THE NECESSITY OF FRAUD IN ELECTIONS: WHY FRAUD CANNOT BE ERASED?

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Abstract. *In many countries we are watching some electoral practices that modify the free wish of people to vote. No matter how democratic is a political regime, some practice seems to be universal and their role is always the same: to change the voter's wish to a specific political party or leader.*

It becomes necessary to understand why such behaviours exist and where are finding their sources of inspiration. The very fact that we will not find perfection in the electoral process in any country compels us to understand the causes of this negative phenomenon (election fraud), because today it is easier to access many data that reveal the extent of the irregularities.

In the same time, it is necessary to know how we can assure a free will for citizens, preventing and diminishing the political fraud. Again, this is necessary in light of the high demands that citizens have today, as well as the consequences that such deception has on their relationship with the state

Keywords*: frauds, elections, legislation, purposes, dictatorship*

1. It is almost impossible not to hear during an electoral campaign, and even more so after it concludes and the elections are over, that one or more of the competitors have used methods that are not legal, or – if they have passed the legality criterion – do not adhere to a certain generally accepted moral conduct in society. In fact, there are numerous cases where the first speech of those who lose elections – usually against the party in power that organizes them – begins directly with accusations of electoral fraud, and the reality is not always far from these serious claims.

Setting aside a certain degree of ridiculous, in which very small and electorally irrelevant parties accuse certain maneuvers against their interests, it is necessary to clarify that the phenomenon of election fraud is very old, and the diversity of negative practices used in this regard reveals the moral limits of those involved (Alvarez, Hall and Hyde, 2009). There is a certain "excuse", if we can call it that: the result of successful elections is the acquisition of power over institutions, implicitly over those who work within them, as well as over communities. Since corruption violations – rooted in the very diversion of some of the effects of power – have not been completely eradicated, we can say that the outcome of elections is also expressed in the bribes that may be

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perceived by those who will be declared winner: "The winner takes is all", as a famous song teaches us. In relation to the size of the text, we will only mention at a generic level the most important issues of fraud in political elections, keeping in mind that each paragraph can be further developed in an independent study. Additionally, a specific perspective will serve as the leitmotif of the text – namely, the legal perspective – since fraud means "an illegal action that alters the will or outcome of an electoral process", and violations of legal norms are identified, judged, and sanctioned based on the content of specific legislation.

In criminal law, the explanation of offenses is recognized according to a fixed scheme, which elegantly reveals both the factual aspect and the attitude of those who commit these negative actions, both towards the acts themselves and towards their consequences (Hotca, 2022). Thus, acts that are punishable by imprisonment must be – in the jurisdictions where legality is a real fact – committed with intent (without detailing now the three types of intent recognized by criminal law doctrine), which always means that the author has at least a clear understanding and a conscious acceptance of both their actions and the results that will ensue. Therefore, violations largely exclude the provision in criminal legislation for acts committed without the author simultaneously understanding what they are doing and what results from it, and the exceptions are equally clearly indicated by the legislator.

There is one very important thing to clarify before analyzing the idea of electoral fraud in more detail. Specifically, a principle of criminal law states that the punishment of certain acts depends entirely on their mention in the legislation of the state. Thus, a guarantee is established for the citizen, namely that they will not be subjected to the arbitrariness of the political-administrative power (Samoila, 2022), which is immense compared to what a single individual can do, no matter how wealthy they may be. However, the mention of acts in criminal legislation is a matter that depends on the interests of lawmakers, which are not always the same. Additionally, certain methods that can lead to the fraud of elections – there should be a discussion on this matter regarding Artificial Intelligence (AI) – can either be very new or unimaginable at a given time for a conscientious legislator. It should also be noted that there is a variant of this issue, namely the decriminalization of certain acts by the same legislator. Practically, for a political interest, it is possible that by law certain acts may no longer be considered crimes, and those who committed them will thus be absolved of criminal responsibility. Therefore, it is possible that what has been a crime for years may suddenly no longer be one, perhaps even for a day, and according to the legal principle regarding the application of the more favourable criminal law for the defendant, any person who has committed a serious act – which may have even altered the final result of the elections – could be free and even hold a public office (Nefliu, 2018).

Evidently, some violations of moral norms are not punished criminally, as certain matters are by definition intangible (for example, an unexpressed thought, whether verbally or in written/magnetic/electronic form by a person), while others are not accepted by the legislator, in the sense that there is no desire to transform deviations from moral norms into offenses. However, moral norms are strong in themselves, and their violation can be punished by ordinary people through attitudes of rejection, distancing, or – in electoral matters – by voting for other individuals (Hall, Son and

Heffner, 2018). In all situations, however, the moral norm is what provides the psychological foundation for legal norms, so that they do not operate in a vacuum, and various legislative changes are not analyzed strictly in relation to the entirety of a country's body of laws, but also in light of what moral norms demand or prohibit (Badescu, 2022).

2. Why are electoral processes being fraud? The answer can partly be given from a general psychological perspective, and from another angle, considering the positive effects (for those who commit fraud) that will arise: money, positions in the state, a larger staff, the possibility of advancing in the future to other political roles, etc.

The general psychological aspect is – perhaps – the easiest to explain, in relation to the inherent human experience of each of us. However, I do not wish to consider the thousands of texts that analyze human behavior, attempting to find conclusions of a general, philosophical, sociological nature, etc. I cannot forget, however, that the tendency to cheat, to deceive certain authorities, or to circumvent rules in favor of someone manifests from a young age, even in the early part of childhood. In various children's games, such behavior can be distinguished, which should serve as a strong signal for the ethical education of all citizens, regardless of social status or age as indicated on their identification documents. However, the obvious existence of these conscious violations of rules is no secret to anyone, and this means that a good part of legislation must be as firm in prevention as it is in the section on penalties – with the clarification that the wisdom of the ancestors has always insisted on prevention as a political-educational tool that can save careers, lives, money, time, and property (Poulouhouse, 2015). Nevertheless, if this nonconformist perspective towards moral rules manifests from a young age, does it mean that the same future adults will be able or willing to violate legal norms, including in electoral matters? The answer is affirmative, with a rather pessimistic clarification: adults break the law more easily if this fact is observed in others, and especially if these violations of legal norms are punished rarely or arbitrarily, depending on the social-political status of the offender (Wanders et al. 2021).

However, the issue of the purpose for which election fraud is committed is much more difficult to control. Essentially, while in the previous paragraph we briefly analyzed the psychological basis of any crime, without distinguishing between them, in this section we will mention a few fundamental issues to understand the electoral process.

First of all, any crime has a primary purpose that, as we emphasized in the first section of the text, the author pursues or at least accepts the occurrence of (the purpose) at the moment they carry out the actions that give it substance. In electoral matters, however, the purpose is clearly defined, and the intention is always direct (in criminal law, there are considered to be three forms of intent, and this is the most concrete, referred to in common language as "premeditation"). Therefore, there can be no case in which an author does not have a clear understanding from the outset of the legal norms in electoral matters, the limits of behavior that these impose, and what the effect of successfully carrying out illegal actions in this area is (OSCE/ODIHR, 2013). Any claim by a person regarding a possible confusion about their conduct must be rejected by the prosecuting authorities, as, given the major importance of electoral processes, all those involved are very well aware of the legislation. Thus, the legal principle that "no one can

invoke ignorance of the law" is difficult to apply in practice, but in electoral matters, it is easier to find knowledge of legal norms at the level of society as a whole, compared to other branches of law (civil, commercial, labor, intellectual property, etc.). Being a field in which major operations occur periodically, and not for long durations (a few months in a year), it follows that societal attention is greater, precisely due to the concentration of electoral action at a peak point, which usually lasts less than a week.

Psychologically, electoral fraud has an element that can favor it, namely the cohesion of the political formations involved. Specifically, the direct intent with which these violations of electoral laws are committed requires a significant number of direct perpetrators who must act in coordination to achieve their goal. In this way, the cohesion of the political formations can be verified (Close and Lidia Nuñez, 2016); if they act as a unit, they become perpetrators from the first to the last member of the electoral offenses. It may seem unimportant, but in reality, if this cohesion does not exist or is limited, there are more opportunities for law enforcement agencies to uncover relevant information that can be deduced for prosecution, thus enabling a subsequent conviction of those who planned and executed the premeditated electoral fraud. Clearly, local initiatives are not excluded – especially in the case of local elections, but they can also manifest in national elections – yet they still require prior approval, usually explicit (rather than tacit). This approval arises because it is not rational for a local politician to engage in illegal actions without the support of their own party, as the electoral consequences of a scandal in elections that ultimately proves electoral fraud can cost a political formation significantly, both nationally and in the long term.

The aspect of cohesion is important from another perspective as well, namely the criminal one. There is an expression that says group unity is strengthened only after certain actions – usually (mostly) illegal or somewhat immoral – are carried out together. A party that commits electoral fraud at the local level – but especially at the national level – psychologically reinforces its unity, as the lines of intellectual, moral, property, and age differences disappear or are substantially reduced. In the end, it can be said that "yes, we all did the same things, and the consequences can be directed against any one of us". Essentially, the objective element (the commission of fraud) becomes conscious, and based on this awareness, a new type of party member emerges, one who has demonstrated on this occasion that they are capable of doing more for the party than the average voter. Consequently, they deserve to be included in other party activities because they have shown loyalty and determination in carrying out the orders received. It is no coincidence that what I have described is also found in a certain area of society, namely that of organized crime groups, which test their unity in the same way – first by selecting individuals and then involving everyone in the most significant criminal actions (Calderoni et al., 2020). Therefore, if in certain popular perceptions political parties are compared to or assimilated with criminal groups, we cannot say that this is too far off the mark (in the substantive assessment of their mode of action).

Moreover, an additional issue must be considered: how can members of a party that commits electoral fraud be sentenced to prison? Although it is not always difficult to prove – especially if clear evidence is collected in this regard before election day – electoral fraud, due to the large number of perpetrators, creates major problems concerning prosecution and their trial (Theodoru and Chis, 2020). It is necessary to

prosecute a sufficient number of individuals to deter such actions, but who determines what the threshold number is in this case? Additionally, how much personnel (prosecutors) need to be allocated to detect these electoral frauds? How long will it take to process these cases, and how long will their trials last, since a large number of defendants also mean a significant number of procedural issues in front of the courts, which increases the duration of the litigation and, implicitly, affects the timely resolution of the cases. It is equally true that such criminal action will have a huge political connotation, and this will be exploited by politicians from various political formations, according to their own goals, one of which will be to undermine the independence and neutrality of the judicial system. So, if the frauds are minor, will they be punished? And if the frauds are major, will there not be larger public protests, on the streets, than the number of those involved in a criminal investigation?

3. There is a fundamental factor – alongside the natural tendency of humans to deceive and violate legal and/or moral norms – that favors electoral fraud, and this relates to the general level of education in the society we live in.

The history of constitutional law reveals that for centuries, the number of those who had decision-making power over the election of leaders was quite limited, and there were often general conditions that had to be met for a long time by those who had the right to vote. If we analyze carefully, the civilizational success of ancient Athens was due to the fact that the number of those who could vote was much larger than in other societies; in reality – as highlighted extensively by the two recent Nobel laureates in several works – history has witnessed a concentration of the decision-making process (including electoral) in the hands of a few individuals, rarely more than a few hundred aristocrats and/or priests (Acemoglu and Robinson, 2020).

Paradoxically, this small number of voters meant that decision-making processes yielded better objective-qualitative results than those of today, as the limited number of people who could vote – evidently, they could also be elected – implied that only they were sufficiently knowledgeable about governance issues at the central/national/royal/imperial level. Aristocrats were educated from a young age regarding their leadership mission, and this – considering the much shorter life expectancy of past centuries – meant a lot compared to the general population. The level of education among the populace was low, and their mobility was generally limited – many people did not travel much beyond the village or town where they lived – which provided aristocrats with an advantage: they had money to pay private tutors for education, could buy books, and did not rely on any salary to support themselves. At the same time, there was also the flip side of this issue: only aristocrats were capable of holding positions in the state, meaning that each of them could potentially become king, complicating the way coalitions for voting were formed. With high stakes involved, the interests of those eager to attain the supreme office had to be secured in ways that often meant "buying votes". Electoral coalitions can be based on numerous motives – personal, property-related, or regional affirmation, etc. – but they are not always solely based on words; they also involve the concrete anticipation of benefits in the event of victory. Even if these benefits can be termed "vote buying", they are inevitably taken into account – both now and then – and those who run for various offices are very much aware of this. Political elections are not a beauty contest, and voters have a certain anticipation of what

will happen if the candidate they vote for wins, in relation to the public electoral program. This perspective of what will follow was even more pronounced in antiquity and the medieval era, as the decision-makers were few, and they did not cast their votes merely for words, but for a clear perspective – which, in relation to their wealth, could only be substantial.

Thus, the qualitative discussion about what "vote buying" means is different depending on the number of voters. In a formula from past centuries, when the number of those who could vote was limited, vote buying was something very tangible and lasting, as most of the time the positions for which elections were held were for life. Therefore, a victorious coalition knew that it could benefit from the positive results of the elections not just for 4 or 5 years, but for decades or even centuries – especially in cases where a dynasty was about to change. Those who voted knew they could also gain from the lands of the defeated, and this was a clear motivation to fight in any way for the coalition's victory, an aspect that often led to real wars. In this sense, we recall the impact of the extinction of the Arpad dynasty in Medieval Hungary (14 century), the Rurikids in Medieval Russia (16 century), or the Habsburgs in 18th-century Spain. Thus, the competition was fierce, it was real, and all participants were very aware of the potential benefits or losses. As a special way to understand the formation of political alliances and the typology of negotiation within a strict framework, it is recommended to objectively analyze the elections for the appointment of the head of the Catholic Church. There, several methods of forming alliances can be distinguished, but the negotiations are time-limited, and some of the various informal agreements cannot be annulled later in any way. I have used this generic term (annulment) because it is better known in the non-legal world, but it expresses a reality: the elected one becomes pope for life, and if he does not wish to subsequently confirm through appointments the various agreements that may have been negotiated, there is no way to be revoked from the supreme position – there being only one case of resignation. What history has shown us – and not just in the case of the Borgia family – in the matter of papal elections is that real negotiations have existed in several cases, that the price of agreements has not once been perfectly expressible in money (patrimonial), and that the spiritual position has not once been viewed primarily through a financial-patrimonial lens, but especially political, so much so that at one point the kings of France would be able to move the seat of the leader of the Catholic Church to their country for 68 years (1309 - 1377). Subsequently, a situation would arise where there would be two popes concurrently, until the year 1417, in Rome and Avignon – evidently, the spiritual aspect of the elections did not exist in this case, but only the political one, which allows for the inclusion of this politico-religious institution in the sphere of our study. There is an additional argument for understanding – especially from a historical perspective – the idea of election fraud in this sphere, namely that a conclave for the election of the pope simply "holds captive" the voters in a single space, which can force the reaching of certain voting alliances, based on objective conditions that may manifest during the electoral process. Thus, there have been cases when some cardinals died during those days, and in the case of others, the desire to reach an agreement more quickly was driven by the issue of lack of access to certain treatments, the interruption of which, given their age, could be fatal in a short time (Rendina, 2002).

As the number of voters expanded into the millions, and the duration of the mandates of those elected decreased to just a few years, vote buying became a much simpler practice, but much closer to the idea of fraud (de Mesquita and Alastair Smith, 2011). This is because a person would accept, for a small sum or a minimal service, to entrust power for 4, 5, or 7 years to individuals in whom they do not necessarily have trust, knowing that once elected, these individuals may not do any good for the community, and only the small service offered creates a differentiation between candidates.

In conclusion, vote buying is an ongoing issue, with a history spanning millennia, but with different moral and practical significance. This different significance arises from the fact that in ancient times, if promises were not honored after the vote, it could lead to open revolt and civil war in a short time, whereas now, if a candidate does not fulfill the promises made to those whose votes were bought, there is no direct way to hold them accountable from those at the bottom of the hierarchy. Most of the world's legislations do not accept imperative voting – this obliges the elected official to vote strictly as requested by their own voters – so today there is great freedom of decision post-election, with the risk of possible subsequent revolts being very low.

The expansion of the electorate was slow because the aristocracy was unwilling to relinquish the lucrative positions they held in the state. However, as the general level of education increased, the economy became more complex, and its professionals demanded more decision-making power within communities. To a large extent, the history of many states is a portrait of the struggles for power among various interest groups, where certain perspectives, doctrines, and inventions (with printing being the most significant) altered the balance of power.

With the generalization of the right to vote, requiring only one objective criterion (the voter's age) to be met, the issue of the voter's intellectual preparation regarding governance emerged. In practice, the expansion of voting rights facilitated the occurrence of electoral fraud, as some methods used in this regard could be more easily disguised in front of individuals with lower levels of education (Dawson, 2020). Equally important – at least in the perception of election participants in the position of candidates – is another issue: namely, the shortening of the term they must serve after winning the competition. From a cynical perspective – almost Machiavellian – it may ultimately be acceptable to increase the number of voters who designate the leaders of a country or a local community, but the major problem is the shortening of the duration of these terms. Even more seriously, in democratic countries, there is the possibility of early parliamentary elections, which shortens terms and alters power dynamics not only within political-administrative institutions (government, parliament) but especially within the parties themselves.

As we know, this text does not address the situation of politicians who compete honestly, but rather that of those who fraudulently manipulate electoral processes – obviously, consciously – which means we are dealing with a criminal psychological perspective, as these alterations often fall under articles of the Penal Code. Thus, the major problem faced by an unscrupulous politician is that a term of 4 or 5 years – or even less, if early parliamentary elections occur – is very little for both their future plans and the potential political-economic benefits they aimed for when submitting

their candidacy. Additionally, there may be even more serious issues, namely the incurring of debts to be able to run, and if the term is short, it may not be possible to repay them in full. Short terms that force a person to campaign every 4 or 5 years are not very profitable for party members at the lower levels of the party hierarchy, which can lead some politicians to contemplate the complete dismantling of elections and – unfortunately – even the establishment of a dictatorship or an authoritarian regime. In this regard, there are numerous examples across all continents in every century, including the current one.

4. In a more brutal perspective of the analysis, it must also be considered that the shortening of term lengths, alongside the increase in the number of voters, brings another problem for candidates in political elections. Specifically, the emergence of the press has increased the transparency of political actions, as well as the visibility of all politicians' actions. Before the expansion of the press, only aristocrats engaged in politics, and negotiations took place strictly among "prestigious people", without the general population learning much about their content. With the growing possibilities for information and the increasing number of those choosing new leaders, it has become increasingly difficult to be a politician. Essentially, one can be seen anywhere, by anyone, and what that person sees can reach the knowledge of a large number of voters. In this sense, the emergence of the internet – especially mobile devices that can access it – is a real threat to any politician, who can be filmed or recorded by anyone, and that audio-visual document can quickly reach the public from any point on the globe (Council of Europe, 2017). Thus, there is a forced change in the conduct of the entire political class, and the fact that elections occur at least 20 or 25 times a century means that there is a possibility of the rapid elimination of a significant number of politicians in just two or three electoral cycles, a situation that never happened when politics was conducted by absolute monarchs and aristocrats.

Paradoxically, this strong pressure on politicians has not only positive effects but also creates a genuine desire among them for revenge against the way the political system is organized today, which is expressed through two types of conduct that they, the politicians, can decide based on their constitutional rights to legislate. Specifically, they can legislate cumbersome ways to be held criminally accountable for actions taken during their term, but also – as mentioned above – they can undertake actions to undermine the legality and democracy of their countries. In this regard, it should be noted that the analysis reports on these two characteristics of the state (legality and democracy) over the past 20 years reveal that they are in regression in the majority of countries worldwide (Freedom House, 2024).

Two major issues have been brought about by the advancement of digital technologies in recent years within the electoral sphere.

First, there is the question of the voting age, which has a special connotation in some countries, aiming to lower the voting threshold, typically from 18 to 16 years (Eichhorn and Bergh, 2021). This change allows for greater civic engagement from the younger generation, who may be less wise but are better at recognizing various manipulation tactics online. Thus, it could help to balance the manipulative relationship on the internet, where older individuals have significant vulnerabilities, becoming victims of subtle operations that quietly and frequently convey certain messages.

Although wisdom is not lacking in mature individuals, they often lack specific knowledge related to the electronic environment, leading to a distortion or complete alteration of their electoral behavior (specifically, their voting preferences change).

The issue of age, in terms of electoral fraud, is a delicate yet very important and real matter. Specifically, as a person ages, certain biological transformations occur that reduce their mobility and cognitive abilities. In this context, it is easy for younger family members of these individuals – or social workers in local public administration – if they have a certain political interest, to employ behaviors that "confiscate" the electoral will of elderly people (such as mobile voting, voting together in the same booth because the older person does not see very well, etc.). The problem of manipulating elderly individuals through messages on the internet and television is equally clear. We are not discussing their good faith, but the consequences of aging do not manifest just one day before their death, and the loss of psychological contact with the social environment can occur years before the inevitable departure from the contemporary world. This can be observed, and if a population is aging, the possibilities for manipulation through the internet or mass media increase, precisely as a result of this decline in intellectual and biological capacities. From this, certain discussions arise about setting a maximum age limit for those who can vote, but any chosen level will spark debates, as there will be individuals who will feel that their electoral rights have been affected by disregarding constitutional provisions.

The second problem arising from the advancement of digitalization is related to the ability of the tools of this new technology to conduct electoral campaigns disguised under the names of individuals, referred to in the specialized literature as "bots", without any pause. Thus, the issue is twofold: on one hand, there is the appearance of humanity, and here the discussion leads to the new technologies of Artificial Intelligence (AI), which will play an increasingly significant role in political campaigns in the coming decades, affecting older individuals as well as those with lower levels of education due to the capabilities of these bots (Lee-Geiller, 2024). On the other hand, the impression that these bots will leave on people with limited knowledge of the electronic environment is very important: "intelligent, highly cultured, persuasive, and above all tireless". In the face of this type of "adversary", many people will subordinate their political will, unaware that the programming of the bots belongs to a party with clear, very objective goals. The effects of digitalization and AI on electoral campaigns and actual elections are not yet fully perceived, but from what we have seen in recent years, there is enough potential to alter the will of voters.

5. Election fraud is therefore a normal consequence of power dynamics within society, but especially within each political party. Clearly, every political formation wants to win elections honestly, as this is the only way to fully legitimize its position in the state, and consequently recruit new members who will carry forward its ideology. Therefore, the real causes of fraud must be sought not only in a specific desire of individuals to violate various legislations, but especially in the will of a few initiators of processes that alter the will of the electorate. When these individuals reach a position of power within their own parties, it can lead to negative electoral conduct, which may ultimately bring success, but will prove harmful in the long run both to the respective formation and to the country where these frauds occur.

In fact, when a party begins to engage in actions that alter the will of voters, it will be observed that it transforms more into a formation of leaders willing to win and maintain power at any cost, rather than a political group with a coherent doctrine. In any situation, this transformation – from doctrine to prominent leaders – is a first step towards the disappearance of the party itself, which will reduce its electoral base and subsequently will no longer reach the threshold for entry into parliaments and local councils.

Election fraud is always very costly financially, and smaller political parties cannot engage in such actions because they lack the resources. Therefore, if large parties begin to alter the will of the electorate, they suddenly become prisoners of their own actions, which can lead either to dictatorship or to the coalition of several political formations against them, or even to large-scale social protests that can result in profound changes in a country's political sphere. However, Artificial Intelligence can provide an additional opportunity for those who wish to commit fraud and have the funds to pay for the most powerful bots of this technology.

Thus, the future appears bleak, and to avoid heading in a negative direction, it is necessary for the entire population of countries to be educated electorally in detecting various types of fraud, but especially in the direction of honest and frequent participation in the political game, as it is only through this that the directions for the development of a society are established.

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