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The urgency of regulating artificial intelligence to maintain the democratic process.

The urgency of artificial intelligence regulation to maintain the democratic process
The urgency of regulating artificial intelligence to maintain the democratic process

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ABSTRACT

Artificial Intelligence (AI) represents one of the main contemporary legal challenges, especially when its impacts go beyond the economic sphere and affect fundamental rights, the formation of public opinion, and the integrity of the democratic process. This article analyzes the urgency of regulating artificial intelligence in Brazil, from the perspective of neoconstitutionalism and digital constitutionalism, verifying to what extent the absence of a specific regulatory framework can compromise the protection of fundamental rights and the maintenance of democracy. It hypothesizes that this absence increases the risks of informational manipulation, decisional opacity, algorithmic discrimination, and violation of fundamental rights, compromising the free formation of democratic will. The research adopts a qualitative approach, a deductive method, and a bibliographic and documentary procedure, with analysis of the Brazilian Federal Constitution of 1988, the LGPD (Brazilian General Data Protection Law), the Marco Civil da Internet (Brazilian Internet Bill of Rights), the CDC (Brazilian Consumer Protection Code), Bill No. 2,338/2023, and international references (UNESCO, OECD, and the European Regulation on Artificial Intelligence). It is concluded that the regulation of AI is a constitutional requirement for transparency, accountability, human oversight, responsibility, and protection of the democratic public sphere.

Keywords: Artificial Intelligence. Fundamental Rights. Democratic Process. Regulation.

ABSTRACT

Artificial Intelligence represents one of the main contemporary legal challenges, especially when its impacts extend beyond the economic sphere and affect fundamental rights, the formation of public opinion, and the integrity of the democratic process. This article analyzes the urgency of regulating artificial intelligence in Brazil from the perspective of neoconstitutionalism and digital constitutionalism, verifying the extent to which the absence of a specific regulatory framework may undermine the protection of fundamental rights and democracy. The hypothesis is that this absence amplifies risks of informational manipulation, decisional opacity, algorithmic discrimination, and violation of fundamental rights, potentially compromising the free formation of democratic will. The research adopts a qualitative approach, deductive method, and bibliographic and documentary procedure, analyzing the Federal Constitution of 1988, the LGPD, the Internet Civil Framework, the Consumer Defense Code, Bill No. 2.338/2023, and international references such as UNESCO, OECD, and the European Artificial Intelligence Act. It is concluded that AI regulation is a constitutional requirement of transparency, accountability, human oversight, responsibility, and protection of the democratic public sphere.

Keywords: Artificial Intelligence. Regulation. Democratic Process. Fundamental Rights.

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INTRODUCTION

Artificial Intelligence (AI) is emerging as one of the most disruptive technologies of the 21st century, with the potential to profoundly transform the economy, health, education, Public safety, social communication, the labor market, and governance itself. State-run. Algorithmic systems are already being used to recommend content and classify information. people, automate decisions, identify patterns, produce texts, images and videos, To mediate economic relations and guide public and private choices.

This technological expansion, although marked by promises of efficiency and innovation, It also generates new legal, political, and institutional risks. In the democratic field, such The risks take on particular gravity. AI has begun to interfere directly with the circulation of information, in the formation of public opinion and in the way citizens access content Political news, election speeches, and expressions of collective interest. The curation. algorithmic content manipulation, extreme message personalization, the use of social bots, the The production of deepfakes and the automated dissemination of misinformation can compromise the freedom of choice for voters, equal opportunities among political actors, and Trust in democratic institutions.

The advancement of AI is occurring in an environment marked by a strong concentration of power. informational. Large digital platforms and transnational technology companies control massive databases, communication infrastructures, and recommendation systems that They determine what individuals see, read, share, and believe. Zuboff calls this... The phenomenon of 'surveillance capitalism': personal data, captured as surplus. behavioral behavior is converted into a product to predict and modify human behavior for the benefit of paying third parties.3 Pasquale4 (2015) adds the legal dimension to this Power: whoever controls classification algorithms has the power to classify without being... classified — an asymmetry that challenges traditional categories of law.5

[3] ZUBOFF, Shoshana. The Age of Surveillance Capitalism: The Struggle for a Human Future on the New Frontier of Power. Rio de Janeiro: Intrínseca, 2020. The author refers to data captured beyond what is necessary for service delivery, used to predict and modify human behavior for the benefit of paying third parties, as 'behavioral surplus'.

[4] PASQUALE, Frank. The Black Box Society: The Secret Algorithms That Control Money and Information. Cambridge: Harvard University Press, 2015. Pasquale demonstrates how the asymmetry between companies' internal knowledge of their algorithms and the opacity imposed on users constitutes, in itself, a form of power — 'the power to classify without being classified'.

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In Brazil, the absence of specific and comprehensive AI regulation intensifies the
Legal uncertainty. Although the Federal Constitution of 1988 (CF/88), the General Law of Protection
The General Data Protection Law (LGPD), the Brazilian Civil Rights Framework for the Internet (MCI), and the Consumer Protection Code
Consumer (CDC) offer relevant instruments of protection, such laws were not
designed to comprehensively address systemic risks arising from systems
autonomous, opaque, predictive, and generative. The existing normative gap not only generates
legal uncertainty, but it also makes it difficult to create ethical and legal guidelines that are appropriate for...
complexity and speed of technological development.

Given this scenario, the problem guiding this research is to answer the question:
The following question: the absence of a specific regulatory framework for artificial intelligence.
In Brazil, it is capable of compromising the integrity of the democratic process, especially in light of...
risks such as disinformation, algorithmic manipulation, decisional opacity, and violation of
fundamental rights?

The hypothesis being supported is that this absence increases the risks of manipulation.
informational, algorithmic discrimination and private concentration of technological power,
compromising the free formation of democratic will, and that regulation should adopt a
A risk-based model, with proportionate duties of transparency, explainability,
Governance, human oversight, and accountability. The aim of this article is to analyze the...
The need for AI regulation as an instrument for protecting fundamental rights.
and democracy, through a qualitative approach, deductive method and analysis of the 1988 Constitution, LGPD,
MCI, CDC, PL nº 2.338/2023 and international benchmarks such as UNESCO, OECD and the
European Regulation on Artificial Intelligence.

The research adopts a qualitative approach, deductive method, and bibliographic procedures.
and documentary, through analysis of specialized doctrine, national legislation, and projects.
legislative and international frameworks on AI, fundamental principles and process
democratic. The study starts from the constitutional foundations of the Democratic State of
Right to examine the need for specific AI regulation, especially in light of
of its impacts on the digital public sphere.

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1. Artificial Intelligence, Democratic Process, and Legal Risks

1.1 Legal concept of artificial intelligence and delimitation of its object

Artificial Intelligence, hereinafter referred to as AI, can be understood as...
In a broad sense, it refers to the set of computer systems capable of performing tasks that...
traditionally depend on capabilities associated with human intelligence, such as
learning, pattern recognition, decision-making, prediction of
behaviors, natural language processing, and content generation. From the perspective
From a legal standpoint, it is less important to discuss whether such systems 'think' like human beings than
to understand how they produce effects on rights, duties, responsibilities and structures of
power.

AI is not a single technology, encompassing everything from simple systems.
based on rules to complex machine learning models, neural networks
Deep and generative systems. The rise of generative AI has intensified legal challenges.
by reducing the distance between human and artificial production, making it more difficult to identify
False, manipulated, or synthetic content has a direct impact on the democratic sphere.

This ability to generate content on a large scale has a direct impact on the sphere.
democratic processes, such as during election periods, are where AI systems can be used for...
create segmented messages, simulate popular support, fabricate speeches, manipulate images of
candidates or produce misinformation with an appearance of authenticity. The problem in question
It resides in the opaque, mass-produced, and targeted use of technology, with the aim of manipulating the
public perception.

Therefore, the legal delimitation of AI must consider three aspects, notably: (i) the
technical-functional aspect, in the sense of the system being able to process data and produce
automated or semi-automated results; (ii) the social aspect, since such systems
interfere in human, economic, political and institutional relations; (iii) the aspect
constitutional, therefore, when AI affects freedom, equality, privacy, information,
political participation and due process, it ceases to be merely a technological tool and becomes
to be subject to legal and constitutional review. As O'Neil warns, opaque algorithms, of
Large-scale and potentially harmful, these constitute instruments of power that the Law
You can't ignore it.

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In a democratic environment, this influence can be legitimate when it is transparent.
Auditable and subject to control, it becomes abusive when it operates invisibly and asymmetrically.
and driven by undeclared economic or political interests. In an order
Based on a constitutional principle grounded in the dignity of the human person, AI must be examined as
Technology of power and, as such, subject to the same logic of accountability as the State.
A democratic rule of law imposes restrictions on the exercise of any relevant form of power.

1.2 Artificial intelligence and the formation of public opinion

Democracy presupposes citizens capable of forming their convictions freely.
and informed, which requires the preservation of an integral public environment, in which different
Perspectives circulate without algorithmic manipulation or structural capture of collective attention.
In the digital realm, however, this circulation is mediated by algorithmic systems that define, with
Based on automated criteria, which content will be prioritized, hidden, or...
driven by a mediation that is not neutral, as it stems from design choices and models.
business and advertising interests.

Algorithmic personalization can create information bubbles and echo chambers that
They reduce contact with divergent perspectives, favor radicalization, and transform the
public debate in segmented, emotionally driven messages that are not subject to...
rational objection.

The concentration of this power in Big Tech companies exacerbates the problem: these companies do not
They not only develop AI systems, but also control the platforms through which
Much of social communication occurs there, influencing the public sphere without transparency.
and the accountability required of state bodies.

In this context, the theory of the horizontal effect of fundamental rights becomes
indispensable: if private individuals exercise power capable of affecting fundamental rights, they must
to observe legal duties compatible with the constitutional protection of the human person and of
democracy, so the formation of public opinion does not depend solely on freedom.
formal expression, but also the existence of material conditions for the citizen
deliberate without undue manipulation. AI, when used to modulate behaviors and
Exploring psychological vulnerabilities can transform freedom of choice into mere manipulation.
The appearance of freedom: the voter believes they are deciding autonomously, but their perceptions may...
to have been driven by invisible systems of recommendation, segmentation, and persuasion.
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1.3 Disinformation, *deepfakes,* and algorithmic manipulation

Disinformation is not a recent phenomenon; however, AI is changing it.
substantially its scale, speed, sophistication, and cost of production, by enabling the
The creation of fake images, videos, audios, and texts with a high degree of verisimilitude, which
This intensifies the challenges to public trust and the integrity of democratic debate.

Deepfakes represent a striking example *of* this risk, given the possibility
to simulate the voice or image of a person, attributing to them speech, gestures or behaviors that
They never happened.

Beyond *deepfakes,* AI can be used for political microtargeting, that is,
a technique that allows sending distinct messages to specific groups of voters, with
based on behavioral, emotional, geographic, religious, economic or data
ideological. The legal problem arises when segmentation ceases to be mere communication.
Politics then moves on to exploit vulnerabilities, fears, and prejudices, preventing public debate.
common.

Algorithmic manipulation can also occur through artificial amplification of
content, such as the use of social robots and automated systems that can simulate
engagement, creating a sense of consensus, attacking reputations, boosting discourse
extremists or to delegitimize institutions.

Democracy depends on a minimum level of trust in the authenticity of public debate;
However, when the digital sphere is occupied by artificial interactions, the social perception of
Reality can be distorted.

For this reason, AI regulation must address not only individual harms, but also...
also collective risks. Democratic protection requires mechanisms capable of identifying
synthetic content, holding agents accountable for using AI to manipulate elections, demanding
Transparency of platforms and ensuring a swift institutional response in high-risk situations.
impact.

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1.4 Algorithmic opacity, discrimination and accountability

Algorithmic opacity, often described as the 'black-box' problem. [5]', that
It typically refers to the difficulty of clearly explaining the "reasoning" used by AI.
one of the biggest legal challenges since many systems, especially those based on
Deep learning produces results even when its own developers are unable to achieve them.
explain the path taken by the model

In constitutional terms, opacity violates or threatens due process of law.
Contradictory, the right to a full defense, and legal certainty. When a person is affected by a decision.
automated, for example, credit denial, content deletion, account blocking,
Risk classification, professional selection, or predictive surveillance—conditions are necessary.
minimum requirements to understand the reason for the decision and to contest it, since the technology does not
It can create zones of irresponsibility.

Algorithmic discrimination is another significant risk, as AI systems learn.
with historical data and whether that data reflects social, racial, economic or inequalities
Regarding gender, the algorithm can reproduce and amplify such distortions. The appearance of neutrality
This technique can mask discriminatory decisions and thus result in the denial of opportunities.
of employment, credit, public services, or political visibility to certain groups, without
that the discrimination is immediately noticeable.

The LGPD (Brazilian General Data Protection Law) helps to address part of this problem by establishing principles such as
purpose, suitability, necessity, transparency, safety, prevention, non-discrimination and
accountability. Article 20 also provides for the right to request a review of decisions made.
exclusively based on the automated processing of personal data. However, the LGPD
It does not solve all the challenges of AI, especially those involving generative systems.
general-purpose models, political manipulation, electoral risks, and collective impacts on
democracy.

Liability for damages caused by artificial intelligence systems should be...
analyzed in light of the complexity of the technological chain involved, as the harmful result can

[5] PASQUALE, Frank. The Black Box Society: The Secret Algorithms That Control Money and Information.
Cambridge: Harvard University Press, 2015

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resulting from the joint or successive actions of various agents, such as developers, suppliers, operators, platforms, contractors, and professional users.6

It should also be emphasized that, in high-risk systems, accountability cannot depend exclusively from the demonstration of subjective guilt, since the victim often does not have access to the technical elements necessary to prove the system defect. Hence the importance of strict liability regimes or presumptions favorable to the victim in certain hypotheses.

2. CONSTITUTIONAL FOUNDATIONS FOR THE REGULATION OF ARTIFICIAL INTELLIGENCE

2.1 Democratic Rule of Law and Fundamental Rights in the Digital Sphere

The 1988 Federal Constitution establishes Brazil as a Democratic State governed by the rule of law. founded, among other values, on sovereignty, citizenship, the dignity of the human person and on Political pluralism, fundamental principles that have an impact on all forms of political exercise. power, including technological power.

The dignity of the human person occupies a central position in this debate, especially when If we have a society driven by data and automated decisions, then the person is no longer involved. It can be reduced to a statistical profile, an object of surveillance, a target for manipulation. or simply an input for training algorithmic models. Dignity demands respect for autonomy, privacy, equality, freedom of thought and the capacity to political participation.

AI regulation is a constitutional requirement. The state has a duty to protect it. in the face of risks that threaten fundamental rights, including when those risks originate from private agents. Regulatory omission can allow opaque and concentrated systems. cause massive damage, in the absence of adequate prevention, monitoring and mechanisms. repair.

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6 DE LIMA LEAL, R.; GARBACCIO, GL; WOICIECHOSKI MALLMANN, JK. Civil liability in the context of artificial intelligence: comparative perspectives between Brazil and Portugal (2023-2024). REVISTA DA AGU, [S. l.], v. 23, n. 4, 2024. DOI: 10.25109/2525-328X.v.23.n.4.2024.3551. Available at: https://revistaagu.agu.gov.br/index.php/AGU/article/view/3551. Accessed on: May 16, 2026.

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From the perspective of neo-constitutionalism, the Constitution is not merely a document.
organizational structure of the State, but it must also be considered for its binding normative force.
as well as by its ability to guide the interpretation of the entire legal system. Thus,
Technological innovation must be compatible with constitutional values, so that
to ensure that this development occurs in a way that is compatible with the human person and justice.
social issues and democracy.

Artificial intelligence directly impacts the exercise of fundamental rights in
digital environment, as many decisions that affect people's lives have become mediated.
by automated systems. These systems select content, organize information,
They recommend publications, collect data, classify users and, in certain contexts,
They influence individual and collective behaviors.

Freedom of expression can be affected by automated moderation mechanisms.
that remove, restrict, or reduce the reach of content without adequate explanation.
Although moderation is necessary to combat abuse, fraud, illicit speech, and
Disinformation, when carried out in an opaque manner, compromises transparency and hinders...
The problem, therefore, lies in the absence of clear criteria.
proportionate and auditable.

The right to information is also strained by recommendation algorithms, which
They define which content will be prioritized, hidden, or boosted. With this, the citizen...
It ceases to access a truly pluralistic informational environment and begins to receive
Content filtered by commercial, behavioral, or political criteria is not always
transparent.

In this scenario, privacy and the protection of personal data take on a crucial role.
strategic, since AI systems depend on large volumes of data to
They function and can produce inferences about the daily lives of the population. In a context
In a democratic system, this information can be used to target political messages.
personalized and influence voting behavior in a subtle way.

Equality, in turn, can be threatened by embedded discriminatory biases.
to the training data or to the operating criteria of the algorithms. Systems
Automated systems can replicate historical patterns of exclusion and generate unfair decisions in
areas such as employment, credit, public safety, education, and access to essential services.

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Due process is weakened when automated decisions are produced.
relevant effects without a comprehensible explanation, without effective human review, or without
adequate possibility of challenging the decision.

Therefore, regulating artificial intelligence and digital platforms does not mean censorship.
Nor can it impede speeches or prevent innovation. Constitutionally oriented regulation can protect
Freedom of expression, the right to information, and democratic integrity against
structural manipulations, fake accounts, illicit boosting, synthetic content
Fraudulent practices and informational asymmetries. Freedom of expression is not fully realized.
when public debate is colonized by invisible mechanisms of attention manipulation
collective.

Thus, protecting fundamental rights in the digital environment requires transparency, explainability [7],
human oversight, and accountability. Citizens must
to know when they interact with automated systems, when certain content was generated
or modified by AI and what general criteria influence the distribution of political messages.
Technological opacity compromises the conscious exercise of citizenship and, therefore, must be...
a challenge faced by regulations capable of balancing innovation, freedom, and democratic protection.

2.2 Democratic process, popular sovereignty and electoral integrity

Article 14 of the Federal Constitution enshrines popular sovereignty, exercised through suffrage.
universal and by direct and secret ballot, with equal value for all, it being certain that integrity
The democratic process is not limited to the correct counting of votes, as it also
It involves the conditions for the formation of political will. A formally free vote can be
materially compromised if the voter is subjected to informational manipulation.
massive, customized, and opaque.

Democracy depends on a minimally reliable informational environment, which
It does not mean demanding consensus, eliminating conflicts, or controlling opinions, since...
Democracy presupposes divergence. Political conflict must occur under conditions of
authenticity, plurality and responsibility.

However, when AI systems are used to manufacture artificial consensus,
to simulate popular support, spread falsehoods, or attack institutions lacking transparency, the

[7] Explainability refers to the ability of an AI system to translate its reasoning and the rationale behind its decisions into a language that humans can understand and trust.

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The democratic process is weakened, and with it, the equality of opportunity among candidates.
It can also be affected.

Campaigns with greater economic and technological capacity can utilize tools
advanced segmentation, behavioral analysis, and automated content production,
widening inequalities in public debate. The absence of clear rules favors certain agents.
with greater data and infrastructure capabilities.

In this sense, AI regulation aimed at the democratic process must consider...
minus five guidelines: identification of synthetic content in an electoral context; prohibition of
Deceptive deepfakes intended to harm candidates or manipulate voters; transparency
in the promotion and micro-direction of politics; accountability of agents who
They utilize automation for informational fraud; and cooperation between platforms and authorities.
electoral and civil society.

2.3 Transparency, explainability and accountability

Transparency is an indispensable pillar for AI governance. In a State
In a democratic system governed by the rule of law, it is unacceptable for important choices to be made through mechanisms.
Automated processes without the citizen understanding what criteria were used, who is...
who is responsible for the system and how any errors can be corrected.

This transparency must be effective and proportionate to the risk: the greater the possibility
Given that technology affects fundamental rights, the duty to explain its effects should be even greater.
Its operation, its limits, and those responsible for it.

In this context, explainability plays a central role, and it should be taken for granted that
Explaining an automated decision doesn't mean revealing the entire source code and its secrets.
not to introduce complex industrial or technical details, but rather to present them to the affected individual.
clear and understandable information about the relevant factors that influenced a given
result.

In any decision made by an AI, the person affected needs to know, at a minimum,
Why did this happen and what means do they have to contest the decision?

Explainability, therefore, brings technology closer to the concrete experience of the citizen.
For those who suffer the effects of an algorithmic decision, it matters little what the system is.
Technically sophisticated if it doesn't offer a comprehensible justification. The absence of
This explanation generates a feeling of powerlessness, as the individual becomes governed by...
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Invisible criteria, with no real possibility of defense. So that there may be harmony with the order. Constitutional decision founded on the dignity of the human person does not allow for decisions that... Rights that are impacted may be hidden beneath technical complexity.

In addition to explainability, auditability is an indispensable requirement. AI systems that produce relevant effects should be able to be examined by competent authorities, independent experts or regulatory bodies, in order to verify whether they function in a way Safe, proportionate, non-discriminatory, and compatible with fundamental rights. A Auditing allows one to identify such flaws in the algorithm.

Auditability helps to reduce the power imbalance between citizens and large corporations. technological agents, because, on the one hand, there are users who often don't even know how their Data is processed or a decision is made. On the other hand, there are institutions that... They control databases, algorithmic models, and complex digital infrastructures. Without audit mechanisms, this relationship becomes profoundly unequal , as only those who... Those who control the technology have the real ability to understand its effects.

It is necessary to identify who is responsible for each stage of the technology chain, because... The technical complexity of AI cannot serve as a shield against accountability. Oversight Human responsibility must be real, not merely formal: the responsible agent must understand the system operation, having access to necessary information and being able to interrupt or Correct automated decisions.

When an automated system interferes with access to rights, it must be possible to determine... the responsibility of the agents involved. Accountability therefore requires clear duties of documentation, impact assessment, risk management, error correction, communication to affected and compensation for damages.

These requirements become even more relevant in so-called high-risk systems. because the greater the potential for harm to life, liberty, equality, privacy, or The greater the participation in politics, the greater the degree of control, transparency, and accountability must be. Thus, AI can be used in high-impact or high-risk contexts, such as security and health. A public tool cannot receive the same legal treatment as a low-impact tool. such as that used in simple or recreational tasks.

In the democratic field, this concern is even more sensitive, especially in light of... The ability of AI systems to recommend political content, boost messages,

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[8] c *SARMENTO, Daniel. Fundamental rights and private relations. Rio de Janeiro: Lumen Juris, 2004.*

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to segment voters or produce synthetic material in order to influence opinion formation.
public.

If such tools operate in an opaque manner, without clear identification and without control.
If appropriate, the citizen may be exposed to persuasive strategies that they do not perceive and that work against them.
which they are unable to react to consciously.

Therefore, human oversight is an essential element of governance, a
since important decisions should not be entirely delegated to automated systems,
without the possibility of review by a person.

Thus, transparency, explainability, auditability, accountability, and oversight.
Human rights are complementary instruments for the protection of fundamental rights, allowing
That AI be used in a safer, fairer, and more constitutionally compliant manner. (Regulate)
These aspects aim to ensure that technological development is subject to control.
democratic and oriented towards the protection of the human person.

Thus, AI governance should prevent relevant decisions from being made in a
zone of invisibility, under penalty of the citizen being placed before systems that influence
your life without any explanation or possibility of contestation. In a democracy
In constitutional terms, the greater the power of technology over social life, the greater its [legal authority/principle] should be.
Submission to transparency, accountability, and public scrutiny.

3. The Legal Framework of AI in Brazil and in Comparative Law

3.1 Federal Constitution, LGPD, Marco Civil da Internet and CDC

Brazil does not yet have a specific and fully consolidated legal framework on
AI, which does not mean that the use of this technology occurs in a completely normless space. The
Brazilian legal system already has important frameworks9 to address part of it.
of the risks arising from AI, especially when its use affects fundamental rights,
consumer relations, personal data protection, freedom of expression and access to information.

The 1988 Brazilian Constitution (CF/88) should be the starting point for this analysis, as it provides the superior foundation.
for any discussion about technology, innovation and regulation, as it enshrines values

[9] *OLIVEIRA, Cristina Godoy Bernardo de. Challenges of digital regulation and artificial intelligence in Brazil.* ***USP Magazine,*** *São Paulo, Brazil, no. 135, pp. 137–162, 2022.*

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structural elements of the Democratic Rule of Law. In this context, Sarlet10 warns that rights Fundamental rights are not limited to their classic subjective dimension, which incorporates the protection of individual versus the State, but they also produce effects on relations between private individuals and They impose on public authorities an active duty of protection, creating what the author calls "effectiveness." "radiating" over the entire legal system. This means that the regulation of AI is not a matter optional for the legislator: when technology affects fundamental rights, the State has the constitutional duty to act.

Therefore, AI cannot be treated merely as a technical or economic tool. when its effects reach people's lives, and their political and social participation is required legal control compatible with the Constitution.

In this sense, AI regulation should be understood as an instrument of realization of fundamental rights, which does not mean preventing technological innovation, but rather to ensure that it develops within constitutional limits. Technology can and It should contribute to social progress, and to the expansion and efficiency of services. However, This development cannot occur at the expense of individual autonomy, equality, and... privacy or the integrity of the democratic process.

Although the LGPD (Brazilian General Data Protection Law) is not a specific law about AI, it represents one of the most significant advancements. relevant in this field, since AI systems depend, to a large extent, on the collection of... Data processing and analysis. Personal data feeds algorithmic models, enabling... Identifying patterns guides behavioral predictions and enables personalization. of content, products, services and political messages.

The principles of the LGPD, such as purpose, adequacy, necessity, transparency, Safety, prevention, accountability, and non-discrimination serve as parameters. fundamental for the responsible use of AI. Therefore, personal data cannot be used in this way. abusive manner.

The agent that develops or uses AI systems must demonstrate why collecting given data, what will be the purpose of this data, and for how long will it be stored? What risks are involved and what measures have been taken to protect the data subjects?

[10] SARLET, Ingo Wolfgang. *The effectiveness of fundamental rights: a general theory of fundamental rights in Constitutional perspective.* 13th ed. rev. and updated. Porto Alegre: Livraria do Advogado, 2018.

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Article 20 of the LGPD [11] This is especially relevant when dealing with decisions made.
exclusively based on the automated processing of personal data. This device
guarantees the data subject the right to request a review of automated decisions that affect their data.
interests or other relevant aspects. In practical terms, the rule recognizes that the citizen
It cannot be completely subjected to algorithmic decisions without the possibility of
questioning, so that the right to review strengthens the idea of contestability.
algorithmic.

If a person has been denied credit, has a profile classified as risky, or has...
If a service is restricted based on automated decision-making, it must have the means to understand and
To contest the outcome. The technological decision cannot be presented as absolute truth.
or inevitable, because, in a democratic state governed by the rule of law, every decision that affects rights must
to be subject to some degree of explanation, review, and accountability.

Despite its relevance, the LGPD (Brazilian General Data Protection Law) does not solve all problems related to AI.
Its main focus is the protection of personal data. However, many AI systems generate
impacts that go beyond the individual sphere of the data subject.

There are situations in which technology influences entire social groups, shaping the debate.
public, fuels misinformation, produces collective discrimination, or interferes with education.
of political opinion. In addition, certain systems use anonymized, inferred data.
or aggregates, which may hinder the direct application of some mechanisms foreseen in
LGPD.

The Brazilian Internet Bill of Rights (MCI) also plays a relevant role in
Brazilian digital governance: establishing principles, guarantees, rights and duties for the use
Regarding the internet in Brazil, Law No. 12.965/2014 consolidated important pillars, such as freedom of...
expression, privacy protection, personal data protection, net neutrality and
Accountability of agents according to the legislation. These are fundamental elements for
Understanding the environment in which AI operates, especially when applied by platforms.
digital technologies, social networks, search engines, and online services.

[11] BRAZIL. Law No. 13.709, of August 14, 2018. General Law on the Protection of Personal Data (LGPD). Brasília, DF: Presidency of the Republic, [2020]. Available at: https://www.planalto.gov.br/ccivil_03/_ato2019-2022/2020/lei/l14020.htm. Accessed on: April 14, 2021. Wording of its article 20: Article 20. “The data subject has the right to request a review of decisions made solely on the basis of automated processing of personal data that affect their interests, including decisions intended to define their personal, professional, consumer and credit profile or aspects of their personality.”

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However, the MCI was developed before the more intense expansion of AI.
generative and advanced algorithmic models, which is why, although it continues to be
an essential norm, it does not specifically address contemporary problems such as
deepfakes, generative systems, foundational models, algorithmic audits, classification
of systems by degree of risk or specific duties of explainability.

At this point, Staats12 argues that the inadequacy of traditional norms in the face of
The growing power of platforms and AI demands the recognition of a new phase.
constitutional, which she calls "digital constitutionalism." For the author, self-regulation
The actions of Big Tech companies are insufficient to protect fundamental digital environments, being
It is necessary to create regulatory frameworks that subordinate the private power of platforms to
The constitutional logic of protecting rights. This perspective reinforces the conclusion that the
MCI, although pioneering, was not designed for the complexity of the technologies that exist today.
They shape the digital public space.

The Consumer Protection Code (CDC), in turn, constitutes an important
regulatory instrument when AI is used in consumer relations. Increasingly, the
Consumers interact with chatbots, virtual assistants, recommendation systems,
credit analysis mechanisms, personalized pricing tools and platforms
automated customer service systems. In these situations, principles such as the following remain applicable:
duty to inform, objective good faith, protection against abusive practices, responsibility
The objective of the supplier and the recognition of the consumer's vulnerability.

Consumer vulnerability becomes even more evident in the face of opacity.
algorithmic, since, to a large extent, the user is unaware that they are interacting with a system.
automated and unclear about the criteria used to define it.
digital ecosystem. Therefore, the duty to inform foreseen in the CDC (Consumer Protection Code) must be reinterpreted in light of the digital ecosystem.
In light of new technologies, this demands greater transparency from suppliers.
They use AI in their products and services.

Furthermore, the strict liability provided for in the CDC is especially important in
contexts in which the consumer suffers harm caused by an automated system, because if the
If a consumer is harmed by abusive practices or a defect in an AI-based service, they must...
There must be a possibility of repair, regardless of the technical difficulties involved.
Identifying the algorithmic error.

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[12] STAATS, Sabrina D. Digital constitutionalism as a protection of fundamental rights. *Journal
Electronics Law & IT,* Porto Alegre, v. 1, n. 14, Dec. 2022.

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It is true that each of these norms operates from a specific perspective. The Constitution It establishes superior values; the LGPD protects personal data; the MCI organizes rights and Duties regarding internet use; and the Consumer Protection Code (CDC) protects consumers in market relations. AI, However, it traverses all these fields simultaneously.

This cross-cutting characteristic of AI reveals the need for a regulatory framework. own, considering that intelligent systems can affect consumer relations, policies public, elections, security, education, health, work, credit, access to information and exercise of fundamental rights. They can also cause individual, collective, and diffuse harm. and democratic. Therefore, the legal response cannot depend solely on the isolated application of existing standards.

As demonstrated by the analysis of Pontes and Lanzillo[13], the fundamental principles of PL 2338/2023 represents precisely an effort at synthesis: the project seeks to articulate the values existing constitutional provisions with concrete obligations aimed at governance, transparency and to holding AI agents accountable. It is, therefore, a regulation that aims not replace the existing system, but complement it and make it operational to address the specific challenges of the technology.

Therefore, the Brazilian legal system needs specific regulations capable of... To articulate innovation, legal certainty, protection of rights, transparency, risk assessment, Human oversight and accountability, aimed at creating conditions for AI to be used for in a reliable, ethical, and constitutionally sound manner.

In a democracy, technology should serve the human person and the public interest. But it should not turn citizens into objects of surveillance, manipulation, or discrimination. Automated. The protection of democracy, fundamental rights, and public trust. It requires a regulatory response capable of keeping pace with the depth of the transformations.

Ongoing technological advancements.

[13] PONTES, Ingrid de Oliveira; LANZILLO, Anderson Souza da Silva. Principles, balancing and regulation of artificial intelligence: an analysis of Bill No. 2338/2023 in light of Robert Alexy's theory. *Veredas do Direito,* v. 23, e235839, 2026.

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3.2 Bill No. 2,338/2023: progress, gaps and perspectives

Bill No. 2,338/2023, the main legislative initiative on AI currently under consideration in Brazil, adopts a
A model inspired by the EU AI Act: it classifies AI systems according to their risk level and distributes them accordingly.
duties in a proportionate manner. Three categories are foreseen: practices of excessive risk,
prohibited (art. 13); high-risk systems, subject to strict governance duties (arts. 14 to 22); and other
systems, subject to self-regulation with accountability.14 For systems of
High risk, the bill requires impact assessments of AI systems, effective human oversight,
Technical documentation, transparency for users, and audit mechanisms.

The bill presents substantial advances, but also significant gaps. On the side of
Advances: Adopting a risk-based model is the most appropriate regulatory approach for
a rapidly evolving technological field; the forecast of impact assessment as
The preventive mechanism is compatible with the constitutional duty of protection; and the requirement of
Effective human supervision directly addresses the problem of unrestricted delegation to systems.
Automated. Regarding the gaps: the PL adopts a more restrictive formulation than the EU AI.
Act with regard to absolute restrictions, while Article 5. The 5th paragraph of the European Regulation
It expressly prohibits subliminal manipulation practices that exploit vulnerabilities.
Humans; the PL's prohibition is limited to systems that cause 'significant harm,' which may hinder
preventive accountability.15 Furthermore, the PL does not yet incorporate a mechanism
of continuous reclassification for general-purpose models that gain systemic impact after initial
classification, a loophole that the EU AI Act itself recognized and sought to correct.16

In the electoral field, the regulation of the PL (presumably referring to a specific legislative proposal or initiative) is generic, making it necessary to provide for specifics.
Specifically: the requirement to identify content generated or modified by AI.
in electoral propaganda; the qualified prohibition of misleading electoral deepfakes; and duties
Specific transparency criteria for systems of political micro-targeting.

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14 BRAZIL. Bill No. 2,338 of 2023. The bill adopts a tripartite classification model: excessive risk systems (prohibited practices), high risk systems (subject to strict governance duties), and other systems (self-regulation with accountability). Articles 14 to 22 govern the duties applicable to high-risk systems, including impact assessment, human supervision, technical documentation, and transparency.

15 EU AI Act, Regulation (EU) 2024/1689, art. 5: prohibits subliminal manipulation practices that exploit human vulnerabilities, social scoring systems, and most uses of real-time biometric identification in public spaces. Bill 2.338/2023, art. 13, only prohibits the use of AI for 'manipulation of human behavior that causes significant harm', a more restrictive formulation than the European one.

16. The classification of AI systems by degree of risk faces the problem of the speed of technological evolution: a model classified as low risk can become high risk with an update. The EU AI Act introduced, in its article 51, a reclassification mechanism for general-purpose models (GPAI) with systemic impact, which Bill 2,338/2023 has not yet incorporated in an equivalent way.

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Barbosa and Pinheiro point out that the bill, by opting for a margin of self-regulation...
Larger platforms may create insufficient incentives for compliance.
whose economic and technological power far surpasses the Brazilian state's capacity for oversight.17

The effectiveness of the bill, once approved, will depend not only on formal rules, but also
also the existence of a regulatory authority with autonomy, technical capacity and power
adequate sanctions, elements that the project does not yet regulate with sufficient precision.

3.3 International experiences: UNESCO, OECD and EU AI Act

The transnational nature of AI, developed in one country, trained with data from
Multiple regions and used by people, businesses, and governments in different jurisdictions, requires
Constant dialogue with international regulatory experiences. Thus, regulation
national policies must adapt them to the constitutional, social, economic, and institutional reality of the country.
considering its own challenges such as the digital divide, market concentration, and
Informational vulnerability of part of the population and the centrality of digital platforms.
in the public debate.

In this context, the UNESCO Recommendation18 on the Ethics of Artificial Intelligence,
Approved in 2021, it states that AI should be guided by human dignity and rights.
humans, for diversity, for inclusion, for sustainability, for transparency, for
responsibility and human oversight, based on the premise that technology should not
It can be developed solely based on efficiency or profit criteria. This perspective is...
This is especially relevant for countries marked by structural inequalities, such as Brazil.
where AI systems can both expand access to services and reproduce exclusions and
deepening discrimination.

The principles of the Organization for Economic Cooperation and Development
(OECD)19 also offer an important contribution, insofar as they advocate for AI

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17 BARBOSA, Leonardo Figueiredo; PINHEIRO, Caroline da Rosa. Artificial intelligence in Brazil: regulatory advances. Revista de Informação Legislativa: RIL, Brasília, v. 60, n. 240, p. 11-41, Oct./Dec. 2023. The authors identify that Bill 2,338/2023, although inspired by the EU AI Act, does not fully adopt the European model of absolute prohibitions, opting instead for more restrictive restrictions and a greater margin for self-regulation.

18 UNESCO. Recommendation on the Ethics of Artificial Intelligence. France: UNESCO, 2021. Available at: https://unesdoc.unesco.org/ark:/48223/pf0000381137_por. Accessed on: May 18, 2026

19 ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT (OECD). Oslo Manual: Guidelines for collecting and interpreting innovation data. 3rd edition. Paris: OECD, 2005.

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reliable, human-centered, transparent, safe and responsible, demonstrating that it does not
There is a necessary contradiction between innovation and regulation: well-structured regulation can...
increase social trust in technology, offer legal security to developers and
To protect citizens from abuse.

The EU AI Act constitutes the main international normative reference by adopting a
A risk-based regulatory model, differentiating applications according to the degree of danger.
which represent fundamental rights, security, and collective interests. For the
In Brazil, the European experience offers three central contributions: (i) risk classification
as a regulatory technique, organizing legal duties according to their potential for harm.
each system; (ii) the requirement for documentation, impact assessment, data governance and
Human supervision for high-risk systems, functioning as a preventive mechanism for
identifying risks before they turn into concrete damage; and (iii) the recognition that
certain practices — such as exploiting human vulnerabilities, subliminal manipulation and
Abusive surveillance—is incompatible with the protection of fundamental rights and should be...
subjected to strong restrictions or prohibition, a particularly relevant concern in the field
democratic.

Although these international references indicate the need for systems
transparent, secure, supervised and accountable, its incorporation into the Brazilian context
It must have the 1988 Federal Constitution as its central normative axis. The effectiveness of
Regulation will depend on the ability to adapt such parameters to the national reality, through
from the construction of a democratic, participatory and technically qualified model.

3.4 Guidelines for a Brazilian regulation oriented towards democracy

Brazilian AI regulation aimed at protecting the democratic process should be
built upon three complementary axes: general principles, specific duties and
institutions capable of overseeing its implementation. Seven guidelines structure this model.

The first is the centrality of the human person. [20] AI systems should be
developed for the benefit of people, promoting autonomy, freedom, equality,
privacy and dignity, preventing the individual from being reduced to an object of surveillance.
behavioral classification or manipulation.

[20] *PEREIRA PINHEIRO, G. REGULATION THROUGH ETHICS AND THE PROPOSAL OF A LEGAL FRAMEWORK FOR INTELLIGENCE ARTIFICIAL IN BRAZIL.* ***Fundamental Rights & Democracy Journal,*** *[S. l.], v. 29, n. 2, 2024.* c

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The second guideline is transparency. [21] qualified: the citizen needs to know, when It interacts with an AI system when certain content has been produced or modified. artificially, and what criteria guide the recommendation or boosting of messages, in an effective and accessible way, not just through lengthy terms of use and incomprehensible.

The third is algorithmic impact assessment: systems with the potential to affect rights. Fundamental aspects must be evaluated before implementation and during operation, with measures taken. mitigation, auditing and correction of failures — an essential preventive logic, given that the Damage can affect a large number of people before they are even noticed.

The fourth guideline is the protection of electoral integrity: the use of AI in campaigns, the The creation of deepfakes, social bots, and electoral microtargeting require specific regulations. and rigorous, ensuring that the voter knows when they are faced with artificial content or guided by algorithmic criteria.

The fifth is holding the agents involved accountable: developers, suppliers, Operators and platforms must be held liable for damages resulting from illegal conduct. negligent or abusive practices, and technical complexity cannot serve as a shield for irresponsibility.

The sixth is independent and technically competent oversight: it is necessary institutions endowed with autonomy, resources, technical knowledge and sanctioning power, under It is a pity that constitutional principles become abstract promises in the face of power. economic and technological development of large private players.

The seventh is social participation: AI governance must involve the state, academia, civil society, the private sector, and potentially impacted communities, incorporating The perspectives of the groups most vulnerable to the discriminatory effects of technology.

Therefore, AI regulation must seek a balance between innovation and legal certainty. and democratic protection, subjecting technological development to parameters clear constitutional principles that ensure its use in a transparent, responsible, and guided manner. to the strengthening of citizenship and trust in institutions.

[21] *SAMPAIO, Daniel de Oliveira; VITA, Jonathan Barros. Regulation of personal data in Brazil, ChatGPT and intelligence. Artificial: Challenges and Proposals. TCU Journal, Brasília, v. 155, n. 1, p. 185–206, 2025.* c

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FINAL CONSIDERATIONS

The research confirmed the central hypothesis: the absence of specific regulation of AI. In Brazil, this increases the risks of information manipulation and opacity in decision-making. algorithmic discrimination and the private concentration of technological power, compromising the Free formation of democratic will. AI is not a neutral tool — it interferes with access. to information, in the formation of opinions and in political participation, aspects that, in a Democracy cannot be relegated to the exclusive logic of the market.

The Brazilian legal system offers relevant foundations: the 1988 Constitution protects the dignity, freedom, equality, privacy, popular sovereignty and political pluralism;

The LGPD (Brazilian General Data Protection Law) regulates data processing; the MCI (Brazilian Internet Law) organizes rights and duties in the work environment. digital; and the CDC protects the consumer in consumer relations. However, these rules, Designed for other contexts, they are insufficient given the cross-functional nature of AI, whose Impacts can be simultaneously individual, collective, diffuse, and democratic.

Bill No. 2,338/2023 represents a significant step forward by proposing a model based on... risks, with duties of transparency, impact assessment, human oversight and Accountability. Its effectiveness, however, will depend on technical oversight from institutions. independent and effective mechanisms of social control. The experiences of UNESCO, of The OECD and the EU AI Act reinforce the need for transparent, secure and... responsible, but their incorporation into the Brazilian context requires adaptation to reality.

constitutional, social and institutional framework of the country.

It is concluded that regulating AI is a constitutional and democratic requirement. It is not... It's not about preventing innovation, but about subjecting it to parameters that ensure transparency. explainability, accountability, and social participation — ensuring that technology Strengthen citizenship instead of weakening people's autonomy and trust in [the government/organization]. democratic institutions.

It can be concluded, therefore, that the urgency in regulating artificial intelligence is... directly related to the preservation of the democratic rule of law. In a society Increasingly mediated by algorithms, democracy depends on rules capable of ensuring Transparency, explainability, auditability, accountability, and social participation.

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