



# INTERVIEW WITH PROFESSOR ANA FRAZÃO ON THE USE OF ARTIFICIAL INTELLIGENCE

## INTERVIEWED

**Ana Frazão** is an Lawyer and Professor of Civil and Commercial Law at Universidade de Brasília (UnB). Master of Law and State from UnB and Doctor of Commercial Law from Pontifícia Universidade Católica de São Paulo (PUC-SP). Former Administrative Council for Economic Defense's counselor. Former Director of Universidade de Brasília's Law School.

## INTERVIEWERS

### **Christine Oliveira Peter da Silva**

Doctor and Master of Laws in Law, State and Constitution from the University of Brasília. Professor in the Master's and Doctoral Programs in Law and Public Policy at the University Center of Brasília. Secretary-General of the Constitutional Studies Center of the Brazilian Supreme Federal Court.

### **Ian Ferrare Meier**

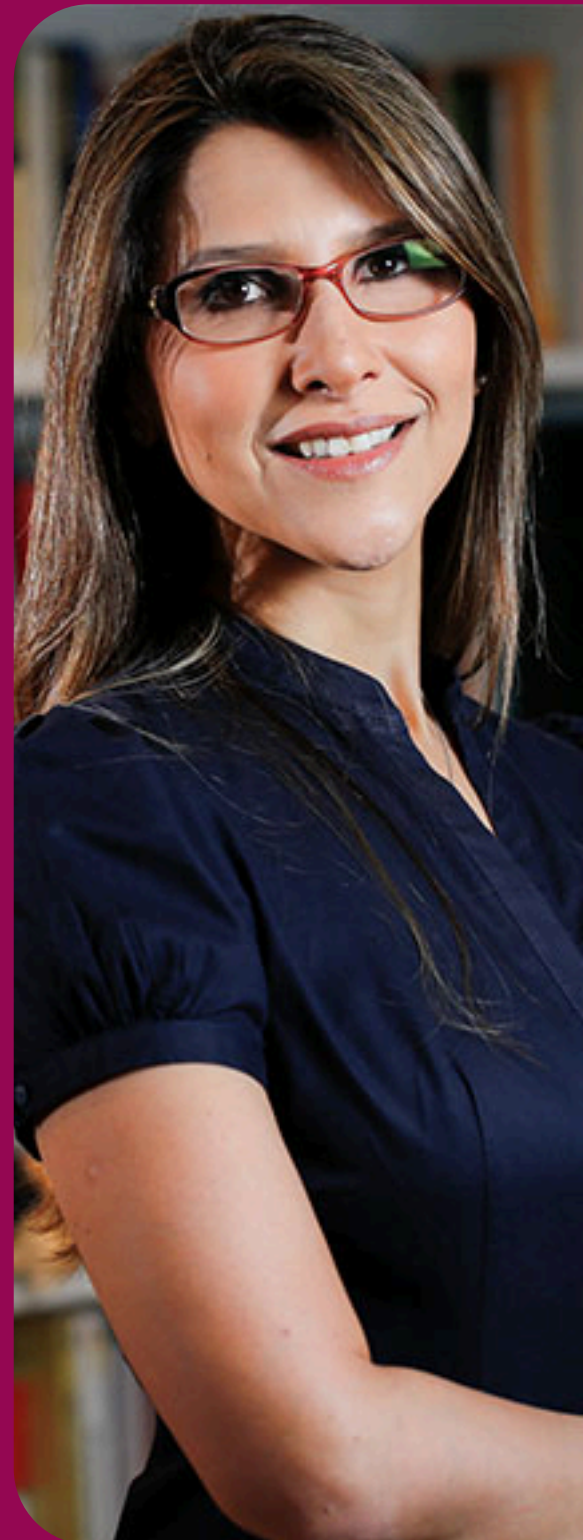
READ CEUB's Editor-in-Chief. Professor in the Lato Sensu Postgraduate Program at CEUB. Researcher. Master's student of Law and Public Policies at CEUB.

### **Luísa Cristina Vasconcelos Marimon Álvares**

READ CEUB's Editor-in-Chief. Lawyer. Postgraduate student in New Tendencies in Public Law at CEUB. Undergraduate student in Philosophy at UnB. Law graduate from CEUB.

### **Mário Talles Mendes Passos**

Member of READ CEUB. Researcher. Law graduate from CEUB. Currently developing studies related to the analysis of jurisprudence of Superior Courts.



# **Interview with Professor Ana Frazão on Ethical and Legal Parameters for the Utilization of Artificial Intelligence<sup>1 2</sup>**

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Christine Oliveira Peter da Silva<sup>3</sup>

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## **TECHNOLOGICAL INNOVATIONS AND ITS IMPACTS**

**[Interviewers] — Do you believe that technological innovations always lead us towards the path of society’s prosperity and progress?**

**Ana Frazão** — Daron Acemoglu and Simon Johnson, authors of the book “Power and Progress”, which is already translated to portuguese, present a sort of historical reconstruction of a thousand years of technological progress. Through this reconstruction, they raise doubt

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<sup>1</sup>Lawyer and Professor of Civil and Commercial Law at University of Brasília (UnB). Master of Law and State from UnB and Doctor of Commercial Law from Pontifícia Universidade Católica de São Paulo (PUC-SP). Former Counselor at the Administrative Council for Economic Defense. Former Director of Universidade de Brasília’s Law School.

<sup>2</sup> The interview herein provided is the product of the participation of Professor Ana Frazão in an event of the Centro Brasileiro de Estudos Constitucionais (CBEC) of the Centro Universitário de Brasília (CEUB).

<sup>3</sup>Doctor and Master of Laws in Law, State and Constitution from the University of Brasília. Professor in the Master's and Doctoral Programs in Law and Public Policy at the University Center of Brasília. Secretary-General of the Constitutional Studies Center of the Brazilian Supreme Federal Court.

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on the premise that technological innovation always leads to progress and prosperity. They argue that, when analyzing history, it's notable that, actually, in a variety of situations great technological innovations reinforce inequalities and have brought problems much more burdensome than those which they sought to solve.

**[Interviewers] — Artificial Intelligence is one of today's big themes. We have seen a huge technological advance and its impacts in societies in the last years. In this context, how do you see these impacts on fundamental rights?**

**Ana Frazão** — From the moment artificial intelligence is used to make value judgments about human beings — judgments that involve high doses of subjectivity — and starts to impact a wide array of areas in these people's life, as example, the access to specific opportunities of education, work or economic activity, on credit and their respective interest rates, or even health insurance and the conditions to which the insured will be subjected, it gains a huge relevance. Thus, we have a direct impact on fundamental rights of the utmost importance, such as, for example, liberty, equality, due legal process and adversary proceedings, as these judgements are, many times, obscure, incomprehensible, and do not allow any type of conscious opposition from those who are judged. In such a sense, we can also perceive how constitutionalism has to direct itself towards other agent besides the State, such as digital platforms, which represent huge focuses of menaces for the fundamental rights of citizens.

**[Interviewers] — What concerns does society have about the impact of Artificial Intelligence on people's private lives and privacy?**

**Ana Frazão** — That's a very prevailing discussion which shows that, today, when we talk about artificial intelligence, even our free-will, strictly speaking, is on the line – what some people call mental-privacy or neural-privacy. To which degree can or can't the artificial intelligence systems manipulate us, coerce us, and induce us to certain behaviors that have numerous implications, not only in our personal lives, but also in the collective dimension of our existence? This includes democratic affairs, considering that the manipulation of results might lead to vast consequences in people's private lives.

**[Interviewers] — How can the lack of informational hierarchy in AI's contribute to the dissemination of fake news?**

**Ana Frazão** — For a long time, I used to be worried with a sort of absence of informational hierarchy on the internet, as these artificial intelligence systems tend to equate, for example, the opinions of scientists to those of laypeople and malicious actors who are on the internet simply to spread fake news. There's no distinction between sources. And, as we all know, fake news and informations that breed fear, anger, and hatred generate greater engagement. They tend to be shared more. However, more than a neutralization of hierarchies, there is what researcher Letícia Cesarino calls inversion of hierarchy. Thus, disinformation gains centrality in the digital world and can be seen as more relevant to artificial intelligence systems that are based in such informational flux. That's why we have such numerous examples of oddities, hallucinations, untruths and many other cases.

**[Interviewers]** — **A recurring concern about these systems is the occurrence of algorithmic discrimination due to biases. Could you detail a little more the challenge law faces in such a scenario?**

**Ana Frazão** — We all know that, especially in machine learning models, we work with probabilistic patterns. The more a prejudice is present in society, the more it tends to be seen by the system as a pattern, and that heightens its chance of being replicated. Indeed, that is a very relevant point of artificial intelligence to us who work with the law: AI looks to the past to replicate-it in the future. The law, however, does not live only from the past. The challenge of law is to find the adequate balance between safety, which maintains the past, but also justice, adaptability and changes .

## **USES OF ARTIFICIAL INTELLIGENCE AND BEHAVIORAL CHANGES**

**[Interviewers]** — **Could you provide an example of how artificial intelligence is being used to automate tasks traditionally done by human beings?**

**Ana Frazão** — Such use for artificial intelligence has been spreading across a wide array of fields. I, particularly, am really fond of business law and have been impressed when I notice how a new kind of outsourcing has been emerging. Activities that were before done by human beings and used to integrate the core of business administration can now be delegated or transferred, totally or partially, to artificial intelligence systems. We are already seeing these impacts, for example, on Human Resources departments. For many, that's something that will soon cease to exist, as many companies use these systems to decide who will be hired, who

will be promoted, and who will be fired. Depending on the case, the very system decides and executes the decision. Investment policies, administration policies and even pricing, which for a long time has been considered the core of free enterprise, today are delegated to artificial intelligence systems.

**[Interviewers] — Does the use of artificial intelligence bring any consequences to the *modus operandi* of legal practice in judicial disputes?**

**Ana Frazão** — Yes. The repeated use of technologies in judicial disputes, especially in big matters, might turn the procedural dynamic in a dispute more about who has the better technology than who has the most adequate right. The *modus operandi* of some law firms can turn towards trying to optimize the comprehension of the courts' systems and circumventing these systems when in interest.

**[Interviewers] — Much is said about how human judgments are way too flawed. In this case, is it feasible to replace them with algorithmic judgments?**

**Ana Frazão** — I'll start answering with other questions: is artificial intelligence really always so superior to human judgment? How many cases have we seen of hallucinations, oddities, and gross mistakes, even in generative artificial intelligence systems? These models, as we say, do not define language. They are based not on the truth, but the probability. The answer is not related to truthfulness. And see the problem that occurs due to the databases that are, in many times, fed and created without any kind of hierarchy. On the other hand, there are many aspects in which human intelligence is superior to artificial intelligence systems: only human beings build framings and work with framing (and not just correlations), counterfactuals and constraints.

## **REGULATION OF ARTIFICIAL INTELLIGENCE**

**[Interviewers] — Is it possible to apply a single risk-based model of artificial intelligence regulation across different countries?**

**Ana Frazão** — Regulating artificial intelligence is not a premise based on the idea that it constitutes a monolithic bloc. Regulation is carried out based on risk. Depending on the type of risk, regulation can be more or less rigid. It's also important to remember that a debate on risk transcends the debate on regulation based on evidences, as it can't be restricted just to a

single scientific perspective. This happens because risk also involves social and cultural components related to what a specific society, in a specific moment, is open to accepting. All regulatory models based on risk usually emphasize popular participation, listening to stakeholders, so it may be possible to contemplate this social dimension of risk. It seems to me that, far from being an obstacle to innovations, the regulation of artificial intelligence is the only way to truly reconcile all its benefits with the protection of fundamental rights.

**[Interviewers] — Is the role of the coercive force of law in this context enough to promote the desired changes?**

**Ana Frazão** — The regulation of artificial intelligence is the only way through which we will be able to truly reconcile all its benefits with the protection of fundamental rights. Much is said about ethics and protocols, but we have observed that without the coercive force of the law, there are now clear changes in the market. However, some even doubt that, even with such coercive force, it may be possible to promote significant changes. As an example of such a viewpoint, we have the Brazilian General Data Protection Law (LGPD). Despite its existence, we see the continued toleration of numerous illegal practices. Even when taken to the regulatory authorities or the high echelons of judiciary, these practices do not receive the due responses. Still, a regulation might be the starting point, as it makes the rights and responsibilities of the involved parties very clear and, at least, offers to citizens instruments that are minimally objective and consistent for the defense of their rights.

**[Interviewers] — How do you see the need for balance between innovation and the regulation of artificial intelligence?**

**Ana Frazão** — If we want a regulation that's minimally compatible with stimuli to innovation, it's important that we give a lot of attention to such regulation. Achieving such reasonable measure is essential, and it cannot become effective if we do not take in consideration that artificial intelligence involves absolutely diverse risks, which must be treated, from a regulatory perspective, in an equally diverse manner. Today we can already map a considerable number of such risks. We have already acquired experience in that sense, what permits, for example, that the Law Project n. 2338 may create a category named "excessive risks" or "vetoed". In this category, are included cases such as the use of autonomous weapons, digital manipulation, specially of vulnerable groups, among other circumstances. In summary, it is the situations that must determine what cannot be allowed.

**[Interviewers] — Why is regulatory action preferable to inaction, even in front of the lack of conclusive scientific evidence?**

**Ana Frazão** — We are talking about very serious matters here and that's why, of course, we have to advance in this regulation through risk. That's what the Law Project n. 2338 attempts. That's what the National Justice Council and many other bodies are also trying to do. However, it seems to me that we cannot lose sight that it is also necessary a space for reflection on uncertainties. Such a space must be ensured, even to avoid that repeated argument: "If there's no consistent scientific evidence, we must not regulate it". What the principle of precaution tells us is: not necessarily. If we are going to depend today, on some kind of scientific consensus surrounding risks, specially in such a dynamic matter, we won't be able to advance. Sometimes, it's better to be safe than sorry. So even in face of not so consistent evidence, in many cases the answer won't be inaction, but regulation and the form of such regulation.

**[Interviewers] — Is the view that we live in a legislative vacuum while the law project does not advance in the National Congress sustainable?**

**Ana Frazão** — We can do a lot with what we already have. Saying that we need a regulation of artificial intelligence surrounding many aspects does not mean that we live today in a sort of legislative vacuum and that, while such regulation still has not arrived, there is nothing we can do. The General Data Protection Law itself already has a series of interpretation zones and, if they were being effectively complied with, it would already have avoided a series of improper uses of artificial intelligence systems. The Consumer Protection Code is another example. If well enforced, we'll already have situations provided for in our legal system.

## **ACKNOWLEDGMENT**

**[Interviewers] — Professor, on behalf of the Revista de Egressos e Acadêmicos de Direito and the Centro Brasileiro de Estudos Constitucionais, both from CEUB, we are very thankful for your contribution and hope to see you soon.**

**Ana Frazão** — The pleasure is all mine. It was great to participate.

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**Translators and translation reviewers' names:** Sabrina Lyrio Mayer Soares e Debora Maria Miura Nakayama

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