ALGOCRACIA: O IMPACTO DA INTELIGÊNCIA ARTIFICIAL NO PROCESSO ELEITORAL

Algocracy: the Impact of Artificial Intelligence on the Electoral Process

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RESUMO

As normas eleitorais brasileiras, notadamente a Resolução 23.732/2024, promoveram consideráveis alterações na Resolução 23.610/2019. Entre outras questões desse tema novo e tão instigante, a INTELIGÊNCIA ARTIFICIAL nas eleições se destaca como uma preocupação que a sociedade precisa ter no combate à desinformação, pois tal mazela pode ficar sensivelmente agravada com essa nova e potente ferramenta.

Palavras-chave: Eleições – grandes plataformas – desinformação – inteligência artificial – algocracia

ABSTRACT

Brazilian electoral regulations, notably Resolution 23.732/2024 issued by the Superior Electoral Tribunal, have made considerable changes to the previous Resolution 23.610/2019. Among other issues related to this new and intriguing topic, the use of ARTIFICIAL INTELLIGENCE in elections stands out as a concern that society needs to address in combating disinformation, a problem that can be significantly aggravated by this new and powerful tool.

Keywords: Elections – large platforms - disinformation - artificial intelligence - algocracy

AI tools for generating texts, audios and images have been strongly incorporated in Brazilian elections. While on the one hand they reduce costs and automate advertisements, they can accentuate misinformation, making the necessary countermeasures more difficult, since identifying false content becomes more challenging.

For this reason, elections always serve as a great laboratory for developing ways to address these challenges. In elections, we can test these new tools, especially regarding videos and images from large platforms and messaging channels that can be customized for different voter niches. One of the main concerns, as already mentioned, occurs in the area of misinformation, notably due to content produced and derived from deepfake sources, through montages and the use of Al to manipulate speech and images.

Brazilian electoral regulations, notably Resolution 23,732/2024 issued by the Superior Electoral Tribunal, have made considerable changes to the previous Resolution 23,610/2019. Among other issues related to this new and intriguing topic, the use of ARTIFICIAL INTELLIGENCE in elections stands out as a concern that society needs to address in combating disinformation, a problem that can be significantly aggravated by this new and powerful tool.

However, despite the impact of this new tool, I must stress that artificial intelligence, despite its sheer power, is a technological tool like so many others already encountered. Political players who experienced elections in the "old school" era can certainly recall the many congresses and seminars organized during the 1990s to discuss and debate the impacts of the Internet on the political game.

And at that time, the Internet also was generally seen as a key part of the scenario described in the famous book Brave New World, written by Aldous Huxley way back in 1932.

The use of artificial intelligence is certainly sharpening the challenges to be faced, and there is no way we can regulate situations with the same speed as the progress of technological innovations. For this reason, the law, as interpreted by the courts and their magistrates, cannot abstain from judging the demands by resorting to constitutional hermeneutics and the famous tripod of interpretative vectors that make up its support, notably text, context and interpreter, to solve the difficult controversies that the new electoral scenario will gradually bring.

By regulating the strictly necessary area, the electoral courts must demand and assure compliance with the constitutional principle of legal certainty, cardinal in matters of elections.

1. METHODOLOGICAL NOTE

This study is configured as a qualitative research of a theoretical-documentary nature, with a descriptive and analytical approach. The research method is based on the analysis of recent Brazilian electoral legislation, especially TSE Resolution No. 23,732/2024 and on the bibliographic review of the theme of Artificial Intelligence (AI), algocracy, and its impact on the democratic process. The objective is to establish a diagnosis of the regulatory and jurisprudential challenges posed by AI in combating electoral disinformation.

2. DEVELOPMENT AND DISCUSSION

We are already accustomed to mediating interpretative results from the electoral courts on a series of issues where there are specific thematic gaps in addressing the dispute between the players. And it is important to say that this does not entail creating rights over and above those enacted by legislators, in light of the corollary of the principle of legality, but only fostering, on the hermeneutical level, satisfactory interpretative results for the demands that are in play. As mentioned at the outset, AI tools for generating texts, audios and images have been powerfully incorporated in Brazilian elections.

In the regulations brought by the mentioned Resolution, one can observe an important difference between the lawful application of artificial intelligence, meaning among other tenets that it is openly used and identified, and thus is aligned with the legal precept of article 9 B, and what are commonly known as deep fakes, whose use is prohibited in Brazil. Such a prohibition does not mean we are strenuously fighting technology, but rather are regulating what needs to be regulated when the use of the tool is essentially tainted by misinformation or lends itself to the commission of crimes and other electoral offenses that deserve the just intervention of the electoral courts in order to ensure the principle of par conditio the backbone of electoral law.

In this sense, service providers, especially those that commercially promote content, will certainly be subject to greater scrutiny and liability if collusion between the platform and the commission of electoral crimes and illegal activities is proven Due to the scale of these activities, their dissemination may not be commercially attractive to the platforms, leading them to take necessary measures to moderate content by court order.

It is very important to say here that this does not involve unfairly harming freedom of expression, since freedom of expression is not an absolute right. While this angry discourse that the electoral courts, through their moderation, are attacking freedom of expression, is urged by many important jurists and other leading professionals, including famous interlocutors on this matter, most of them are ultimately the lawyers for the platforms and defend the interests of their clients, which is legitimate.

Indeed, the electoral courts are not party lawyers and need to do what needs to be done. No one will be prohibited from posting the content they want. And at this point, freedom of expression will be fulfilled, but as in any democratic society, they will have to be ready to face the consequences arising from their actions.

It's a matter of managing the legitimate interests of both wrongdoers and victims. The wrongdoers have the right to say whatever they want, but the victims need, above all, to have means to accurately and quickly identify the wrongdoers in order to obtain redress for the damage suffered. And in this sense, we cannot forget some important paradigms in this diagnosis.

The first is the constitutional prohibition of anonymity. Another issue is that a robot does not possess, at least for the time being, in current legal framework, legal personality to have fundamental rights guaranteed.

And in ensuring access to justice for those harmed, the electoral courts must act to effectively suppress new anomalies arising from artificial intelligence in electoral processes, taking action when necessary, even before the end of an election. To this end, the electoral jurisdiction must advance the interpretation of the civil-electoral framework.

In the substantive sphere, a doctrinal reinterpretation and jurisprudential update of the hypothesis of the improper use of social media is required, without prejudice to the configuration of the abuse of economic and media power and the proof of any undue expenditure (Article 30-A of Law 9,504/97).

In the procedural field, there must be greater emphasis (including in cases of irregular campaigning) on more appropriate techniques for preliminary and injunctive judicial measures against the use of bots and fake profiles (removal not only of content, but also removal or suspension during the election period of fake or anonymous profiles that commit serious electoral crimes and offenses).

Furthermore, in order to better react to the misuse of social media, the configuration of abuse of economic power, or Article 30-A, the limits of judicial electoral investigation action deserve to be restructured, or at least revitalized, with the help of the various procedural avenues offered by the Code of Civil Procedure.

If we do not take these measures to ensure the principle of equality among those who compete in elections in the face of the emergence of artificial intelligence, elections will run the risk of being undemocratic, even when all the normal activities of democracy, such as speeches, announcements, messages, voting, and vote counting have been assured.

In this context, organizations can use artificial intelligence language models to induce voters to behave in specific ways. On this topic, Senator Josh Hawley, in a US Senate hearing on May 16, 2023, regarding artificial intelligence, posed this question to OpenAI CEO Sam Altman. Mr. Altman confirmed concerns about the use of language models to manipulate, persuade, and facilitate guided engagement in interactions with voters.

At this public hearing before the U.S. Senate, the political technologists who testified described the possibility of developing a machine called a Clogger, which would relentlessly pursue a single objective: to maximize the chances of a candidate's victory. The campaign that purchased such services would, they argued, prevail in an election over the opposing candidate.

While platforms use forms of AI to keep users at their websites longer, AI Cloggers would have a stronger objective: to specifically change people's voting behavior.

A Clogger would work by using automation to dramatically increase the scale, and potentially the effectiveness, of behavioral manipulation and micro-targeting techniques that political campaigns have used since the early 2000s. So, just as advertisers use people’s browsing and social media history to individually target commercial and political ads, a Clogger would use artificial intelligence to individually

target the attention of hundreds of millions of voters. The operational capability would be triggered by offering three advancements in relation to next-generation algorithmic behavior manipulation.

First, its language model would generate messages – texts, social media comments, and emails, perhaps including images and videos personalized individually for each voter. It's worthwhile noting that while advertisers strategically place a relatively small number of ads, AI language models can generate virtually countless unique messages for millions of voters throughout a campaign.

Second, a Clogger would use a technique called reinforcement learning to generate a succession of messages that would become increasingly likely to change the target person's vote. Reinforcement learning is a trial-and-error approach to machine learning, in which the computer performs actions and gets feedback on what works best to learn how to achieve a goal. Machines that can play chess and many video games, working better than any human, have used reinforcement learning. This has already been extensively tested for games players, and it could be easily extended to influencing voters.

The functioning of reinforcement learning is the third consideration to be highlighted. Throughout a campaign, a Clogger's messages can evolve to take into account a voter's responses to the machine's previous messages and what the machine has learned about how to change the opinions of others.

The Clogger would then be able to maintain dynamic "conversations" with voters, individually at all times, reaching millions of people throughout the election period. The Clogger's messages would be similar to the annoying ads that follow us on different websites and social media platforms.

3. HIGHLIGHT ALSO FOCUSES ON BUGS

The messages the Clogger sends may or may not contain political content. The machine's sole objective is to maximize its share of the vote and likely devise strategies to achieve this goal on a scale that no human could accomplish.

Furthermore, the Clogger doesn't care about the truth. There's no way to know what's true or false. This artificial intelligence doesn't obey the Aristotelian logic of true or false and the non-existence of a third mode, as we learn in the best teachings of legal ethics. The so-called "hallucinations" of the language model, fueled by misinformation, are not a problem for this machine because its goal is to change your vote, not to provide true, honest, and accurate information.

Another aspect is that, since the Clogger would dispense a type of black-box artificial intelligence, people wouldn't be able to know what AI strategies are used. The field of explainable AI, which is exactly what the Brazilian Justice System has regulated, aims precisely to open the secret box of many machine learning models so that people can understand how they work.

Americans even use the term "Clogocracy" and argue that if, hypothetically, a Republican presidential campaign implemented a Clogger, the Democratic campaign would likely be forced to respond in kind, perhaps with a similar machine.

This second artificial intelligence machine has been called a Dogger. If campaign managers conclude that these machines are effective, an election could boil down to Clogger vs. Dogger, and the winner would be the client of the most effective machine, who paid the most for it, creating a reality of absolute dominance of economic power and the commodification of politics.

Political scientists and other experts would have much to say about the reasons why one AI system or another prevailed, but probably no one would really be able to give a conclusive answer.

Candidate would be elected not because their political proposals or ideas persuaded more voters, but because they had more effective AI. The winning content would have come from an AI machine focused exclusively on victory, stripping itself of its own political ideas and ignoring the value of candidates or parties.

In this sense, a machine would have won a given election, not a person. The election would cease to be democratic, even though all the normal activities of a democracy might have occurred, because voters would have been manipulated by AI instead of freely choosing their political leaders and policies.

Another path would be for candidates to follow the messages, behaviors and policies that the machine predicts, maximizing their chances of election or reelection. In this scenario, a candidate would have no specific platform or agenda beyond maintaining power. The candidate's actions, guided by AI, would be those most likely to manipulate voters rather than serve their genuine interests or even the candidate's own ideology.

Therefore, the possibility of preventing AI-based electoral manipulation would require all candidates,

campaigns and consultants to openly agree to refrain from this practice. This would be virtually impossible to achieve. If politically effective machines are developed, the temptation to use them would be almost irresistible. In fact, political consultants may well consider using these tools as being required by their professional responsibility to help their candidates win. And when a candidate uses a tool very effectively, it is difficult to expect opponents to resist by unilaterally disarming themselves.

Therefore, strong laws and regulations ensuring data privacy can help prevent Al from being manipulative in the electoral process[cite: 101].

Perhaps greater protection within the realm of privacy rights could help. There are many initiatives worldwide focused on controlling data management. In Brazil, we have the General Data Protection Law. Electoral reliance on AI depends on access to large amounts of personal data to target individuals, create personalized messages to persuade or manipulate them, track them, and redirect them throughout a campaign.

By strenuously invoking this law, the collection and use of the resulting data by companies and candidates would be denied or at least limited, gradually making AI less effective. Therefore, strong laws and regulations ensuring data privacy can help prevent AI from being manipulative in the electoral process.

Another solution lies with electoral commissions when it comes to electoral governance. In Brazil, the responsibility for electoral governance rests with the Superior Electoral Tribunal, and the Brazilian electoral justice system is fulfilling its role very well.

Brazilian electoral governance could attempt to prohibit or severely regulate these machines. There is a heated debate about whether this "replication of discourse", even if political in nature, can be regulated. However, this runs up against the exaggerated tradition that freedom of expression cannot be regulated, which leads, as everyone here knows, to many vociferous academic debates.

However, there is no plausible basis for extending constitutional protection and the guarantee of fundamental rights to AI machines. In the future, nations may choose to grant rights to machines, but that is not the case now, and this should be a decision based on today's challenges.

CONCLUSION

Only through this set of actions — be it from laws, regulations, candidates, political parties, platforms, or especially voters — will we have a suitable environment for the development of meaningful electoral debate. These measures, far from marking the end of the problems brought about by technology, are only the first step towards ensuring that Brazilian elections can balance technological advancement and the freedom of choice of people regarding their leaders.

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