

Combatting Misinformation: Divergences and Similarities Between American and Brazilian Electoral Institutions

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ABSTRACT: This paper analyses Brazil's and the United States' approach to combat electoral misinformation. It seeks to explain the differences in fake news containment measures in recent years, as both countries have recently experienced similar political environments. The research employs a comparative political science lens - paired comparison method - to analyze the institutional differences between the two nations' federal electoral regulating entities: Brazil's Tribunal Superior Eleitoral and America's Federal Election Commission. The study found that broader, more centralized, independent, and innovative institutions provide better opportunities for combating misinformation. This research's findings can have potential policy implications in electoral regulation, addressing online misinformation, and democracy protection.

KEYWORDS: Behavioral and Social Sciences, Other with Politics, Political Science, Comparative Politics, Misinformation Combat, and Electoral Institutions.

■ Introduction

Since the mid-2010s, global politics have been reshaped by the Internet and social media. While it certainly has democratized access to essential information surrounding current political events, the digital environment has increasingly proved to be a medium for the spread of misinformation. While misinformation is not yet a consensual definition among academics, the most common definition is "false and misleading information."¹ Some argue that misinformation is false and misleading information unintentionally spread, while disinformation is false and misleading information with spread the intention to cause harm. Regardless, this paper will use misinformation and disinformation interchangeably, defining both as "false and misleading information", regardless of intentionality.¹ Populist politicians have particularly benefited from the easing of content sharing. Digital misinformation ("fake news") has dangerously affected public health during the COVID-19 pandemic and the integrity of democratic systems in certain countries. Two such nations are Brazil and the United States of America. These countries have used different approaches to address the threat, ranging from non-interference to regulatory attempts. Both are still experiencing the consequences of misinformation within their political systems. However, Brazil changed an already-existing centralized institutional mechanism to curb the threat. Meanwhile, the U.S. demonstrated a more relaxed, decentralized, and non-coordinated approach. The results are visibly different. In Brazil, extremist politicians publicly espousing anti-democratic beliefs have been latent, and the political environment has cooled from the January 8th climax. Misinformation posts have been consistently removed in the country, showcasing relative success. In America, the same political group maintained its strength and expanded in the context of the 2024 election. These differences inspire

the questions at the heart of this investigation: Why has Brazil been more successful at combating misinformation than America? How can government institutions combat misinformation? This paper argues that Brazil's solidified, centralized electoral institution, as opposed to America's decentralized approach, accounts for the different actuation scopes on containing digital fake news.

Brazil and America have been selected as analysis targets for their similar political climates. The two countries have witnessed the rise of populist politicians to the heights of power: Trump in 2016 and Bolsonaro in 2018. Their governments were also marred by misinformation on a wide variety of political debates. Both have also experienced the electoral defeat of their movements in misinformation-tainted elections on electoral fraud that culminated with attacks on political institutions; in America, the January 6th, 2021 attacks on the Capitol, and in Brazil, the January 8th, 2024 attack on Congress, the Presidential Palace, and the Supreme Court. Additionally, both have complex, developed digital social networks.

This research article claims that stronger, centralized institutional checks and balances and innovative social media moderation technology account for the different results obtained by these nations. After a brief literature review, the first section provides a general introduction to both countries' recent political pasts and their struggles with misinformation. The second and third sections delve deeper into the respective cases of Brazil's and America's electoral institutions and their designs. The fourth section compares the two through an institutional interest lens, demonstrating that different levels of centralization, autonomy, and acting scope play a defining role in how political misinformation is addressed, impacting its success. Finally, the conclusion summarizes the findings of this research and outlines some of its potential policy implications.

■ Methodology

This paper utilizes a paired comparison methodology originating in comparative politics to explore how different variables - namely, institutional centralization, institutional strength, and innovativeness - generated greatly distinct results. For this, the analytical lens of this article, inspired by Acemoglu and Robinson, and Mahoney's work, will focus on electoral regulating institutions, the Federal Electoral Commission (FEC), and its Brazilian counterpart, TSE, Tribunal Superior Eleitoral.^{2,3}

Data was compiled using research articles on the two electoral bodies and information from the two organization's websites. A direct comparison between the three different variables was made. This paper emulates the comparison process by separately introducing the two mechanisms and drawing parallels between aspects such as membership and power structure.

The existing academic literature on misinformation is mainly focused on two main points of interest. The first one is misinformation itself. Hunter focuses on a quantitative evaluation of misinformation and its effects on the political arena.³ Resende *et al.* quantitatively analyze a pool of misinformation shared through WhatsApp, to identify their source and how they spread.⁴ The second evaluates the systematic usage of misinformation within specific electoral contexts through case studies. Batista Pereira *et al.* and Machado *et al.* employ this technique to examine the 2018 Brazilian Presidential election; Guo et Vargo do the same for the 2016 US Presidential Election; and Kennedy *et al.* explore it in the context of the 2020 US Presidential election.⁵⁻⁸

Articles on the electoral institutions described in this article have distinct features. Research on the FEC is heavily skewed toward an analysis of its lackluster role within the generally decentralized American electoral system (see Franz 2009).⁹ On the other hand, research on the TSE is either focused on its specific duties within Brazilian elections' organization and oversight or on the measures themselves, adopted under the institution's unique position.^{10,11} Research to date has yet to offer a paired comparison of the US and Brazil in the context of their electoral institutions or an examination of how the electoral system of these two countries has been protected from misinformation. Thus, this article seeks to utilize the similarity of these countries' political environments to enrich the existing literature, providing a comparative perspective on combatting fake news in populist democratic contexts.

■ Results and Discussion

General Overview:

The COVID-19 pandemic brought havoc upon the world and plagued each country with another virus: misinformation. The resurgence of populism many nations had already been experiencing became a global point of concern in the mid-2010s. Fake news has been employed in many different political and, especially, electoral contexts. In the United States, the usage of fake news became more widespread after the 2016 election, in which misinformation campaigns were systematically employed as political weapons. The main vectors spreading such content were Twitter and Instagram.⁷ Misinformation's scal-

ability was such that it provoked official FBI investigations into a series of supposed Russian-backed accounts accused of colluding with surrogates of Republican candidate Donald Trump's campaign against Democratic candidate Hillary Clinton. The investigation itself became a contentious topic that shaped a chapter of the Trump administration. The same techniques were employed during the 2020 election, marred not only by misinformation which was political in nature but also health policy lies as COVID-19 spread through the country.⁸ After Donald Trump's defeat, the then-president embarked on an official fake news journey which put into question the electoral process' legitimacy. His claims spurred the "Stop the Steal" movement, which claimed that the 2020 elections were rigged to remove Trump from office. Another fake news-inspired movement, QAnon, claimed Trump was a victim of a coup from "pedophile globalist elites."⁸ The two movements' supporters stormed the Capitol on January 6th, 2021, to try and stop the certification of the election results.

In Brazil, the same phenomenon occurred in 2018, stirred by a wave of anti-establishment sentiment within the populace. During that year's presidential election, the left-wing Worker's Party, which governed the country between 2002 and 2016, candidate Fernando Haddad faced then-federal deputy Jair Bolsonaro, a former Army captain and populist right-winger.⁵ The Workers Party's reputation had fallen after an extenuating economic crisis beginning in 2014, a systematically-wide corruption scandal known as Operation Car Wash, and the impeachment of former president Dilma Rousseff for high crimes and misdemeanors.⁸ False information targeting the Worker's Party spread quickly within WhatsApp, Brazil's main messaging app, and fact-checking efforts proved ineffective.⁶ During 2020, the same networks were used to spread COVID-19 misinformation, in an attempt to downplay the virus severity. Later, in 2022, the agents targeted the TSE, Brazil's electoral body.¹¹ Emulating America's "Stop the Steal" movement, they put the election's credibility into question to prepare the ground for a possible defeat of Bolsonaro, which ultimately happened. Supporters assembled next to army barracks to urge a military intervention and blocked highways throughout the country. As in America, official investigations were opened by the Supreme Court and TSE to investigate the networks, dubbed "digital militias".¹¹

The similarities between the two, however, have produced very distinct observable results today. While both Americans and Brazilians prepare for their next electoral cycle, and social media apps have adopted misinformation combating measures, misinformation agents have encountered a still permissive ambiance within American social media.⁸ On the contrary, Brazilian agents have had their actions restricted and their influence diminished.¹¹ The difference begs the question: What factors are responsible for these distinct results? Why has Brazil been more effective at combating fake news? To do so, a deeper delve into both countries' systems is required.

Brazil's Electoral Institution - TSE:

Brazil employs a unique system of electoral organization. In the country, all elections, whether municipal, state, or federal level, are organized under the supervision of Justiça Eleitoral,

or Electoral Justice.¹⁰ This is a judicial sub-branch precluded (included/present in) by all Brazilian Constitutions since its establishment in 1932. The Judiciary in Brazil divides itself into branches of action, defined by hearing specific case themes. *Justiça Eleitoral* is the sub-branch that deals with election-related cases.¹⁰

Created as a response to a period of rampant electoral fraud, known in Brazilian historiography as the “Old Republic”, its main enforcer agent is the *Tribunal Superior Eleitoral* (TSE), Superior Electoral Court. Its role is that of an ultimate, centralized arbiter of potential electoral disputes, working to uphold electoral laws. It functions as a judicial body composed of seven magistrates. Two come from the *Superior Tribunal de Justiça* (STJ), Superior Justice Court in English. Another two are appointed by the President from a three-candidate list crafted by the *Supremo Tribunal Federal* (STF), Brazil’s Supreme Court, under the constitutional requirement of possessing an honest record and ample judicial expertise. The last three are themselves STF members.¹⁰ The non-partisan composition of TSE is built to avoid any abuse of the electoral system for political gains.

TSE’s seven-member structure is replicated by its state-level equivalent, the *Tribunal Regional Eleitoral* (TRE). There is one TRE for each state. This hierarchical web is further subdivided into municipal levels. Nevertheless, the bulk of electoral regulation is concentrated within TSE’s helm. TRE’s and municipal counterparts work as enforcers of the Court’s determination, and as assisting bodies in election organization and coordination within Brazil’s 26 states and its Federal District.¹⁰

This centralized chain of command entails a wide range of duties for TSE. The organism is responsible for many essential electoral measures. Among these are ensuring universal voter registration, according to Brazil’s mandatory voting requirements; issuing voter identification documents; organizing electronic voting machines distribution; registering all candidates; compiling candidate’s net worth reports; and distributing public campaign funds proportionally to their Legislative presence, according to Brazilian electoral law.¹⁰ These are typical of election-organizing institutions. What differentiates TSE from its counterparts in other nations is its official affiliation with Brazil’s Judiciary.¹⁰

Possessing judicial powers conferred by the *Justiça Eleitoral*’s structure, TSE also hears cases on electoral law.¹¹ For this reason, this institution has a more extensive range of powers than other electoral regulating parts, including police power within electoral periods. The court has the unique ability to punish candidates for breaching electoral law within and outside of the electoral period, for acts committed during it.¹⁰ This means the court can apply a broader range of measures against offenders. These can range from simple fines to outright removal from office and temporary suspension of political rights. It also hears cases of slander and defamation within the election period. Campaigns can file complaints on the subject, and the court has to decide whether the content is shared by political organizations or personalities. TSE can also open investigations on these offenders. If deemed untruthful,

content has to be removed, withdrawn, or apologized for, depending on how it was shared and according to TSE’s ruling.

Punitive measures fall upon the offenders. To illustrate, former President Bolsonaro has been condemned by the court for spreading misinformation about digital ballot machines in an official meeting with many ambassadors. He is currently barred from running for office until 2030. These two idiosyncratic mechanisms, together with the institution’s constitutionally-defined responsibilities, have been key in positioning the court as Brazil’s main defender against political misinformation.¹¹

With the rise of social media and digital misinformation accounts, the Court expanded its acting scope to engulf the virtual world. Social media accounts that shared misinformation came under the same scrutiny faced by TV or advertisement-spread electoral falsehood. The misinformation-spreading network was, thus, slowly dismantled through court-imposed content removal in platforms like Twitter and Instagram. Repeating offenders’ accounts were restricted within Brazilian territory, despite resistance from certain Big Tech companies.¹¹ The court also formalized an initiative signed with other 34 politically-relevant actors on combating disinformation. Since 2020, every election has had a meeting with political parties and their representatives outlining cooperative measures against disinformation and reaching an agreement with anti-misinformation measures to be adopted, showcasing constant institutional innovation.⁵

However, WhatsApp’s omnipresence in Brazil meant political misinformation sharing had a facilitated environment.⁶ To fight it, TSE and WhatsApp have signed a cooperation memorandum. There is an active chatbot created by and directly linked to TSE, fact-checking political messages and providing accurate information, while WhatsApp flags constantly shared messages, restricting its sharing to at most 3 contacts at a time, which slows down false content spread.

Innovation is not only restricted to judicial rulings. New departments within TSE are being created to combat more complex misinformation forms. One such example is the *Centro Integrado de Enfrentamento à Desinformação e Defesa da Democracia* (CIEDDE), or the Integrated Center for the Combat of Disinformation and the Defense of Democracy in English, a body of experts hired by TSE to centralize digital content removal measures, focused heavily on high-complexity falsehood, such as “deep fake” videos of politicians.¹¹ It also researches potential new response mechanisms.

This is not to say that TSE doesn’t face challenges regarding misinformation combatting. The two primary limitations to TSE’s action are a monolith block of populist politicians within Congress and Big Tech Companies. They form what Jon Elster would classify as a coalition: a union of distinct political agents over a shared, rational or irrational, interest.¹² The populist block has fought against TSE’s measures and tried to block attempts to regulate Brazilian social media. They do so with tacit support from Big Tech companies and their platforms, who deem those projects as too burdensome on their business model. This coalition most noticeably came into action in 2023, when it was able to filibuster Bill 2630/2020,

locally known as the Fake News Act, which would entail a series of measures to legally specify fake news spreaders and their used vehicles and social media companies for misinformation.

Excessively radical measures taken by TSE have also furthered opponents' claims of judicial activism and political persecution undertaken by the court. Some of the most controversial ones include the forced removal of social media accounts and passport confiscation of suspected misinformation agents to prevent them from fleeing the country and escaping justice. Many are also concerned about its potential lack of oversight from other institutional checks and balances, especially from the Supreme Court, since some of its members accumulate function within the two courts.⁵ Critics are also worried about potential hindrances to freedom of speech in the name of democracy's security, denouncing the Court's efforts as illegal censorship. Brazilian law, however, distinguishes itself from its American counterpart in the extent to which speech is protected. While America's First Amendment protects almost all speech, Brazil's legislation on freedom of speech considers hate speech, racist speech, injury, defamation, slander, and incitement of crime or violence, including violent abolition of the democratic state and the rule of law, as unlawful abuses of this constitutional right. Most political misinformation spread on the Internet falls under these criminal offenses, which, according to the Supreme Court Justices, justifies the court's actions against offenders.

Nevertheless, the presence of a proactive, centralized institution with specific goals and an ample arsenal of powers meant Brazil had a solid protective mechanism against misinformation. While TSE's actuation is not unanimous nor perfect, it allowed Brazil to effectively coordinate a systematic state-sponsored campaign against misinformation agents, both within and outside of populist governments because of its independence from political parties.¹¹ The same cannot be said for the American case.

America's Electoral Institution – FEC:

American electoral organization is very decentralized, being regulated by counties, the country's smallest political division.⁹ The country's federalist ideology, dating back to the American War of Independence, grants autonomy for states to define their own electoral laws. Not even federal elections are truly federal: The electoral college system ensures states have a say in organizing presidential elections. For this reason, there is no appropriate universal regulatory electoral body. Each state's Secretary of State has the responsibility to conduct and organize elections according to the state's electoral law. However, this is an official cabinet role of a state executive power; it does not function as an apolitical regulatory institution. The closest organ to an electoral regulatory body is the Federal Electoral Commission (FEC). The FEC was established in 1974, under the Federal Election Campaign Act.⁶ It is responsible for the oversight of federal elections and enforcing campaign finance laws. Its structure is also very different from TSE's. Its six commissioners are appointed by the President and confirmed by the Senate, and its members are affiliated with America's two main political parties: The Republican and the Democratic Party.⁹ While the commissioners also possess ample knowl-

edge of the law like their TSE counterparts, they do not come from judicial careers. Rather, they emerge from the political party's legal teams under the guidance of bipartisanship. The even number of commissioners means there is a possibility for gridlock in case of divided decision-making, which does not happen in odd-numbered TSE.⁹

The range of power available to FEC is also much more restricted than that available to TSEs. As it is a Commission under the control of Congress, it operates under a legislative power framework according to Montesquieu's tripartite power division.¹³ The FEC has the ability to pursue investigations into breaches of campaign finance law, including auditing of campaign funds and pursuing criminal charges against offenders.⁹ Unlike Brazil's public financing, the US does not divert any government funds to political campaigns. The FEC, thus, solely supervises campaign finance, while TSE is directly responsible for resource distribution.

The Federal Electoral Commission falls short of operating within the election organization. The commission cannot create norms and regulations or outright act on essential aspects of the democratic process, such as voter registration, ballot distribution, or vote counting.⁹ It also cannot indirectly regulate the electoral process through proposed modifications. It is not within the body's scope to suggest better ballot design, ballot distribution, or voter registration measures. All these policies are under full control of local and state Boards of Elections, under each Secretary of State or equivalent department. The organization is completely restricted to campaign financing regulation, which prevents its official actuation as an agency to prevent misinformation. Another barrier to the commission's ability to properly conduct its job is the lack of coordination between it and the American Judiciary. Brazil's TSE, being officially affiliated with the judiciary, possesses the autonomy to propose and enforce norms according to the body's determinations.¹⁰ Having Brazilian Supreme Court Justices serving within the organization at all times also aids the coordination of measures between the electoral court and its immediate superior, meaning electoral and anti-political misinformation regulations are solidified and are not easily revoked by the STF. By comparison, the FEC has had a troubled relationship with the American Supreme Court. Many political organizations and individuals have sued the Commission for controversial campaign finance regulations. The most significant is the landmark 2010 case *Citizens United v FEC*. It reallocated unlimited corporate and union donations, prompting the creation of "Super" political action committees, a type of campaign fundraising organization, fed on by their funds.⁹ SCOTUS has also evaluated other litigations over limitations on campaign financing that have also reduced the FEC's oversight and power.

The FEC's limited acting scope, its partisan composition, and constant judicial revision of its measures empty any potential official institutional response to political misinformation. One can say the FEC is the antithesis of the TSE as an institution: decentralized rather than centralized, dependent rather than autonomous, and fragile rather than solidified. It is too

incipient to properly enforce any regulatory or punishing acts against those spreading fake news.

With the FEC's bureaucratic apparatus not being prepared to contain electoral misinformation, content moderation is left in the hands of social media companies' internal departments. The businesses themselves do not have any vested interest or institutional duty to protect democracy from threats. Their actions are based on unique terms and conditions, subject to their digital realm, and are not done systematically. Individual accounts can be temporarily suspended or banned, but there is no official investigation into who's behind misinformation campaigns; after all, that is not their role. The reliance on "Big Tech's" own mechanisms to contain misinformation further weakens any response efforts from the US, who might not co-operate with authorities when not legally obliged.

The American decentralized electoral system, with its weak federal institutions, has offered disjointed responses to the rise of misinformation. The FEC's limited power to oversee federal elections translates into an inefficient institution not only at containing false narratives with democracy destabilization potential; it also fails at creating sufficiently fair rules that could help legitimize the ever-more controversial American electoral system. It should not come as a surprise that much more misleading content and claims circulate more frequently and with less restriction on American social media as compared to its Brazilian counterpart.

■ Conclusion

American and Brazilian electoral regulating institutions play a key role in shaping each country's misinformation-combat strategies and their subsequent success or failure. Brazil's centralized, innovative, and coordinated actions, particularly those led by the TSE, have weakened digital misinformation networks that currently do not enjoy the same operational ease as before the institutions' intervention. America's decentralized, rigid, and non-universal approach did not allow for any official, state-sponsored attempts at combatting disinformation. The FEC's limited range of action prevents any coordinated federal response; the Secretaries of State and local Board of Elections do not have enough power or specialized bureaucratic apparatus to address misinformation that, by its own digital nature, reaches far beyond their jurisdiction. The outsourcing of misinformation combat responsibility to the social media companies that facilitate misinformation spread is insufficient because it does not allow for and cannot take a systematic approach to investigating, punishing, and dismantling the complex misinformation network web present in America.

Institutional centralization, institutional power, and legal action scope influence the manner in which democratic countries combat disinformation and the effectiveness of these measures. Broader, more centralized, and independent institutions like Brazil's TSE have a higher effectiveness potential. They have more incentives to combat disinformation, for they are designed to effectively organize, coordinate, sustain, and protect the democratic process. Additionally, this design provides them with access to a wider range of financial, political, and judicial resources and mechanisms to effectively eliminate misinformation networks. Finally, this constitutional duty and

broader set of resources promote innovation and research in the misinformation-combat field, through larger investments in misinformation identification software, for example.

Decentralized, more specific, and politically affiliated institutions like the FEC do not possess the same incentives or resources, compromising any efforts to combat misleading content and its spreading agents. They are also more prone to delegitimizing efforts than centralized institutions, for their restrictive action scope combined with potential partisan gridlock makes them vulnerable to misuse. This can legitimize false narratives of electoral fraud, manipulation, and vote rigging among the general public, having a negative effect on misinformation combat efforts. Additionally, they lack enough political and legal strength to either edict national-wide measures or broader-fielded measures necessary to fight misinformation within the Internet.

This research's findings on the effects of centralization and the power range of electoral institutions can have further policy implications for countries threatened by political misinformation networks, offering insights into how choices of institutional design influence its effectiveness. Future examination of this topic would benefit from the incorporation of quantitative research on digital misinformation and its regulation. Such research would help to investigate to what extent centralized electoral institutions help in the fight against misinformation and to what extent centralized electoral institutions and their measures effectively reduce the number of false political content circulating within the web. This research would also benefit from a qualitative evaluation of the different approaches adopted by TSE and FEC under the tradeoff between freedom and security, to better understand the distinct rationales adopted and their consequences for the general populace.

■ Acknowledgments

I'd like to thank all the guidance from my mentor Dr. Aviezer Tucker and Dr. Audrey Wozniak for helping me throughout my research journey. Your assistance has been invaluable in the crafting of this article.

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