

ICON·S 2024 ANNUAL CONFERENCE
Madrid | 8-10 July

Elections, democracy, and the rule of law in the Age of AI

10.07.2024 | 14.45-16.15

Parallel Session 19 - Intelligence(s) and Innovation: building sustainable societies

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Democracy: competition, autonomy, and dialogue.

- ▶ A polysemic and contextual concept: “*democracy means different things to different people at different times*” (Dahl, 2000).
- ▶ From **membership, autonomy** and **equality before the law** to **sovereignty, representation, liberty** and **equality**.
- ▶ **Democracy**: a variety of normative orders, institutional arrangements of political decision-making, social and economic structures, and basic values of a community (Frankenberg, 2012).
- ▶ The many ‘shapes’ of democracy: direct democracy, representative democracy, competitive democracy, deliberative democracy, communicative democracy, participatory democracy, radical democracy, wikidemocracy, etc.
- ▶ **Democracy as a constitutionalized system of competition for the common good, which presupposes the autonomy and dialogue of its participants.**

The constitutional *design* of democracies under the rule of law.

- ▶ The ‘normative core’ of democratic constitutional states (Habermas, 2020):
 - ▶ **Autonomy of citizens (self-determination):**
 - ▶ Protection of fundamental rights;
 - ▶ Access to independent courts;
 - ▶ Separation of powers and legality.
 - ▶ **Political participation of citizens:**
 - ▶ Equal rights of association, participation and communication for all;
 - ▶ Periodic elections and (eventually) referendums based on an inclusive and equal right to vote;
 - ▶ Competition between parties and actors with different platforms and programs;
 - ▶ Majority principle in decision-making.
 - ▶ **Political public sphere, as a sphere for the free formation of opinion and will:**
 - ▶ Press freedom, media plurality and freedom of information;
 - ▶ Access of the masses to the political public sphere and prevention the political, social or economic monopolization of public communication arenas;
 - ▶ Also: **information integrity.**

Elections: a ‘tiny technical detail’ (Ortega Y Gasset, 2019).

- ▶ Free, fair and regular elections as the key of representative and competitive democracies.
- ▶ Requirements of the electoral process (Morais, 2023):
 - ▶ Free elections:
 - ▶ **Pluralism and self-determination;**
 - ▶ **No explicit or subliminal constraints;**
 - ▶ **Information.**
 - ▶ Periodicity;
 - ▶ Universal, equal, direct and secret vote;
 - ▶ **Transparency;**
 - ▶ **Fairness;**
 - ▶ Independent control;
 - ▶ Majority principle.

Elections and AI: *much ado about nothing?*

- ▶ 2024 as the year in which half the world goes to the polls: “the ultimate election year”

European Union, Taiwan, India, Indonesia, Pakistan, Bangladesh, Russia, Mexico, Portugal, United Kingdom, United States, South Africa, South Korea, Algeria, Uzbekistan, Ghana, Mozambique, Madagascar, North Korea, Syria, Mali, Sri Lanka, Romania, Chad, Senegal, Cambodia, Rwanda, Tunisia, Belgium, Dominican Republic, Jordan, South Sudan, Chechia, Azerbaijan, Belarus, Togo, Austria, El Salvador, Slovakia, Finland, Mauritania, Panama, Croatia, Georgia, Mongolia, Uruguay, Republic of Moldova, Lithuania, Botswana, Namibia, Guinea Bissau, North Macedonia, Mauritius, Comoros, Bhutan, Solomon Islands, Maldives, Iceland, Kiribati, San Marino, Palau, Tuvalu and France.

- ▶ The ‘**AI panic**’ following the ‘**social networks panic**’: 2016 as a game changer.

- ▶ EU actions:

- ▶ [Communication from the Commission](#), Securing free and fair European elections, Brussels, 12.9.2018, COM(2018) 637 final;
- ▶ [Regulation \(EU, Euratom\) 2019/493](#) of the European Parliament and of the Council of 25 March 2019 amending Regulation (EU, Euratom) n.º 1141/2014 as regards a verification procedure related to infringements of rules on the protection of personal data in the context of elections to the European Parliament;

Elections and AI: *much ado about nothing?*

▶ EU actions:

- ▶ [Communication from the Commission](#), On the European democracy action plan, Brussels, 3.12.2020, COM(2020) 790 final;
- ▶ [Regulation \(EU\) 2022/2065](#) of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (**Digital Services Act**);
- ▶ [Commission Recommendation \(EU\) 2023/2829](#) of 12 December 2023 on inclusive and resilient electoral processes in the Union and enhancing the European nature and efficient conduct of the elections to the European Parliament;
- ▶ [Communication from the Commission](#), On **Defense of Democracy**, Brussels, 12.12.2023, COM(2023) 630 final;
- ▶ [Regulation \(EU\) 2024/900](#) of the European Parliament and of the Council of 13 March 2024 on the **transparency and targeting of political advertising**;
- ▶ [Regulation \(EU\) 2024/1083](#) of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (**European Media Freedom Act**);
- ▶ [Communication from the Commission](#) – Commission Guidelines for providers of Very Large Online Platforms and Very Large Online Search Engines on the mitigation of systemic risks for electoral processes pursuant to Article 35(3) of Regulation (EU) 2022/2065;
- ▶ **Artificial Intelligence Act.**

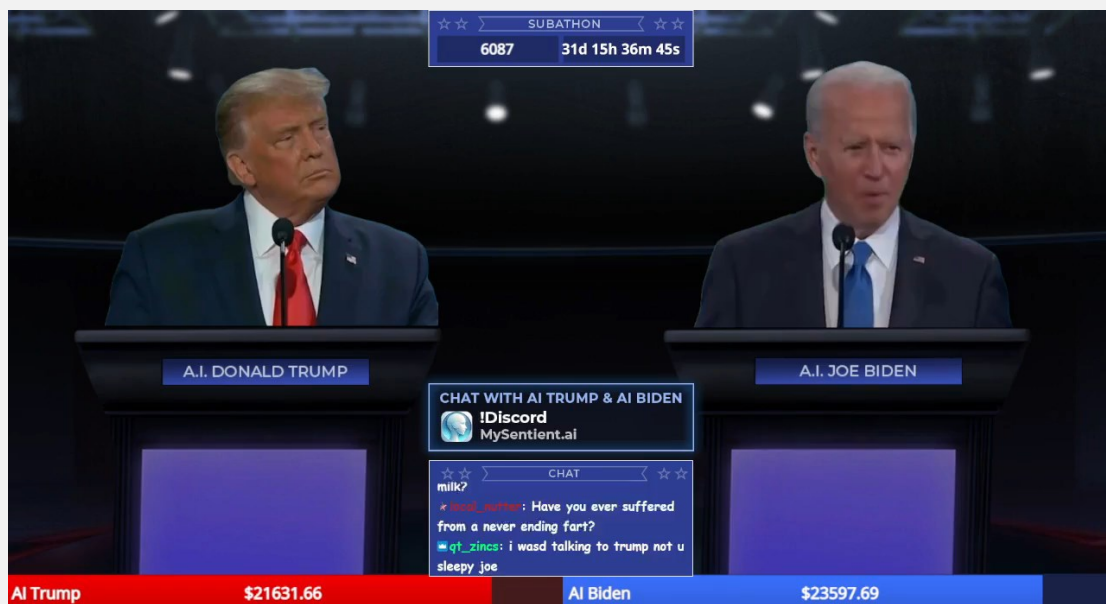
Elections and AI: *much ado about nothing?*

▶ International compromises:

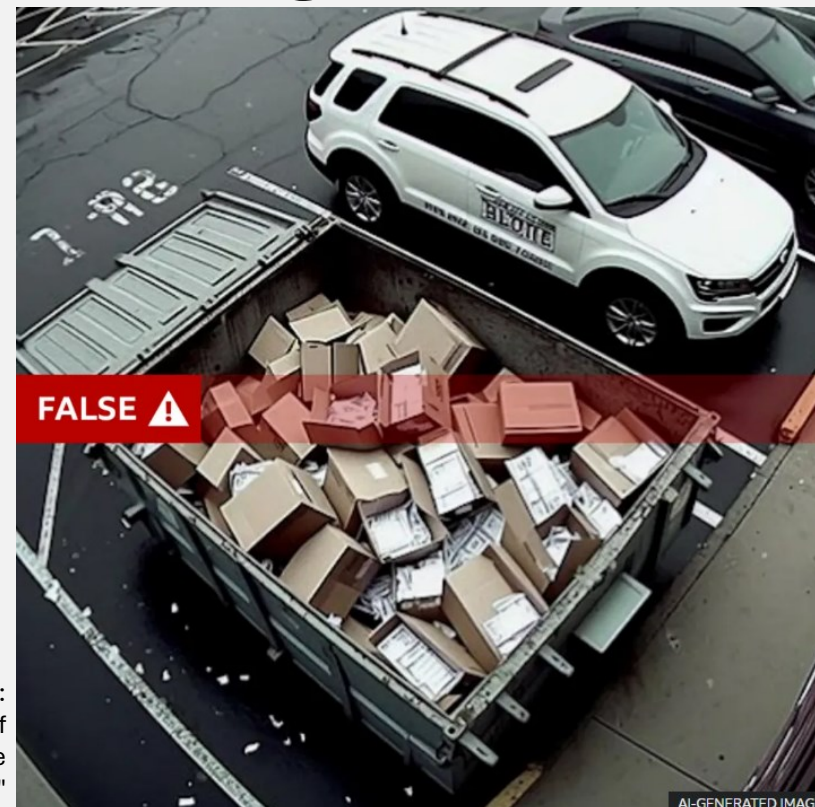
- ▶ [‘Tech Accord to Combat Deceptive Use of AI in 2024 Elections’](#) (2024): non-binding agreement between 26 online platforms and search engines that “seeks to set expectations for how signatories will manage the risks arising from Deceptive AI Election Content created through their publicly accessible, large-scale platforms or open foundational models, or distributed on their large-scale social or publishing platforms”, including **disinformation**.
- ▶ [Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law](#): approved in May 2024, states that the Parties “shall adopt or maintain measures that seek to ensure that artificial intelligence systems are not used to **undermine the integrity, independence and effectiveness of democratic institutions and processes**, including the principle of the separation of powers, respect for judicial independence and access to justice” and “shall adopt or maintain measures that seek to **protect its democratic processes** in the context of activities within the lifecycle of artificial intelligence systems, **including individuals’ fair access to and participation in public debate, as well as their ability to freely form opinions**”.

Elections and AI: *much ado about nothing?*

- ▶ The biggest concern in 2024: **deepfakes** ('AI-generated or manipulated image, audio or video content that resembles existing persons, objects, places, entities or events and would falsely appear to a person to be authentic or truthful' - DSA).
- ▶ Hannah Arendt: «a people that no longer can believe anything cannot make up its mind. It is deprived not only of its capacity to act but also of its capacity to think and to judge. And with such a people you can then do what you please».



A photo created by Image Creator:
"A grainy CCTV photo of boxes of
ballots in a dumpster, make sure
the ballots are visible"



TECHNOLOGY

AI-generated Biden robocall linked to Texas companies, officials say

The FCC issued a cease-and-desist order Tuesday to Lingo Telecom, a Texas entity that carried the robocalls on its phone network.

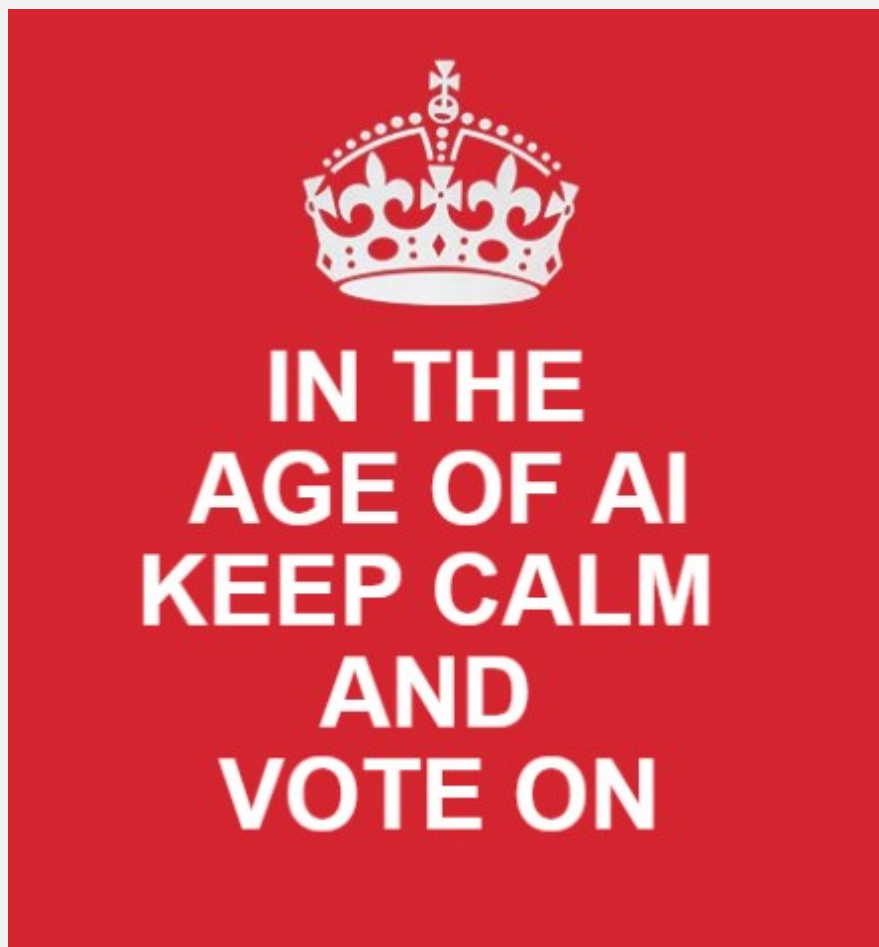
Elections and AI: ‘pacing a stumbling block before the blind’

(Leviticus, 19:14).

- ▶ Let’s not forget about microtargeting, recommendations systems and personalization of content.
- ▶ The ‘digital services package’ vs. META: the “Pay or Consent” model. Another clash between VLOP and ‘European digital constitutionalism’?
- ▶ Digital nudging (Ienca, et. al., 2024):
 - ▶ Narrow sense: use of interface design elements to guide people’s behavior in digital choice environments;
 - ▶ Broad sense: design and deployment of digital technology (not just user interface) to predictably alter people’s choices and behavior in either a digital or physical (online or offline) choice environment.
- ▶ The ‘evil nudges’ (Thater, et. al., 2009), the ‘dark patterns’ and the inability ‘to act otherwise’ (Ienca, et. al., 2024).

Elections and AI: ‘re-manipulating’ democracy.

- ▶ Pressure points (Lewandowsky, et. al., 2020):
 - ▶ Attention economy;
 - ▶ Choice architectures;
 - ▶ Algorithmic content curation;
 - ▶ Information disorder (including deepfakes).
- ▶ **Risk: unreasonable ‘modulated’** (Cohen, 2013)
or ‘manipulated’ democracies (Moore, 2019).
- ▶ **Answer: digital rule of law!**
- ▶ Elements (from constitutional states under the rule of law and electoral processes) affected:
 - ▶ Self-determination and free will;
 - ▶ Pluralism;
 - ▶ Absence of constraints;
 - ▶ Transparency;
 - ▶ Fairness;
 - ▶ Equality;
 - ▶ Information integrity;
 - ▶ Non-monopolized (digital) public sphere.



Thank you!