

Artículos

Evidentiary Standards and Electoral Justice from the Experience of Peru, Brazil, and the United States*

Estándares probatorios y la justicia electoral desde la experiencia del Perú, Brasil y Estados Unidos

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Abstract:

The article addresses the evidentiary standards in electoral justice in Peru, Brazil and the United States, considering the emblematic cases of Keiko Fujimori, Jair Bolsonaro and Donald Trump. Its importance lies in guaranteeing electoral transparency and democratic legitimacy in the face of questions of alleged fraud. The objective was to analyze the evidentiary standards applied in these countries, identifying patterns and significant differences. The methodology was qualitative, with a hermeneutic approach and case study design, using documentary analysis as a technique. The results show that, while in Peru legal security is prioritized over electoral truth, in Brazil and the United States disinformation strategies that affect public perception predominate, in both countries, social networks have been key tools to consolidate fraud narratives without solid foundations. Despite contextual differences, common patterns are observed in the use of disinformation to question electoral processes. The discussion was enriched by multiple triangulations, seeking logical consistency, credibility and replicability of the findings. In conclusion, electoral justice faces global challenges related to media manipulation and the lack of clear standards to guarantee electoral truth, which affects trust in democratic institutions.

Keywords: Democracy, Elections, Political Participation, Political Party, Electoral System, Vote.

Resumen:

El artículo aborda los estándares probatorios en la justicia electoral en Perú, Brasil y Estados Unidos, considerando los casos emblemáticos de Keiko Fujimori, Jair Bolsonaro y Donald Trump. Su importancia radica en garantizar la transparencia electoral y la legitimidad democrática frente a cuestionamientos por presunto fraude. El objetivo fue analizar los estándares probatorios aplicados en estos países, identificando patrones y diferencias significativas. La metodología fue cualitativa, con un enfoque hermenéutico y un diseño de estudio de casos, se empleó el análisis documental como técnica. Los resultados evidencian que, mientras que en Perú se prioriza la seguridad jurídica sobre la verdad electoral, en Brasil y Estados Unidos predominan estrategias de desinformación que afectan la percepción pública, en ambos países, las redes sociales han sido herramientas clave para consolidar narrativas de fraude sin fundamentos sólidos. A pesar de las diferencias contextuales, se observan patrones comunes en el uso de la desinformación para cuestionar procesos electorales. La discusión se enriqueció mediante la triangulación múltiple, buscando la consistencia lógica, la credibilidad y la replicabilidad de los hallazgos. En conclusión, la justicia electoral enfrenta desafíos globales relacionados con la manipulación mediática y la falta de estándares claros para garantizar la verdad electoral, lo que afecta la confianza en las instituciones democráticas.

Palabras clave: democracia, elecciones, participación política, partido político, sistema electoral, voto.

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Introduction

The electoral justice system, as a specialized jurisdiction, is intrinsically linked to the fundamental goal of justice, which is the pursuit of truth. However, in electoral matters, it seems that the truth is built on the popular will of the majority, as a democratic expression at the ballot box, in that sense, it could be affirmed that the evidentiary standard to affirm the electoral truth is a mathematical operation of summation of votes, in such a way that whoever wins at the polls implies that he has reached the evidentiary standard to say that it is the electoral truth. Each vote serves as a means of proof that contributes to the standard of proof. However, the panorama changes when there are questions about the electoral results, in the sense of knowing what the evidentiary standard is in these cases to determine the electoral truth, that is, in the face of a questioning of alleged irregularities in the result of the elections, where the credibility and legitimacy of the electoral justice system are in danger. Thus, it becomes necessary to identify the legal framework that allows such concerns to be addressed and to determine the existence of an evidentiary standard capable of affirming the electoral truth.

The Peruvian reality is not alien to this investigation problem, since, in the last presidential elections of 2021, there were complaints of electoral fraud, generating between two political parties 1265 requests for nullity before the Special Electoral Jury, 1,115 were presented by Fuerza Popular and 150 by the political party Perú Libre, the same that were declared inadmissible in the first and second instance.¹

The Plenary of the National Jury of Elections (JNE) keeps, in line with its jurisprudence, that the grounds for nullity provided for in the electoral regulations are exhaustive in nature and must be interpreted strictly, with the aim of protecting electoral processes. It also points out that nullity will only be declared when sufficient and adequate evidence is presented that discredits the veracity of the results obtained at the polls, in order to guarantee legal certainty. In this context, uncertainty is generated regarding whether the electoral justice system prioritizes the truth of the electoral results or legal certainty. It also raises the question of what standards would be necessary to achieve the legal status associated with the search for electoral truth.

The outlook becomes more uncertain because, in evidentiary matters, the JNE, through Resolutions No. 0086-2018-JNE,² No. 0195-2015-JNE,³ No. 3399-2018-JNE, No. 0718-2021-JNE,⁴ No. 0723-2021-JNE, No. 0728-2021-JNE⁵⁻⁶ and No. 941-2021-JNE,⁷ has held that there is no evidentiary action stage, establishing certain evidentiary rules, including: a) Only evidence that does not require action is admitted; b) in the case of expert reports by a party, they do not constitute conclusive evidence According to resolution No. 3277-2018-JNE, in this sense, it is necessary to know how the electoral justice system builds an evidentiary standard to declare the electoral truth.

The situation was further aggravated by the decisions of the JNE in resolving the requests for the nullity of elections by the candidate of Fuerza Popular,⁸ in which it has generated concern about the current regulation of evidentiary standards in electoral justice to seek electoral truth as an expression of the popular will, giving rise to the need to set new evidentiary standards, given that the current legal design limits the offer of evidence and also the way in which it is evaluated, otherwise, the problems of linking with the electoral results of the parliamentary majority, who do not accept the public opinion expressed at the polls, arise.⁹

A similar reality has been seen in the countries of Brazil (Jair Bolsonaro case), the United States (Donald Trump case) with Peru (Keiko Fujimori case) regarding requests for annulment of elections, for alleged fraud in the electoral results, which is why, based on this casuistry, it is necessary to carry out a comparative analysis of the electoral justice of these countries in order to know the evidentiary standards.

Development

The purpose of electoral law is to guarantee the authenticity of the information provided by candidates and campaigns, as well as to ensure the transparency and integrity of the electoral process. This right looks to ensure that citizens have access to truthful information and that elections are carried out in a fair and clear manner. Although there is no single definition, its relevance in the protection of fundamental rights within the electoral context is valued.¹⁰ Fundamental principles in the electoral field, such as certainty, impartiality, independence, legality, and objectivity, are also essential to ensure the right to truth in electoral systems.¹¹

Truth understood as certainty refers to the need for all actions of the Court to be based on verifiable facts and to be clear, so that the results of those actions are reliable and verifiable, this principle is key due to the importance of guaranteeing the rights of citizens and all political actors by the electoral judicial authority. Likewise, electoral certainty allows us to understand and trust the results of the elections, since it shows how the will of the electorate expressed at the polls was reflected, this principle is built from the good performance of the electoral authorities, who must guarantee respect for the will of the citizens. In this sense, it can be concluded that certainty consists of having confidence in the reliability of the electoral system.¹²

In this sense, in view of the need to find the truth, it must be based on the Theory of Justice, which in electoral matters not only involves the application of the law and the legal framework that govern electoral processes, but is also highly influenced by the socio-cultural, historical and political context where it is developed. In the electoral field, the rules must be interpreted within the framework of a restrictive interpretation of electoral disqualifications, following the perspective of justice as impartiality proposed by J. Rawls in his work "Theory of Justice," with the purpose of guaranteeing respect for public rights and freedoms.¹³

Landinez,¹⁴ commenting on John Rawls' Theory of Justice, argues that this approach seeks to rationally justify the principles of justice and prioritizes political and legal equality, as well as decent material conditions for life and the bases of self-respect, its fundamental objective is to discover the conditions of possibility of a reasonable basis of justification. Rawls argues that political and legal equality is fundamental to justice and social cooperation on a basis of mutual respect among citizens. Rawls proposes two principles of justice: The principle of equality, which guarantees political and legal equality, and the principle of maximization of utility, which seeks to maximize the average expectations of the less fortunate.

Among the criteria for the admission and evaluation of evidence in comparative jurisprudence, three criteria have been developed for the admission and evaluation of evidence often applicable in cases of resolution of electoral conflicts,¹⁵ which are the following:

1. The preponderance of the evidence is a criterion widely applied in civil actions within most legal systems, sometimes extending to electoral appeals as they are considered matters of a civil nature. However, this practice can have disadvantages, such as the risk that dissatisfied individuals will abuse the process through the filing of multiple appeals. In the context of the rule of law, official election results should be supported by a presumption of validity and not easily annulled, as this could help those who challenge them without legitimate reasons. However, when the results of an election derive from a complex judicial process, it is essential that they be fully substantiated, as the lack of clarity could raise doubts about both the election and the legitimacy of the resulting government.
2. The standard of proof beyond a reasonable doubt is used primarily in criminal cases and rarely in civil cases, this standard requires that the evidence presented be so strong and convincing that decisions can be made without significant uncertainty, even if they fall short of providing absolute certainty. In the United States, this criterion was applied in at least one electoral case because of

the need to prove a more rigorous standard than that of a preponderance of the evidence. In the electoral field, this criterion may be considered proper in situations involving criminal matters. This is especially relevant in countries such as Nigeria, where the beyond a reasonable doubt standard is required even in civil cases if they have criminal implications, however, in Nigeria, both lawyers and judges have pointed out that numerous cases are rejected because they do not meet this standard, which highlights that it could be too demanding for electoral justice procedures. On the other hand, in the case of *Miller v. Minister of Pensions*, it was clarified that the beyond a reasonable doubt standard does not imply reaching absolute certainty, but that a high degree of probability must be achieved, this case highlighted that the total absence of doubt is not a requirement to meet this¹⁶ criterion.

3. Clear and convincing evidence occupies an intermediate position between the preponderance of evidence and the beyond a reasonable doubt criterion, since it requires that the evidence provided demonstrate that it is considerably more likely that the claim raised is true, although without reaching the level of rigor required by the criminal standard. Although the term “substantial” lacks a precise definition, it is generally accepted that this criterion is more demanding than the preponderance of the evidence, but less than the criminal standard. In the United States, this standard has its roots in civil cases involving allegations of fraud or quasi-criminal conduct. Over time, its application was extended to cases involving fundamental human rights and to situations that could lead to irreparable harm of a non-monetary nature. In the U.S. electoral arena, this criterion has been used in matters related to restrictions on advertising and campaign financing, due to the potential impact of these regulations on free speech rights. Meanwhile, in Thailand, the Organic Law on the Election of Members of Parliament and Senate States that the Election Commission must use the standard of convincing evidence to assess possible violations of the rules on campaign expenditure or dishonest acts in the electoral process. At the international level, this type of standard has been adopted in cases related to human rights, combining itself as one of the most frequent criteria in the analysis of evidence within the international civil sphere.

According to Ramírez,¹⁷ this evidentiary model establishes that, in order for a hypothesis about the facts to be considered proven, the adjudicator must conclude clearly and categorically based on the evidence presented, that it is significantly more likely that the event occurred as it is raised, compared to the possibility that it did not happen that way. This standard has been developed mainly in countries such as the United States and England, in the latter, it has been applied in civil proceedings where the facts evaluated, although they could be subject to criminal sanctions, are not judged under the criminal standard. Since the consequences of an error in the ruling can be equally severe, it has been decided to strengthen the traditional civil standard, so that this approach has led to the adoption of stricter thresholds, which require strong and categorical evidence to support a specific version of the facts.

Likewise, it is supported that the OAS has implemented electoral audits in various countries, as a process of transparency and oversight of an electoral process.¹⁸ In the case of Brazil, it is a process carried out by the Superior Electoral Court (TSE) and the Federal Court of Accounts (TCU) to guarantee the transparency and security of the voting system. This process includes auditing electoral systems, verifying their authority, and testing the integrity of votes. Key aspects of electoral auditing in Brazil include:

- Public Security Test (TPS): Electronic ballot boxes in Brazil incorporate at least nine auditing tools, including TPS, which is used to confirm the legitimacy and authority of electoral systems.
- Integrity test: In the run-up to election day, ballot boxes are randomly chosen and will be subjected to a voting test, in which votes previously recorded on paper are placed in the electronic ballot box. This process is videotaped and then a parallel count of the votes is carried out.

- Opening of the source code and monitoring of the development: The TSE makes public the source code of the electoral systems in order to carry out a comprehensive audit. Auditors have the opportunity to fully examine the source code and evaluate the operation of the electronic ballot boxes.

- Audit of the electronic voting system: The TCU conducts the audit of the electronic voting system in Brazil, presenting the results obtained during the first phases of the integrated audit.

Electoral auditing in Peru refers to the auditing and supervision of electoral processes by the National Office of Electoral Processes (ONPE) and other bodies. This audit includes the verification of electoral rolls, voting records, voter lists and the computer system used, among other aspects.

These audits are important to ensure the transparency and legitimacy of electoral processes in the country. In summary, electoral auditing in Peru involves:

- Auditing and supervising electoral processes by the ONPE and other agencies.
- The verification of electoral rolls, voting records, voter lists and computer systems used.
- The request for international audits in specific cases, as in the case of the 2021 presidential election.
- Ensuring the transparency and legitimacy of electoral processes by watching the income and expenditure of political parties.

Election auditing in the United States is a process that involves verifying and counting votes in federal and state elections. The U.S. Election Assistance Commission (EAC) handles developing voluntary voting guides and offering information on the administration of election elections. In summary, election auditing in the United States is an important process to ensure the transparency and security of elections. The U.S. Election Assistance Commission and other state and local agencies work to ensure the proper administration of elections and the certification of results.

Methodology

The study was carried out internationally, between the countries of Brazil, the United States and Peru, with a qualitative study, type of basic research and case study research design (Trump, Bolsonaro and Keiko Fujimori Case). The study categories are evidentiary standards and electoral justice, the samples were three emblematic cases in international electoral justice.

The technique used for the collection of information was documentary analysis, which included doctrine, laws and jurisprudence, with the aim of categorizing the data for later analysis using the hermeneutical method. A document analysis guide was used as an instrument. The procedure began with the identification of resolutions related to evidentiary matters issued by the electoral judicial system, followed by the search for emblematic cases in each country, examining the criteria applied through hermeneutical interpretation. For the discussion of the results, the multiple triangulation technique was used.

To guarantee validity and reliability, following a rigorous scientific approach, the criteria of logical consistency, credibility, confirmability and transferability were applied.¹⁹ First, internal validity, also known as credibility of the information, was assessed, given that the data comes from the websites of the electoral management bodies of the countries studied. About external validity or transferability, the criterion was met that the information is easily accessible to readers, who can contrast theories, doctrine and jurisprudence. Confirmability is proved because the process can be replicated thanks to the multiple triangulations applied in the analysis and discussion of the data. Finally, logical consistency was verified through the analysis of the categories together with the sample.

Results

TABLE 1.
Case of Fuerza Popular - Peru. Resolution No. 729-2021-JNE

Pretension	Majority Vote	Minority Vote	Popular force arguments
Nullity of electoral results – Elections 2021	<p>Following the requirements of FP would imply opening an evidentiary stage that would alter the peremptory and preclusive deadlines of the electoral process. The applicant did not sufficiently show the existence of a forgery or to prove that the alleged irregularities favored any particular candidate.</p> <p>The request for voter lists would jeopardize the protection of citizens' personal data, remembering that, in every electoral process, the validity of the vote is presumed. In addition, the minutes in question were not subject to observation by the ODPEs, and both the JNE and the ONPE lack the competence to decide the authenticity of the signatures. For this reason, the majority of the members decided to refer the proceedings to the Public Prosecutor's Office so that it can investigate the possible crimes of falsehood.</p> <p>It was emphasized that, if any person committed such a crime, they would have to be held accountable before justice. However, it is not up to the electoral bodies to condemn, resolve or justify decisions based on presumptions, such as assuming that a document is false or that irregularities tilted the vote in favor of or against a candidate. In the words of the members, "annulling by presumptions is not the way".</p>	<p>It was indicated that the files were not in a position to be resolved on the merits, since it was necessary, previously, to verify the questioned signatures with information from Reniec and consult the lists of voters to the ONPE, a request that had also been raised by Fuerza Popular.</p> <p>Along these lines, it was argued that, although the JNE has precedents for resolutions in the same sense, the current circumstances demand a less regulatory approach oriented towards "the search for the truth".</p> <p>It was stressed that the JNE lacks competence to find or punish crimes, since this responsibility falls on the ordinary justice system. However, it was emphasized that this does not imply abandoning the effort to clarify possible electoral infractions. In addition, he warned that the legitimacy of the winning candidate could be compromised if the information available from Reniec and the voter lists is not transparent.</p>	<p>It was stressed that the commitment to the search for the truth should not be abandoned or limited to referring the case to the prosecutor's office. The request for the voters' list from ONPE is not an evidentiary process nor does it compromise personal data protection; it ensures proper court oversight.</p> <p>In addition, the importance of graphotechnics ability was highlighted, considering them fundamental evidence that could be described as indubitable. These were carried out by comparing the electoral record and the Reniec file, since both documents are part of the electoral system.</p>

Source: Authors' own elaboration.

Resolution No. 729-2021 of the JNE in the case of Fuerza Popular highlights the importance of the principles that govern the electoral process, such as preclusion and peremptory (Table 1). The majority decision argues that meeting the requirements of Fuerza Popular, such as the opening of an evidentiary stage or the request for voter lists, would imply a violation of these fundamental principles. Thus, respect for these deadlines looks to guarantee the speed and stability of the electoral process, avoiding uncertainties that affect its legitimacy.

On the other hand, the decision emphasizes the presumption of validity of the vote as an essential element for the integrity of the democratic system, according to the majority, the irregularities pointed out have not been sufficiently proven, which rules out the possibility of annulling results on the basis of presumptions. In addition, they emphasize that bodies such as the JNE and ONPE do not have the competence to investigate

crimes such as the falsification of signatures, referring these issues to the Public Prosecutor's Office for evaluation in the criminal field. The minority, however, poses a unique perspective, defending the need to deepen the search for electoral truth, this vote argues that requesting information from institutions such as RENIEC and ONPE does not put personal data at risk, but rather strengthens the oversight of the process. It also considers that the graphotechnics ability stands for an indispensable means of proof to evaluate the authenticity of the disputed minutes, which would contribute to resolving doubts about the legitimacy of the electoral result.

A crucial point in the debate is the tension between the JNE's function as an inspector and the delimitation of its powers. While the majority advocates strictly respecting normative limits, the minority supports that the body should not give up on the search for electoral truth. This approach reflects a more dynamic view of electoral law, arguing that evolving events may require more flexible responses to ensure the transparency and legitimacy of the process (Table 2).

TABLE 2.
Bolsonaro Case - Brazil

Pretension	Foundations of the Brazilian Electoral Tribunal
<p>The Liberal Party (PL) asked the Electoral Tribunal to dismiss the votes coming from certain machines that, according to its claim, would have been compromised during the second round of the presidential elections. Former President Jair Bolsonaro's party questioned votes from October's election, where he narrowly lost the presidency to Luiz Inácio Lula da Silva.</p> <p>The PL hired a consultancy that found that electronic ballot boxes manufactured before 2020 do not generate registration files with unique identifiers, which would prevent associating a specific file with a given ballot box. These files hold vital details, such as the number of ballot boxes turned on and off, as well as when the programs were loaded, making them critical for detecting potential irregular access.</p> <p>According to the PL, only votes cast in ballot boxes manufactured from 2020 onwards would be dependable. According to his calculations, if only those votes were counted, Bolsonaro would have won the elections with 51.05 % of the valid votes compared to Lula's 48.955 %</p>	<p>Brazil's Superior Electoral Court (TSE) rejected the request of the Liberal Party (PL), led by Jair Bolsonaro, which sought to invalidate the results of the presidential elections. The court noted that the report presented contained technical errors regarding the security of the electronic ballot boxes and did not provide evidence of fraud in favor of President-elect Luiz Inácio Lula da Silva.</p> <p>In addition, the TSE considered the PL's complaint as "an affront to democratic norms," arguing that its goal was to "encourage criminal and anti-democratic movements." It also determined that the lawsuit was filed "in bad faith," imposing a fine of 22.9 million reais (equivalent to 4.3 million dollars) on the party.</p> <p>In the elections, the Liberal Party performed better than expected in the first round, but in the second round, Lula won with 50.9 % of the votes against Bolsonaro's 49.1 %, a result that was confirmed by the TSE. Although no concrete evidence was presented, the PL questioned 280,000 voting machines manufactured before 2020, alleging possible irregularities.</p> <p>However, it was highlighted that if the failures pointed out by the PL were as serious as alleged, the party would also have requested the annulment of the results of the first round, since the questioned ballot boxes were used in both rounds of the electoral process.</p>

Source: Authors' own elaboration.

The case presented highlights a conflict between the protection of electoral integrity and the misuse of legal mechanisms for anti-democratic purposes. The analysis of the Superior Electoral Court (TSE) focused on two fundamental aspects: the lack of concrete evidence to support the accusations of the Liberal Party (PL) and the potential impact of these demands on democratic stability. These dimensions not only address the immediate resolution of the case but also pose structural challenges on the resilience of institutions in the face of disinformation and delegitimization strategies.²⁰

First, the TSE identified that the PL's technical arguments lacked verifiable support, revealing a strategy that sought to sow doubts about the reliability of the electoral system without concrete evidence of fraud, this highlighted an inherent risk in allowing unfounded accusations to be thoroughly discussed as it could set a dangerous precedent, in which electoral processes become spaces for narrative manipulation rather than

an exercise of justice. By rejecting the lawsuit, the court not only protected the legitimacy of the system but also avoided opening the door to an abusive judicialization of the electoral results.

Second, the TSE's decision also evidenced the instrumental use of electoral litigation as a political tool, the fact that the PL did not challenge the results of the first round, where the questioned ballot boxes were also used, shows that the main objective was not the integrity of the electoral process, but to delegitimize Lula da Silva's victory in the second round. This poses a structural problem for democracies, through the manipulation of legal institutions by political actors who look to erode trust in the system when the results are not favorable to them.

This led to an economic sanction to the PL for acting in bad faith and the accusation that the lawsuit encouraged criminal and anti-democratic movements, send a strong message about the need to protect democratic principles against internal threats. However, the case also reveals a latent challenge, how to prevent the judicial system from becoming a stage for post-election conflicts based on disinformation strategies, without limiting the legitimate right to challenge flawed processes.

TABLE 3.
Donald Trump Case - United States

Pretension	Facts
During the 2020 U.S. general election, Donald Trump took to Twitter to spread messages questioning the legitimacy of the electoral process, alleging without evidence the existence of "electoral fraud."	During the election campaign, Trump expressed a critical stance towards voting by mail, considering that it could help electoral fraud. In one of his social media posts, he claimed that the Dominion counting system had cut votes that favored him in Pennsylvania and awarded them to Biden.
When it became known that Democrat Joe Biden had won the presidential election held on November 20 of that year, Trump insisted on discrediting the results through unfounded claims about voting by mail, raising doubts about the integrity of the country's democratic system.	Statements related to alleged fraud intensified while the votes were being counted, particularly those cast by mail, which led to constant variations in the results and delayed the final confirmation of the winner.

Source: Authors' own elaboration.

The case of Donald Trump and his accusations of electoral fraud after the 2020 elections forms a paradigmatic example of how disinformation can be used strategically to erode trust in the democratic system, more than a simple electoral dispute, Trump's actions represent a direct challenge to institutional legitimacy (Table 3).

From a political perspective, Trump's accusations of fraud reveal a strategy of delegitimization aimed not at correcting alleged irregularities but at undermining public confidence in the election results when they did not favor him. This type of behavior transcends the scope of legitimate political contestation and enters the field of institutional manipulation, as it uses unfounded accusations as a tool to combine a narrative of victimization that mobilizes its electoral base.

On the social level, the case underscores how social media amplifies the dynamics of polarization and misinformation. Trump's ability to use Twitter and other platforms as a megaphone for his statements allowed them to reach millions of people at once, creating an atmosphere of mistrust that resulted in social tensions and acts of violence, such as the attack on the Capitol. This highlights the responsibility of both political leaders and tech platforms in moderating content that threatens democratic stability.

In the legal field, the multiple lawsuits filed by Trump and his team to challenge the election results, which were mostly rejected for lack of evidence, reflect a misuse of legal mechanisms. This abuse not only congests the judicial system but also threatens to undermine the purpose of institutions designed to ensure transparency and electoral justice.

This case raises a reflection on the resilience of contemporary democracies in the face of populist leaderships that look to exploit social divisions and question institutions from within. Although the U.S. electoral system resisted Trump's attempts to alter the results, the damage to the public feeling of electoral legitimacy persists, as evidenced by the distrust of a considerable sector of the population in the process.

Discussion

In the cases analyzed, it can be seen that the electoral system between Peru and the countries of Brazil and the United States are different, given that the latter countries vote is electronic unlike Peru, which is written through the ballot box, so the questioning, although it aimed to invalidate the electoral results; nevertheless, the mechanism of electoral fraud denounced was in different areas; for example, in Peru, acts of signature forgery were alleged, while in Brazil it was alleged that the voting machines were models manufactured prior to 2020, while the United States questioned postal votes.

However, a pattern of behaviors of the three cases analyzed is appreciated, in the sense of using social networks to generate disinformation and pressure the existence of fraud, that is, that we are currently living in a post-truth bubble, characterized by disinformation. In recent years, the phenomenon of disinformation has grown significantly, driven largely by the expansion of social networks and the loss of the mediating role traditionally played by the media.²¹ Currently, this issue influences multiple sectors.

In the case of Trump and Bolsonaro, disinformation was used as a key tool, while fallacies played a significant role in their populist discourses. Both leaders resorted to the argument of alleged electoral fraud, relying on the lack of political knowledge on the part of the citizenry (appeal to ignorance) and on the authority they held as presidents. This strategy was complemented by various propaganda tactics, such as presenting opinions as facts, making striking generalizations and employing biased attributions, all based on manipulated information. The messages published by Trump on Twitter during the post-election period show how this platform was used to strengthen the discourse of fraud and cast doubt on the legitimacy of the elections.²²

In the cases of Brazil and the United States, the evidentiary standards do not focus on verifying electoral truth, but on promoting a post-truth, understood as the strengthening of beliefs based on imprecise versions of reality. This distortion can be intentional or influenced by emotions, social or ideological factors, and goes beyond a simple lie. Post-truth was a central element in the campaigns of Donald Trump and Jair Bolsonaro, playing a role that exceeded rational expectations.²³ In addition, post-truth is related to fake news, since "it feeds on disinformation and the manipulation of reality."²⁴

In this sense, post-truth as an evidentiary standard contradicts Rawls' Theory of Justice, because it does not look for political and legal equality, but rather distorts the idea of justice, as a value, but as a particular interest in questioning a result or validating a questioned result.²⁵ In the electoral justice of Brazil and the United States, the aim is not to build an evidentiary standard based on electoral truth from the perspective of Rawls' Theory of Justice, but rather to publicize a post-truth, based on disinformation through social networks, a situation that was not alien to the case of Peru, in which the political party Fuerza Popular united with other political parties and lawyers undertook a policy of giving interviews to different media outlets showing the existence of electoral fraud.

Conclusions

That the evidentiary standard in electoral matters in Peru is constituted by the citizens' votes at the polls, in such a way that the electoral truth is the result of the popular will; however, in the face of questions about the electoral result, the standard varies, assuming the presumption of veracity of the results, prioritizing legal certainty over the truth.

The evidentiary standard in Brazil, the evidentiary standard on electoral matters has been judicialized, in the sense that the Supreme Electoral Tribunal, acting in the last instance, verifies the validity or legitimacy of any questioning of the results; however, the standard of presumption of validity of the results prevails for reasons of legal certainty.

In the United States, while the popular will serves as the foundation of electoral truth, the standard of proof in elections is often influenced by social networks. These platforms play a significant role in shaping public feeling, frequently spreading inaccurate versions of electoral reality—a phenomenon known as post-truth.

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Notes

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- 2 Resolution No. 0086-2018-JNE, which regulates the procedures for declaring the nullity of voting tables and elections, establishing criteria on verifiable rights during the electoral process and provisions to guarantee electoral justice in accordance with the Political Constitution of Peru and the Organic Law of Elections.
- 3 Resolution No. 3399-2018-JNE, which includes the appeal against Resolution No. 00960-2018-JEE-CÑTE/JNE, of October 18, 2018, on the detection of irregularities around the signatures of the members of the polling station, presuming adulteration and fraud of the electoral process, which was declared Unfounded.
- 4 Resolution No. 0718-2021-JNE, which addresses a request for the nullity of voting at a polling station during the second round of the 2021 General Elections in Peru, highlighting the importance of guaranteeing the authenticity of signatures and the due electoral process to preserve the popular will, June 29, 2021.
- 5 Resolution No. 0723-2021-JNE, which ratifies the validity of the electoral process at a polling station during the second round of the 2021 General Elections, emphasizing the principle of legal certainty and the need for suitable evidence to question the authenticity of the results issued at the polls, June 30, 2021.
- 6 Resolution No. 0728-2021-JNE, which resolves an appeal in the framework of the 2021 General Elections, reaffirming the validity of the electoral process at a polling station, and underlining the importance of guaranteeing the transparency and authenticity of electoral procedures in accordance with current regulations, July 1, 2021.
- 7 Resolution No. 0941-2021-JNE, which establishes new provisions for the processing of requests for the nullity of voting at polling stations and elections. It seeks to guarantee the integrity of the electoral process through clear rules for the registration, substantiation and resolution of such requests, in accordance with the principles of celerity, concentration and procedural economy.
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