

POST-TRUTH, NEOLIBERALISM AND INSTITUTIONAL CYNICISM

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ABSTRACT

This text deals with the Brazilian political situation and the process that led to the coup d'état that brought down the elected president Dilma Rousseff. Expressing the notions of regime of truth, discursive practices and politics of scandal, the text moves forward with a description of the formation of a liaison between the dominant classes, media corporations, Public Prosecutor's Office and the Judiciary to destroy the electoral possibilities of the left-wing forces in Brazil, paving the way for the implementation of the neoliberal prescription. Making use for the most part of the idea of fighting corruption, the old economic power structures organize the construction of State speeches and actions that establish institutional cynicism as State policy.

KEYWORDS

Institutional cynicism; post truth; truth games; neoliberalism; Brazil

RESUMO

Este texto trata da conjuntura política brasileira e do processo que redundou no golpe de Estado que destituiu a presidente eleita Dilma Rousseff. Articulando as noções de regime de verdade, práticas discursivas e política de escândalo, o texto avança na descrição da formação de uma articulação das classes dominantes, corporações da mídia, Ministério Público e Poder Judiciário para destruir as possibilidades eleitorais das forças de esquerda no Brasil, abrindo caminho para a implementação do receituário neoliberal. Apropriando-se principalmente da ideia do combate à corrupção, os velhos esquemas do poder econômico organizam a construção de discursos e ações de Estado que compõem o cinismo institucional como política de Estado.

PALAVRAS-CHAVE

Cinismo institucional; pós-verdade; jogos de verdade; neoliberalismo; Brasil

In 1964, Brazilian generals were mobilized to seize state power in order to prevent important reforms for Brazilian society. President João Goulart was deposed by a coup d'état which directly applied military force. More recently, in the first decade of the 21st century, the forces of Capital, including among others the main Brazilian communications group, Rede Globo, began to construct a political campaign together with members of the Public Prosecutor's Office and the Judiciary for the purpose of defeating the left-wing forces and clearing the way for a wide range of measures aimed at implementing the neoliberal prescription in the country. In order to do this, the center-left reformist forces had to be removed from the executive branch. The criminalization of opponents

and the use of the popular imagination against corruption were the key ingredients in the attempt to destroy the country's main center-left force. In 2016, without any tanks on the streets, Capital and neo-fascist forces used a systematic campaign in the various media, the Judiciary and the Public Prosecutor's Office to consolidate their coup against democracy. In this text, I identify neoliberalism's new *modus operandi* for the construction of a regime of truth required for the application of its economic and political measures.

In order to understand the judicial-media coup in Brazil, it is necessary to analyze the electoral process. Companies and businessmen dominate Brazilian politics, since they are the ones who finance the elections. Under the Brazilian Electoral Code, up until 2014, apart from individuals, only for-profit legal entities could finance electoral campaigns. Non-profit legal entities were and are prohibited from contributing financially to the elections. The Brazilian elections are clearly organized in such a way as to enable Capital to make headway on the political front: "in contrast to the United States, trade unions are apparently absent from campaign funding in Brazil. The reason is that direct contributions from trade unions are prohibited" (Samuels, 2007, p. 19). The Brazilian political parties, particularly the PMDB (Brazilian Democratic Movement Party), the DEM (Democrats Party) and the PSDB (Brazilian Social Democratic Party), have their campaigns funded by money from businessmen who are the suppliers and direct beneficiaries of the state. This dates back to well before the start of Operation *Lava Jato*¹. For example, the then President Fernando Henrique Cardoso and his allies in the then PFL (Liberal Front Party) – which has now become the DEM, had the costs of their election campaigns paid with money from banks and consortiums that received benefits and won public bids under their management (Bradesco foi maior financiador de FHC, 1994). Examples of this are the Telemar group, Andrade Gutierrez and the banks Itaú and Real/ABN-Amro (which no longer exists), according to the official donations in 1998 (Freitas, Vaz & Bramatti, 1998).

When the PT (Workers' Party) emerged in the 1980s, it rejected the campaign mode of funding that was so common among right-wing parties. Since the time of the so-called New Republic, the largest financiers of the competitive candidates have been banks, privatized companies and corporations that have a close relationship with the State (Toledo, 2014; Agostine, Vieira & Basile, 2006). The costs of electoral campaigns in Brazil were high even by North-American standards (Samuels, 2007, p.15). After defeats in successive campaigns for Federal Executive Power, with a constant growth in their numbers of congressmen and having won a number of municipal elections, the PT was increasingly operating in a similar way to the right parties. In order to obtain resources for the purpose of winning elections which are dominated by the power of money, the party began to fund its campaigns in the same way as the PSDB, the DEM and the PMDB parties. This is the key ingredient to understanding the coup d'état that took place in Brazil.

Lula², benefited by a favorable external scenario and a successful policy of social inclusion, achieved positive indicators, and his party consistently grew and made electoral inroads, becoming the largest left-wing party in Brazil. The PT and Lula were never

¹ The *Lava Jato* operation is an investigation of corruption and money laundering in Brazil.

² President of the Republic of Brazil between 2003 and 2010.

accepted by the high income segments in the country, and much less were regarded as partners by the leaders of Big Capital, except for minor exceptions. However, Lula and his party's leaders gave the impression that they believed they had been accepted by the ruling classes or the economic elites. But, the signs were otherwise. A widespread systematic campaign resumed the victorious formulas for attacking the left-wing parties. The flag of the fight against corruption is being brandished in a cynical way by the main parties that used the same methods for financing their political campaigns and for personal enrichment of their parties' political members (Michael & Gramacho, 2000). The everyday line in Brazil that "all politicians are thieves" has been changed to "we've never had as much corruption as we've got nowadays" or "the PT systematized corruption in the country". This framework was being assembled ever since the time of Lula's first reelection. It was necessary to selectively criminalize the campaign's funding and to retell the story of Brazil. In order to achieve the first task, it was essential for the PSDB's and DEM's leadership to coordinate with the Public Prosecutor's Office and the Judiciary. Rede Globo played a key role in carrying out the second task with a distributed coordination, not always agreed upon, of a number of business groups and conservative collectives on the social networks.

TRUTH, SPEECH AND POWER

In order to analyze such state of affairs in Brazil it is necessary to present a conceptual arsenal. I begin with the role of the construction of truth and its relationship with state power. Foucault gave us the reflection regarding the relationship between truth and power. It is not possible to structure the state system and its justice without the construction of a set of rules to distinguish between what is false and what is true. It does not matter whether what is being produced as truth represents what we consider to be true, truthful. The truth has an economic role, it is the organizer of the processes in the market and in the State's apparatus. Foucault suggested discussing politics not just in terms of ideology and its relationship with science, but from the point of view of truth in its interaction with power.

In our societies, the "political economy" of truth has five historically important characteristics: "truth" is centered on the form of scientific discourse and the institutions that produce it; is subject to constant economic and political incitement (the need for truth both for economic production as well as for political power); it is in many ways an object of immense diffusion and consumption (it circulates in the education or information apparatus, whose extension in the social body is relatively large, notwithstanding some strict limitations); it is produced and transmitted under the control, not exclusively, but predominantly, of a number of political or economic apparatuses (university, army, writing, media); and last but not least, it is the subject of political debate and social confrontation (the "ideological" struggles). (Foucault 1979, p. 13)

The battle for truth is the definer of power. In his inaugural lecture at Collège de France on December 2, 1970, published as *The Order of Discourse*, Foucault advocated that the penal system itself initially sought its justification in legal theory, but in the nineteenth century sought to find it in sociological, medical and psychiatric knowledge, in other words, “as if the word of the law could no longer be authorized in our society, other than by a discourse of truth” (Foucault, 2014, p. 18).

The games of truth that define the modes of existence and the flows of power that have been based on scientific knowledge, particularly on the social sciences. They organize discursive regimes that legitimize discourses that should or should not be accepted. What we are interested in here is the construction of truth in institutions, particularly in the Judiciary. Presented to society as being neutral, the courts claim that their decisions are based on the legal sciences. Of the three branches of government, the Judiciary is the one that most presents itself as being the guardian of the truth, as the executor of truth-generating procedures.

In Brazil, the role of the judicial institution in the games of truth and in the establishment of discursive regimes that make it possible, for example, to make political conduct acceptable or unacceptable was not evident. The very political culture of the social segments, of the professional groups and of the parliamentary bodies had in their constitution the incorporation of the way in which the Judiciary and its fundamental and support institutions constructed the models of respect for the law, of what is acceptable and unacceptable. The political system had clearly assumed that the direct participation of businessmen and their businesses in the process of financing elections and in defining public spending was acceptable. For a long time the left-wing forces had denounced the connection between the ruling classes and their corporations and the government. Somewhat curiously, campaign donations from bankers who benefited from the right-wing parties' economic policies were never considered to be bribes. The privatizations of companies to businessmen and politicians directly linked to the PSDB party were also accepted as being legal, normal and legitimate. The accusations contained in the book *Brasil Privatizado* [Privatized Brazil], by the journalist Aloysio Biondi, which sold thousands of copies in the 1990s, did not produce any initiative on the part of the Public Prosecutor's Office. Biondi's detailed account of the corrupt privatization schemes makes Operation *Lava Jato* seem small. Even so, the PT believed that judicial proceedings would be universal. If Odebrecht³ financed politicians such as Serra, Aécio, Alckmin and a hundred others, that would be completely acceptable to the entire political spectrum.

What the Brazilian left and center-left realized to a partial extent was that large-scale campaign funding gave them electoral competitiveness in a plutocratic system which was designed to exclude radicals. The apparent success of these left-wing forces to play the right-wing's game and use it to defeat them was the path that led to its own defeat. The forces of the conservative right realized that it was necessary to prevent the possibility of an electoral victory by the center-left conglomerate. This led to a major liaison involving not only Congress members and party activists. The factions linked to the

³ The Odebrecht Group was created in 1944 in Bahia, Brazil, and currently it is present in 24 countries.

PSDB and to the other conservative parties such as the DEM, were called upon to create a veridiction process, a regime of truth that would make it possible to defeat the center-left reformism in general politics. The Judiciary, which had already adopted a selective approach in relation to the poor, blacks and Indians, would now apply its experienced selectivity in the service of the resumption of government by the right-wing parties and by the application of neoliberal measures.

In 2012, while the municipal elections were taking place, during the first term of Lula's successor Dilma Rousseff, the Federal Supreme Court, the Brazilian constitutional court, began to issue daily broadcasts of the trial of the so-called *mensalão* [big monthly payment], the scandal based on the accusation of the purchase of parliamentary support by the government and PT leaders for the Lula government's projects. With new technologies for proving the truth, arguments and procedures were assembled so as to construct the narrative of a large scale theft of power committed by the forces of the left. The best moments of the *mensalão* trial were selected by Globo's editors to be broadcast on the news programs and by the newspapers and magazines that operated and still operate on behalf of the interests of national and foreign corporations.

The truth was on the TV screens; politics took its place in the dock. The general thinking of broad swathes of the middle classes confirmed its new slogan that corruption had taken over the government, fought by the seriousness and prominence of the magistrates, neutral and beyond reproach. In 2012, the liaison between influential leading members of the Public Prosecutor's Office, judges, media owners, in particular the Marinho family⁴ and those in charge of the PSDB party, was already evident. The objective was clear: to annihilate and destroy any possibilities of re-election of the then President Dilma that would take place in 2014. The Judiciary's agenda was in line with the electoral strategy.

POWER AND COMMUNICATION OR THE POLITICAL CULTURE OF SCANDAL

In modern-day societies, organized by late, informational capitalism, the mobilization of common sense has occurred mainly by means of spectacularization (Debord, 1997) and, by its more usual political side, which has been called the "scandal politics" (Castells, 2015).

What I mean by this is that, well before the advent of networked society, scandal politics was already an essential characteristic in determining relations of power and institutional change. Indeed, (...) scandal politics is a more ingrained and typical type of power struggle than the political competition conducted in accordance with the rules of the state. (Castells, 2015, p. 297)

The phenomenon of politics understood by ordinary citizens as an arena of successive scandals is worldwide and may well be related to the weakening of party identification and to the self-promotion of public figures over and above collective interests

⁴ Owner of Grupo Globo, Brazil, with several companies in the area of information and entertainment.

(Castells, 2015, p. 303). However, this phenomenon acquires greater strength in Brazil, where there have been few periods of democracy and with its inheritance of political *coronelismo* [the so-called rule of the colonels] that articulated the nepotism of the political elites with the patrimonialism in the occupation of public spaces. For a large part of the population, people go into politics in order to enrich themselves, in other words, corruption would be the norm in Brazilian politics.

Stating that corruption is an attribute of the left-wing has been a historical and common practice both in Brazil as well as in the rest of the world. This is mainly due to the adoption by the leftwing of electoral pragmatism. During the so-called *mensalão* [big monthly payment], members of the PSDB and DEM parties (all accused of corruption) began to disseminate the idea that corruption had been systematized during the PT's administrations. In other words, previously it was secondary, disorganized, practiced by individual politicians, rather than a system for financing and maintaining power. Very quickly, middle-class people began repeating the slogan: "corruption was never practiced on such a large scale or in such a systemic way".

After the media bombardment of 2012, with the popularization of the *mensalão* [big monthly payment], the conservative forces that coordinated the spectacle involving the judiciary and the media were of the opinion that the center-left would be defeated in the 2014 elections. In addition to a systematic campaign on the part of Rede Globo, the conservative effort, involving North-American Foundations and Think Tanks, funded groups on the internet to intensify the wear and tear on the left-wing parties and on the Dilma Rousseff government. Since 2012, a number of organizations linked to the right-wing parties and to the PSDB party have set up numerous pages and profiles on Facebook on the issue of fighting corruption. When the autonomous *Passe Livre* [Free Fare] movement took to the streets in June 2013, the various conservative and right-wing groups were well-positioned to attract the indignation and revolt of young Brazilians.

It should be borne in mind that those who were 20 years old in 2013 were only 12 years old when Lula began his first administration. They did not experience the military dictatorship, the Sarney's government, and did not have the necessary maturity to make an assessment of the country's politics and economy during Fernando Henrique Cardoso's administrations. Therefore, it was very easy to hold the center-left administration accountable for Brazil's structural problems. In this way, discursive practices would point to the left-wing parties as being responsible for the historical ills of population and youth, particularly in the outlying regions of the major urban centers. However, it should be recognized that Lula's and Dilma's efforts had done little to counter the legacy of organized violence during the period of the dictatorship, and in particular had not confronted the militarized structure of the state police and nor had they taken any effective action against the extermination of the black population in the outlying regions of the major urban centers.

Despite the unrestrained attacks on the government and on the main left-wing party, Dilma Rousseff defeated Aécio Neves in 2014. The conservative forces and the

³ Government of José Sarney (1985-1990), in the period after the military dictatorship in Brazil.

PSDB were dissatisfied with the result and did not accept defeat. It was necessary to come up with a new, more forceful, more coordinated and destructive plan for the center-left government. As a result the strong ties between the PSDB party, bankers and the rural caucus with members of the Public Prosecutor's Office and the Judiciary assumed strategic importance.

WHEN MEMBERS OF THE JUDICIARY ORGANIZE THEMSELVES AS A POLITICAL FORCE

The most popular judge in the country, Sergio Moro, gained notoriety in the Globo news programs and in the systematic campaign for his promotion. A lower court judge, he became the poster-boy for Lava Jato on account of the media overexposure. He became the political leader of the Brazilian right-wing forces due to the fact that he imprisoned members of the PT and condemned former President Lula on the basis of allegations, plea bargaining and convictions. His career has begun to suffer wear and tear, as evidence has come to light of indications of selectivity and persecution of certain public figures. He was accused of having committed crimes and of having been pardoned, without punishment, by members of the judiciary. Prior to Lava Jato, Moro arranged a fake identity card and individual taxpayer's registration number in order to comply with a request from the US police, which is illegal in Brazil. In Lava Jato, he admitted that he had leaked information to the press, in addition to being accused of having wiretapped the Presidency of the Republic.

The greatest damage to Moro comes from the photos of him with a number of PSDB party politicians and right-wing leaders who are now under investigation by other Operation Lava Jato courts. The most famous image is the one in which he appears smiling in a lively conversation with Senator Aécio Neves at the end of 2016. When questioned by the Folha de São Paulo newspaper, Moro said: "it was a public event, and the senator is not under investigation by Curitiba's Federal Justice department. It was an unfortunate photo, but there is no case involving him" (Moro diz que foto com Aécio foi 'infeliz', mas nega parcialidade, 2016). It so happened that on the day the photo was taken, Senator Aécio was already under investigation by the Public Prosecutor's Office. His name had already appeared in a number of testimonies to Moro himself. Later, he was recorded by the Federal Police, when it became evident that he was involved in corruption schemes. Aécio Neves's cousin, who was mentioned on the tape, is filmed as the carrier of a large sum of cash.

Moro wrote an article in the Federal Justice Council Magazine in 2004 about the Operation Clean Hands or *Mani Pulite* that had dismantled the Italian party system, attacking the corruption schemes that supported it. Moro's objectives were clearly outlined in this important passage in which he talks about his country:

in Brazil, a number of the institutional conditions required to undertake similar judicial action are present. Like in Italy, the political class does not enjoy great prestige with the population, and there is a lot of frustration due to the unfulfilled promises following the restoration of democracy. On the

other hand, the Brazilian judiciary and public prosecutors enjoy significant formal independence from the political authorities. The Republic's judges and public prosecutors start off their careers by means of public examinations, and the positions are for life and the judges and public prosecutors cannot be removed from office against their will. The negative highlight is the access to higher bodies, which are more dependent on political factors. Another negative factor that should be mentioned is that under the law certain public authorities, such as congressmen and ministers are granted special jurisdiction, on the grounds of protecting them during the exercise of their office. (Moro, 2004, p. 61)

US government agencies quickly identified Moro as an important ally for their goals in Brazil, publicly defined as combating money laundering and its criminal implications. The United States has regularly held training courses and seminars for Brazilian judges and public prosecutors. This is part of a strategy of legal and political influence aimed at preserving the interests of corporations and the US government. These activities have been reported by a number of authors. One of the leading international relations thinkers and an advisor to various White House administrations, Joseph Nye Jr. wrote the book *The Paradox of American Power*. In it, Nye Jr., basing himself on the theory of soft power, states that it is essential to use persuasion and co-optation instead of coercion. It states that the United States should define the political agenda and preference of peoples.

In the case of Operation Lava Jato judge Moro tried to follow the steps or lessons that were present in his 2004 article. These actions played a fundamental role in consolidating in the population a sense of undeniable truth, a belief that corruption would be eliminated by destroying left-wing forces and their corrupt leaders. Note the passage that reinforces the politics of scandal, as pointed out by Castells (2015), in the games of truth, or rather, in the construction of truth by the institution that presents itself as being politically neutral:

those responsible for the *mani pulite* operation also made extensive use of the press and with effect. To the dismay of the PSI party's leaders, who, for sure, never stopped manipulating the press, the "*mani pulite*" investigation leaked like a sieve. As soon as someone was arrested, details of his confession were aired in "L'Espresso", "La Repubblica" and other sympathetic newspapers and magazines. Although there is no suggestion that any of the prosecutors who were most involved in the investigation would have deliberately fed the press information, the leaks served a useful purpose. The constant flow of revelations kept the public's interest high and the party leaders on the defensive. Craxi, in particular, was not accustomed to being in the humiliating position of constantly having to answer accusations and having his political agenda set by others. (Moro, 2005, p. 59)

The importance of mobilizing public opinion in Moro's strategy is clear. Another point that is obvious is the role of the demoralization of the suspects who should be

previously condemned by the media. Moro's thinking was completely suited to the coup-like interests of the conservative right, which was headed up at the time by the PSDB party and Rede Globo.

POST TRUTH, FAKE NEWS AND INSTITUTIONAL CYNICISM

Brazil is experiencing a situation that could be called "institutional cynicism", the main characteristic of the communicational economy that currently organizes the regime of political-judicial truth in the country. The incongruous, incoherent and selective reason can be found in the discursive practices that are widely accepted by the public prosecutors, the judiciary and the media corporations. Fake news can be defined as information that is proven to be false, which is intentionally produced for the purpose of influencing public opinion (Allcott & Gentzkow, 2017, pp. 213-214). "Institutional cynicism" cannot be reduced to the debate in relation to fake news or the simple characterization of opinions based on fake news. It is the organization of truths that are known to have no empirical evidence, which are intended to support the old privileges of the wealthier classes and which are produced with the clear intention of gaining the support of public opinion even when based on the selective application of the law and by completely inconsistent attitudes.

The central feature of institutional cynicism is to organize the communicational or judicial strategy based exclusively on political objectives, with little concern for the limits of the law or the coherence of its application. In this way, neoliberal demands and right-wing forces seem to be imposing a return to the period of political *coronelismo* [the so-called rule of the colonels]. Victor Nunes Leal, when analyzing the organization of the Brazilian police and judiciary during the imperial period, described the justice as being dominated by political party affiliation, being one of the main instruments of the power of the colonels, the local political leaders and the landowners. Leal claims that even with the establishment of the Republic, judicial and police structures acted in accordance with the motto "give justice to one's friends and apply the law to adversaries" (Leal, 2012, p. 137). The current absorption of party politics by the Brazilian Judiciary seems to be a perfect application of this motto.

The following extract from the paper by Judge Sergio Moro clearly states that the purpose of the conviction of the suspect appears to be well above the truth and the presumption of innocence that is so dear to the rule of law:

there is always the risk of undue injury to the honor of the person under investigation or who is being accused. However, care must be taken in connection with the disclosure of facts related to the investigation, rather than an abstract ban on disclosure, since the publicity has legitimate objectives which cannot be achieved by other means. Prisons, confessions and the publicity given to the information obtained generated a virtuous circle, which is the only possible explanation for the magnitude of the results achieved by the *mani pulite* operation. (Moro, 2004, p. 59)

Moro clearly makes the assumption that publicity and the mobilization of public opinion are fundamental elements of justice. He seems to be unaware that justice is not a court of exception and that the risks of cases such as the hasty accusations against the teachers of the so-called Base School in São Paulo indicate that it is essential to preserve suspects until the process has reached its conclusion. However, the passage indicates that it would be essential for the courts to destroy the reputation of the accused as part of the investigation strategy. For its part, this has nothing to do with the search for confirmation or denial of hypotheses, such as that undertaken by a scientist. The investigation called for under the strategy of institutional cynicism is aimed at finding elements that make it possible to create an impression of truth.

Institutional cynicism works with selectivity, the protection of allies and with direct political action on the part of the Judiciary together with public opinion, with the constant use of exceptions in order to achieve the pre-defined political objectives. The dissemination of institutional cynicism in the essential structures of justice came about as a result of the growth of the truth regime of neoliberalism that aims to reformulate the Law in function of the application of its economic prescription. Everything that is preventing neoliberal logic has to be removed and if possible criminalized. Therefore, the Brazilian neoliberal right joins forces with the old patrimonialist conservatives who cynically say they are against corruption, as can be seen from the stories of Aécio Neves, Michel Temer, Eduardo Cunha along with many other leaders of the coup that is destroying Brazil. The absorption of party politics by the Public Prosecutor's Office and the Judiciary is essential for neoliberalism. With the erosion of political representation, neoliberalism operators have paved the way for magistrates to be at the front of direct political action. The fight against corruption was the motto for the selective removal of the center-left political forces and for the application of measures demanded by global corporations and financial capital.

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* Submitted: 29-09-2017

* Accepted: 30-10-2017