

THE ROLE OF NEW INFORMATION AND COMMUNICATION TECHNOLOGIES IN THE DEMOCRACY CRISIS

O PAPEL DAS NOVAS TECNOLOGIAS DE INFORMAÇÃO E COMUNICAÇÃO NA CRISE DA DEMOCRACIA

ELÍSIO AUGUSTO VELLOSO BASTOS¹
CRISTINA PIRES TEIXEIRA DE MIRANDA²
DANIELA RODRIGUES DE NARDI³

ABSTRACT

The present study has the general objective of investigating the role to be played by the New Information and Communication Technologies (NICTs) in relation to the crisis that Democracy is currently going through in some parts of the world, including Brazil. Will they have a positive or negative influence? What ideas can be implemented to motivate a healthy relationship between NICTs and Democracy? The research now developed has a theoretical-descriptive character and qualitative bias, which is proposed within a critical and reflective perspective. The deductive method, of historical-comparative procedure and the bibliographic research technique specialized in the researched subject are used.

Keywords: Democracy; Crisis; New Information and Communication Technologies; Importance.

RESUMO

O presente estudo tem por objetivo geral investigar qual o papel a ser exercido pelas Novas Tecnologias de Informação e Comunicação (NTIC's) em relação à crise pela qual atravessa a Democracia atualmente em alguns lugares do mundo, inclusive no Brasil. Terão elas influência positiva ou negativa? Que ideias podem

1 Doctor in State Law from the Law School of the University of São Paulo (USP). Professor in Human Rights and in General Theory of the Constitution (Graduation) and in Constitution Theory at the University Center of the State of Pará - CESUPA. Coordinator of the Artificial Intelligence, Democracy and Fundamental Rights Research Group. Attorney of the State of Pará. Attorney at Law. ORCID iD: <https://orcid.org/0000-0001-8183-5920>. E-mail: elisio.bastos@uol.com.br.

2 Master's student at the Stricto Senso Postgraduate Program in Law, Public Policies and Human Rights at the Centro Universitário do Pará - CESUPA. Member of the Artificial Intelligence, Democracy and Fundamental Rights Research Group. Lawyer for Banco do Estado do Pará - BANPARÁ. ORCID iD: <https://orcid.org/0000-0001-7884-2687>. E-mail: cristinamrodriguesadv@gmail.com.

3 Communicologist - Publicist and Advertiser from the Centro Universitário do Estado do Pará - CESUPA. Law student at the Centro Universitário do Estado do Pará - CESUPA. Member of the Artificial Intelligence, Democracy and Fundamental Rights Research Group. ORCID iD: <https://orcid.org/0000-0002-6891-9561>. E-mail: danydnard@gmail.com.

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ser implementadas para motivar uma relação saudável entre as NTIC's e a Democracia? Ao Direito, na qualidade de fonte garantidora dos Direitos Fundamentais, caberá papel relevante nessa indagação, eis que deverá atuar sobre as NTIC's para orientar suas práticas em busca de que possam atuar junto à redução do déficit democrático. A pesquisa ora desenvolvida tem caráter teórico-descritivo e viés qualitativo, que é proposto dentro de uma perspectiva crítica e reflexiva. Utiliza-se o método dedutivo, de procedimento histórico-comparativo e a técnica de pesquisa bibliográfica especializada no assunto pesquisado.

Palavras-chave: Democracia; Crise; Novas Tecnologias de Informação e Comunicação; Importância.

1. INTRODUCTION

Political democracy is currently going through a worrying crisis. It runs the risk of ceasing to be, without ever, in fact, having been. It runs the risk of being, itself, one of the promises it has not been able to keep. It is known that political democracy, beyond representation, has always been in crisis, since deliberative mechanisms have not yet achieved a reasonable effectiveness, especially in countries like Brazil, but not only here. This article will not deal with this crisis, although it is quite relevant.

It is also known that beyond the political field the democratic deficit is even greater, so that democratic values, as a rule, enjoy reduced influence in other fields of human relations, such as social, economic, gender relations, etc. It is not about this relevant deficit that we will speak either. As a matter of fact, as Boris Fausto well notes, in this aspect and in the aspect mentioned in the previous paragraph it is preferable to use the expression deficit, instead of democratic crisis, because the latter expression could give the idea of a "goal that has been reached, in times past, which is not certain. One of the central elements of the deficit concerns the quality of the democratic regime, its participatory content [...]" (FAUSTO, 2004, p. A3).

The crisis addressed here will be different. It is a crisis that threatens to deconstruct democracy, even, and above all, in fields where it was thought to be reasonably consolidated. The usefulness of democracy in achieving the promises it repeatedly fails to keep is currently under discussion.

Indeed, because in several places where this political regime enjoyed a certain level of health, it is already possible to identify signs of weakness. Its relevant conceptual elements are shaped so that any system of mediation between the unity of the State and the multiplicity of social actors can fit into them. People, more often and less shyly, justify notably despotic practices as necessary for the protection of democratic ideals. Hate speech is regularly used for the same purpose. Not by chance, moreover, some relevant surveys show that people have never been less committed to democracy or more receptive to authoritarian alternatives than they would be today, so that, effectively, democracy is losing space and prestige.

Thus, it remains relevant to know if these New Technologies can be used as instruments to overcome the crisis through which Democracy is going through, or, who knows, to worsen this crisis. In this aspect, it is important to investigate whether, in the current scenario of the crisis of Democracy and the extensive flow of data and the use of the so-called new technologies or information and communication tools, to what extent can Democracy be influenced? Moreover, as the present work assumes its commitment to democratic values, it is urgent

that alternatives be discussed so that such relationship may be profoundly positive and fruitful, so that the NICTs may be used as instruments capable of reducing the referred crisis and strengthening the political-democratic structures. It is urgent to ask what role the Law should play in this regard.

It is evident that the fight should be not only for the rescue of political democracy to its status quo ante bellum, but to rebuild it, reducing its deficit, since a good deal of the current crisis is planted in the promises that Democracy has not been able to keep, and is rooted in such deficit, therefore. A deficit that is political, regarding the mechanisms of direct citizen participation, but is also juridical, social, cultural, economic, gender, racial, etc.

Well then, the first step necessary to carry out this study is precisely to define the essential theoretical frameworks about democracy and the crisis it is going through. This will be the subject of the first chapter, which will have the works of Robert Dahl and Yascha Mounk as its main sources of research.

Next, the second chapter will seek to establish the conceptual foundations necessary to understand the effects that NICTs may cause in the exercise of the democratic game. To this end, the study supported by ideas coined by important authors who have elaborated serious and well grounded studies on this theme, such as Larry Diamond, Thomas Friedman, Farhad Manjoo, Cass Sunstein, and Cathy O'Neil, will be fundamental.

At the end, it will be time and place to analyze some suggestions so that the NICTs may, in the light of Law, effectively serve as an instrument to reduce the crisis and, why not, the democratic deficit. The most relevant doctrinal frameworks for the construction of such suggestions are those launched by Eduardo Magrani and Helbing et al. Some experiences adopted in the European Union are also used.

Thus, recognizing the importance of Democracy as one of the pillars of the Rule of Law and its necessity in a socio-political context, which has been remodeling itself based on the changes perceived within these contexts, it should be kept in mind that in a globalized scenario new changes are emerging, rapidly and significantly altering the way people interact with each other and share their lives with the world.

The relevance of knowledge about such changes is an extremely important way to recognize the way in which technology has impacted the private sphere of individuals, considerably affecting their autonomy.

2. POLITICAL DEMOCRACY: THE CONCEPTUAL PREMISES THAT ARE BEING LOST ALONG THE WAY AND THE CRISIS OF DEMOCRACY

At the outset, it is important to clarify that the present article will deal with political democracy as a political regime (despite its necessary social, economic, cultural, gender, etc. implications), thus conceiving it, *lato sensu*, as an instrument of mediation between the unity of the State and the multiplicity of social actors (TOURAINÉ, 1996).

It is also important to clarify, in light of the need to establish conceptual premises, that the present work adopts the classificatory and descriptive line drawn by Lijphart, who identifies two great global models of political democracy the majoritarian one (where it is governed according to the majority and its interest is sought without worrying about maximizing the size of such majority) and the consensual one (where the majority is, only, a minimum requirement for Democracy, and, thus, it seeks to expand the participation in the government as well as the necessary consensus in political decisions that will be taken through instruments that enhance inclusion, negotiation and compromise) (LIJPHART, 2019). The reflection proposed by the present article serves both models.

Democracy, also for the purposes of this study, is a regime based on the recognition of certain Fundamental Rights that serve as a support for its effective exercise (DALH, 2001, p. 61/62). In this sense, for example, for the expression of plurality, a right that guarantees citizens freedom of speech is necessary; so that individuals can be properly enlightened, the Right to access to information and education is fundamental and so on, successively.

Autonomy and freedom reveal themselves, on the one hand, as basic presuppositions of the democratic model, and on the other, as the desired result of such model. This means that the free will of the citizen reveals itself as an indispensable condition for the true exercise of democracy, but, at the same time, the exercise of democracy should provide a strengthening of freedom and autonomy of individuals, in an inexhaustible relationship of feedback or strengthening between democracy, freedom and autonomy.

Precisely by understanding Democracy, for the purposes of the present study, remember, within the aspects revealed above, is that the same objective elements (conceptual premises) for a democratic process that Dahl deals with are identified and adopted. These are [a] effective participation, which consists in the possibility of every political participant being able to present his or her opinion on a given policy before its implementation; [b] equality of the vote, whereby everyone's vote should have equal weight; [c] enlightened understanding, that is, having knowledge regarding other possible policies and their consequences; [d] control of the planning program, which consists in deciding which issues should be the subject of planning; and [e] inclusion of adults, which guarantees the observance of the first criterion, but in relation to citizens (DALH, 2001, p. 50).

Remember that respect for these criteria is important to ensure political equality, so any violation would result in an inequality that would distort the political-democratic process. Thus, in summary, Democracy has as its main precepts: the guarantee of fundamental rights; individual valorization; respect for the diversity of ideas (GARCIA, 1997, p. 43), as well as equality, autonomy and freedom to decide. Such precepts guarantee the model the necessary cohesion to sustain its organizational structure and a real possibility of success in achieving its main objective: mediation (free, plural and equal) between the State and the multiplicity of social actors.

Thus, in the view of the authors of this study, democracy emerges as a practice that, in the existence of favorable conditions, will, in fact, allow individuals to participate freely and directly in the political decisions made in a society. Otherwise, democracy needs to feed back into the system, reinforcing and amplifying such favorable conditions. In other words, within a society, the individuals inserted in that context will be able to participate, opine, and even

oppose, effectively, the political issues put on the agenda. They will be able to establish their own individual organization to enforce their participation.

Well, not only in Brazil but also in other parts of the world, this is the model intended by the Constitutions of several countries around the globe. This was the model that, until recently, was seen as the ideal model, to be pursued by National States truly committed to ideals of freedom, autonomy, and equality.

It turns out that, as identified by some important authors, including Yascha Mounk (2019), individuals have never been less committed to Democracy or more receptive to authoritarian alternatives than they would be today. Thus, Democracy has been losing allies. It is true that there are other equally relevant analyses about this crisis faced by democracy, however, Mounk's analysis was chosen as representative of the issue since it registers a correct analysis about the setback movement that the consolidation of democracy has been suffering in recent years throughout important countries where, until then, it seemed to have no legitimate opponents.

It is thus clearly perceived that something has changed considerably since Norberto Bobbio stated, even if with a certain fear, that Democracy would not be subject to the internal dangers from which right-wing and left-wing extremisms could derive (BOBBIO, 2000, p. 49/50). After all, the author recalled, even unfulfilled promises or unforeseen obstacles would not have been enough to turn democratic regimes into autocratic ones, so the minimum content of the democratic state would not have shrunk.

This analysis no longer holds. According to Mounk, democracy is becoming increasingly deconsolidated and, over the decades, the number of citizens who distrust their politicians has increased considerably, while confidence in political institutions is increasingly low (MOUNK, 2019, p.125).

This is, as Krastev detects well, a true paradox, since Democracy would have reached its existential crisis at the exact moment of its global triumph (KRASTEVEV, 2020). Yes, because while Democracy is perceived as the best form of government by most people in the world, opinion polls indicate that people living in authoritarian regimes are more likely to believe that their voice matters in the decision-making process than people living in democracies.

Not only in North America, but also in Western Europe, voters' expectations about the fate of democracy are worrisome, as the population finds itself in a scenario of unpredictability about government actions. But it must be emphasized that this popular disillusionment did not occur in an inconsistent or even fortuitous manner. Yascha Mounk, for example, cites that in the United States, for example, the "Saturday Night Massacre" episode of the Watergate scandal, and which mobilized the impeachment of President Richard Nixon, significantly shook the confidence of Americans in their political representatives (MOUNK, 2019, p. 125).

Unfortunately, political scandals have become more and more frequent around the globe, notably those linked to episodes of corruption, embezzlement of public resources, violation of citizens' rights by the state, and the unpredictable possibilities of wars between countries. Corruption, social moralization, social securitization, emergence of the fight against terror, generalized surveillance are important elements (BOLZAN DE MORAIS, 2018, p.876-903) that begin to compose and define the state and social relations.

All this has motivated the growing democratic crisis, showing that people are less and less optimistic about this political regime, becoming more open to authoritarian regimes.

There is also a loss, and thus a conceptual weakening of the fundamental elements that characterize a democratic regime. In this sense, for example, there are several manifestations that proclaim themselves “in favor of democracy”, but that, in truth, are founded on the absolute fragility or disregard of one, some or even all of the objective elements that characterize the democratic process, as, for example, in the manifestations that support the use of the Armed Forces or the closing of the Constitutional Courts as measures to be adopted to protect democracy.

But why is this happening? Why are young people especially surrendering to anti-democratic ideologies rather than advocating for the revitalization of political institutions as pillars of democracy? Mounk (2019) explains that much of this stems from a lack of knowledge about the consequences that the absence of Democracy brings to individuals and what it would be like to live in a political system without Constitutional guarantees.

If we observe what history shows us, the social struggles for the conquest of Public Freedoms were a very important step to limit the power of the State over people’s lives and, consequently, avoid the tyranny of rulers, in order to protect people from the State itself. However, since this is a generation that did not experience fascism and does not know the turbulence of being inserted in a threatening political scenario, it somehow makes these individuals favor the relativization of authoritarian regimes, making real the possibility of political experimentation, since democracy no longer seems to be the only option. They are unaware of the smell of gunpowder because they have never been to war.

Be that as it may, it is certain that for Mounk (2019) a growing portion of citizens have been presenting negative views about Democracy or believe that it is not particularly important. As can also be seen in the current Brazilian scenario, a smaller but rapidly growing portion is open to authoritarian alternatives, with despots or military in power, in a clear demonstration of the crisis in Democracy, its assumptions and its institutions, which until recently were considered stable.

Democracy, thus, is in crisis, and this crisis, above all, is a crisis linked to a deep crisis of performance (MOUNK, 2019) arising from several unfulfilled promises, and this crisis, of course, is exploited by various sectors.

Bobbio rightly points out six of such promises, namely: 1) The empowerment of the individual; 2) The prohibition of the imperative mandate; 3) The defeat of oligarchies; 4) The exercise beyond the political frontier, with its action in non-political spaces in which power is exercised that makes binding decisions for an entire social group; 5) of eliminating Invisible Power, such as the power exercised by the mafia, militia, organized crime, etc. and, finally, 6) education for citizenship, which would enable the exercise of an eminently active citizenship (BOBBIO, 2000, p. 34/45).

In this context, other ways of thinking about collective organization seem to gain strength and the democratic regime and, what is worse, its values, are threatened. Many people ask themselves why insist on Democracy if it no longer (or definitively?) meets society’s wishes, if political agents do not represent, and do not materialize, the interests of those who elected them? The current crisis of Democracy is, thus, the crisis (or the giving up) of the values that it

represents and intends to strengthen, among which are Fundamental Rights, freedom, autonomy, and equality.

Well then, during this crisis of democratic legitimacy, is it possible for Democracy to be re-dressed using NICTs to transform it into a new digital Democracy? In the current scenario of the crisis of Democracy and the extensive flow of data and the use of the so-called NICTs, to what extent can Democracy be influenced? This is what will be answered below.

3. NEW INFORMATION AND COMMUNICATION TECHNOLOGIES AND DEMOCRACY: WHERE WILL THE PENDULUM SWING?

For Castells, the core of the transformation experienced in the current scenario refers to information processing and communication technologies. According to the author:

[...] information technology is to this revolution what new sources of energy were to successive industrial revolutions, from the steam engine to electricity, fossil fuels and even nuclear power, since the generation and distribution of energy were the main element in the basis of industrial society (CASTELLS, 2019, p. 88).

Well then, the evolution of information and communication technologies, from the printing press, the telephone, the television, and, finally, the computer, culminated, until this moment, with the so-called New Information and Communication Technologies - NICTs, which were driven by the expansion of the use of the internet. NICTs are, then, all the digital electronic devices that allow communication between individuals in real time, at high speed, and with a high flow of information.

In this sense, it is common to identify conflicting positions about the role (to be) played by such NICTs in the democratic system. From an optimistic to a gloomy perspective, the authors diverge on the possibility of using such technologies for the benefit of democratic instruments.

Runciman clarifies that at first it was believed that with the advent of a single network in which people, objects, ideas and information could be connected, Democracy would gain strength, and the great constant flow of information would become a powerful ally of democratic dictates. This is indeed possible, but it is far from an inexorable effect (RUNCIMAN, 2018, p. 154).

Larry Diamond (2012) goes so far as to call these new technologies “liberation technologies” (comprised of any form of Information and Communication Technology (ICTs) that can expand economic, political, and social freedom, which would currently involve the digital forms of ICTs - computer, internet, cell phones, Social Media...), in light of the empowerment they would give citizens and civil society to facilitate independent communication, expose opinions, mobilize protests, monitor elections, oversee government, and other ways of achieving freedom. Important samples of such liberation movements can be found in the “Green Revolution” in Iran, the “Arab Spring” in the Middle East and North Africa, Occupy Wall Street, Black Lives Matter in the US, and, in Brazil, the mobilization in favor of the half-pass and demonstrate

that, indeed, NICTs enjoy relevant potential to reduce the communicational gap between insiders and outsiders.

Friedman (2014), for his part, came to imagine that the democratization and diffusion of the revolution and universalization of new technologies, which left the Elites' computers for people's Smartphones, would give birth to a new global political force, bigger and more important than the "Men of Davos". In this sense, it should be clarified that the expression "Davos Men" was coined by Huntington (2004) to identify a global "superclass" emerging from the Davos World Economic Forum, a cosmopolitan and transnational elite, formed by high-tech, finance, multinationals, academics and NGOs and that had "little need for national loyalty" and more in common with each other than their fellow citizens.

Well, this larger and more important force than the "Men of Davos," Friedman (2014) called the "Square People." These square people would represent a diversity of politics and would demand a new kind of social contract. They would fight for their voice to be increasingly heard. They would fight for better schools, better roads, and better rule of law. They would demand the possibility of a better future and to have their voices amplified.

In a more skeptical view Runciman predicts that dependence on this new technology would make us an easy target for exploitation. The ones who would enslave us would not be killer robots, but unscrupulous individuals capable of using such technology to their advantage. He finishes by warning that in a land of technology dependents, those who navigate smartly would be king, as fake news and the micro-targeting of messages to voters would demonstrate (RUNCIMAN, 2018, p. 134).

Krastev (2020), for his part, correctly points out that NICTs have the power to dramatically increase governments' capacity for social control, so big data authoritarianism would be able to compensate for one of the main deficiencies of old-fashioned authoritarian regimes: the lack of relevant information about what is happening in society.

Also concerned, Manjoo (2016) suggests that before we get excited about such changes, we should get nervous about it, because the Internet has loosened our collective understanding of truth, which turns out to be a discouraging trend, suggesting that social media has become an increasingly powerful cultural and political force, to the point that its effects are beginning to alter the course of global events.

The author identifies, as a possible circumstance to favor political instability through the weakening of political institutions, the advent of the internet and social media, since they have enabled the spread of new sources of information, significantly weakening the pillar of the hypodermic theory of communication: the mass media (MANJOO, 2016).

In this sense, the transformation in communication is such that, currently, newspapers, radios and televisions (pillars of the hypodermic theory of communication) now also use internet-based communication in their production or dissemination, in a true revolution also incident on the reading patterns of such information, that not only make the mainstream media less and less relevant as hostages of the Technology Giants (especially Google, Facebook and Amazon) that, thus, now assume the role once played by the mainstream media, i.e. as true gatekeepers of information, but, what may be more worrying, make them (us) hostages of the values of such giants (FOER, 2018, p. 137).

To get an idea, it is estimated that among Americans, 62% read news from social media, notably Facebook, and not from the main page of the major media outlets, with one-third of the traffic arriving at the sites of such media outlets coming from Google (FOER, 2018, p. 25/16).

Be that as it may, with the advent of the Internet in a new communicational landscape, it has become increasingly possible to insert the ordinary individual in a leading role in front of the elaboration of digital content.

The individual, thus, would have ceased to be a mere receiver and started to be the sender of the message, producing contents that are capable of influencing thousands of other people, and thus, no longer occupying only the passive pole in the communication process. Communication is no longer from one to a few or even one to many (as in mass communication media), to become many to many (MOUNK, 2019, p.172/173), that is, several individuals who produce information and at the same time receive information and, thus, much of their ability to control the dissemination of ideas or messages that resonate among ordinary people is lost.

There is no longer a monopoly of informational content by traditional media, although it can (and should) be said, as mentioned above, that a considerable part of this power has passed into the hands of large technology companies. Yes, because all this informational content will necessarily (and this is far from unimportant for the purposes of informational autonomy) go through some sifting or control by the new gatekeepers, but they (individuals) will be given the power to produce the very content they want to see disseminated. Now, any individual can produce content and disseminate it to an infinite number of people, anywhere in the world, including the politicians themselves.

In this sense, it is increasingly common for parliaments to be occupied by the so-called digital influencers or Youtubers, where the culture of sharing “in real time”, the supposed informality and the alleged proximity, seeks to transform voters into followers, making them loyal. This direct relationship between politicians and voters-followers, for example, makes some time-honored political institutes or practices anachronistic, as is the case of the Right to Broadcast and the maxim, applied in many parliaments, that states that the opposition would be the audience and the government, the scoreboard: today, almost everyone plays to seduce or charm, in a very performative way, their audiences.

This new possibility (the power to produce one’s own content) generated by the NICTs, this control carried out by the new gatekeepers, this lack of digital literacy, this control carried out by Big Brother, in short, all the new challenges (which reside in old problems) bring an environment still weakly protected and regulated, being the stage for conflicts regarding Fundamental Rights and Democracy, the two main measures used to assess the legitimacy of Political Power. Thus, NTIC’s will have a direct influence on Law and its attempt to regulate social and political relations.

Another important factor caused by NICTs is the “changing Overton window” Clay Shirky tells us about, as Manjoo (2016) points out. This window is an expression coined by Joseph Overton to describe the variety of subjects that the mainstream media considers publicly acceptable to discuss. Well, from the early 1980s of the twentieth century until the very recent past it was considered unwise for politicians to espouse views considered, by most, to be outside the mainstream, things like explicit appeals to racial prejudice.

Precisely because of this, Shirky points out, as Manjoo (2016) points out, white ethnonationalism was kept in check. Thus, pluralistic ignorance would have caused groups of people holding offensive views, to be restrained by not knowing how many others shared their views. Thanks to NICT's they could see that they were not alone. They were able to express their thoughts online reinforcing their distorted worldview and then enter the mainstream.

In this sense, reaching such groups (and their enthusiasm and energy) also became the goal of several figures, considered outsiders, who suddenly left irrelevance or inexpressiveness (Trump, Bolsonaro, Jörg Haider, Geert Wilders, etc.) to reach relevant and expressive political positions, recognizing and making use of the energy and enthusiasm of such groups. Here, we cannot help but recall Krastev's (2020) correct and accurate observation to the effect that the new authoritarians ended up being the biggest beneficiaries of the wave of protests of the last decade, and also contributed to the declining influence of NGOs as an agent of social and political change.

But that's not all. The fragility of the blind belief in the democratizing power of NICTs is even greater. yes, because the relationship between NICTs and Democracy is influenced by the phenomenon of information curation. Nicholas Negroponte, quoted by Sustain had predicted that a few years after 1995, it would be possible for people to gain access to extremely personalized news, so that they would only receive what they considered important (SUNSTEIN, 2017, p. 1). Such a personalized newspaper would be a "Daily Me," a personal and unique newspaper. Such a prediction, in a sense, is already present in today's internet architecture.

The Daily Me that social media can promote is not set up by the user. The algorithms know a lot about people's lives through their browsing history and patterns. By analyzing the correlation between what people have done before, quite accurately, they can predict what people will like to do (or what they will do or what they will be prone to do if given the right incentive) next (O'NEIL, 2016, p. 77) and thus show such people, on social media or search engines, data that matches their opinions, or the opinions that prove convenient for sales purposes (of products or people) (O'NEIL, 2016, p. 188/191).

This phenomenon is called by Sunstein the "Architecture of control" (SUNSTEIN, 2017, p. 1). After all, this selectivity of what can or should be seen by someone, which conditions people in an "echo chamber" and to the Daily Me, is far from natural, because it is the result of a thorough and millimetrically personalized control.

Noteworthy, also, as HELBING et al. (2017) warn, some software platforms are moving toward "persuasive computing," so in the near future (or present?), using sophisticated manipulation technologies, these platforms will be able to guide us through entire courses of action, so the trend would no longer be programming computers, but programming people.

In the same vein, he warns, moreover, that perhaps even more significant is the fact that manipulative methods change the way we make our decisions, so the large-scale use of such methods could cause serious social harm, since such manipulative technologies would restrict freedom of choice, which would be slowly but surely disappearing - slowly enough, in fact, that there has been little resistance from the population so far (HELBING, et al., 2017).

Incidentally, the "echo chamber" and polarization are also revealed as important phenomena stemming from (or incredibly enhanced by) NICTs. The phenomenon of the "echo chamber" is not even perceived due to a supposed freedom in data circulation, but it is marked by

the advent of the insertion of the citizen in a false reality in his “virtual bubble,” believing that his conceptions of the world are universal. As a result, the “other” is reduced to a stereotype and is easily characterized as the enemy - a true polarization.

This conjuncture is harmful to Democracy insofar as the individual is directed to maintain his understanding and not to rethink, maintaining a passive posture and directed to reject those who have any disagreement with his ideals - without any possibility of admission for integration, without exercising tolerance and alterity.

The issue is even more complex in face of the following paradox: on the one hand, the need to protect the citizen from the undue appropriation of his data flow by private companies; and on the other hand, the excessive protection of privacy may result in the injury or mitigation of the public interests of security and effectiveness, as well as the economic development of society. Here, as will be seen, the Law must choose a side.

The complexity can also be identified in the fact that technology has developed at an important speed in recent years. Electronic devices such as smartphones are interconnected to personal digital devices with the intention of making human life more practical, and, in fact, they do.

Examples of this include GPS mobility applications, Facebook friend suggestions (about people we might possibly know), and advertisements that recognize our interests and invade our computer screen. All this seems obvious when looked at from a day-to-day perspective. However, what is little recognized about these examples is that they are mechanisms with an incredible potential for persuasion.

The drastic changes perceived as technological advances develop, demonstrate the insertion of these means in the daily lives of individuals in a way that has become practically impossible to disengage from them. Society is increasingly more dependent on digital means of communication, since being inserted in this environment is no longer optional to the individual. In this way, NICTs have become not only a work tool, but have also significantly changed interpersonal relationships.

An example of this is the emergence of direct messaging applications, such as WhatsApp, which became an indispensable source of communication, making human life more practical. Thus, the advent of new techniques that allow greater convenience and practicality is easily accepted by the postmodern society, characterized by living in a globalized world, where information is passed on at great speed around the world (HALL, 2011).

Even public policies are already being implemented based on these digital resources to manage and drive behavior in society. These are the so-called nudges that, according to Sunstein (2017) would be, in theory, subtle incentives or discouragements (which may also take the form of permissions and prohibitions, depending on the case) by the Public Administration to guide people in certain directions, without preventing them (in theory), however, from following another path.

For the author, nudges are not normative rules that force people to shape their behavior through coercion, but strategies that direct people through incentives, allowing them freedom of choice to decide whether to comply with that guidance or not. Sunstein demonstrates practical examples of how nudges surround our daily lives:

In everyday life, a GPS is an example of a nudge; likewise is an app that informs the user how many calories have been ingested over the previous day; likewise is it with the text message, which informs customers that a bill is due or a doctor's appointment is scheduled for the next day; so is an alarm clock; so is automatic enrollment for pension and retirement plans; with default settings on computers and cell phones; so is the system for automatic payment of credit card and mortgage bills (SUNSTEIN, 2017, p. 1026).

When we talk about interventions within cyberspace, the implementation of marketing communication strategies has no limits. That is, increasingly, the frequent access of NICT users has left traces of their activities, interests and needs, which serves quite properly, for example, to companies that want to sell their products (or people) reaching the ideal consumer. Advertising itself has followed the peculiarities of new technologies, adapting itself to the formats that allow it to send messages increasingly targeted to individuals who are seen not only as users on the network, but also as potential consumers.

According to Magrani, we are facing a techno-regulated world, that is, a world in which the rules of technology, as well as its internal architecture and design, will condition human actions to previously programmed codes (MAGRANI, 2019, p. 251/259). Thus, although there may be the feeling that users are fully exercising their freedom when "surfing the web", there is a great chance that we are, in fact, totally limited to the commercial purposes of these devices. This is a scenario of commercialization of personal data.

Imperceptibly, we make available the register of our activities and personal data to the platform's own system, which uses this data for advertising and commercial purposes of companies that are also in that environment in order to sell products, people and services.

For example, if a Facebook user decides to perform a search on Google about a very specific type of accessory that he intends to buy in the future, immediately numerous advertisements referring to the object in question will surround him on his other social media, such as Facebook and Instagram.

Sometimes we may ignore or even not rethink the issues that exist behind a simple advertisement. However, the interconnectivity between digital platforms (Google, Facebook, Instagram, and even Whatsapp), has presented a system of commodification, regarding the use of users' personal data, for entirely commercial purposes. Elections around the world have already been (and probably still are) decided based on such data, one strongly suspects.

This shows how much we are hostages of the algorithms that make up the architecture (or design) of these digital platforms, since it was not necessary for the user of the previous example to request the suggestions of ads on his own, but simply, he was conditioned to receive all this content from the moment he joined that network, agreeing to the terms of use and privacy policy of the media in question. Thus, techno-regulation by design carries a great risk of authoritarianism and paternalism, according to Pagallo, because they remove autonomy on the part of people, by making it virtually impossible to conduct infringing the behavior desired by the rule (PAGALLO, 2015, p. 161-177; FLORIDI, 2015, p. 173).

Thus, to what extent can one ignore these measures imposed by technology, since the routine use of social media has become a practice that can no longer be considered optional? Should individuals abide by these rules as a preponderant condition for the use of these means

of communication, even if this directly violates their constitutional rights? Where is the intervention of the Rule of Law as a means of guaranteeing citizens' rights?

Well, as we have seen, the movement of NICT's on Democracy is pendular, and it can oscillate between positive action and action that weakens democratic structures. There is potential for tilting to both sides, therefore. It is necessary to choose, therefore.

Thus, if the democratization of the media has entailed a potential empowerment of individuals with regard to the possibility of receiving and propagating ideas opposing the government and the mainstream media, transforming "fundamentally the structural conditions of communication" (MOUNK, 2019, p.172). If, every day, thousands of polls, comments and "likes" are registered among users on the networks, not only as a form of practical interaction in cyberspace, but as a virtual movement that allows construction and development of debates on social and political issues, capable of mobilizing people almost instantaneously in favor of a common interest.

If, for example, during the Brazilian presidential elections that took place in 2018, the explicit possibility of then-candidate Jair Bolsonaro being elected mobilized several voters to protest against some of the positions adopted by him, generating a movement that managed to mobilize more than 1 million members in less than 2 weeks, enabling demonstrations throughout Brazil through #ELENÃO!⁴, considered by some as the largest women's political act in the history of Brazil.

If such episode reinforces the thesis exposed by Mounk (2019) in the sense that social networks have enabled the insertion of individuals in leadership positions when it comes to social and political issues, which has considerably attenuated the old limitations established by the mass media, so ordinary individuals have become content producers with the potential to become influencers on a large scale, without the need to bet on a high investment for the use of these platforms.

Despite all this, it is also true that NICT's can be captured by antidemocratic forces and, thus, serve to weaken Democracy, as seen above. It is necessary, therefore, to have responsible and careful analyses to support ethical practices committed to democratic values. It is necessary, moreover, to adopt and promote a set of actions that can swing the pendulum in favor of Democracy. Below we will look at some of them.

4. HOW CAN THE LAW SWING THE PENDULUM IN FAVOR OF DEMOCRACY?

As seen above, the emergence of the Internet has enabled the insertion of individuals in networks, democratizing the use of digital platforms. However, as we have also seen, although the great technological advance as a tool for the development of society itself is remarkable, there are central problems that can be observed about the processes of use of these media by

4 EXAME. "Women United Against Bolsonaro" has 1 million members on Facebook. 2018. Available at: <https://exame.abril.com.br/brasil/mulheres-unidas-contra-bolsonaro-tem-1-milhao-de-membros-no-facebook/>. Accessed on: 15 Dec. 2019.

civil society. Therefore, while the new means of communication have enabled popular inclusion for a significantly smaller investment than the mass media, the State and society will need to develop mechanisms to force the NICTs to act in a democratic way, or to offer means that enable the individual-lector to develop his own defense and protection mechanisms against the improper use of such New Technologies.

In this sense, according to what has been exposed, we can identify a contemporary paradox: the NICTs have brought the possibility of information and communication democratization by means of digital platforms, at the same time that they have violated Fundamental Rights referring, among others, to freedom, privacy, ownership of personal data, notably sensitive data and information self-determination.

The delicacy of the issue is also emphasized by Magrani, when he affirms that we are facing a world regulated by non-regulatory techniques resulting from technology. Therefore, understanding that digital architecture subtly imposes the naturalization of abusive practices within digital platforms, such as the commodification of personal data and illegal censorship, one realizes that it has its own regulation, which not only acts in an arbitrary way to Law, but competes directly with it (MAGRANI, 2019, p.252).

Magrani draws on Bingham's conceptions in his work *Rule of Law*, about the role of the rule of law in a technoregulated world, and states:

[...] there is today a discrepancy between the role that the Rule of Law should represent in contemporary societies, and the upsurge in the practice of technoregulation of citizens carried out on digital platforms, encompassing their products and services to users (MAGRANI, 2019, p.253).

Therefore, relevant question regarding the above, is given by the fact that the new Gatekeepers of Communication and Information are creating regulations that follow their own commercial interests, foster their own values, limiting and conditioning users to their structure and values. In other words, we are increasingly prone to the rules of technology as something that is overriding law itself, which considerably diminishes the potential of the public sphere and the rule of law within cyberspace. It is almost as if there is no legitimacy for Law to interfere with the rules of technology. It is an imaginary line that separates Law (of humans) from the technological universe (of machines).

In a techno-regulatory scenario, the rules are simply dictated by the code imperatively. In a context where non-normative technological tools dominate the regulatory environment, we seem to be subject to the rule of technology rather than the rule of law. Technoregulation signals the disappearance of our capacity to argue and resist, and thus may result in an even greater deviation from the values that make us "human," when thinking about power relations and contestations; as well as the sphere of truth and justice governed by the rule of law (MAGRANI, 2019, p.254).

Thus, Magrani states that the Rule of Law as a source guarantor of Fundamental Rights should intervene in these techniques in order to guide the practices of technology, having as a basis the Law itself, and not the opposite (MAGRANI, 2019, p.255). Law should be the major model of normative regulation, since, in contradiction to this, we will be facing constant instabilities regarding the protection of citizens' rights, as well as, we will be increasingly distant from establishing legal certainty and avoiding arbitrariness. This will generate more and more difficult cases in the judiciary. It is true that the Law can act through its primary sources, espe-

cially through the edition of normative acts that can guide the democratic role to be played by NTICs. However, secondary sources also play a relevant role, either as a motivational factor for normative change, or as a consolidating element of such change. Both sources are of interest to the present work.

Thus, it is necessary that there be an ethical-legal balance in the practices arising from cyberspace, through an analysis focused on the effects of the actions of non-human agents, within the private or sensitive sphere of individuals. Technological advance must be faced as a reality that tends to develop faster, perhaps, than Law's capacity to keep up with it. However, it is the Law's fundamental role in overseeing these practices, protecting and safeguarding individuals from violations that interfere with the exercise of their autonomy.

The Law, supported by an adequate ethical foundation, will serve as a channel for data processing and other technological materialities, avoiding a technoregulation that is harmful to humanity. In this new role, it is important that Law guides the production and development of Things (technical artifacts) so as to be sensitive to values, for example, regulating privacy, security, and ethics by design. (MAGRANI, 2019, p.257).

After all, the right to individual self-development can only be exercised by those who have control over their lives, which presupposes informational self-determination, which in turn requires a model of education and conduct geared towards these new problems and fragilities. Discussing ideas for better citizen protection in the face of new technologies, Helbing et al. (2017) make an important warning in the sense of requiring that any and all advertisements be properly identified as such, and should not be misleading, or use certain psychological tricks, such as subliminal stimuli.

Helbing et al. (2017) make an important comparison when they warn that in the academic world, even harmless decision experiments are considered experiments on human beings, which would have to be approved by an ethics committee with public accountability, so a code of conduct like the Hippocratic Oath is entirely appropriate to move the conduct of large companies in the virtual environment. They make Helbing et al. (2017), a disturbing inquiry, to know if our thinking, our freedom and democracy have been invaded?

Recent facts show that they have, so it is urgent to reverse this situation.

To this end, Helbing et al. (2017) rightly advocate the establishment of the following principles to guide the relationship with new technologies: 1. Decentralize more and more the function of information systems; 2. Support self-determination and participation of information; 3. Improve transparency in order to achieve greater trust; 4. Reduce distortion and pollution of information; 5. Enable user-controlled information filters; 6. Support social and economic diversity; 7. Improve interoperability and collaboration opportunities; 8. Create digital assistants and coordination tools; 9. Support collective intelligence, and 10. Promote responsible citizen behavior in the digital world through digital literacy and enlightenment.

It is evident that, for these principles to be able to act, it is first necessary to make a choice, which is not only the individual's choice, but the State's choice when it exercises the art of defining and executing public policies, behold, the issue can never be faced correctly without the institution and development of central public policies that choose and trace the path to be taken, either in the light of digital literacy, informative self-determination, protection

of democratic values, or in the light of media anaphalbitism, circulation of information, fake news, disinformation, etc..

Some, certainly, will ponder that it would not be necessary to choose which path to follow, but to try to make them compatible, in an attempt to proceed to a practical concordance between such equally fundamental values. For such optimistically minded people it is important to remember the correct and precise lessons of Villey (2007, p. 8) in the sense that each one of the Human Rights “is the negation of other human rights”. Continuing in acute and forceful observation about the flexible, modular and contradictory nature intrinsic to the notion of Human Rights, he states:

“Oh admirable medicine - capable of curing everything, even the diseases it has itself produced. (...) A tool of a thousand uses. It has been used for the benefit of the working classes or the bourgeoisie - of the evildoers against the judges - of the victims against the evildoers. But beware! You have to choose: either for the good of some or for the good of others. Never in history have human rights been exercised for the benefit of all. The trouble with human rights is that no one could take advantage of them except to the detriment of some men.” (VILLEY, 2007, p. 162).

Thus, the struggle for the effectiveness of any Fundamental Right is, in essence, a tragic choice, so it is important to choose which side to follow, it is also important that the choice is clear and precise on the part of the State, providing public policies and appropriate regulatory framework to ensure that technologies are designed and used in ways that are compatible with the hyposufficiency present, to a large extent, in the relations of the individual, notably the voter, with the companies that collect and process data, in the struggle to keep their understanding free and clear.

About the importance of clarity about the choices made, Krastev (2020) when analyzing the relationship between hyper-globalization, democracy, and self-determination, based on the trilemma proposed by Rodrik, states that one can even restrict democracy in order to minimize international transaction costs, disregarding the economic and social whiplash that the global economy occasionally produces. One can even limit globalization in the hope of building democratic legitimacy at home, or even globalize Democracy at the expense of national sovereignty, but what we cannot have is hyper-globalization, democracy, and self-determination simultaneously, which is precisely what most governments (and people) want.

For the same reason we cannot have Democracy supported or enabled by Military Government, informational self-determination and hate speech or fake news, secrecy of public documents and reduction in corruption, free circulation of data and protection of personal data, and so on. It is necessary to choose. Or rather, the choice has already been made, has it been made for you or, in some way, represents you?

It should be noted, in this respect, that the European Union is in the vanguard of some relevant choices in the attempt to swing the pendulum in favor of Democracy. We speak not only of the General Regulation on Data Protection, of 2018, but especially of the various movements practiced there that indicate that the right choices are being made, unlike Brazil, as we shall see below.

In this sense it is registered that in 2018 the Action Plan against Disinformation⁵ was launched, which intends to carry out some bold goals to combat disinformation that generated relevant episodes in some countries, such as in Spain, after the probable interference of Russian “bots” during the referendum in Catalonia and as in the United Kingdom, because of the wave of disinformation about Brexit.

It is intended, for example, to ensure more effective detection of disinformation media, on the assumption that the state needs to invest an important amount of public resources for this purpose, especially in combating disinformation and raising awareness of its adverse impact.

Now, it is known that the realization of a certain right is not exhausted by its mere provision in the legal system. The intervention of a political authority, in this case the State, is necessary for the rights to come to be realized, since in the absence of such an authority willing to act to guarantee a given right, it will be nothing more than an unfulfilled promise. The absence of the State will mean the absence of Rights, since a Right will only exist if and when it receives support from State Institutions, including the public budget (HOLMES; SUNSTEIN, 2011, p. 38). It is precisely for this reason that the realization of Fundamental Rights, whatever they may be, demands, imperiously, the allocation of public resources. Thus, it is certain that rights depend on the government, so it will remain impossible to protect them without funds and state support (HOLMES; SUNSTEIN, 2011, p. 33). It is precisely for this reason that one cannot seriously speak of protecting the Right to informational self-determination without the existence of public policies and significant public resources allocated to this area.

Returning to the aforementioned Action Plan prepared by the EU, it is worth noting that it also intends to formulate a coordinated response among the various EU members, through the creation of a specific early warning system between the EU institutions and its member states, in order to facilitate data sharing and analysis of disinformation campaigns, alerting to disinformation threats in real time.

The Plan also covers the duty to implement quickly and effectively the commitments made, focusing on urgent measures such as ensuring transparency of political propaganda, increasing efforts to close down active fake accounts, identifying non-human interactions (messages propagated automatically by “bots”), and cooperating with fact-checkers and academic researchers to identify disinformation campaigns and make the content of verified facts more visible and widespread.

Finally, the Plan seeks to raise awareness and empower citizens to shield themselves from the effects of disinformation campaigns, promoting the so-called media literacy through specific programs, where national multidisciplinary teams of independent verifiers and investigators will be supported to identify and denounce disinformation campaigns on social networks.

Something quite different occurs in Brazil, where an important level of slowness, improvisation and disjointed actions can be found in relation to the protection of the individual-voter’s right to informational self-determination. Such slowness, of course, is incompatible with the speed and scope of the damage that NICTs can cause to Democracy. At the end of 2017, the Superior Electoral Court took the initial step in the attempt to protect the free manifestation of the voter’s will, by creating the Advisory Council on Internet and Elections, with the purpose of

5 European Union. Action Plan against Disinformation. December/2018; Available at https://eeas.europa.eu/sites/eeas/files/action_plan_against_disinformation.pdf. Accessed May 25, 2020.

developing research and studies to be implemented in the elections that took place in October of the following year. Already in the resolutions referring to those elections, the Court included some rules aiming to discourage the spread of false news, for example, without much success.

Another important step taken by the TSE was the elaboration of the Countering Disinformation Program, launched in August 2019, whose object is focused on the 2020 election and has the adhesion of civil society, notably Google, Facebook, Twitter and WhatsApp, which have signed commitments to actively discourage the spread of false information and to improve methods of identifying possible practices for disseminating false content.

The Electoral Justice has also produced some normative acts in order to protect the informational self-determination of the individual. In this sense, we highlight TSE Resolution no. 23.610, of December 18, 2019, intended to regulate the electoral propaganda for the 2020 election, which intends to punish candidates who disseminate false news or make mass content shooting on the Internet during the electoral campaign.

According to this Resolution, the electoral propaganda can be carried out on the websites and social networks of the candidates and political parties, always respecting, especially in the case of the use of messaging applications, the terms of Law No. 13.709/2018 (General Law of Protection of Personal Data - LGPD) regarding the consent of the receiver, and not counting with mechanisms for boosting or triggering of mass content that may alter the content of the electoral propaganda or distort its identity.

This Resolution establishes that candidates will have the obligation to confirm the veracity of the information used in their electoral propaganda, including those disseminated by third parties, under penalty of imposition of fine or criminal sanction, being also assured the right of reply to those who feel harmed by the use of false news. This normative act takes care of only part of the problem, since the informational self-determination can be damaged in other ways, such as by the creation of bubble filters or by the sharing of citizens' personal data with companies that can, from the mining and analysis of such data, build an important profile of the electorate for fixing approach and persuasion strategies, like the case involving Cambridge Analytica in the USA.

Thus, considering that the companies that control technology and, consequently, the data of the vast majority of citizens, will have more and more control over individuals and their freedom, it will be important to set limits that can act outside the specific sphere of Electoral Justice, beyond the necessary fight against disinformation.

In Brazil, Law No. 12.965/2014 (Marco Civil da Internet) and Law No. 13.709/2018 (Lei Geral de Proteção de Dados Pessoais - LGPD) were edited from an intention to strengthen the protection of the rights of users of new information and communication technologies.

The legislative intention is and should be valued, however, it is not yet adequate to the new conception of the right to privacy as a right to informative self-determination, where the control of personal data should be entirely of the individual-user of digital platforms and applications. All the more so if we observe the content of Decree No. 10.046, of October 9, 2019, which provides for the governance of data sharing within the Federal Public Administration and establishes the Citizen's Base Register and the Central Data Governance Committee, which in several aspects contradicts provisions of the LGPD, especially by not necessarily making clear what destination will be given to all information gathered on behalf of the CPFs of Brazilian citizens.

The legislation in effect lacks the provision of technological mechanisms that allow the control to be, in fact, of the citizen and owner of personal data, and not of the government or the companies that collect and analyze such data. There is also a lack of technological mechanisms that guarantee transparency and the necessary clear information to citizens about the composition of the algorithms that make up the devices used to collect their data.

Thus, one notices in Brazil, as of 2014 with the edition of the so-called Marco Civil da Internet, a greater concern about the negative effects that the misuse of NTIC's can cause in people's lives. In 2017 this movement reaches the Electoral Justice that, then, is effectively concerned with the informational self-determination of the individual both in the development of institutional campaigns and in the edition of normative acts intending to combat misinformation in electoral propaganda.

In 2018, in line with other countries, Brazil established an important legal framework for the protection of personal data, notably sensitive data. It is the aforementioned LGPD, which, in addition to the deficiencies already pointed out, has had its effectiveness postponed, prejudicially and constantly, by various normative acts, the most recent being MP 959/2020, which, when dealing with the operationalization of the payment of the Emergency Benefit for Preservation of Employment and Income, took the opportunity to postpone the effectiveness of this rule, which will now only be in force in May 2021, and the PL 5762/19 is already in Congress, which intends to extend this deadline even further to August 2022.

As can be seen, the regulation in Brazil still does not reveal itself adequate to substantially move the pendulum that currently lies on the negative side of the relationship between NTIC's and Democracy. It does not reveal itself sufficient to implement the necessary guiding principles of the relationship of the individual with the new technologies that Helbing et al. (2017).

This is the reason that underlies the reflection that this article intended to make: to reinforce the idea that Democracy is at risk and that we should not worry about war only when we smell gunpowder: it may be too late.

5. FINAL CONSIDERATIONS

Democracy has been losing its defenders, in a slow but remarkable process of erosion and discredit, to the point that we can already perceive an effective risk to its existence. On the other hand, the NICTs have become a milestone of the post-modern period, which have modified, on a global scale, the interpersonal relationships of individuals.

It is evident that, within this new scenario, it becomes impossible to disassociate oneself from such interactions, since communication in the digital world has become not only a practice, but an imposing reality that permeates a relevant part of the lives of a large number of people.

Emerging as a means of civil empowerment, the NICTs have become an instrument of practical and political interaction, which allows individuals to obtain greater autonomy of information and greater power of mobilization, facts that the historical protests throughout the Globe could prove. This has enabled the construction of new sources of information and has

the considerable potential to contribute to the strengthening of citizens' struggle for their individual, social, and political rights. Inherent to the NICT's is, therefore, its capacity to interrupt the crisis through which Democracy is going through.

However, several cases recently experienced in several countries have made it necessary to revise the optimistic vision about the role of NICTs as a factor for overcoming the democratic crisis, generating a distrust in users about this instrument that had offered autonomy and reach that enabled them to obtain a voice and insertion in political contexts.

It is precisely for this reason that there is an urgent need for the formation of an informational pact that not only improves access to public data and makes possible an effective and transparent rendering of accounts by public agents, but that also allows the individual to develop his media literacy and, based on it, his right to informational autonomy. Legal science has a preponderant role in the conception of this pact.

Finally, we point out that the health of democracy depends directly on the existence of a serious, open, free and fair public debate, and it is up to us to fight for such a space so that, more and more, NICTs may serve democracy and not the opposite. This is what we have tried to do through this study.

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