**Good Governance and Artificial Intelligence:**

**A Legal Toolbox to Fight against Corruption**

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**Abstract**

*This paper explores the impacts of artificial intelligence (‘AI’) on state governance in the context of corruption. It also aims to demystify a few of the preconceptions about the actual role and possibilities AI has to offer when addressing corruption issues. In addition, it covers some of the legal and technological tools that were put in place to fight against corruption.*

**Keywords:** *corruption, state governance, artificial intelligence, Canada, Vietnam*.

Oftentimes, and for many people, artificial intelligence (‘AI’) is connected in our minds to the world of science fiction[[1]](#footnote-1), and is seen with favorable eyes: for example, the world could become, because of the use of AI, a leisure society where AI does all the hard work, and leaves almost all the good time to human beings. As Ertel puts it differently, “The term artificial intelligence stirs emotions. For one thing there is our fascination with intelligence, which seemingly imparts to us humans a special place among life forms.”[[2]](#footnote-2) Conversely, many often imagine corruption as a scheme that most of the time involves an illicit exchange of a substantial amount of money between a high rank public official and an experienced criminal – maybe because they have watched too many movies. This is not always the case. For example, Peter C. Kratcoski notes, “even in those cases in which the amount of money or value of the gifts involved in the corrupt transaction [with state representatives] may be small, the process is harmful since, if widespread, it tends to undermine the public’s confidence in the honesty of public officials.”[[3]](#footnote-3) For example, in Canada, a public office holder must make a public declaration within thirty days that provides sufficient detail to identify the gift or other advantage accepted that has a value of $200 or more, other than a gift from a relative or friend.[[4]](#footnote-4) The devil is in the details, and the road to integrity of state representatives, even if paved with good intentions, may sometimes be the equivalent for them of walking on a thin line. Honesty and integrity are key, obviously, but carefulness and caution, too.

We will see that, while these two last scenarios easily catch the imagination, the reality is more complex and sophisticated than that. Our focus will be on the role of the state in addressing corruption in its realm - with a special attention given to Canada[[5]](#footnote-5).

**AI, State and Corruption**

AI has become a vital tool in crime control worldwide in a world where “technology is constantly changing”.[[6]](#footnote-6) However, as Aarvik observes, “AI is not solving corruption on its own no matter how effective it may be in predicting or revealing misconduct or abuses.”[[7]](#footnote-7)

Because “[e]conomic consequences of corruption in developing countries are serious”[[8]](#footnote-8), it is worth recalling what Bacarese, Chien, Nguyen and Huong write about how corruption was addressed from a legal perspective in Vietnam, even though it is true that “corruption is a serious problem in all countries”[[9]](#footnote-9):[[10]](#footnote-10)

Although Viet Nam has made effort to improve the anti-corruption legal framework by enacting, for example, the Law on Anti-Corruption 2005 (Amended in 2012) and providing regulations on assets and income declaration (since 2007), Vietnam continues to face many challenges in tackling corruption. In 2009, Viet Nam became a State Party to the United Nations Convention Against Corruption (UNCAC), which indicated some commitment to fighting corruption.

Nevertheless, Simonović opines regarding developing states in general, “[p]rograms of corruption prevention in developing states usually do not give the desired results.”[[11]](#footnote-11) Could AI then eventually make a difference, could it be *the* solution? Maybe but not necessarily since “[m]any … technologies failed to deliver their expected benefits”[[12]](#footnote-12), even though there are “[a]rguments in favor of AI for law enforcement [that] presume[s] there is a causal link between the use of AI and decreased crime rates.”[[13]](#footnote-13) However, because “[a]t the current state of development, and with the lack of scientific evidence, the impact of AI on corruption and its potential – *especially for developing countries* – is difficult to assess”[[14]](#footnote-14), then the hope that AI might eventually work and operate as expected in the fight against corruption should not be given up. Not now. It is too early to say.

The author submits that in spite of not being amongst the most technologically advanced countries in the world when it comes to the use of AI for law enforcement purposes, Canada is, in our view, a relevant and interesting case study with respect to the issue of corruption, and this mostly because:[[15]](#footnote-15)

Canada is generally regarded as one of the world’s leading democracies. This is believed to be the case because Canada has developed systems and rules to help strengthen and protect democratic values and democratic institutions. … Despite its generally strong reputation for protecting its democratic institutions and values, however, Canada has also lived through a few challenges that demonstrate the impact AI can have on institutions dedicated to advancing public trust in government.

An example of one of these challenges is found in the Canadian ‘Sponsorship Scandal’ that was the subject of intensive media coverage:[[16]](#footnote-16)

Following the results of the 1995 referendum on Quebec sovereignty, the federal Cabinet created the Sponsorship Program …, which was designed to counteract the sovereignty movement and increase the visibility of the federal government in Quebec … [a] journalist … wrote a series of articles on the Program. [He] focussed primarily on several problematic activities relating to the Program’s administration. His most significant allegations targeted the misuse and misdirection of public funds. … Following a scathing report from the Auditor General, a Royal Commission … was struck to investigate what had become known colloquially as the ‘Sponsorship Scandal’.

What if AI would have been used? Could this scandal have been caught in its early stages? We do not know. We will never know. Nevertheless, what we know is that Canada “has signaled its interest in being an AI superpower”[[17]](#footnote-17), but is not one, yet.

Thus, “[t]he insistence on the exemplarity of those in power is far from obsolete. It finds a singular echo in the current campaigns against corruption and moralization of political life.”[[18]](#footnote-18)

**What Is Corruption?**

Generally, “The definition of ‘corruption’ commonly used by anti‑corruption organisations is: ‘the abuse of entrusted authority for illicit gain’ ... it can take many shapes [and] can happen at the elite level … or at a lower level” of the state organization.[[19]](#footnote-19) More specifically, Lisciandra explains that the meaning of corruption may be “narrowed to consider [it] as an act of misuse of public power for private profit against the common good. Sensu stricto, bribery is considered the only actual form of corruption. It consists of promising, offering, or giving, as well as soliciting or accepting a corrupt exchange between some utility … and the actions of individuals … in charge of legal or public duty.”[[20]](#footnote-20) This type of corruption, i.e. “among public officials and private persons [,] is the most widespread. The simplest form of corruption in that area is bribing of public officials.”[[21]](#footnote-21) Lisciandra also notes that “[t]wo main factors are considered responsible for corruption and corrupt behavior: institutional or cultural factors and economic drives.”[[22]](#footnote-22) Corruption is a constant in all civilizations and throughout times: “Corruption was defined as a negative social phenomenon as early as in the Roman law”.[[23]](#footnote-23)

Therefore, this supports “[t]he need to justify the conditions for exercising power in order to remedy the problems of maladministration, inefficiency, opacity and corruption, to give only a few examples, explains ‘the return’ [in the Canadian context] of good government, in the same way than the need to modernize and update it according to more contemporary requirements.”[[24]](#footnote-24) Could one of these requirements, from an operational standpoint, be the use of AI? Maybe.

**What Is AI?**

“The term *artificial intelligence* (AI) covers technologies where machines mimic human intelligence to solve complex problems.”[[25]](#footnote-25) It “was invented in 1956 by John McCarthy, an American scientist. Decades after the invention, artificial intelligence is considered a nebulous term and a wide range of definitions are available in the doctrine.”[[26]](#footnote-26) The Council of Europe also defines it as a “set of sciences, theories and technique whose purpose is to reproduce by a machine the cognitive abilities of a human being. Current developments aim, for instance, to be able to entrust a machine with complex tasks previously delegated to a human.”[[27]](#footnote-27) In a less formal way, Costantinos defines AI as “[t]he ability of computer technology to adapt to tasks which in usual sense, requires human intelligence, emotional response, decision-making capacity and strategic technique, [which] is known as artificial intelligence”.[[28]](#footnote-28)

These definitions give a pretty clear and clean idea of what AI is all about. However, does it mean that AI is always used in a neutral way, without bias or without shady intentions? No. As Dupont, Stevens, Westerman and Joyce note, “Artificial Intelligence is very good at learning from data. However, if this data is biased, these biases will be reproduced by the AI.”[[29]](#footnote-29) For example, “[t]he story of the Uighur Muslim minority in China shows the destructive competences of artificial intelligence in the wrong hands.”[[30]](#footnote-30) Another example would be the use by the Chinese government of facial recognition “to identify and profile members of the ethnic minority, the Uighurs, for the purpose of law enforcement and ideological indoctrination”.[[31]](#footnote-31) This shows how “AI [could] have a real, and perhaps unpredictable, impact on our democratic systems”[[32]](#footnote-32), and “the use of AI has the power … to facilitate unprecedented surveillance and social control.”[[33]](#footnote-33)

**When AI & Technology Meets Corruption**

Gaon and Stedman mention, “Governments and citizens will be able to use AI in ways that completely transform how our systems of government oversight and accountability function.”[[34]](#footnote-34) Citizens are sometimes involves directly in the use of AI or software applications that are dedicated to combat corruption. For example, applications “have been pilot-tested to identify risk of corruption or fraud in public procurement in Mexico and Ukraine.”[[35]](#footnote-35) In addition, “The Brazilian Office of the Comptroller General has developed a machine learning application to estimate risk of corrupt behaviour among its civil servants.”[[36]](#footnote-36) Also, another example of how AI is used to combat corruption is the crowdsourcing platform “I Paid A Bribe which was first introduced in India and adopted in more than 10 other countries” [[37]](#footnote-37), for example in Vietnam with *Tôi đi hối lộ*.[[38]](#footnote-38) These tools allow “users to anonymously share their corruption experience”[[39]](#footnote-39), and then it reports and exposes publically the occurrences where corruption is alleged to be involved. This shows that civil society has a role to play, if not “the most important role [to play] in the prevention of corruption. State bodies cannot be the only actors in the fight against corruption since suppression and prevention of corruption is a matter of wide social consensus.”[[40]](#footnote-40) However, it could also be a double-edged sword: what if a false denunciation happens? What happens to the people who were falsely reported? What about the damages, sometimes permanent, caused to their reputation should the allegations of corruption turned out to be false? These are all questions that may eventually need an answer, but that the author will leave for another day because answering would go beyond the scope of this paper.

**Is AI the Holy Grail?**

To our knowledge, Canada did not use AI specifically so far to fight directly against corruption. However, it certainly addressed, at least, the issue of corruption within its public service, for its state representatives, etc., mainly in two different ways. First, “Canada is an international leader in the field of the study and the management of conflicts of interests”[[41]](#footnote-41), for example with its public service. As Falcone states, “Reducing maladministration through public ethics improves the relationship between citizens and administration, it guarantees greater efficiency and effectiveness of public services, but most of all, it is essential in the fight against corruption. When we talk about ethics infrastructures in public administration … among the elements composing [it, there are] ethical codes and codes of conduct.”[[42]](#footnote-42) Canada managed to address the *prevention* of corruption within its public service and public officials by a number of legal acts, for instance in package of laws or code of conducts. Second, when it is time to deal with corruption issues *post facto*, Canada criminalized it.[[43]](#footnote-43) Let us not underestimate the fact that the “[l]ack of professional ethics and deficient laws regulating corruption as a criminal offense, and the prosecution and sanctioning of it are also an important cause for the emergence and spread of corruption.”[[44]](#footnote-44) Before AI was considered, the tools adopted in Canada mentioned above have proven effective. As Dupont, Stevens, Westermann and Joyce observe, “[a]rtificial intelligence is being used in the detection and investigation of criminal activity in countries around the world”[[45]](#footnote-45) as with the example of Brazil described previously, but these authors also note:[[46]](#footnote-46)

[T]echnology is already being used to detect the occurrence of crime. *Artificial intelligence is simply a new addition* to the repertoire of capabilities in the technologies used by law enforcement to determine when a crime may be happening or has already happen. AI merely creates new information processing and analytical capacities for other technologies that have become routine in law enforcement.

That being said, “AI could increase the effectiveness and efficiency of predicting, detecting and pursuing corruption.”[[47]](#footnote-47)

In sum, the author submits that what should be the primary concern of a state that wants to keep a positive track record of good governance, when contemplating the idea of using AI to combat corruption, is to keep, at the forefront of its considerations, an ethical framework for the development and deployment of AI. Such a framework and more was proposed, for example, in 2018 in the updated version of the *Montréal Declaration for Responsible Development of Artificial Intelligence*.[[48]](#footnote-48)

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   See, e.g., Lafrance S. (2020A), ‘The Impact of the Artificial Intelligence on the Formation and the Development of the Law’, *Vietnam Journal of Legal Sciences*, *2*(1), p. 2. [↑](#footnote-ref-1)
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48. *Montréal Declaration for Responsible Development of Artificial Intelligence*, 2018. Retrieved from <https://www.montrealdeclaration-responsibleai.com/the-declaration> [accessed 19 July 2020]. [↑](#footnote-ref-48)