. For others it has fuelled the cause:

[...] at the GAECO group³⁶ they tell mothers that it is not possible to denounce the 2006 police officers, but that they can denounce

the police officers involved in crimes now and that in this way they pay for the crimes of the past. But this is unacceptable. If dictatorship crimes can be brought to a head then why not those in times of democracy? [...] I went back to GAECO and asked the Prosecutor Brandão to help us to preserve the young people's bodies for an investigation in the future (D.M.S)

[...] as human beings we have rights and duties. It is his right to know who killed, even if they don't go to prison. Unfortunately Brazil is in this mess, but to know, is a right to know. So he's going to die without knowing. You feel like turning round and saying why? Why did you do this? (R.M)

I am waiting for time to tell me what is the best thing to do. I have kept quiet. I've often felt like saying something and I haven't because I've been waiting for something to happen. The mothers have a special affection for each other, because they all understand what I feel and I understand what they feel. The pain is the same. (V.L.A)

3 • Final Considerations

The open-ended nature of the May Crimes means we are unable to draw any conclusions about the perpetrators. As there were no investigations, forensic tests nor adequate procedures to clarify, or at least try to clarify who was responsible for the crimes and take them to court, it is as though nobody was guilty or as though the victims were not important or as though the victims' families did not deserve to know the truth about the deaths of their loved ones.

The allegation of lack of proof was the justification given by the state for failing to complete the investigations and subsequently judge the crimes. But the denial of access to justice stemmed from omissions on the part of the state. Access to justice was denied when crime scenes were not preserved. This is the role of the Administrative Police Officer of the Military Police. The destruction of crime scenes favours adulteration and obliteration of proof. Access to justice was denied through negligence in gathering proof, such as data caught on surveillance tapes, or hearing witnesses and the victims' families. This is the role of the Judicial Police Officer of the Civil Police. And justice was denied when the families were sent back and forth from the Public Defender's Office to the Public Prosecutor's office where they were often treated with indifference, were denied information and were even mocked for wanting to find those responsible for the deaths of their children.

All manner of disregard in guaranteeing rights was seen in the lack of consistent investigations and in the filing of cases without taking sufficient steps to discover all the facts. As such,

without identification of those responsible and in the absence of sufficient elements and/or information to make denouncements of criminal action, none of the cases went to court.

Disregard for the victims was seen clearly in the treatment of their families. They were denied information about what had happened and about investigations and procedures. As well as having to deal with the pain of losing their loved ones, families had to deal with anguish. They were treated with contempt by state bodies responsible for the investigations. They were continually led to believe that nothing could be done, that there was no way of discovering who was responsible for the crimes, in the midst of bureaucratic discourse and procedures that made them feel invisible and unfairly treated. Humiliation, mockery, persecution and slander were and still are very present in the lives of the victims' families, particularly the mothers who are searching for the truth about the execution of their sons and daughters.

According to general data from the narratives the victims were poor and lived in peripheral regions of urban centres or were socioeconomically vulnerable. When victims are from specific groups, inaction, precariousness and disinterest are evident in investigations and police inquiries. In most cases, this leads to inquiries and possible lawsuits being prematurely filed. The invisibility of the urban peripheries favours denial of access to rights and to the legal system.

Another important aspect, concerning the investigation process and the judgment of crimes is material and non-material (moral and psychological) compensation for the families. The victims were members of poor families and in many cases they assisted their families financially or they were starting their professional lives.

Furthermore, it was noted that the victims' deaths caused illness in their families and psychological and physical consequences which in some cases led to death. For some of those in this situation, it is too late for any historical vindication to repair psychological damage. Other deaths have been caused by the murders of the May Crimes. It will not be possible to talk about justice, if material and non-material compensation is not taken into account in the long-awaited penal sentences.

Finally, visibility of the narratives and of the struggles of these families who are transforming their personal pain into a public cause, is seen as fundamental so that their daughters and sons' stories are not forgotten, so the omissions of the state is made evident, so that future cases are not treated with the same indifference and so that the poor, young, black population living in urban peripheries do not continue to be excluded from the protection of rights and access to justice.

NOTES

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10 • In the first three days (from 12 to 14 May) the First Capital Command carried out dozens of attacks. As a consequence people linked to the group as well as police officers were killed.

11 • In the 72 hours after 14 May (Mothers' Day) 60 people were murdered by police officers in the capital, in the metropolitan region of São Paulo and the Baixada Santista. On 16 May alone, the police killed 29 people in supposed confrontations with members of the First Capital Command. Information from the police ombudsman also shows that death squads, in which it is suspected there is police participation, executed 84 people between 14 and 20 May ("São Paulo sob Achaque," IHRC/Justiça Global, 2011, 60-1).

12 • This fact is stressed in testimonies, newspaper articles, official documents and denouncements made by victims' families, presented in the study.

13 • For further information: Newton Fund, Homepage, 2018, accessed July 4, 2018, <http://newtonfund.ac.uk>.

14 • Content analysis was carried out based on reading these narratives, seeking to understand the dynamic of the state violence, focusing on information about the process, from the perspective of access to justice. Laurence Bardin, *Análise de Conteúdo* (Content Analysis) (Lisbon: Edições 70, 1979).

15 • The narratives of eleven families of 10 May Crimes victims were analysed. This discourse was the result of field work carried out by the researchers Débora Maria da Silva – Founder and Coordinator of the Mães de Maio movement and Aline Lúcia de Rocco Gomes and Valéria Ap. de Oliveira Silva-CAAF/Unifesp. They found out the addresses of the families of May Crimes victims, gathered testimonies and carried out discourse analysis.

16 • Throughout the text the use of the expression *judicial/legal process*, with reference to the May Crimes should be understood in the broad sense, given that police inquiries (administrative procedures) never became legal action (prosecutions).

17 • Maria Cecília de Souza Minayo and Edinilza Ramos de Souza, "Violência e Saúde Como um Campo Interdisciplinar de Ação Coletiva," (Violence and Health as an Interdisciplinary Field of Collective Action) *História, Ciências e Saúde - Manguinhos* 4, no.

3 (feb. 1998): 8.

18 • Flávia Piovesan, *Direitos Humanos e o Direito Constitucional Internacional* (Human Rights and International Constitutional Law) (São Paulo: Saraiva, 2007).

19 • Nine cases were submitted in total. For example: Case 1788 (murder of 104 people); Case 1835 (arbitrary detention of 53 people); Case 1684 (the alleged existence of at least 12 thousand political prisoners in Brazil). (Piovesan, *Direitos Humanos...*, 2007, p. 297-299).

20 • Luis Eduardo Soares, "Prefácio," (Preface) in *Política e Ditadura: A Arquitetura Institucional da Segurança Pública de 1964 a 1988 – Volume 1* (Politics and Dictatorship: The Institutional Architecture of Public Security from 1964-1988), Maria Pia Guerra (Brasília, Ministério da Justiça, 2016): p. IX, accessed April 14, 2018, <https://policiaeditadura.files.wordpress.com/2016/09/policia-miolo-interativo-1-1.pdf>.

21 • *Ibid.*, p. IX.

22 • *Ibid.*, p. 305.

23 • *Ibid.*, p. 308.

24 • IA new legislative change has seen a relapse. (Law 13.491/17) upholds that crimes committed by military personnel of the armed forces against civilians are to come under the jurisdiction of the country's Military Court.

25 • Paulo S. Pinheiro, "O Passado Não Está Morto: Nem Passado É Ainda," (The Past is not Dead: nor is it in the past) in *Democracia em Pedacos* (Democracy in Pieces), ed. Gilberto Dimenstein (São Paulo: Companhia das Letras, 1995): 9.

26 • Brasil, *Constituição da República Federativa do Brasil* (Brasília, DF, Senado Federal: Centro Gráfico, 1988): artigo 5º, XXXV, XXXIII e LXXVIII.

27 • The narratives of families participating in the study were used and excerpts were used to provide examples Débora Maria da Silva (D.M.S.), mother of Edson Rogério Silva dos Santos (murdered in Santos/SP on 15/05/2006); Márcia Alves da Cruz (M.A.C.), mother of Rodrigo da Cruz Reis (murdered in São Vicente on 15/05/2006); Raquel Monteiro (R.M.), sister of Ricardo Souza Monteiro Martins

(murdered in Guarujá/SP on 14/05/2006); Vera Lúcia Andrade (V.L.A.), mother of Mateus Andrade de Freitas (murdered in Santos/SP on 17/05/2006) and Vera Lúcia Gonzaga (V.L.G.), mother of Ana Paula Gonzaga dos Santos and mother-in-law Eddie Joey de Oliveira Lavezaris (murdered in /SP on 15/05/2006). The initials of the person speaking appears after each excerpt.

28 • The function of police investigation is usually the role of the Civil Police, according to Art. 144 (...). § 4th, CF –“The civil police department, under the supervision of professional police delegates, are responsible for, according to Brazilian law, the functions of judicial police and resolving criminal infractions, except those pertaining to military staff’.

29 • Laura Capriglione, “Os Mecanismos Midiáticos que Livram a Cara dos Crimes das Polícias Militares no Brasil,” (The Media Devices that Render Military Police Crimes Faceless in Brazil) in *Bala Perdida: A Violência Policial no Brasil e os Desafios Para Sua Superação (Stray Bullet: police violence in Brazil and the challenges)*, Bernardo Kucinski *et al.* (São Paulo: Boitempo, 2015) (e-book).

30 • The position of Police Chief does not carry the privilege of irremovability. So it is not illegal to move a police chief or to reallocate or call-back a police inquiry. Law 12380/13 was passed in an attempt to avoid this being used as a means of persecution or of impeding a criminal investigation. This law upholds that call-back and reallocation of an inquiry and the removal of a police chief can be carried out solely by reasoned order (Lei 12380/13, Art. 2º, § 4º e 5º).

31 • “Meta 2: A Impunidade Como Alvo. Diagnóstico da Investigação de Homicídios no Brasil - Concluir as Investigações por Homicídio Doloso Instauradas até 31/12/2007,” (Aim 2: Impunity as Target. Diagnosis of Murder Investigations in Brazil – Conclude Investigations for Murder up to

31/12/2007) Estratégia Nacional de Segurança Pública - ENASP, 2012, accessed July 4, 2018, http://www.cnmp.mp.br/portal/images/stories/Enasp/relatorio_enasp_FINAL.pdf.

32 • “11º Anuário Brasileiro...”, (Brazilian Yearbook) FBSP, 2017.

33 • Sérgio Adorno, “Crime, Justiça Penal e Desigualdade Jurídica: As Mortes que se Contam no Tribunal do Júri,” (Crime, Penal Justice and Legal Inequality: Deaths that are taken to Trial by Jury) *Revista USP*, Dossiê Judiciário, no. 21 (1994).

34 • Maria Lúcia Karam, “Violência, Militarização e Guerra às Drogas,” in *Bala Perdida: A Violência Policial no Brasil e os Desafios Para Sua Superação (Stray Bullet: Police Violence in Brazil and the Challenges)*, Bernardo Kucinski *et al.* (São Paulo: Boitempo, 2015) (e-book).

35 • The discussion on whether the investigative role is the responsibility of the Public Prosecutor’s Office was decided by the Supreme Federal Court (STF). They recognise the Public Prosecutor’s responsibility in promoting proper penal investigations, respecting constitutional rights and guarantees. In addition it stresses that “the investigative role of the Public Prosecutor’s Office does not become normal activity, but rather exceptional activity, to legitimize their actions in cases of abuse of power, police crimes, crimes against the Public Administration, **inertia of police bodies, or undue procrastination in carrying out penal investigations, situations when, for example, the subsidiary intervention of a ministerial body is justified.**” [author’s highlighting] (“RE 593727/MG, 14.5.2015. Informativo n. 785,” STF, 2015, seen on 25 April 2018, <http://www.stf.jus.br/arquivo/informativo/documento/informativo785.htm>).

36 • Group for Special Action in the Repression of Organised Crime in São Paulo.



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DRUG POLICY IS A WOMEN'S ISSUE¹

Lucia Sestokas & Nathália Oliveira

- *Drug policy, criminal justice* •
and gender in Brazil

ABSTRACT

This article presents analyses that have been systematised by the Gender and Drug Project of the Land, Labour and Citizenship Institute on the intersections of the topics of gender, criminal justice and drug policy. In this regard, the paper illustrates some dangers of restricting drug policy to the fields of public security or criminal justice. It also demonstrates the need to centralise gender in connection with other social markers to analyse violations and access to rights.

KEYWORDS

Drug policy | Gender | Incarceration | Criminal justice

1 • Introduction

Drug-related crimes are among the leading reasons for incarceration worldwide. There is an increasing body of evidence that the “war on drugs” is a costly policy² that has failed to produce a “world free of drugs” and that serves to justify highly militarised policies.³

According to the report “From coercion to cohesion”, published in 2010 by the United Nations Office on Drugs and Crime (UNODC), countries that introduced harsh penalties for these crimes have higher incarceration rates but have not, however, seen any significant long-term impacts on use, dependency or drug-related crimes, in particular when compared to countries that do not have strict punishments.

Moreover, various studies have analysed the sizable impact of drug policy on female incarceration. Based on these studies and on the culmination of 20 years of work developed by the Land, Labor and Citizenship Institute (or ITTC using its acronym in Portuguese) in guaranteeing women’s rights and combating incarceration, we consider it urgent to discuss the criminal justice system in connection with incarceration, drug policy and gender. It was in this context that the Gender and Drug Project emerged in 2015 with the intention of mapping and analysing this discussion on drug policies in the context of female incarceration.

This article will present some of the analyses systematised during the two years of the project on the intersections of the topics of gender, criminal justice and drug policy. In this regard, the paper illustrates some dangers of restricting drug policy to the fields of public security or criminal justice.

2 • Getting to grips with the topic: drug policies, gender and incarceration

In our efforts to map the national and international situation regarding drugs and the justice system, we found that drug policies have a variety of models,⁴ and not necessarily exclusionary. In other words, a drug policy adopted by one country is not defined by a single model, but by a combination of models. In Brazil, for example, Law 11,343 of 23 August 2006,⁵ which established the National System of Public Policies on Drugs, adopts decriminalisation for people who “purchase, keep, store, transport or possess drugs for personal consumption”. At the same time, it maintains the criminalisation with a prison sentence for those who “import, export, dispatch, prepare, produce, manufacture, purchase, sell, display for sale, offer, store, transport, possess, keep, prescribe, administer, deliver for consumption or supply drugs”.

Brazil’s drug policy, therefore, is not defined exclusively by either the decriminalisation model or the criminalisation model. Instead, it is the result of a combination of both. Consequently, we determined that policy models cannot be analysed in isolation: it

is necessary to observe the policies of different countries and cover all the models adopted in each of them.

We initially thought that countries that adopted flexible policies based on the models of legalisation, decriminalisation or depenalisation would show a reduction in incarceration rates. However, once we understood that the policies are not based on a single model, we proceeded to investigate which models were in place in these countries and how incarceration rates in each of them were affected.

We began by setting up a database so we could cross-reference information on the rise in incarceration, both overall and female, in countries that adopted “flexible” drug policy models.⁶ This would allow us to determine in each country whether making drug policies more flexible led to decarceration.

We looked at whether the incarceration rates had increased or decreased since the adoption of flexible drug policies until the present day.⁷ This database became the Drug Policy and Incarceration: an overview of America and Europe,⁸ launched in early 2016. From these results, we found that, contrary to our initial assumption, more than half the countries that we studied presented an increase in incarceration: of the 36 countries that made their drug policies more “flexible”, 22 presented an increase in overall incarceration and 19 presented an increase in female incarceration.⁹

As a result of these findings, we turned our attention to the countries that had presented an increase in their incarceration rates with the intention of examining similarities between them and understanding the drug policies that were adopted in each one. We identified, for example, that in the overwhelming majority of cases the “flexibility” was only related to drug consumption, while the cultivation, production, transport and sale were still generally the target of criminalisation and repression. We also found that in several cases the “flexibility” related to consumption only applied to marijuana, while criminalisation was maintained for all other drugs. The conclusion we drew from this research is that a drug policy based on “flexibility” but that is restricted to certain behaviors and certain substances does not necessarily result in decarceration.¹⁰

The case of Brazil is an example of this: the decriminalisation of drug use achieved by Law 11,343 did not lead to decarceration. Instead, starting in 2006, the year the law was passed, we can observe an explosion in incarceration rates, particularly female incarceration,¹¹ caused primarily by drug-related crimes.

According to the World Prison Brief (WPB), the increase in the Brazilian prison population between 2006 and 2014 was 51.4%. The increase in the female prison population, meanwhile, was 84.5%. Infopen, the official database on the country’s prison population containing information last published in 2014 by the Ministry of Justice’s National Prison Department, reveals that drug trafficking is the reason behind the incarceration of 27 per

cent of the total prison population, with the percentage for men standing at 25 per cent and for women 63 per cent. Additionally, a survey conducted by the Research Consortium on Drugs and the Law (*Coletivo de Estudos Drogas e Direito* or CEDD),¹² by the researcher Luciana Boiteux, shows that between 2005 and 2013, the total number of people imprisoned for drug trafficking increased 345 per cent, while the increase in the number of women imprisoned for the same reason over the same period was 290 per cent.¹³

The drug law that was introduced in 2006 and is still in effect today established harsher penalties for drug trafficking and created new criminal behaviors that are punishable by prison. The law states that criminal behaviours related to trafficking are “non-bailable and not eligible for probation, pardon, exemption, amnesty or release on own recognizance,” thereby additionally serving to keep offenders in prison. Heidi Cerneka, the director of ITTC who has worked with the topic of female incarceration for 20 years, points out that these harsher penalties are justified primarily by a supposed effort to detain the right people. In other words, the understanding that drug users should not be sent to prison is repeatedly accompanied by the idea that traffickers belong behind bars. Anyone who is not unquestionably a user, explained Cerneka, must therefore be a “trafficker” who deserves their sentence.

Although Law 11,343 was important in that it represents progress on the subject of treatment for drug users, it still keeps them in the grips of the criminal justice system. Even though they do not go to prison, these people still face criminal charges,¹⁴ since illegal drug use is still a crime.¹⁵

In Brazil, currently, there is no official objective standard (i.e. established by law or jurisprudence) for distinguishing between drug use and drug trafficking. Without this distinction, only the public security forces and the Judiciary have the power to decide who to stop, who will be considered a user or a trafficker, who poses a “threat” and which punishments, sentences or measures should be issued, etc. As such, it is up to the people who operate public security and criminal justice to determine who will have access to which policies, whether treatment for drug use or repression for trafficking and crime. In practice, judging from the profile of the Brazilian prison population, it is clear which people are assigned to criminal justice: black people from poor neighbourhoods.

3 • Dialogue and reflection: debates on drug policy in 2015 and 2016

In an attempt to solve the arbitrary way in which the security forces and the criminal justice system distinguish between drug users and traffickers, proposals have been made to establish standards for making this distinction.

Over the course of 2015, the Supreme Court resumed its judgment of Special Appeal No. 635659, which it first began to hear in 2011 and which challenges the constitutionality

of article 28 of Law 11,343. The Special Appeal analyses the possibility of decriminalising drug possession for personal use, with an initial focus on marijuana.

In this case, some court justices revisited the discussion on the adoption of objective criteria for distinguishing between drug use and drug trafficking.¹⁶ Objective criteria are standards that help classify individual behaviours that are used in drug-related offences to identify behaviours that carry different penalties according to the drug law of each country. Generally speaking, the objective criteria proposed is the amount of a substance that differentiates users from traffickers or even small-time dealers from large traffickers.¹⁷

Besides these questions about how the criteria should be defined and who should have the authority to define them, the accumulated experience of ITTC with incarcerated women reveals a number of dangers in adopting such criteria.¹⁸

We believe, for example, that the definition of quantities can lead to the automatic criminalisation of people who possess a quantity that exceeds the permitted amount. In other words, users who are stopped by the police in possession of a quantity of psychoactive substances that exceeds the defined maximum amount will automatically be classified as traffickers. This will make it easier to frame people and make seizures: all that is needed is to plant a specific quantity of drugs in a person's belongings for them to be classified as a trafficker.

At the same time, if someone in possession of a quantity that is within the permitted limit can still be considered a drug trafficker, the current reasoning is maintained that anyone who possesses drugs can be classified as a trafficker. In this case, users can still be arrested on trafficking charges.

Furthermore, we believe that distinguishing between large drug traffickers and small-time dealers based on quantity ignores the fact that possession of large quantities of drugs does not necessarily mean the person in question has a senior position in the drug trafficking "hierarchy". In other words, people in possession of large quantities of drugs should not automatically be classified as large traffickers. This is because people who work in the drug trade do not always control the quantity they are allocated to store or sell.

Although these standards would be intended to make the investigation processes and trials more thorough, they do not change the important issues related to the incarceration of people for drug-related offences: the functioning and the role of the security forces and the Judiciary.

It can be said that the establishment of objective criteria does not alter the paradigm of criminal selectivity, since they will not apply, for example, to the initial contact by the police. The police contact, when the person in possession of drugs is brought into the criminal justice system and subject to repressive public security policies, will continue to occur at the discretion of the security forces. That is, the establishment of legal quantities for drug possession will have no impact on people who are considered "suspects" by the

police. Therefore, if the police continue to stop the same people, specifying a quantity that defines who is a drug trafficker may only have the effect of legitimising the detention of people who today would already be arrested as traffickers.

Also on the subject of police stops, neither will the establishment of objective criteria alter the dangers of the police being the only witnesses in the cases that go to trial. According to the research “Pre-trial detention and the Drug Law – a study on drug trafficking arrests in the city of São Paulo”, released in 2011 by the Centre for Studies on Violence (or NEV according to its acronym in Portuguese) of the University of São Paulo, for 70 per cent of the cases judged in São Paulo the only witnesses are the police officers who worked the case.¹⁹ In this respect, as pointed out by the journalist from the Consultor Jurídico legal journal, Sérgio Rodas, in an article published on 17 February 2017, “if it were the same officers who made the arrest, how could they testify objectively about their own acts?”²⁰

The example of Mexico is significant in that it illustrates many of the aforementioned dangers. In 2009, the country passed the *Ley de Narcomenudeo* (Small-Scale Drug Law) that amended the country's General Health Act of 1994. The Law decriminalises possession for the consumption of small quantities (up to 5g of marijuana, 2g of opium, 500 mg of cocaine, 0.015 mg of LSD, 40 mg of methamphetamine and 50 mg of heroin or diacetylmorphine). The Public Prosecutor's Office is responsible for judging, on a case-by-case basis, whether the quantities seized are within the legal limits. The Law also establishes a distinction between “use” and “compulsive use”, with compulsive use being considered anyone who presents symptoms of dependency. Mandatory treatment is established for people who are compulsive users.

The article “Mexico: The Law Against Small-Scale Drug Dealing”, by Jorge Hernández Tinajero and Carlos Zamudio Angles²¹ explains that users found in possession of more than the permitted quantity are treated as criminals and can be convicted to a prison sentence of between 10 and 36 months. In these cases, the law does not even require the authorities to prove that the seized drugs were intended for sale. The authors also point out that it is common practice for users to be detained and searched without a warrant based on “suspected trafficking”. In effect, therefore, anyone found in possession of drugs can be considered a criminal. It is important to note here, as the authors do, the absence of any control and anti-corruption mechanisms on the actions of the police force, which creates incentives for the practices of corruption, extortion and abuse of power. The article concludes that the war on drugs in Mexico ends up criminalising the most marginalised people. In the cities, poor young people are targeted by the authorities because they are deemed more likely to be drug users and because of their appearance. The article points out the need to consider that people enter the illegal drug market due to lack of economic opportunity, which is more prevalent among the most vulnerable in society, notably peasants, young people and women.

Given the situation described above, we believe that the establishment of objective criteria could be used as a way to justify incarceration or even as a means to supposedly

detain the right people, enabling the arbitrary acts of public security agents sanctioned by the criminal justice system.

As seen in the Mexico case, the establishment of objective criteria to distinguish between criminal behaviours could create a dangerous illusion of neutrality in police action, making it unquestionable because it is grounded on “concrete” standards. Moreover, it could also forge misleading ways for judges to be “secure” in their decision, as if the new standards would safely and definitively define who could be considered a user.

The belief that a “concrete” standard is needed to distinguish between who can be considered a user or a trafficker once again reinforces the dichotomy between the two, using fragile factors considering the diversity of situations. Although these standards may be a response to the arbitrariness of the security forces and the Judiciary, when applied they do not consider the specifics of each situation. We need to ask whether these new standards would result in decarceration, in particular for the profile of people who are currently imprisoned – as users or traffickers – and also whether this distinction would have the effect of guaranteeing the rights of both.

4 • Gender: (in)visibility, impacts and selectivity in prison

Since its foundation, ITTC has been working with women in conflict with the law both inside and outside prison. The Institute encounters in the prison environment and in the criminal justice system the inequalities based on gender asymmetries in their intersection with other markers of difference, since we believe that both the prison environment and the criminal justice system produce and reproduce gender inequality and violence.

We have found, as pointed out by Bruna Angotti,²² that “prison is a powerful place of stigmatisation, within a context of structural oppression of sex, gender, race and class”. The author also emphasises that prison represents yet one more violent place among so many others from previous experiences, whether in the maintenance of violent spaces or in the reinforcement of gender stereotypes. The prison system, just like the justice system, contributes to enhancing violence against women and perpetuating gender inequality.²³

It is interesting to note how gender is a topic that is frequently hidden over the course of the passage of men and women through the criminal justice system. According to the report “Women in Prison”, released by ITTC on 7 March 2017, matters of gender are systematically ignored in criminal cases, from the initial police contact until the end of the proceeding. Several public bodies fail to make a distinction between cases of men and women, from courts to Public Defender’s Offices, State Security Departments, the Ministry of Justice and even the National Justice Council, which has oversight powers over the justice system. During the research for the report, it was found that police reports,

for example, suppress important information on maternity, which makes it difficult for women facing charges to access certain rights, such as house arrest.

The invisibility of specific gender issues in official information and data on the prison system²⁴ leads to the reinforcement of gender violations in this environment and, subsequently, makes it difficult to create and provide access to specific policies and to guarantee rights.

According to Angotti,²⁵ “it is undeniable that there are particularities in the imprisonment of men and women, whether on account of the binary structure that separates the sexes into two distinct categories, attributing to them their own social roles, the social effects of this division or even the physical characteristics of the female body”. It is interesting to note how the environment can serve to reinforce gender roles and stereotypes related to specific ideas about “women”. Whether through the control of conjugal visits,²⁶ the repression of affective-sexual relationships that occur between female prisoners,²⁷ the promotion of domestic chores for women²⁸ or the offer of training courses and jobs that reinforce gender stereotypes,²⁹ prisons and even juvenile detention centers impose standards for the expected behaviour of women in these environments.

According to Heidi Cerneka,³⁰ social and family issues also contribute to distinguishing between the experiences of women in prison and those of men. Although there is no official survey in Brazil on maternity among female prisoners, it is safe to say, based on the experience of the ITTC, that many of them are responsible for looking after children, for other family members or people from their close social circle, a role socially attributed to women. As a result, prison can also have an economic and affective impact on the family. Also on the subject of maternity inside prisons, the study “Dar à luz na sombra” (Giving Birth in the Dark)³¹ reveals that maternity in prison generally appears to be controlled by the institutions. The study also shows that women who are mothers and/or caregivers experience prison in a hyper and hypo-maternity paradox, i.e. prison can either represent a space where new mothers spend 24 hours per day with their babies or it can serve as a rupture of the maternal bond.

According to the working group responsible for the publication “Women, Drug Policies and Incarceration: a guide for policy reform in Latin America and the Caribbean”, released by the Washington Office on Latin America (WOLA), the International Drug Policy Consortium (IDPC), Dejusticia and the Inter-American Commission of Women (CIM) of the Organization of American States (OAS), with the support of ITTC, the use of prison as a response to drug-related offences has disproportionately affected women. The publication shows that prison further limits the chances of women finding a decent job in the formal employment market after they are released. This is particularly true in the market for caretaking jobs (domestic workers, nannies, caregivers etc.), since their criminal record and prison time is frequently the greatest impediment to them finding employment. Even though the Judiciary and the labour market are not directly related, it is interesting to note that the profile of women who face the greatest economic hardship is the same as most of the women who are caught up in the criminal justice system.³²

Female prisoners in Brazil fit a certain profile. In general, they are young, black and have a low level of schooling, just like the overall profile of the Brazilian prison population. According to the aforementioned survey by Infopen, 50 per cent of the women are between 18 and 29 years old, 68 per cent are black and just 14 per cent have finished high school.³³ This profile, however, is not exclusive to Brazil: in Latin American prisons, women are mostly young, black, indigenous and latina, and have a low level of schooling. They are also mostly first-time offenders, family breadwinners and say they have already suffered some type of violence.³⁴

The situation experienced by these women, according to Angela Davis,³⁵ has historic roots and is interspersed with certain marks of distinction. In her book “Women, Race and Class”, the author turns her attention to countries with experiences in slavery and points out that black women who progressed from the condition of merchandise at the end of the 19th century to rights-holders do not fully enjoy, in the 21st century, all the same political, economic, social and affective rights as white people. The political, economic and social inequalities identified by Davis are the result of societies that are structured on racism and, once they are structured as such, all relations will carry the markers of inequality based on this mechanism.³⁶ Along the same lines, the lawyer Dina Alves presents, in the context of Brazil, the influence of racist theories on relations between race and crime developed in the 19th century, during the formation of Brazilian legal thought. She argues that racism is an anchor of criminal selectivity generating a “continuum from *senzala* (slave quarters), *favela* (slum) to prison”.³⁷

For the black lawyer and activist Deborah Small,³⁸ it is essential to understand how the racist mechanisms of society are reinforced by the current drug policy. According to Small, the so-called “war on drugs” is an effective tool for criminalising blacks, since it criminalises entire poor territories and the relationships contained within them.

In this regard, it is important to understand not only how the profiles of drug users and traffickers are formed, but also the various profiles associated with drug use. It is also important to keep in mind how drug policies reproduce and modernize a series of inequalities based on gender, race and class. It is these reflections that make it possible to consider and develop other drug policy tools that are not anchored solely or primarily in incarceration and that are not intended solely to control and repress these same women.

5 • Conclusion

It is safe to say that incarceration, in particular female incarceration, is affected by the drug policies adopted in different countries.

Understanding the centrality of the topic of gender in connection with other social markers is to understand the existence of specific issues that need to be taken into account with regard to both violations and concrete proposals on access to rights.

It is also to understand that the formulation of drug policy should not be limited to the field of public security or criminal justice. Thinking about these policies in other terms, therefore, involves thinking about them in connection with policies on healthcare, social services, employment and income distribution, among others, considering local realities.

We believe this will make it possible to find ways to help guarantee rights and reverse the inequalities primarily experienced by women due to drug policies. After all, we consider drug policy to be a woman's issue.

NOTES

1 • Ana Luiza Voltolini Uwai, Bruna Bumachar, Denise Neri Blanes and Heidi Cerneka contributed to this article.

2 • "The Alternative World Drug Report: Counting the Costs of the War on Drugs – Executive Summary," Count the Costs, 2016, accessed June 15, 2018, <https://www.unodc.org/documents/ungass2016/Contributions/Civil/Count-the-Costs-Initiative/AWDR-exec-summary.pdf>.

3 • "Ending the Drug Wars – Report of the LSE Expert Group on the Economics of Drug Policy," LSE, May 2014, accessed June 15, 2018, <http://www.lse.ac.uk/ideas/Assets/Documents/reports/LSE-IDEAS-Ending-the-Drug-Wars.pdf>.

4 • For more information, see: "Glossário – Tipo de Políticas de Drogas," Instituto Terra, Trabalho e Cidadania, 2015, accessed June 15, 2018, <http://itcc.org.br/glossario-tipos-de-politicas-de-drogas/>.

5 • "Lei nº 11.343, de 23 de Agosto de 2006," Presidency of the Republic, Chief of Staff, Subdivision for Legal Affairs, 2006, accessed June 15, 2018, http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2006/lei/l11343.htm.

6 • To identify the countries that have adopted flexible policies, we used the report "Levantamento sobre legislação de drogas nas Américas e Europa e análise comparativa de prevalência de uso de drogas" of the National Department on Drug Policy

of the Ministry of Justice that listed 34 countries. However, it was found that Ukraine and the United States, despite having tolerant legislation on drug use, were not included in the report. Adding these two countries, we established a total of 36 legislations that have depenalised, decriminalised or legalised the use or otherwise legalised and/or regulated the cultivation, production and/or sale of an illicit psychoactive substance (marijuana, cocaine, lysergics etc). The information found on the Asian and African continents was inconclusive and, therefore, was not included in the report.

7 • To monitor incarceration rates, we used the database available at: "World Prison Brief Data," Institute for Criminal Policy Research, 2018, accessed June 15, 2018, <http://www.prisonstudies.org/world-prison-brief-data>.

8 • Available at: "Política de Drogas e Encarceramento: Um Panorama América-Europa," ITTC, 2016, accessed June 15, 2018, <http://itcc.org.br/infografico/>.

9 • An increase in the total prison population was seen in Argentina, Belgium, Bolivia, Brazil, Chile, Colombia, Ecuador, Honduras, Hungary, Ireland, Italy, Luxembourg, Mexico, Netherlands, Paraguay, Peru, Portugal, Slovakia, Slovenia, Spain, United Kingdom and Venezuela. An increase in the female prison population was seen in Argentina, Brazil,

Chile, Colombia, Ecuador, Honduras, Hungary, Ireland, Italy, Luxembourg, Mexico, Netherlands, Paraguay, Peru, Slovakia, Slovenia, Spain, United Kingdom and Venezuela.

10 • For further details, see: Lucia Sestokas and Nathália Oliveira, "O Que Experiências em Países Tolerantes com o Uso de Drogas Têm a Nos Mostrar?" *Le Monde Diplomatique*, April 19, 2016, accessed June 15, 2018, <https://diplomatique.org.br/o-que-experiencias-em-paises-tolerantes-com-o-uso-de-drogas-tem-a-nos-mostrar/>.

11 • For further details, see: Lucia Sestokas and Nathália Oliveira, "Guerra às Drogas: Heranças e Novos Paradigmas." April 5, 2016, accessed June 15, 2018, <https://jota.info/artigos/guerra-drogas-herancas-e-novos-paradigmas-05042016>.

12 • Coletivo de Estudos Drogas e Direito (CEDD) is formed by researchers from 9 Latin American countries whose objective is to analyse the impact of criminal legislation and legal practice in the area of drugs, seeking to generate information and promote informed debate about the effectiveness of current policies and recommend alternative approaches for fairer and more effective policies. More information on the website: *Drogas y Derecho*, Homepage, 2018, accessed June 15, 2018, <http://www.drogasyderecho.org/index.php/es/>.

13 • Luciana Boiteux, "Mujeres y Encarcelamiento por Delitos de Drogas." *Colectivo de Estudios Drogas y Derecho*, 2015, accessed June 15, 2018, http://www.drogasyderecho.org/publicaciones/pub-priv/Luciana_v08.pdf.

14 • In practice, a person stopped by police officers in possession of illegal drugs can be taken to the police station for questioning or be detained on the spot on trafficking charges. At the police station, the police chief may decide that he/she is dealing with a user and send them to a special criminal court, where they will receive punishments such as community service or educational assignment. If the police chief determines that the case involves trafficking, they may be sent to a custody hearing. At the custody hearing, the judge may rule that

the arrest was illegal if they understand that the person is a user (even in cases of framing, no-knock raids, etc.) and send them to the special criminal court. If the judge determines that it is a trafficking case, he/she will issue a sentence that could include detention (if he/she deems that there is sufficient evidence to justify detention and that the person poses a threat to the public order or to the observance of the law) or other measures (probation, bans on entering certain places, bans on contacting certain people, bans on leaving the city, curfew after a certain time of day, etc.).

15 • The association of drug use with crime led us to question whether this is a common association and whether it exists in all countries. The research that produced the *Drug Policy and Incarceration*: an overview of America and Europe reveals that in at least 20 countries in the Americas and Europe the use of psychoactive substances is not considered a crime.

16 • Justice Luís Roberto Barroso voted to establish a quantitative criterion to distinguish between drug use and drug trafficking and Justice Luiz Edson Fachin said the quantitative criterion should be determined by the legislative branch. For more information, see the position of the rapporteur, Justice Gilmar Mendes "Recurso Extraordinário 635.659 São Paulo," *Migalhas*, August 20, 2015, accessed June 15, 2018, <http://www.migalhas.com.br/arquivos/2015/8/art20150820-10.pdf>, the vote of Justice Edson Fachin ("RE 635.659-RG – Rel. Min. Gilmar Mendes Voto-Vista Min. Edson Fachin," *Migalhas*, 2015, accessed June 15, 2018, <http://www.migalhas.com.br/arquivos/2015/9/art20150910-12.pdf>) and the notes for the oral vote of Justice Luís Roberto Barroso ("RE 635.659 Descriminalização do Porte de Drogas Para Consumo Próprio," *Migalhas*, 2015, accessed June 15, 2018, <http://www.migalhas.com.br/arquivos/2015/9/art20150911-04.pdf>.

17 • Objective criteria can also be based on purity, type (hard or soft), the value of the drug that the person possesses, or a combination of these

factors. These criteria can be used to differentiate between “problem users” and “recreational users”, “users” and “traffickers”, “small-time dealers” and “large traffickers”, and “small producers” and “large producers”, etc.

18 • For further details, see: “10 Anos da Lei de Drogas: É Estratégico Discutir Critérios Objetivos?” ITTC, September 29, 2016, accessed June 15, 2018, <http://ittc.org.br/10-anos-lei-de-drogas-e-estrategico-discutir-criterios-objetivos/>.

19 • The study analysed 667 cases of detention for possession of narcotics in the city of São Paulo from the months of November and December 2010 and January 2011.

20 • Sérgio Rodas, “74% das Prisões por Tráfico Têm Apenas Policiais Como Testemunhas do Caso.” Consultor Jurídico, February 17, 2017, accessed June 15, 2018, <http://www.conjur.com.br/2017-fev-17/74-prisoos-traffic- apenas-policiais-testemunhas>.

21 • Jorge Hernández Tinajero and Carlos ZamudioAngles, “Mexico: The Law Against Small-Scale Drug Dealing”, Transnational Institute, *Series on Legislative Reform of Drug Policies* no. 3 (2009).

22 • Bruna Angotti, “O Encarceramento Feminino como Ampliação da Violação de Direitos”. *Le Monde Diplomatique*, p. 4, December 7, 2015, accessed June 15, 2018, <http://diplomatique.org.br/o-encarceramento-feminino-como-ampliacao-da-violacao-de-direitos/>.

23 • For further details, see: “Infográfico Mulheres e Tráfico de Drogas: Uma Sentença Tripla,” ITTC, August 12, 2015, accessed June 15, 2018, <http://ittc.org.br/infografico-mulheres-e-traffic-de-drogas-uma-sentenca-tripla/>.

24 • For further details, see: “Situação das Mulheres Presas no Brasil Pode Ser Mais Grave do Que Apontam Dados Oficiais,” ITTC, December 14, 2015, accessed June 15, 2018 <http://ittc.org.br/situacao-das-mulheres-presas-no-brasil-pode-ser-mais-grave-do-que-apontam-dados-oficiais/>; “Nota ITTC: ‘Brasil é o Quinto País Com Mais Mulheres Encarceradas no Mundo’, According to the report

of the Institute For Criminal Policy Research, published in *O Globo*,” ITTC, October 5, 2015, accessed June 15, 2018 <http://ittc.org.br/brasil-e-o-quinto-pais-com-mais-mulheres-encarceradas-no-mundo-segundo-relatorio-do-institute-for-criminal-policy-research-publicado-em-o-globo/>.

25 • Angotti, “O Encarceramento Feminino”, 2015, p. 2.

26 • The researcher Natália Corazza Padovani, in her article “No olho do furacão: conjugalidades homossexuais e o direito à visita íntima na Penitenciária Feminina da Capital”, analyses the right to conjugal visits and looks at which relationships are considered family or matrimonial relationships by the prison’s governing body. Her analysis focuses on the struggle for the right to homosexual conjugal visits. Available at: Natália Corazza Padovani, “No Olho do Furacão: Conjugalidades Homossexuais e o Direito à Visita Íntima na Penitenciária Feminina da Capital,” *Cadernos pagu* 37 (July-December 2011): 185-218, accessed June 15, 2018, <http://www.scielo.br/pdf/cpa/n37/a07n37.pdf>.

27 • The researcher Natália Corazza Padovani, in her article “Poder e sexualidades dissidentes na prisão: discutindo a relação entre poder e prazer (homo) sexual na Penitenciária Feminina da Capital,” analyses the relationship established, by the legal system, between sexual behaviours considered illegitimate and criminality during a study period of just over thirty years, covering past and present forms of classifying and managing the sex of the female prisoners. Available at: Natália Corazza Padovani, “Poder e Sexualidades Dissidentes na Prisão: Discutindo a Relação Entre Poder e Prazer (Homo)sexual na Penitenciária Feminina da Capital.” 34° Encontro Anual da ANPOCS Seminário Temático 30: Sexualidade, Gênero: Ética e Política, 2010, accessed June 15, 2018, <http://www.anpocs.com/index.php/papers-34-encontro/st-8/st30-2/1650-npadovani-poder/file>.

28 • According to an article published in the magazine *Época* in 2015, girls from one unit of

the Fundação Casa youth reform centre said that they receive the clothes, sheets and towels from the male unit of the same reform centre to wash. Available at: Flávia Tavares, "A Vida e os Problemas das Meninas Infratoras." *Época*, May 27, 2015, accessed June 15, 2018, <http://epoca.globo.com/tempo/noticia/2015/05/vida-e-os-problemas-das-meninas-infratoras.html>.

29 • It is interesting to note that very often the vocational courses and jobs offered to the detained women and girls reinforce some gender stereotypes. An example of such occupations are those related to the kitchen, sewing, cleaning, caretaking or beauty activities.

30 • Heidi Cerneka, *Incarcerated Women of Color and How Race and Mental Illness Issues Affect Them and Are Manifest in Their Prison Time*. Unpublished manuscript. Loyola University Chicago School of Law, 2015.

31 • "Dar À Luz na Sombra: Condições Atuais e Possibilidades Futuras para o Exercício da Maternidade por Mulheres em Situação de Prisão," Instituto de Pesquisa Econômica Aplicada, 2015, accessed June 15, 2018, <http://www.justica.gov.br/noticias/201clugar-de-crianca-nao-e-na-prisao-nem-longe-de-sua-mae201d-diz-pesquisa/pesquisa-dar-a-luz-na-sombra-1.pdf>.

32 • According to the research "Mulheres e Trabalho: Breve Análise do Período 2004-2014", released by IPEA in March 2016, black women are more susceptible to unemployment: in 2014, 10.2 per cent were unemployed, whereas just 4.5 per cent of white men were unemployed in the same period. Moreover, the percentage of people who are in precarious working conditions is 39.08 per cent among black women, followed by 31.6 per cent among black men, 26.9 per cent among white women and finally 20.6 per cent among white men. It is also black women who have the lowest remuneration and who represent the largest contingent of workers without formal employment contracts and in self-employed activities. According to the analysis conducted in the research, even

though income inequality has narrowed, in 2014 black women still earned less than 40 per cent of the average salary of white men, or R\$946 per month compared to R\$2,393. See: "Mulheres e Trabalho: Breve Análise do Período 2004-2014," Instituto de Pesquisa Econômica Aplicada, 2016, last accessed June 15, 2018, http://trabalho.gov.br/images/Documentos/Noticias/Mulher_e_trabalho_marco_2016.pdf.

33 • For the purposes of comparison, the Pesquisa Nacional por Amostra de Domicílio household survey from 2015 conducted by the IBGE statistics institute identifies that the percentage of black women in Brazil is 53.6 per cent. Moreover, the 20-29 age group represents 7.5 per cent of the Brazilian female population. Finally, a survey by Todos pela Educação (available at: "79,8% das Meninas Concluíram o Ensino Fundamental Até os 16 Anos em 2014," Todos Pela Educação, March 8, 2016, accessed June 15, 2018, <http://www.todospelaeducacao.org.br/reportagens-tpe/37285/798-das-meninas-concluiram-o-ensino-fundamental-ate-os-16-anos-em-2014/>) reveals that the percentage of girls up to 19 years of age in Brazil who finish high school is 63 per cent.

34 • Boiteux, "Mujeres y Encarcelamiento," 2015.

35 • Angela Davis, *Mulheres, Raça e Classe* (São Paulo: Boitempo, 2016).

36 • *Ibid.*

37 • Enedina do Amparo Alves, "Rés Negras, Judiciário Branco: Uma Análise da Interseccionalidade de Gênero, Raça e Classe na Produção da Punição em uma Prisão Paulistana." Master's Dissertation in Social Sciences at Pontifícia Universidade Católica de São Paulo, p. 129, 2015, accessed June 15, 2018, <https://sapientia.pucsp.br/bitstream/handle/3640/1/Enedina%20do%20Amparo%20Alves.pdf>.

38 • In a talk given on 29 July 2016, documented at: "A Melhor Política de Drogas É Não Ter Política de Drogas," ITTC, August 5, 2016, accessed June 15, 2018, <http://ittc.org.br/melhor-politica-de-drogas-e-nao-ter-politica-de-drogas/>.



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CONVERSATIONS



“HUMAN RIGHTS IMPACT ASSESSMENTS MUST BE PART OF ECONOMIC REFORMS”

Interview with Juan Pablo Bohoslavsky

“HUMAN RIGHTS IMPACT ASSESSMENTS MUST BE PART OF ECONOMIC REFORMS”

• Interview with Juan Pablo Bohoslavsky •

By Oliver Hudson and Jefferson Nascimento

For many people, the link between foreign debt, finance and human rights may not be immediately clear. However, the Human Rights Council has an independent expert (one of its Special Procedures) to explore exactly this. In this exclusive interview for the Sur International Journal on Human Rights, Juan Pablo Bohoslavsky (Argentina) – the United Nations’ Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights – explains his mandate and how the question of human rights and finance are, in fact, intrinsically linked.

In particular, he discusses how austerity policies – which, although not new, are currently being implemented by governments at an alarming rate around the world – can have a devastating effect on human rights. Bohoslavsky notes how a human rights impact assessment is usually not considered by governments when developing economic reforms, including austerity measures. He is therefore in the process of developing a set of Guiding Principles on this issue, and takes the time to discuss how he has gone about doing this. In particular, he notes the importance of civil society participation in the issue. Finally, he reflects on the Brazilian government’s cancellation of his much anticipated visit to Brazil and explains how he is still hopeful to engage in meaningful dialogue with Brazil through other channels.

More details about Juan Pablo Bohoslavsky can be found on his official webpage (<http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/IEDebtIndex.aspx>). He tweets at @IEfinanceHRs.

Conectas Human Rights • The title of your mandate mentions the effects of foreign debt, but the analysis of austerity measures is often associated with your work. Could you explain the relationship?

Juan Pablo Bohoslavsky • I would like to offer two responses to this question. The first response is formal. My work on economic reform policies, of which austerity, structural adjustment and fiscal consolidation are part, is based also on a request from the Human Rights Council to analyse the impacts on the enjoyment of all human rights, particularly economic, social and cultural rights, and to develop guiding principles for their assessment.¹

A second, more substantive response, is the intrinsic link between debt issues and financial and economic crises. Often, economic strategies and economic reform packages are "justified" by their links with deficit and high levels of public debt. Hence, discussing if and to what extent public debt has to be repaid means also discussing how financial obligations are reconciled with economic and social rights.

Conectas • The adoption of economic austerity measures gained momentum after the global financial crisis (2007-2008). At times, the imbalance of public accounts is used as a justification for severe and long-term budgetary constraints, as occurred in Brazil. How can we include the logic of human rights in this economic debate?

JPB • Allow me first to clarify that the adoption of austerity measures is not entirely new, and certainly not only from the 21st century. From a global perspective we could trace key elements of structural adjustment and fiscal consolidation to a number of crises of the last century, before the 2007-08 crash, whether in Latin America or Asia. This is one of the points I raise in my report presented to the Human Rights Council recently,² the fact that despite decades of experience of the negative impacts on human rights of this type of reforms, in various parts of the world, we continue to see the same recipes applied, with the same negative outcomes. These policies often ignore the imperative of assessing – from a human rights perspective – the impacts on people before these policies and reforms are set in motion.

Now, in relation to your question, the short response is: a human rights perspective must be part of all economic debates, and especially a human rights impact assessment must be part of economic reforms. Economic decisions are never pure and detached from ideology. This exercise (a human rights impact assessment) can support governments and international financial institutions in complying with their international human rights obligations when carrying out economic reforms by providing a specific framework and process for testing how proposed policy responses and related budgetary adjustments measure up against those obligations. Such an exercise contributes to evidence-based policymaking as it provides an analytical basis for forecasting potential human rights impacts when choosing among policy options. At the same time, a human rights impact assessment makes the potential human rights impacts of policy choices more visible and explicit to a wider population and their representatives, and makes policy choices and their consequences

more explicit for policymakers. A human rights-based approach, unlike other more technocratic approaches, provides normative guidance to policymakers about which choices they should make or avoid.



Austerity policies are often justified by an overly simplified or misleading diagnosis — in particular, blaming excessive public expenditure for fiscal crises without even considering other relevant factors, such as external shocks, insufficient revenue streams, illicit financial flows, financial deregulation, widening inequalities, and depressed wages among low- and middle-income households or other failures owing to globalisation. Policy decisions are frequently taken without sufficient consideration of less harmful policy options and reliable analysis of foreseeable outcomes. Information related to these decisions is often not publicly accessible in any meaningful way nor subject to robust participation by groups in society that may be adversely affected. Those who typically shoulder a disproportionate part of the cost of adjustments are the most disadvantaged groups who have marginal voice and political power, which makes their situation and the impact on their rights invisible.

Conectas • Could you talk a little about your most recent report to the UN Human Rights Council in February 2018?

JPB • Thanks for this question, as it allows me to explain the process that I started in 2017, and the various building blocks³ towards the development of the Guiding Principles on Human Rights Impact Assessment of Economic reform policies, which should be submitted to the Human Rights Council by the end of the year.⁴ I see it as a multi-layered process and a crucial opportunity for a diverse group of States and stakeholders to delve into the impacts (documented as well as testimonial), the lessons learnt, the commonalities and the limitations of human rights impact assessments. My main objective with this process is to enhance the understanding of the links between economics and human rights, in times of crisis or acute economic distress, and to provide a robust and practical tool for human rights-centered action.

The report that you are referring to is a crucial building block and I call it the “mapping report”.⁵ This report consolidates existing human rights and other relevant impact assessment tools. It highlights that the guiding principles aim at providing effective and practical guidance and tools to different stakeholders for assessing economic reform policies based on existing international human rights standards and principles. Although such human rights-specific guidance has not yet been adequately developed, relevant tools, experience and research exist. It identifies challenges and some elements to advance towards more effective protection of human rights in economic policy.

The next part of this process is my upcoming report to the General Assembly on the impact of economic reform policies on women's human rights (it will be available mid-September 2018).⁶ This report aims to analyse the particular ways in which austerity measures, structural adjustment, fiscal consolidation and in general economic reform programmes, have a disproportionate impact on the life of women of all ages and what to do to address the negative impacts. The report aims to provide concrete and critical guidance for the Guiding Principles, from the perspective of women's human rights.

In addition, the process will include consultations, expert meetings, and importantly a draft text of the Guiding Principles will be posted on my webpage in August 2018 for comments and inputs from any State or stakeholder.⁷ I encourage your readers, especially in the Global South, to engage with this process and to send me their contributions.

Conectas • You have already mentioned how the use of human rights impact assessments to strengthen policy responses to financial crises is analysed in one of the chapters of the report. Can you talk a little more about the importance of these impact assessments and their main requirements?

JPB • While United Nations human rights bodies have already highlighted key human rights principles and standards against which adjustment policies should be reviewed (such as the prohibition of retrogressive measures that are discriminatory or not proportional), there is still a clear need to develop more practical guidance on how to design and implement a human rights impact assessment in practice. That would enable the move from human rights on paper to human rights in action. The guiding principles for assessing the human rights impact of economic reform policies should assist States, international financial institutions and other stakeholders in designing, implementing and monitoring economic reform programmes with the aim of ensuring the protection of human rights.

The guiding principles should be applicable to different circumstances in the context of acute financial crises, in less challenging economic times, in developing countries and in highly advanced economies, and ensure as well prompt consideration of various policy alternatives, beyond austerity measures, in response to fiscal constraints.

They should also provide guidance on and references to analytical approaches that could make visible the potential impacts of reform measures and show how the burden of adjustment is shared across different income quintiles, gender, age and different social groups, including the most marginalised.

Furthermore, they should contain guidance for carrying out cumulative, rights-based impact assessments of various reforms measures that are often implemented in parallel as part of fiscal consolidation packages, such as taxation and public expenditure reform, so that the fuller impact on rights holders and particular groups at risk can be assessed.

And they need to consider the best way to carry out a human rights impact assessment in

order to ensure that the results can effectively inform policy decisions, while at the same time address the independence and credibility of the assessment undertaken.

Conectas • How important is the participation of civil society in developing guiding principles for assessing the human rights impact of economic reform policies?

JPB • In all my work as Independent Expert, I have learnt from and have greatly valued the engagement, contributions and support of civil society organisations and networks. This is true of my country visits, communications, events, thematic reports and it is especially important for the development and later for the use and dissemination of the Guiding Principles. As of today [6 May 2018], I have already received substantive and valuable contributions from civil society around the world referring to what should be included in the Guiding Principles, what type of critical aspects need to be sharpen and what arguments are needed in this type of tool. I continue to engage and invite contributions, critics and also examples. And I especially want to invite civil society in the Global South to engage with this process.

Conectas • In 2017, you visited three countries: Tunisia, Panama and Switzerland. How have the observations and dialogue with civil society in those countries influenced the report?

JPB • During all my country visits, a part of the agenda is devoted to meeting and discussing with civil society. I believe that all of us, special procedures mandate holders, aim to ensure this in our practice. However, in relation to my mandate and work, civil society is sometimes not the “traditional” human rights type. There are a number of organisations working on economic policy, taxation, budgets, corruption or similar issues that do not see themselves or do not necessarily frame their work as human rights work. Part of my role and work is to also build bridges within civil society between these organisations and the relevance of human rights standards, tools, and principles. Ultimately, the use of public funds and public money is critical to issues of equality, redistribution, accountability and effective use of the maximum of available resources, all of which are central principles of a human rights perspective.

Similarly, the work of investigative journalists, such as those that have made public the so called Panama Papers, Paradise Papers, Swiss Leaks, etc. is not often presented and perceived as human rights work. For my work and for the purpose of this mandate, the work civil society organisations have carried out has been very relevant.

Conectas • In March 2018, the Brazilian government cancelled your official visit to the country, with only a few weeks’ notice. The cancellation frustrated civil society organisations, which have worked hard to show how the 2016 freeze in public spending – planned to be in force for 20 years – will have a drastic impact on social rights. What is your evaluation of the visit’s cancellation and how could the criteria included in your report help the Brazilian government take a more human rights approach?

JPB • As you know, all special procedures mandates, such as mine, have to carry out two official

country visits per year, and dates are agreed upon with the Government. In the case of Brazil, the dates for a visit (March 2018) were agreed upon in August 2017 with the Government.

While the visit was postponed at the end of February, I understand that the Government of Brazil will propose new dates, but I have not received them yet. I am still hopeful that the new dates will be confirmed in the coming weeks.

Having said this, there are of course other mechanisms to engage constructively with Governments in my capacity as Independent Expert to assist with assessment and recommendations. Promoting a human rights approach to deal with financial matters is in the interest of the world's peace, equality and inclusive growth. So I am ready to contribute to the country in any way.

• • •

*Interview conducted by Oliver Hudson
and Jefferson Nascimento on 6 May 2018*

NOTES

- 1 • "Resolution 34/03," Human Rights Council, A/HRC/34/L.3, March 16, 2017, accessed June 6, 2018, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session34/Pages/ResDecStat.aspx>; "Resolution 37/11," Human Rights Council, A/HRC/37/L.22, March 16, 2018, accessed June 6, 2018, <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Pages/ResDecStat.aspx>.
- 2 • "A/HRC/37/54," Human Rights Council, December 20, 2017, accessed June 6, 2018, http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/37/54.
- 3 • Other building blocks include the report on labour rights and austerity "A/HRC/34/57," Human Rights Council, December 27, 2016, accessed June 6, 2018, <http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/AnnualReports.aspx>, and the upcoming report to the General Assembly on the impact of economic reform policies on women's human rights.
- 4 • "Guiding Principles for Human Rights Impact Assessments for Economic Reform Policies,"

OHCHR, 2017, accessed June 6, 2018, <http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/DebtAndImpactAssessments.aspx>.

5 • "A/HRC/37/54," Human Rights Council, December 20, 2017, accessed June 6, 2018, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/HRC/37/54.

6 • For further information and contributions received to date see: "The Impact of Economic Reform Policies on Women's Human Rights," OHCHR, 2018, accessed June 6, 2018, <http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/ImpactEconomicReformPoliciesWomen.aspx>.

7 • The draft Guiding Principles will be published at: "Independent Expert on The Effects of Foreign Debt and Other Related International Financial Obligations of States on The Full Enjoyment of All Human Rights, Particularly Economic, Social and Cultural Rights," OHCHR, 2018, accessed June 6, 2018, <http://www.ohchr.org/EN/Issues/Development/IEDebt/Pages/IEDebtIndex.aspx>.



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VERA CHIU

INTRODUCTION

Launched by Justice Centre Hong Kong in 2013, the Hong Kong Human Rights Arts Prize (HKHRAP) has played a pivotal role in discovering and encouraging Hong Kong-based artists to explore the state of human rights both at home and abroad. The arts prize offers a platform for artists to create work without boundaries and to magnify the impact and exposure of their stories.

The work of Justice Centre Hong Kong in creating a public dialogue and hosting voices at the intersection of art, society, business and human rights is of the utmost importance, especially in the current climate. By collaborating across all sectors they also hope to engage the civic imagination and inspire creative alternatives to the challenges at hand.

The HKHRAP also aims to raise awareness and funds for the front-line work of Justice Centre Hong Kong. A non-profit human rights organisation, Justice Centre works fearlessly to protect the rights of our most vulnerable community members bringing their stories into the public debate. They also provide people seeking protection in Hong Kong with free and independent legal information and assistance.

WEBSITE & SOCIAL MEDIA:

Justice Centre HK website: www.justicecentre.org.hk

IG @justicecentrehk / FB: JusticeCentreHK

IG @hkhumanrightsartsprize / FB: HongKongHumanRightsArtsPrize

CHRISTY CHOW | Winner - HKHRAP 2017

De-stitching

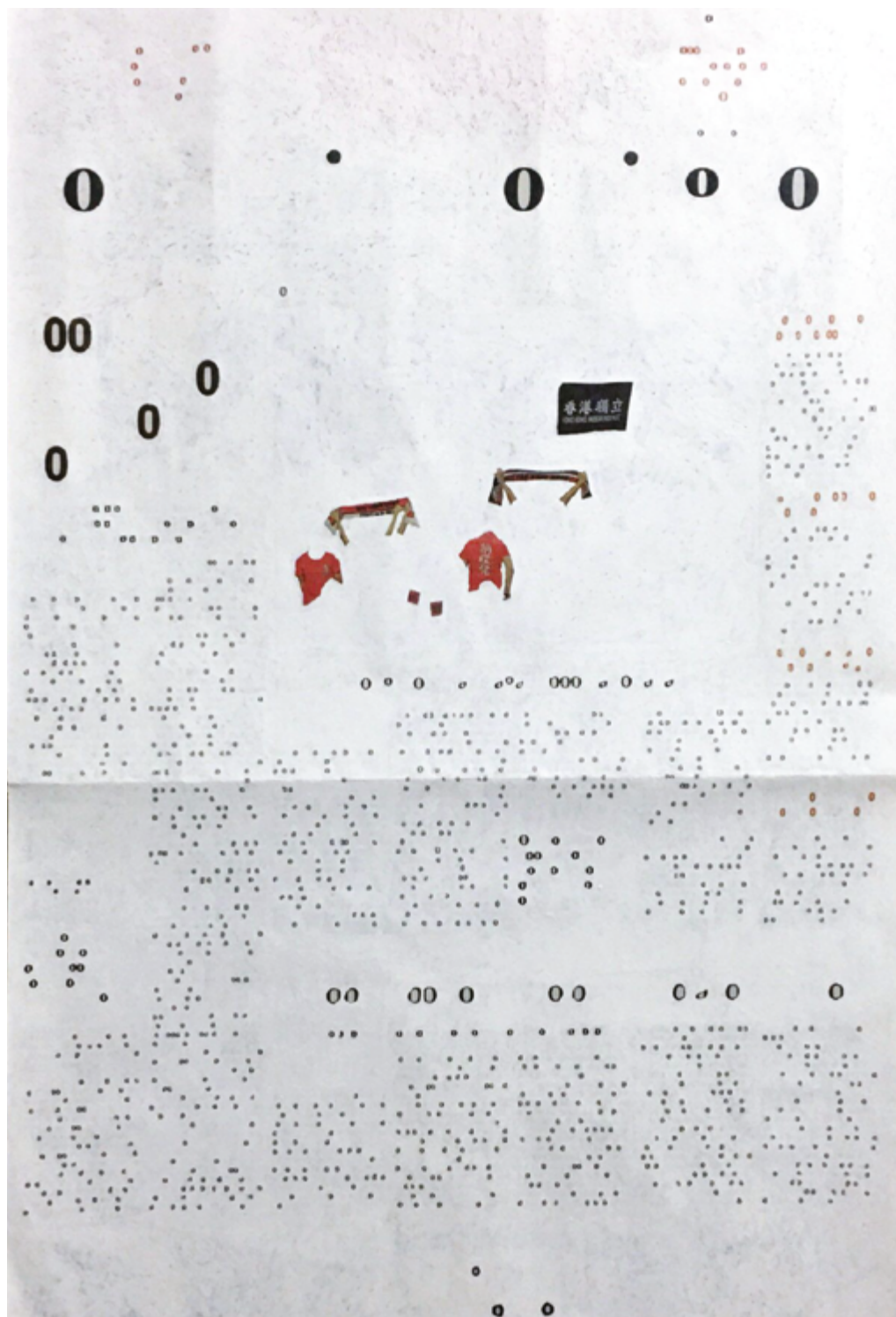
2014

Shirt, safety pin, video projection

208 x 147 x 114 cm

De-stitching is part of the “Laborland” series. The artist took a shirt that was sewn together by a sweatshop worker in Bangladesh in less than 15 minutes. She deconstructed it by removing 3745 stitches carefully and counting every stitch in Cantonese for 4.5 hours. She did this to experience and pay tribute to the labour of this anonymous sweatshop worker. De-stitching questions the value of labour in the world of capitalism, and asks if the value of labour can only be measured monetarily.





MOK TING YAN VIVIEN

Sorry That I Can't Believe Any Word Really

2017

Correction fluid on newspaper

Size variable

"Hong Kong residents shall have freedom of speech, of the press and of publication..." as stated in the Article 27 of the Basic Law of the HKSAR. This protects the right of freedom of expression, however, the press seems not to be safeguarded under such ordinance. To avoid overstepping the prescribed limits, rigid reporting is common to fit in the "norm". The idea of questionable objectivity of the press is thus presented in the form of a plain white paper with scattered "O"s that originated from the newspaper by leaving the circular parts of the letters "O/o/p/d/b/q" and having the rest hidden with correction fluid.

JENNIFER LAI CING YAN | Second Runner Up - HKHRAP 2017

I Desire

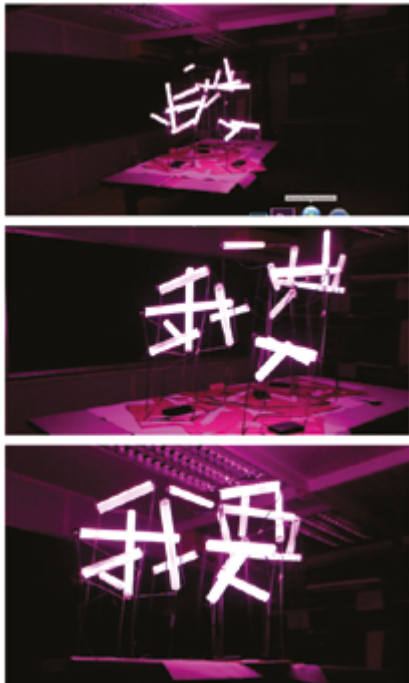
2017

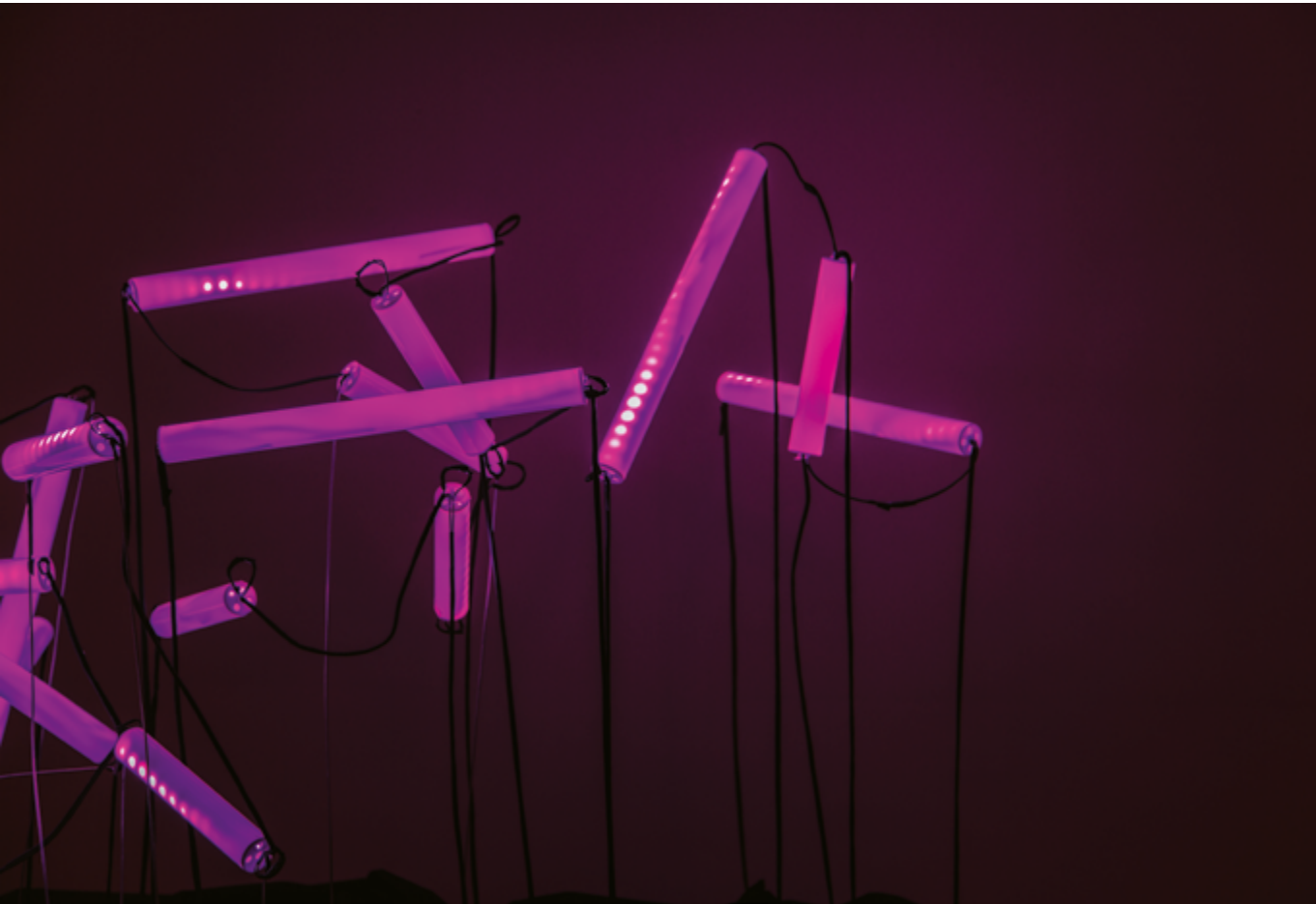
Light Installation

90 x 80 x 150 cm

This is a continuous research project on the sex industry in Hong Kong. My initiative is based on the lack of awareness and recognition of the sex workers. They are living an underprivileged life.

By adopting part of the protesting slogan from the recent Umbrella Movement, the two Chinese characters explicitly show what “I desire”. The light installation uses pink neon tubes which symbolise the present brothels of the city, through which I am trying to find angle to investigate where the workers can be represented.







I want my Grandmama to come to
Hong Kong
Ryni, I am 8 years old

LEO KWOK

The Right to Hope

2016

Photography Series

42 x 30cm, set of 8

The children in the photo series have no real identities. Some of them were born in Hong Kong and they are taught to speak Cantonese, but their faces and skin colour tell you that they are not Chinese. But they do not belong to their mother countries. Their parents left their home country because of suffering and persecution on account of race, religion, nationality or political opinion. The parents made the choice to become refugees but their children do not have a choice. They are living in the shadows of fear and helplessness.

**NG PUI YAN ESTHER**

That Ceiling

2017

Cement, Latex paint, light tube & mixed media

61.5 x 91.5 cm

"There was a little girl being locked up on the bed and raped more than 10 times every day, all she can see is only the ceiling," as told by an anti-human trafficking leader. Can you imagine this feeling: you can only see the ceiling and customers' faces without an end in sight? The artist hopes while we are all living stably under our own ceiling, we will keep in mind that in this very moment, someone out there is suffering tragically.



**LIT WING HUNG**

"The White Collar" Series

2016

Mixed Media

Size variable

The clothing of a person is one of the main elements used to identify the different social classes in Hong Kong. Construction workers belong to the working class, while people who wear ties and collared shirts are the middle-class. Using "Good Morning" towels, a daily supply of the working class, to make the higher-class accessory, blurs the relationship between the labour class and second-class.



KONG KA YAN

Rights of The Child

2017

Oil Painting

60.9 x 91.4 cm

More and more people are concerned with the development, welfare, education, nutrition and health of children. However, they do not pay much attention to children's personal rights. Some only consider this an issue with those who are suffering in the Third World – however, as everyone deserves human rights, every child deserves the Rights of the Child. This work represents the voice of all exploited children worldwide in hopes to contribute in changing society's views on the topic. I hope children can clearly understand what their own rights are through this painting.



VERA CHIU

Battle House for Adults

2017

Mixed Media

37 x 32.5 x 35 cm

Welcome to this daily battle, where you fight for your space within the average living area per capita of only 47.8 square foot that many Hong Kongers are sharing. Your rights to be sheltered in a secure, affordable and habitable housing are ignored. Unrealistic housing projects are handled around like a toddler's toy. This flimsy, childlike model of Hong Kong housing is presented to you, as the concept of your living space.

VOICES



“PACIFICATION” FOR WHOM?

Marielle Franco

WHAT HAPPENS WHEN A GIANT SNEEZES?

Deborah Doane

“PACIFICATION” FOR WHOM?

Marielle Franco

MARIELLE PRESENT!

Marielle Franco, aged 38, a Rio de Janeiro city councilor elected with 46,502 votes in 2016, was shot dead in an ambush on 14 March 2018. As a black woman, a lesbian and a mother who grew up in the Maré favela, Marielle turned to human rights activism when she was 19 years old and routinely had to contend with machismo, racism and LGBTphobia in her work.

Nothing changed when she served as city councilor: shortly after taking office, Marielle was made chair of the Rio de Janeiro City Council Women's Commission – a job whose results were released three months after her murder.¹ Five of the bills she submitted were approved: Bill 17/2017 – Espaço Coruja (“Night Owl”): crèches for parents who work or study at night; Bill 103/2017 – Dia de Thereza de Benguela no Dia da Mulher Negra: a homage to the 18th century black leader Thereza de Benguela to be celebrated on the same date as Black Woman's Day; Bill 417/2017 – Assédio não é passageiro: a campaign to raise awareness and combat sexual assault and harassment; Bill 515/2017 – Efetivação das Medidas Socioeducativas em Meio Aberto: to guarantee social and educational measures for young offenders; Bill 555/2017 – Dossiê Mulher Carioca: compilation of an annual report with statistics on violence against women.

As a long-time vocal opponent of the militarisation of life, her political and academic output demonstrate the strength of someone who knew, from an early age, the devastation caused by institutional violence. Marielle graduated in sociology from the Catholic University of Rio de Janeiro (PUC-Rio) and earned a Masters in Public Administration from the Postgraduate Programme in Administration at the Faculty of Administration, Accounting Sciences and Tourism

at Rio de Janeiro's Fluminense Federal University, where she wrote the thesis "UPP – The Decline of the Favela in Three Letters: an analysis of public security policy in the state of Rio de Janeiro". Drawing on the findings presented in her thesis, this as yet unpublished text featured in this issue of Sur Journal was written for an oral presentation given at the Latin American Sociology Association Conference in 2017. With this publication, we add our name to struggle for her voice not to be silenced and for her ideas to continue to be amplified.

Juliana Farias and Sílvia Aguião

• • •



EDITORIAL NOTE

It is an honour for us at Sur Journal to publish the words of Marielle Franco, a tireless human rights defender in Brazil. Marielle was brutally murdered but her voice has not been silenced and it continues to resonate. We are grateful to Juliana Farias and Sílvia Aguião for entering into contact with us and for the dialogue with Marielle's family that resulted in this publication. The links referred to in the original were updated to the time when the text was reviewed (June 2018). However, no changes were made to the content or language of the text itself.

• • •

“PACIFICATION” FOR WHOM?

First of all, out with Temer! It is impossible to start an academic presentation in the field of Social Sciences without first taking a look at the current political situation in Brazil. An illegitimate government, mired in corruption allegations that have gone uninvestigated, has been implementing measures that successively eliminate our rights, namely: the labour reform and the pension reform.

The ideas laid out in this presentation are taken from my masters research (entitled “UPP – The Decline of the Favela in Three Letters: an analysis of public security policy in the state of Rio de Janeiro”),² the work developed by our mandate in the Rio de Janeiro City Council and the engagement with the work of Pâmella Passos on the cultural impacts of the installation of UPPs (Police Pacification Units).³

Launched in 2008 in the Santa Marta favela, the pacification policy established by the Rio de Janeiro state government has been confined almost exclusively within the limits of the Wonderful City – of the 38 UPPs that exist today, only one is located outside the state capital: the Mangueirinha UPP, the last one to be set up, is located in the city of Duque de Caxias.

Neither are the UPPs intended for the occupation of militia territories, as only the Batan UPP fits this description. The geographic distribution of the “Peace Police”, as they are called by the public authorities, begs the question: if the militias are also a public security problem, why were the militia regions not considered a priority on the “pacification” map?

A comparison of this map with data from the Rio de Janeiro State Public Security Institute,⁴ which shows that the highest murder rates are found in the west side of the capital and in the *Baixada Fluminense* region of the state, both currently controlled predominantly by militias, suggests that the goal of “taking back the territories” announced on the UPP’s official website did not take these indicators into account. What we can see from the map is the alignment of the course taken by the UPP with the interests of national and international big business in the areas of investment in tourism and mega-events: Rio+20 (2012), Confederations Cup (2013), World Cup (2014) and Olympics (2016).

In this context of “pacification”, young people, although not only them, have been deprived of their cultural activities as well as their freedom of movement. Curfews, constant searches at gun point, recurring mistreatment during police stops and abuse of authority are trademarks of the project, as shown in an article in the *Folha de São Paulo* newspaper on 2 September 2013, under the headline “Denúncia contra PMs atinge 76% das UPPs” (76% of all UPPs have complaints filed against police officers).⁵

In the survey conducted for Pâmella Passos’ doctoral thesis,⁶ data from the Public Security Institute revealed that, of the 33 units existing at the time, there were complaints in 25

of them against the actions of the officers. These complaints bring to mind an important analysis by Loïc Wacquant on the penal issue in neoliberal capitalism:

[...] Sweeping measures of penal expansion (BONELLI, 2008): Intensified policing centered on low-income districts, youth night curfews, enlarged recourse to incarceration for street crimes (in sharp contrast to the depenalisation of corporate crime), plea bargaining and accelerated judicial processing for low-level delinquents, mandatory minimum sentences for youth recidivists.⁷

This already presents a critical assessment of the UPPs in Rio de Janeiro, however, the assessment becomes substantially worse after the staging of the Olympic Games in 2016, the last in the series of mega-events hosted by the city. If the dysfunctionality of the project was already apparent in the preceding period, then the end of the cycle of mega-events conclusively demonstrates the complete breakdown of the UPPs.

The first evidence of this was the incorporation of the project into the administrative structure of the Military Police. When the project was first introduced, the units were separate from the other operating bodies of the Military Police and placed under the command of the Police Pacification Coordination Office. In mid-2017, the UPPs became subordinate to the battalions responsible for each area. This change were not merely administrative – the autonomy of the UPPs was justified as a way to create a new culture and manner of policing, in which new police officers would not be guided by the same rationale of confrontation historically employed by the Military Police battalions. The joining of the structures also signifies the joining of policing practices and the complete abandonment of any attempt at distinguishing forms of policing – even though this had only been superficial and with limited evidence of success.

In this context of the complete breakdown of the UPPs, the “big white skull” has emerged as the main symbol of their failure. The term “big skull” refers to the armored vehicle used by the Special Police Operations Battalion (or BOPE as it is known in its acronym in Portuguese) of the Military Police in Rio de Janeiro. It looks like a security van that has been adapted for conflict, complete with visors and gun ports for high-caliber weapons on the sides and the top of the vehicle. The symbol of the BOPE, painted in black on the bodywork, gave rise to the nickname: a skull with a dagger buried in it from the top down. These days, “big skulls” are also being used by other military police battalions and even by the civil police.

These vehicles have long been condemned by favela residents, social movements and human rights organisations as instruments of death. When they are used in the UPP areas, the vehicles are modified in a manner as cynical as it is sordid: the bodywork is painted white. Shootings and violent police incursions have become an unacceptable routine in the favelas with UPPs. In the Alemão favela complex, police officers occupied rooftops in February to set up improvised military bases, even going so far as to remove some residents from their

homes. In Jacarezinho and Mangueiras, a massive police operation involving 200 officers took place in August and lasted for 12 whole days. Seven people were killed.

In the Rocinha favela, which has its own Police Pacification Unit, the operations have taken on a new dimension by involving, in a perverted and inappropriate manner, the use of a thousand troops from the army, navy and air force. A Presidential Decree for the Guarantee Law and Order is currently in place in Rio de Janeiro that authorises the use of the armed forces. The establishment of this type of measure has been described by organisations and researchers as unconstitutional and it is escalating the process of militarisation of the city, particularly the favelas and the urban fringes. The use of tanks and soldiers in the favelas exacerbates and exposes the racism and the criminalisation of poverty that are characteristic of the public security policy currently in place in the city. At least 25 complaints have been formally submitted to the Public Defender's Office by residents of Rocinha involving cases of torture, aggression and even sexual violence.

These are just three recent examples demonstrating the failure of the UPPs – a failure that is brutally felt in the daily lives of the residents of the favelas. The rationale of confrontation finds no distinction between supposedly pacified or non-pacified favelas, but is justified by the historic narrative of the “war on drugs”. It is a genocidal policy that systematically violates the rights of the residents of the favelas and primarily victimises black youth. The persistence of this type of policy is related to issues that run much deeper than merely the “culture of policing” that is so often claimed to be new about the UPP project. While the approach to public security is structurally associated with the profitable black market in arms and drugs and to the corruption of state agents, any pretense of “pacification” will have no more meaning than an armored vehicle painted white.

NOTES

1 • Available at: “Relatório da Comissão de Defesa da Mulher (2017-2018),” Rio de Janeiro Municipal Legislature, 2018, last accessed on June 20, 2018, <https://www.mariellefranco.com.br/relatorio-comissao-da-mulher>.

2 • Thesis for her Master's in Public Administration from the Postgraduate Program in Administration at the Faculty of Administration, Accounting Sciences and Tourism (UFF), between 2012 and 2014.

3 • Project developed by Pâmella Passos during

her post-doctoral fellowship in the Postgraduate Program in Social Anthropology of the National Museum (PPGAS/UFRJ), entitled “Cultura Pacificada? Uma análise dos impactos culturais da instalação das Unidades de Polícia Pacificadora (UPPs)”.

4 • Data available at the Public Security Institute, Homepage, 2018, accessed June 12, 2018, <http://www.isp.rj.gov.br>.

5 • Marco Antonio Martins, “Em 76% das UPPs no Rio Há Denúncia Contra Algum Policial.” Folha de S.Paulo, September 2, 2013, accessed

June 20, 2018, <https://www1.folha.uol.com.br/cotidiano/2013/09/1335523-em-76-das-upps-no-rio-ha-denuncia-contra-algum-policia.shtml>, reprinted at <http://www.adepolrj.com.br/Portal2/Noticias.asp?id=14317>.

6 • Pâmella Passos, "Cultura Pacificada? Uma Análise dos Impactos Culturais da Instalação das Unidades de Polícia Pacificadora (UPPs)" (post-

doctoral fellowship in the Postgraduate Program in Social Anthropology of the National Museum - PPGAS/UFRJ, 2013).

7 • Loïc Wacquant, "Forjando o Estado Neoliberal: Trabalho Social, Regime Prisional e Insegurança Social," in Loïc Wacquant e a *Questão Penal no Capitalismo Neoliberal*, org. Vera Malaguti Batista (Rio de Janeiro: Revan, 2012).



MARIELLE FRANCO – *Brazil*

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WHAT HAPPENS WHEN A GIANT SNEEZES?

Deborah Doane

- *How the international development sector needs to react following the recent sexual misconduct scandals* •

ABSTRACT

Over the last six months, a spate of sexual misconduct scandals has rocked the international development sector. In this op-ed, Deborah Doane discusses the impact that the scandals – which came as little surprise to many working within the organisations affected – are having, including loss of trust, loss of income and increased regulation. Already facing a hostile operating environment, Doane argues that civil society has two choices – either to continue unchanged or to see the scandals as an opportunity to disrupt the sector and its existing systems. She argues that the latter will require considerably more imagination, ambition and up-front investment than is currently evident. In addition, Doane makes the case for southern organisations needing to change as much as northern organisations – despite the fact that the scandals erupted from within the latter – because doing so will help address existing power imbalances between the South and North.

KEYWORDS

Sex scandal | International development | Oxfam | Save the Children | Power dynamics | Reform

What happens when a giant sneezes? We all catch a cold. This is the most likely impact of the devastating sexual misconduct revelations across the international development sector in recent months. The effects won't simply be contained to a few large international NGOs (INGOs). It could have far-reaching implications for many across the wider civil society eco-system. As far as I see it, civil society has two options: accept the consequences and accept a weakened civil society as a whole; or courageously confront the challenges as an opportunity to reform, refresh and embolden civil society globally.

At the time of the immediate crisis, nobody I knew who had worked in international development were the least bit surprised. Humanitarian aid was rife with stories of abuse for decades. The former head of Save the Children UK guilty of sexual harassment? Aid workers using prostitutes? As one colleague who had worked for both entities said to me, "We knew. We all knew. Yet we did nothing."

Large organisations' power and dominance, especially in international development, has helped to build a quiet complacency across civil society. Smaller civil society groups in the global south depend on them for income. Donors rely on them to deliver aid. They have helped to influence and amplify issues on the international stage, like international debt relief, climate change or increases in aid budgets. The "halo" effect was implicit. We assumed for years that the virtues of civil society would be obvious to all, and even with a few annoyances, large INGOs could help to grow public support for everything from poverty eradication or environmental improvements, to human rights.

Of course, there is an alternative story. It's that the large professional NGOs like Oxfam or Save the Children had long ago strayed from the heart and soul of civil society. They had become corporate machines dominated by arrogance and hubris about being able to "Make Poverty History". Fuelled by a white man's saviour complex, embodied by rock stars like Bono and Bob Geldoff, the mainstream of INGOs felt so very far away from the regular grass roots struggles that most face. The hyper-professionalisation of civil society – moving from spontaneous and bottom-up citizen action to complex log frames in a fairly short space of time – has been a huge detriment to civil society as a whole. It has disconnected civil society organisations from the very issues they're meant to address, and the communities they're meant to serve.

And the immediate consequences of having got to this point do indeed look dire. As readers of *Sur* will be acutely aware, any "non-governmental organisation" these days already faces a series of threats. Governments seek to contain and regulate them; populist media is intent on vilifying "foreign agents" or NGOs; and a wider public is looking for someone to blame when things go wrong.

So a consequent loss of trust of the big guys has a serious chain reaction: loss of trust leads to loss of income, leads to increased regulation, leads to a deliberate hollowing out of civil society over time.

Already, public opinion surveys and commentaries are showing an immediate decline in public trust, at least in the North, with a March 2018 survey in the UK showing public trust down 6 per cent from the year before. As one Haitian commentator wrote about the scandal, “With friends like these, who needs enemies?”¹

Negative narratives against civil society are now commonplace, and this incident may only further help to fuel the flames of discontent: In the North, development NGOs, in particular, are often positioned as being corrupt, free riding off limited tax dollars that would be better spent at home.² In the South, rights based and environmental organisations are positioned in public discourse as being “anti-development”,³ foreign agents, bringing in western values. Populist governments exploit these sentiments readily, turning the public against civil society.

Loss of income is the most obvious consequence. International bilateral donors have withheld funds to INGOs caught up in the scandal, while individual donors have been pulling out in droves. Oxfam, for one, saw over 7,000 people withdraw their support after the issue came to light. Comic Relief, meanwhile, a major private development funder, saw its takings decrease by one third in their annual fundraising campaign.⁴ The UK’s Department for International Development has worryingly used the scandal as an opportunity to divert more funds towards the private sector and away from civil society.⁵

Organisations in the Global South stand to lose the most. Less money for INGOs means less money going to partner organisations. Ironically, it also means more money being directed to northern administration in order to implement the types of systems that can ensure better safeguarding of beneficiaries. And it may mean private donors picking up the slack, again diverting away from other causes too.

More regulation, of course, will undoubtedly follow. The UK’s charity regulator has recently launched a serious investigation into Save the Children, as more whistle blowers have emerged about the failure of the Board to address sexual harassment at the most senior levels of the organisation. The UK and US charity regulators are often models for regulation in the Global South. This can only spur controlling efforts of the sector on.

So what are the responses going forward? Scenario one is Business as Usual (BAU). This sees civil society simply accepting the consequences discussed above. It’s already coming to fruition. It will see an even more conservative and “professionalised” sector, with narrower sets of understanding of what civil society can be and how it should be supported. Most of the proactive attention across the sector is being placed on safeguarding beneficiaries and implementing better staff recruitment procedures, including increased diversity in organisations.⁶ This is probably a good thing but doesn’t go far enough.

Aside from loss of income, and increased regulation, the BAU scenario could also serve to further embed the reactionary conservatism inherent in some INGOs, further

moving away from a rights-based agenda. When the scandal itself erupted, Oxfam had been leading a strong campaign on inequality, and some were even suspicious that the scandal was only exploited by a right-wing media who didn't like the political nature of the campaign. One clear outcome is that INGOs will move even further away from solidarity, batten down the hatches and sticking to "safer", non-confrontational work, like service delivery. Let's see how this one plays out.

Scenario two, could be called 'Revolution from below'. It's a more enlightened scenario but will also require more imagination, ambition and up-front investment. Here, the scandals are seen as an opportunity to disrupt the sector and its systems, with a complete overhaul of the structure and power relationships within global civil society.

Scenario two has the potential to move us away from the paternalistic INGO model, by shifting systems of power and accountability. If the INGOs see the whole scandal as more than just a safeguarding issue, then there is an opportunity to put this into action. But southern organisations will need to demand this, too, and move away from the client/patron relationship that's come to dominate much of civil society.

Maybe this shouldn't be said by a white northerner, but in my view, southern organisations need to take the reins and demand a better, more solidaristic future, not wait for it to be given to them. Because like all systems, those in power rarely relinquish it. INGOs may think they're doing so, but they are also protecting worn out structures too. Old-fashioned charity, where money flows from North to South, with northerners, including INGOs and donors, dictating the rules of the game, still dominates.

There are good examples of alternatives, but they're far too few. Southern civil society organisations should be able to not just hold organisations in the North to account, but they should be sharing governance, too. Finally, they'll need to become stronger advocates locally, demonstrating that they're working on behalf of their communities in more explicit and connected ways. But this can only bring more power to the South, by helping to root civil society more strongly in local communities.

Few are acknowledging the real scale of the challenge – that the structure and power imbalances within the sector – mirroring those in the wider world – is the root cause. If the Oxfam scandal can be seen as a launch pad for genuine systems change, then we should be grateful it all came to light.

NOTES

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[brother-is-watching-you/#1773ea615505](https://www.forbes.com/sites/meghabahree/2014/06/16/modi-governments-message-to-ngos-in-india-big-brother-is-watching-you/#1773ea615505).

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Deborah is the director of the Funders' Initiative for Civil Society, a campaigner and a writer. She blogs regularly for the Guardian on development issues. She has worked across the NGO sector including as director of the World Development Movement, head of sustainable consumption for WWF-UK, and founder/director of the CORE (Corporate Responsibility) Coalition of over 130 NGOs and head of Corporate Accountability at the New Economics Foundation. She has been a trustee of the Fairtrade Foundation and is currently a director of Finance Uncovered. She tweets @doaneatlarge.

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The background of the entire page is a photograph of an abstract art installation. It features numerous long, cylindrical light tubes in a vibrant pink color. These tubes are arranged in a complex, overlapping, and somewhat chaotic manner, some hanging vertically and others at various angles. They are illuminated from within, creating a strong glow that contrasts with the dark background. The overall effect is one of dynamic energy and modern aesthetic.

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