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HATESPEECH ON PANDEMIC TIMES

O DISCURSO DE ÓDIO EM TEMPOS DE COVID-19

RUBENS BEÇAK

Master and Doctor in Constitutional Law and Associate Professor at FADUSP; graduation and post-graduation at the Faculty of Law of Ribeirão Preto (FRRP); Associate Professor at USP; Coordinator of the Postgraduate Course in Constitutional and Electoral Law at USP (latu sensu); visiting professor at the Universidad de Salamanca(USAL) linked to the Master en Estudios Brasileños program; and co-editor of the international publication of Revista de Estudos Brasileiros

KALEO DORNAIKA GUARATY

Master and Bachelor from the University of São Paulo and Lawyer.

JOSÉ BARROSO FILHO

Doctoral Student in Business Law and Citizenship at UNICURITIBA; Minister of the Superior Military Court and Counselor of the National Education Council (2020/2024).

ABSTRACT

Objective: hate speech is an old problem, which presents itself in different features over time. Currently, it is possible to identify discriminatory statements linked to the context of the pandemic COVID-19. The article aims to present the transformations of the concept of hate speech from the emergence of the debate to the current phenomena related to the pandemic. It is observed that there is still no specific treatment on the subject in the legal sphere, and there is still a gap between the research to identify hate speech on social networks and the legal response to the phenomenon.

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Methodology: the present study uses the dialectical and dogmatic method, through an approach focused on Brazilian and American legislation, and the debate between authors specialized in the theme; as for the procedure, it is a bibliographic search through the review of specialized doctrine and recent studies on the connection between hate speech and the coronavirus, seeking to present the relevance of the theme in the current context.

Results: it is observed that the pandemic was the scene of new modalities of hate speech, also adding the cases in a quantitative way. It is observed that there is still no specific treatment on the subject in the legal sphere, and there is still a gap between the research to identify hate speech on social networks and the legal response to the phenomenon.

Contributions: With the COVID-19 pandemic, several fields of social research turned to the topic. This article brings as a contribution some innovative research initiatives that identified a correlation between the disease and discriminatory discourses.

Keywords: Hate speech; COVID-19; Pandemic; Constitutional right; Social media.

RESUMO

***Objetivo**: o discurso de ódio é um problema antigo, que se apresenta em diferentes feições com o passar do tempo. Atualmente, é possível identificar falas discriminatórias ligadas ao contexto da pandemia COVID-19. O artigo tem por objetivo apresentar as transformações do conceito de discurso de ódio desde o surgimento do debate até os fenômenos atuais relacionados à pandemia. Observa-se que ainda não há tratamento específico sobre o tema no âmbito jurídico, e há ainda um distanciamento entre a pesquisa de identificação do discurso de ódio nas redes sociais e a resposta jurídica ao fenômeno.*

***Metodologia**: o presente estudo utiliza o método dialético e dogmático, por intermédio de uma abordagem voltada à legislação brasileira e estadunidense, e o debate entre autores especializados no tema; quanto ao procedimento, é uma pesquisa bibliográfica mediante a revisão de doutrina especializada e estudos recentes sobre a ligação entre o discurso de ódio e o coronavírus, buscando apresentar a relevância do tema no contexto atual.*

***Resultados**: a pandemia foi cenário de novas modalidades de discurso de ódio, acrescendo também os casos de forma quantitativa. Observa-se que ainda não há tratamento específico sobre o tema no âmbito jurídico, e há ainda um distanciamento entre a pesquisa de identificação do discurso de ódio nas redes sociais e a resposta jurídica ao fenômeno.*

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***Contribuições**: Com a pandemia COVID-19, vários campos de pesquisa social se voltaram para o tema. O presente artigo traz como contribuição algumas iniciativas inovadoras de pesquisa que identificaram uma correlação entre a doença e discursos discriminatórios.*

***Palavras-chave:** Discurso de ódio; COVID-19; Pandemia; Direito Constitucional; Redes sociais.*

1 INTRODUCTION

There is an interesting tale by the Danish writer Jens Peter Jakobsen called “The Plague of Bergamo”. As the title reveals, the city of Bergamo is beset by a plague and the devout Italian population seeks to assuage the effects of the disease by imposing a chaste life, with strict religious habits. Nothing works. People are still sick, and bodies accumulate on the streets. In a reaction of fury against the divinity that forsakens them, the population seeks the opposite solution: to commit all sins and to worship the demons. Literature teaches us that the consequence of long periods of illness is hatred.

Despite the apparent novelty, hate speech is a topic that has been in the political debate of different countries for at least 40 years. The controversy surrounding hate speech per se started in the university environment, in the 80s and 90s, on campuses such as Stanford University and the University of Massachusetts. The main context was a racial and sexual issue, which later came to include other segments. Today, with the developments of information technology and research resources on the internet, there are numerous analysis tools to identify hate speech on social networks.

With the pandemic COVID-19, several fields of social research turned to the theme. In this paper we present some innovative research initiatives that have identified a link between the disease and discriminatory speeches.

Our approach will start with a dogmatic study on free speech- necessary to deepen the legal debate - and a presentation on the Supreme Court of United States of America cases development about the theme. From this, we will present the

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current stage of research on the topic and the recent conclusions about hate speech in the context of the pandemic.

2 FREE-SPEECH AND HATE SPEECH

What defines a gap? Are the empty spaces or the structure that surrounds it? Without entering in any metaphysical disputations, we have related questions in law studies. Just as some objects can only be determined by the limits in which they are inserted, some legal institutes only appear when involved in a concept or principle of greater extent. This is the case of hate speech in relation to the norm that prefigures it, and, simultaneously, is opposed to it: the freedom of speech. Only within the context of a society based on this primacy, can hate speech become a legally relevant topic. Otherwise, the question loses its meaning. If a regime or a government refuses to accept the primacy of freedom of speech, there will be no politically relevant issue about hate speech.

Only surrounded by a set of commandments already established that attest to a permissive dimension of manifestation - with a rule for State absenteeism, forbidding it from being involved in this manifestation - can hate speech become a political question, opening the further legal debate.

2.1 FREEDOM OF SPEECH IN BRAZILIAN LAW

As it integrates the core of indispensable rights to human dignity, freedom of speech is included on the catalog of fundamental rights that are constitutionally protected. On Brazilian Constitution, it is found in art. 5, IV, with the legal proposition to be “free to express thought, anonymity being forbidden”; in item XIV of the same article, allowing the “access to information and the confidentiality of the source is safeguarded, when necessary for professional practice” and in art. 220 by stating that "the expression of thought, creation, expression and information, in any form,

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process or vehicle, will not suffer any restriction, subject to the provisions of this Constitution", followed by paragraphs 1: “No law shall contain a device that may constitute an embarrassment to the full freedom of journalistic information in any media of social communication, subject to the provisions of art. 5, IV, V, X, XIII and XIV "; and § 2," Any censorship of a political, ideological and artistic nature is prohibited ". The normative statements are quite broad, indicating the primacy for freedom of expression and exceptionality of the means that may restrict it.

From the second paragraph, there is the prohibition of censorship, constituting a defensive right against the State. There is the intention which arises to oppose any type of censorship, maintaining his right as a deontic modal of permissibility. On the other side, the State will have the duty to abstain, constituting for it a modal of prohibition. This is the basic relation between the individual and the State on the context of the constitutional right to freedom of speech. It is also conceived, as an instrumental result, freedom of information, freedom of the press, religious freedom and even the right to silence (MEYER-PFLUG, 2009, p. 70). Aline Osorio (2017, p.44) distinguishes three freedoms in the constitutional system of freedom of expression: freedom of expression *stricto sensu*, freedom of information and freedom of the press. Freedom of expression *stricto sensu* would be the right to express and disseminate one's own thoughts, ideas, creations, opinions, feelings and other expressions; freedom of information corresponds to the right to transmit and communicate facts; and freedom of the press includes the right of all the media (and not just the printed media) to express any ideas, opinions and manifestations (in the exercise of freedom of expression in the strict sense), as well as to disseminate and transmit the facts and events (in the exercise of freedom of information).

Exceptionally, the occupation of the relation poles can be reversed, granting the State an active role in the production of certain contents to which the individual must be bound in benefit of public interest and the common good.

Since freedom of expression is a genre of freedom, it fits the classic distinction coined by Isaiah Berlin: negative freedom (freedom of), opposed to restrictions and the state of being able to act without impediments; and positive

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freedom (freedom to) focusing on freedom as the presence of conditions and means to enforce the rights of the citizen (BERLIN, 1981). One can also envision an angularized relationship, in which the State protects a relationship between two individuals, as occurs in the right of reply, ensured by art. 5th, item V. In this case, the Constitution protects a right of reaction "proportional to the injury" suffered, in order to restore protection to image and honor. This distinction supposes the division made by the doctrine in fundamental rights in the objective and subjective dimension: the subjective one means that the holder of a fundamental right can seek it judicially, raising the pretense of tutelage of the State for itself; the objective dimension presents fundamental rights as a set of values and directive purposes of public powers, that is, a normative content with different functions, including the duties of protection of the State, its organizational and procedural function (SARLET; MARINONI ; MI-TIDIERO, 2013, p. 304-311). The distinction finds varieties in the doctrine, listing categories such as fundamental rights of defense, performance and participation: defense in the sense of abstaining from the State, as in the case of the prohibition against prior censorship, attributing a negative competence rule to power public; provision as rights of promotion and syndicability of state action, favoring a state of affairs intended by the individual, as in the case of the right of reply in relation to the reparation to the right to honor; and participation rights constitute the enjoyment of the fundamental right to the formation of the will of the Country, corresponding more densely to the chapter of the Federal Constitution regarding political rights, but strongly associated with freedom of expression insofar as this will be ineluctably the means by which all participation will be effective. The multiplicity of theories about fundamental rights is due to the exuberance of possible legal relationships that link the fundamentality of some rights, not excluding the possibility of conflicts and collisions. Precisely for this reason, the idea that there are limitations to fundamental rights is also common.

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2.2 RESTRICTIONS ON FREEDOM OF SPEECH IN BRAZILIAN LAW

The possibility of restricting fundamental rights stems from the very dynamics of fundamentality. Because they are characteristically broad and encompass a variety of legal relationships, it is sometimes the case that fundamental rights overlap, creating so-called collisions. In addition, there are inherent limitations to the protected values, being prohibited its use for achieving illicit purposes.

For an analysis of the limitation, it is necessary to initially check the protective scope or nucleus of that particular fundamental right. Freedom of expression has a certain scope of protection that is not to be confused with its object of protection (that which is effectively protected), from which it stems, as a general rule, that the analysis of the constitutional norm guaranteeing rights has a wide range of protected legal assets. . It also happens that the hermeneutic analysis to identify such goods is often dialectical, discovering the scope of protection of the norm when confronting it with situations in which the protection yields to another fundamental right (collision) or to a determined rule (legal reserve). In short, as exposed by Ingo Sarlet (2015, p. 409-10), there is a substantial consensus as to the fact that fundamental rights can be restricted by (i) an express constitutional provision; (ii) a legal norm promulgated based on the Constitution (resulting from the delegated authorization to the infraconstitutional legislator) and (iii) through collisions between fundamental rights, even if there is no express limitation or express authorization ensuring the possibility of restriction by legislator.

For example, at the time of the judgment on the constitutional reception of Law No. 5250/67 (Press Law), the need to use the weighting technique in cases involving freedom of expression was emphasized, since this, in this specific case, it would not find express provisions on its possibility of restriction or limits.

In general, however, freedom of expression is a fundamental right with explicit indications of legal reserve when mentioned, in § 1 of art. 220, that the expression of thought is qualified “subject to the provisions of art. 5th, IV, V, X, XIII

and XIV ". Thus, the constitutional restriction to anonymity[1], the imposition of the right of reply, the right to indemnity for moral and patrimonial damages and to the image are inferred, in order to preserve the intimacy, private life, honor and image of people, and so that everyone has the right to information. Other limitations to freedom of expression, indirectly, since their manifestations can also occur - but not necessarily - through the discursive way, are found in the repudiation of racism[2] and discriminatory practices in general[3].

From the point of view of the collision of principles, this is always revealed in the specific case, and an alleged cataloging of all possible collisions is useless. However, there are typical consequences - as they are frequent - of opposition to speeches for violating equality before the law (art. 5, caput), gender equality (art. 5, I) and non-submission to inhuman or degrading treatment (art. 5, III). It is also possible to point out oppositions between freedom of expression and national security (MOREIRA, 2016, p. 23-25)[4]; the so-called "right to be forgotten" (MOREIRA, 2016, p. 33-43)[5] and the issues pertaining to material parliamentary immunity and breach of decorum (SOARES, 2014).

It is recognized that there is a certain openness in the concepts presented by the restrictive constitutional norms. Dangers can be seen both in the abuse of the

[1] Regarding anonymity, notes Henrique Neves: Under the Brazilian Constitution, freedom of expression is guaranteed to identifiable citizens. The same constitutional provision that establishes the guarantee of free expression of thought expressly prohibits anonymity (CF, art. 5, IV). At this point, Brazilian constitutional law diverges from the understanding of the United States Supreme Court, which, when interpreting the First Amendment of that country's Constitution, considered that freedom of expression should be unrestricted and that "anonymity is a protection against the tyranny of the majority", as recorded, among many others tried and especially in relation to the electoral debate, in McIntyre v. Ohio Elections Commission (514 US 334) - SILVA, 2018. p. 199).

[2] Art. 4 The Federative Republic of Brazil is governed in its international relations by the following principles: [...] VIII - repudiation of terrorism and racism.

[3] Art. 5 (omissis): XLI - the law will punish any discrimination that violates fundamental rights and freedoms.

[4] New York Times Co. v. United States on the disclosure of the so-called Pentagon Papers, tried by the American Supreme Court; the processes brought together under the name Spycatcher cases, tried by the European Court of Human Rights; and the case of Palamara Iribarne v. Chile, tried by the Inter-American Court of Human Rights.

[5] This is an innovative hypothesis in Brazil, with reference to the "Lebach" case, in German jurisprudence. Among us, there is Statement 531, approved at the VI Civil Law Conference of the Federal Justice Council, which says that "the protection of the dignity of the human person in the information society includes the right to be forgotten".

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fundamental right and, in contrast, in the discretion of the legislator by limiting them. In the latter case, suffering from express indications, the collision with other principles would give rise to undue restrictions, being necessary the application of the theory of limits of limits (Schranken-Schranken), from which it is affirmed that it is not enough to find that fundamental rights may be restricted, but also that such restrictions must be limited. These new limits stem from the Constitution itself, referring to an essential nucleus of clarity, determination, generality and proportionality of the restrictions imposed. In other words, the limitation on freedom of expression must itself follow a limit that does not end up suffocating the fundamental right[6]. This double limitation is, to a large extent, what underlies the debate about what is considered hate speech.

3 THE DEBATE ON HATE SPEECH IN US CASES

The First Amendment was challenged by some values opposed to it, which we can summarize by way of example: the need for an authoritative license for publications; sedition (either by external or internal enemies)[7]; the social chaos generated by the defamation of public figures[8]; favoring the enemy in the

[6] In a vote, Supreme Court Justice Gilmar Mendes offered an exposition on the possible restrictions: The 1988 Constitution contains a significant list of rules that, in principle, do not grant rights, but that, rather, determine the criminalization of conduct (CF, art. 5, XLI, XLII, XLIII, XLIV; art. 7, X; art. 227, § 4). In all of these rules, it is possible to identify an express criminalization mandate, in view of the assets and values involved. Fundamental rights cannot be considered just as intervention bans (Eingriffsverbote), but also expressing a postulate of protection (Schutzgebote). It can be said that fundamental rights express not only a prohibition of excess (Übermassverbote), but can also be translated as prohibitions of insufficient protection or imperatives of protection (Untermassverbote). Constitutional criminalization mandates, therefore, impose on the legislator, for their due fulfillment, the duty to observe the principle of proportionality as a prohibition of excess and as a prohibition of insufficient protection "- HC 104.410 / RS.

[7] Since 1538, King Henry VIII had instituted the prior restraint license for all publications, which lasted until 1694, with the Glorious Revolution. The system of licenses for publication was abolished, but in its place, an even more repressive law, the seditious libel law. Publication was released without a prior license, but the Courts newly created by the monarchical power began to limit the content, prohibiting everything that was considered disrespectful to the State or the Church. As the objective was to prevent disrespect for the institutions and avoid social chaos, the exception of the truth was not allowed as a way to remove the punishment of conduct, imposing penalties ranging from fines, to the death penalty for hanging - (LEWIS , 2010, p. 3-4).

[8] In 1776, at the eminence of the American Revolution, the Declaration of Rights of the State of Virginia already contained the statement "Freedom of the press is one of the greatest bulwarks of

circumstances of an international conflict[9]; the need to prove the facts (similar to the Brazilian paradigm of the exception of the truth) and the presumption of editorial responsibility of the press[10]; obscenity (either by moral or feminist bias)[11].

A panoramic view at the reasons that supported arguments for which freedom of expression could be restricted indicates a historical development of the institute. This itinerary goes through concerns concentrated in the public sphere, but which allows to glimpse an authoritarianism remaining from periods prior to American democracy, such as the need for permission to publish and the supposed risks of sedition.

An authoritarianism with monarchical notes is replaced to the concern with the undisputed defense of the democratic regime against the threat of rival ideology:

freedom, and it must never be restricted except by despotic Governments" ; the application, however, remained in accordance with the consolidated interpretation in England that publication was permitted, but the content was subject to punishment under the English seditious law - (LEWIS, 2010, p.7-10).

[9] In 1798, the US Senate enacted the Sedition Act, which made it a crime "[...] any false, scandalous and malicious writing or deed against the United States government or any house of Congress [...] or the president [...] intending to defame or [...] bring them, or any of them, to contempt or discredit; or to arouse against them or any of them, the hatred of the good people of the United States. " The political reading to be made of this legislative change is that behind the term "sedition" there was a fear of events that occurred in Europe. The French Revolution was the initial fear of the forming Federalist party (Federalists). In Schenck v. United States (1919), the secretary general of the American Socialist Party was denounced for distributing leaflets against the United States' entry into the First World War and opposing military recruitment (without, however, preaching illegal measures such as refusing to provide service military). These acts contradicted the Espionage Act (Espionage Act), a law enacted by the Union, legitimizing the discussion of this norm against the constitutional paradigm. In this case, Judge Oliver Wendell Holmes Jr. drafted his vote with the famous saying that not even the strictest protection of freedom of expression would apply to someone who shouted "fire" in a crowded theater.

[10] The forms of speech close to what we can conceive today as "hate speech" begin with cases involving the limits of the press, as in Near v. Minnesota. The state of Minnesota had published a law in 1925 closing newspapers that attacked lawmakers and other public officials, under the pretext that these newspapers compromised public peace (Public Nuisance Law). One of the targets was the Saturday Press newspaper, by anti-Semitic editor Jay M. Near. With the closing of the newspaper, the case reached the Supreme Court, which considered it a violation of the First Amendment. The analysis of the content itself, in the case of alleged defamation, begins in 1964, with the New York Times v. Sullivan. An advertisement was published in the New York newspaper describing officials who had arrested Dr. Martin Luther King as "constitutionally violating southerners" and telling about the use of illegal tactics to curb the black civil rights movement. The case ended with the victory of the New York Times. Since then, the understanding of defamation has changed dramatically. The burden of proof was reversed: it was necessary for the defamatory content to be proved false by the offended person, increasing the protection of newspapers that criticized.

[11] In Roth v. United States, in 1957, was the first conviction for sending material considered obscene. The arguments for the prohibition, that is, censorship, were that the speech had no social importance. The test proposed by the Supreme Court, was to verify if it is for the common person, applying the contemporary standards of the community, the dominant theme of the material taken as a whole appeals to the lustful interest.

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communism. Freedom of expression is represented as a category proper to democracy, but subject to contradiction if this same democracy is debated (the famous paradox of democracy: is it possible to democratically accept anti-democratic actions?). With the mass society and the expansion of the means of communication, the limiting factors of the institute advance to the private sphere, making privacy a possible limit, as well as the interference in the established moral standards, hence the protection against obscenity and pornography.

A next step, will be the limitation resulting from the legitimation of groups that make up society. Looking at a maximum scale of amplitude, the institute's evolution begins with challenges against the limitations imposed on behalf of the nation-state, after the government, after society and reaches the groups that make up society, already tending to turn to the individual in question. themselves, in their intimate aspects.

An accurate historical analysis of the development of Supreme Court judgments in parallel with US political, economic and social conditions is made by Stephen M. Feldman. The author elaborates a detailed journey through American history, pointing out the initial proposal for a “republican democracy” based on Protestant values, civic virtues and the common good, defended by American judges until the first half of the 20th century. Since the 1930s, the regime is no longer based on moral premises, but on the acceptance of the pluralism of ideas and values. As a result of immigration, the population of cities and the economic prominence of the industrial sector in the New Deal, the integration of new citizens would become the watchword in the courts and in the intellectual circles. In this decade there is an intellectual transition from the concept of freedom of expression: only this right would enshrine the possibility for each group to participate in the country's politics, making pluralism the main characteristic of democracy. It is from this new conception - pluralist democracy - that safeguarding freedom of expression will be linked to the integration of the different groups that make up American society.

Although the theme is old, the academic debate about hate speech begins in the early 2010s. When, in 2012, he published “The Harm in Hate Speech”, Jeremy

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Waldron started a series of questions about the damage caused by the speech itself. Unlike the classic conception of the limits of freedom of expression in the USA - incitement to probable violence, a clear and present danger - Waldron was one of the pioneers in the thesis that some speeches cause harm even if their consequences do not materialize. This is the case, for example, with speeches that correlate Arabs with terrorists; although there is no political consequence effectively caused by this type of discourse, it in itself represents damage to that group, since it destroys its dignity and distances it from the community (2012, p. 25).

The author recognizes that there are cumulative effects of the speeches - apparently innocuous - that end up having indirectly harmful political consequences. The more the hate speech spreads and is accepted socially, the more chances of the vulnerable group have to suffer the real harmful consequences that were implied in the speech. Thus, in the case of Arabs, the more the correlation between ethnicity and terrorist groups is accepted, immigration policy becomes more oppressive, jobs become more inaccessible and opportunities for political recognition are diminished. Waldron adopts a perception of hate speech as problematic mainly because it directly generates an attack on the dignity and reputation of the victims, secondarily recognizing the concrete political effects (hence the option to frame this discussion as deontological). In the same way that a defamation or injury has direct damage against the victim (individual), an attack through a publication that links all Arabs to terrorism directly offends every Arab who faces that content. As the victim loses his security as a member of equal value in that community, he actually suffers harm[12]. This also motivates the separation of hate speech from other forms of attacks on the subjectivity of the individual (crimes against honor, eg): in hate speech, feelings are not necessarily affronted, but reputation, dignity, and the inclusion of the subject in society[13].

[12] It is important to point out that, for Waldron, this is not an eminently psychological damage, so this cannot be the exclusive category for determining whether or not someone is a victim of hate speech. This is because the damage can be psychologically ignored, but the individual's reputation will still be damaged.

[13] Waldron defines inclusiveness as “one’s status as an ordinary member of society in good standing, entitled to the same liberties, protections, and powers that everyone else has” - (2012, p.220).

The problem of limiting hate speech is outlined by Eric Heinze (2016, p.2) as three developments, based on freedom of expression.

First, there is a limitation on the State to pay attention to expressions, even if unpopular, following the logic of a liberal command to contain power in favor of freedom.

In a second step, it appears that it is necessary to limit the offense that citizens may suffer, precisely the limitation that the prohibition against hate speech represents.

Finally, a third limitation will be the contours that hate speech can take, preventing an excessive or unbridled application of the concept from hindering democracy itself.

In these terms, it is possible to structure the debate, now, in three levels of action: a) by the State's refraining from acting; b) by the inhibiting action of the State; and c) the consideration and technique of how the inhibiting action should relate to abstention. In Heinze's formula, “the limit on the limit on the limit imposed on democracy”. As stated at the beginning, this structure only makes sense if it starts with freedom of expression as an original value. For the author, more than a luxury category among the rights of man, freedom of expression finds primacy over other rights and with regard to democracy it is treated as its foundation.

This is because among the various possible meanings, the vote itself would be a periodic procedure of the prerogative of expression in public discourse. Even changing democratic rules could only be done through public discourse capable of convincing the need for change. In yet another interesting formula, the public discourse would be “the constitution of the Constitution” (HEINZE, 2016, p. 6).

Therefore, there is no question of eliminating public policies to protect vulnerable groups aimed at their well-being, but the impositions regarding the discourse will never be democratically beneficial to anyone. Likewise, Heinze argues that a democratic model that promotes pluralist views and contrary to hate-based world views should be promoted, but this need not lead to sanctioning impositions that culminate in punishing citizens.

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But if this was evident in the notorious cases of marginalization of the 20th century, with the implementation of new forms of sharing information and data, new forms of discrimination also appear that cross the boundaries of local communities, giving rise to expressions of hatred at a global level. The research on hate speech has been developed in order to include the manifestations of discrimination in social networks. Although there is a recognized gap between the lines of research based on pure data analysis - led, mainly, by the computer science community - and, on the other hand, research in the social sciences (in which the law fits), it is possible we take advantage of both contents to draw a panorama of hate speech at the present moment.

4 THE HATE SPEECH IN THE DAYS OF COVID-19

With the restrictive measures imposed by the governments, there were changes in the daily routines that had as one of the consequences the more prolonged use of the digital and social media platforms. The sharing of messages and publication of online content reflects (and expands, as we will show) some manifestations related to discrimination. Even before the frank dominance of social networks in the digital space, there were studies to identify racist and anti-Semitic content on pages and websites (GREEVY; SMEATON, 2004).

In the sharing networks themselves, the construction of databases was initially sought (WASEEM; HOVY, 2016) and, later, pioneering studies developed methods of analysis for the phenomenon of hate speech in networks based on machine learning (WARNER, HIRSCHBERG, 2012); neural language models (GAMBÄCK, KUMAR SIKDAR, 2017) and deep learning techniques (BADJATIYA, et. al., 2017). In general, research seeks to identify and quantify the correlations between texts and certain feelings. Aimed at the specific context of coronavirus and hate speech, it is worth mentioning the COVID-19 Hate Speech Twitter Archive

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(CHSTA), an aggregate of tweets gathered since February 2020 with open access for research (FAN, et. Al, 2020).

In the case of the new coronavirus, the correlation of the disease with Chinese ethnicity[14], serving as a basis for hate speech, has already attracted the attention of researchers. The phenomenon is not new: since 2015, the World Health Organization has sought to restrain nomenclatures that may stigmatize certain groups, which only amplifies the unnecessary effects of diseases (WORLD HEALTH ORGANIZATION, 2015). In an analysis of tweets published throughout 2020, it was pointed out that the terms "Chinese virus" and "Wuhan virus" appear as correlated to discriminatory discourses (FAN, YU, YIN, 2020). To reach this conclusion, it was necessary to use new tools for the collection and interpretation of data.

We highlight, among the innovative methods on network analysis of hate speech, the use of the decision tree classifier: the decision tree is a widely used learning machine technology that uses a model of questioning lines with derivations , representing different decision-making and analyzing the possible consequences.

The aim of the construction is to relate the terms of hate (based on the dictionary of terms of the platform “Hatebase”[15]) with terms that identify certain emotions. The technique of correlating words and phrases with emotions is also based on information analysis methods developed for the study on a scale of comments and postings on the internet (MOHAMMAN; TURNEY, 2010). The results presented demonstrate that fear and surprise are the emotions most related to hate speech in the context of the pandemic.

In a broader context, an ongoing study in Argentina seeks to correlate the context of the pandemic with motivations related to groups often victims of hate speech (COTIK, et. Al., 2021). The method used seeks to analyze the comments made in the publications of the main news related to the coronavirus. In preliminary results, it was identified that an average of 9% of comments was identified as hate

[14] Although there are researches also pointing to the “retaliation” of Chinese users with the use of automation to disseminate the #USAVirus advertisement, which links the North American country to the disease (WANG, et. al. 2020).
[15] Available at https://hatebase.org/. Accessed on March 20th. 2021.

speech as defined by the IACHR (2015). In another study (FARRELL; GORRELL; BONTCHEVA, 2020), with a mixed methods approach to analyze citizen engagement in relation to British parliamentarians' online communications during the pandemic, it was possible to point out that, in certain topics, such as criticism of authorities and issues such as racism and inequality, tend to attract higher levels of hate speech.

Parallel to the user interface, there are recent investigations into the emergence of infodemias, misinformation, conspiracy theories, automation and online harassment at the beginning of the virus outbreak. As only happens, environments where scientific consensus and non-conclusive research on matters of general interest are still lacking become fertile in conspiratorial rumors. Although some are easily discarded and have very low population adherence, there is also false information based on informal sources of knowledge that reach large populations (SAMUELS, KELLY, 2020).

Mechanisms for identifying potentially harmful information have been studied since before the pandemic: sometimes it is merely anecdotal content, or based on popular knowledge with few social consequences; however, even if based purely on a regional basis, this type of knowledge has already been pointed out as a narrative structure that, in times of crisis, is quickly endowed with confidence by members of the community.

Even before the pandemic, the set of false orientations was identified as a perennial structure composed of an orientation (who, what, where and when), a complicating action: threat (identifying who or what is threatening or disturbing the interior of the group) identified in the guidance), a complicating action: strategy (a proposed solution to avoid the threat), and a result (the result of applying this strategy to the threat) (TANGHERLINI, 2018).

Applying the structure to a survey with a large number of posts on the pandemic, 5 conspiracy groups were identified: (i) the attempt of some conspiracy theorists to incorporate the pandemic into well-known conspiracy theories, such as Q-Anon; (ii) the emergence of new conspiracy theories, such as one that aligns the domains of telecommunications, public health and global trade, and suggesting that

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the 5G cellular network is the root cause of the pandemic; (iii) the alignment of several conspiracy theories to form larger ones, such as one suggesting that Bill Gates is using the virus as a pretext for his desire to create a state of global surveillance through the application of a worldwide vaccination program, thereby aligning conspiracy theory with anti-vaccination conspiracy theories and other conspiracy theories related to other global plots; (iv) the nucleation of potential conspiracy theories, such as #filmyourhospital, which can become a larger theory or be included in one of the existing or emerging theories; and (v) the interaction of these conspiracy theories with the news, where certain factual events, such as the installation of tents in Central Park for a field hospital to treat the overflow of patients, are linked to conspiracy theories. In this particular case, the field hospital tents are linked to central aspects of Pizzagate's conspiracy theory, specifically child sex trafficking, underground tunnels and the involvement of public figures (SHAHSAVARI, et. Al., 2020). Other studies demonstrate how certain political segments adhere more easily to this type of theory (HAVEY, 2020).

These are relevant data, since disinformation has connections that are already widely known and discussed with hate speech. Thus, it is observed that COVID-19 has been transformed into an attack weapon (weaponized) against certain segments. What was previously common in anonymous environments and closed communities, quickly became a “multiverse” identified in the rapid diffusion of content on different online platforms, from the most secluded ones, to those with free access, like Facebook, Twitter and Instagram (VELASQUEZ; LEAHY; RESTREPO, 2021).

5 FINAL CONSIDERATIONS

The Covid-19 pandemic has shown us how blind our faith in the future can be. It is understandable that our need for meaning behind the pandemic creates narratives - sometimes absurd. What does it mean, after all, to live in a world where such things happen? The narrative goes through moments of fury and hunting for the

guilty. As in Jakobsen's tale, revolt leads to the loss of the notion of the common good, bringing diseases of the spirit, disunity and dissociation from the social cosmos into pathological disease.

Among the symptoms of the revolt, hate speech shows no signs of cooling in its social impacts. Although with new clothes, the problem persists. Throughout this work, we point out the constitutional treatment in Brazilian law and the doctrinal positions on the possibility of restricting the discourse. There are legal instruments that allow a balance between the values of free expression of thought and the principles of equality and the dignity of the human person.

In the cases of the Supreme Court of the United States of America, we have entered into the original characteristics of the problem to facilitate the understanding of the current academic debate. In the North American approach to the theme, we describe how democracy has been reframed over the years and, with this, how the concept of freedom of expression has also been transformed. The academic debate about the possibilities of regulation of hate speech has arguments for the fact that the limitation does occur and others that point out the incompatibility of any type of restriction with the primacy of the democratic political regime. Currently, there is no news of a clear position on the legal treatment of hate speech in cases related to Covid-19.

Although inserted in a legal gap, the phenomenon is growing. The hate speech now turns against the alleged culprits of the disease: the Chinese population, the inefficient politicians, the manipulators of the world order, etc. As we have presented, even the most anecdotal narratives also have damaging effects on the population.

At the end of Jakobson's tale, the people of Bergamo receive an unexpected visit from a procession of flagellators, wrapped in black and red clothes. Among them is a monk who delivers a lying sermon, distorting the Gospels, and revealing to the people that eternal salvation does not exist. Frightened, the Italians crucified the monk, repeating the biblical passage. What is not clear in the story is whether the last act meant a punishment against the heresies uttered or yet another spectacle of

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amusement. Hatred always has these two faces. It is reasonable to expect the law to present tools to curb the social effects of the pandemic, among which we seek to highlight hate speech.

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