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Decolonial thinking in Brazil: perspectives for overcoming digital colonialism through the protection of human rights

Introduction

The sharp evolution of machine and deep learning techniques is causing the implementation of algorithms to accelerate processes and optimize results more frequently. From this new paradigm, several economic activities have already started to be functionalized by automated processes that categorize people using the technique described by the doctrine as profiling due to the treatment of large amounts of data (Big Data). Alongside technological development, there is the emergence of digital colonialism, which is exercised by technology companies predominantly headquartered in the global north, and which impose to the south – including Brazil – worldviews shaped by applications, algorithms and social networks that they manage and operate according to pre-established parameters.

In an attempt to respond to the questions that arise in this “datified” society and to protect the contingencies that exist in it, legislation began to be enacted across the globe. The fact is that the consequences of colonialism persist until the present day, although many of its characteristics have been transformed through technologies that allow the implementation of algorithms in spaces

where the lack of regulation and governance perpetrates the exploitation of vulnerabilities.

The main objective of the article is the study of decolonial thinking in the aforementioned context of the new hegemonic digital colonialism in Brazil. For that, the deductive method shall be used, from the analysis of general premises to reach a certain conclusion, as well as the bibliographical research.

Digital colonialism: a few notes on surveillance capitalism in the 21st Century

In digital colonialism, the colonial characteristics are equivalent to current digital information activities and refer to the more general concept of coloniality. Thus, unlike colonialism, coloniality reveals interweavings between power, knowledge, being and gender, but in a more sophisticated environment. The emergence of new Information and Communication Technologies, essentially based on the implementation of Artificial Intelligence algorithms¹, has favored a virtual environment called infosphere, in which informationally embodied organisms (*inforgs*)², as well as the strengthened digital colonialism perpetrated by technology companies from the North, provide the accumulation of wealth and profits at the expense of social inequalities and injustices imposed by a new hegemonic digital colonialism that emerges and is guided by surveillance capitalism.³

The concept of surveillance capitalism highlights a new dynamic of power⁴ that brings out traces of a new economic order that considers human experience as a source of information that feeds subtle (and often hidden) commercial application algorithms based on data that foreshadow the offer⁵ by commercial companies of supposedly free technological services for people in order to monitor their behavior with a very high level of detail⁶, as they profit

¹ Cf. L. Floridi, *The philosophy of information*, Oxford University Press, Oxford 2011.

² Cf. *idem*, *The 4th Revolution: how the infosphere is reshaping human reality*, Oxford University Press, Oxford 2014.

³ S. Zuboff, *Big Other: Surveillance Capitalism and the Prospects of an Information Civilization*, "Journal of Information Technology" 2015, Vol. 30, doi: 10.1057/jit.2015.5.

⁴ Cf. C. Véliz, *Privacy is power: Why and how you should take back control of your data*, Bantam Press, London 2020.

⁵ S. Zuboff, *The age of surveillance capitalism: The fight for a human future at the new frontier of power*, PublicAffairs, New York 2019, p. 4. The author says: "Entanglements of knowledge, authority and power are no longer confined to workplaces as they were in the 1980s. Now their roots run deep through the necessities of daily life, mediating nearly every form of social participation."

⁶ A.P. Basan, *Publicidade digital e proteção de dados pessoais: o direito ao sossego*, Foco, Indaiatuba 2021, pp. 160–169.

frighteningly from the appropriation of data captured by dehumanizing algorithms that trace profiles and stigmatize.⁷

The eagerness for economic acceleration highlights the precipitation of certain algorithmic applications, which may be programmed to operate at optimized heuristics levels, but when ‘fed’ by colossal amounts of data (denoting the reason for using the expression Big Data in data-driven markets)⁸, present conclusions based on statistics that, in the current state of the art, are still operationalized by semantic structures. Therefore, they should depend, even at a revisional level, on the participation of a human individual – although this is not always observed, or even inspectable – and, for yet very controversial reasons, Article 20 of the Brazilian General Law for the Protection of Personal Data (Law No. 13.709/2018), which had been previously enacted to provides the right to automated decisions reviewal, has been altered in 2019 and the current provision no longer imposes human participation.⁹

Human rights as a means to achieve decolonial thinking

Monitoring and surveillance structures¹⁰ allow such data extractions and, as consequence, degrade life, making it dependent on data¹¹ and converting it into

⁷ T. Wu, *The attention merchants: The epic scramble to get inside our heads*, Vintage, New York 2016, pp. 5–6.

⁸ V. Mayer-Schönberger, T. Ramge, *Reinventing capitalism in the age of Big Data*, Basic Books, New York 2018, p. 6. According to the authors: “Conventional markets have been highly useful, but they simply can’t compete with their data-driven kin. Data translates into too much of an improvement in transactions and efficiency. Data-rich markets finally deliver what markets, in theory, should always have been very good at – enabling optimal transactions – but because of informational constraints really weren’t. [...] The promise of data-rich markets is not that we’ll eradicate these market failures completely, but that we’ll be able to greatly reduce their frequency and the resulting financial devastation.”

⁹ F. Medon, *Inteligência Artificial e responsabilidade civil: autonomia, riscos e solidariedade*, Juspodivm, Salvador 2020, p. 304.

¹⁰ Cf. F. Coleman, *A human algorithm: How Artificial Intelligence is redefining who we are*, Counterpoint, Berkeley 2019.

¹¹ S. Zuboff, *We make them dance: surveillance capitalism, the rise of instrumentarian power, and the threat to human rights*, [in:] *Human rights in the age of platforms*. Cambridge, ed. R. Jørgensen, The MIT Press, Cambridge 2019, p. 28. In the author’s words: “As to the new species of power, I have suggested that it is best understood as *instrumentarianism*, defined as the *instrumentation and instrumentalization of behavior for the purposes of modification, prediction, monetization and control*. In this formulation, «instrumentation» refers to the ubiquitous, sensate, computational, actuating global architecture that renders, monitors, computes, and modifies human behavior. Surveillance capitalism is the puppet master that imposes its will through the vast capabilities of this connected puppet to produce instrumentarian power, replacing the engineering of souls with the engineering of behavior.”

a subproduct for the purposes of capitalist production.¹² Thus, one of the fundamental consequences of this phenomenon is the continuous tracking of human life. To curb this unwanted paradigm, it is naturally necessary to reconfigure protective structures in line with the new moment of technical-informational development.¹³ Human rights must inspire regulatory frameworks, legislative proposals and, essentially, all the normative frameworks that are intended to be instituted.

In Brazil, what guided the enactment of the General Law for the Protection of Personal Data was precisely this “hard core” of parameters extracted from a broader understanding of the right to privacy.¹⁴ Provided in the legal text (Article 2) as fundamentals, they act as axiological vectors for the rights (and duties) described in other passages of the law and, also, for the subsequent action of the State in regulation. Noteworthy is item VII of Article 2 of the Brazilian LGPD: “The discipline of personal data protection is based on: [...] VII – human rights, the free development of personality, dignity and the exercise of citizenship by natural people.” (freely translated)

The definition of categories that deserve greater protection, such as personal data classified as “sensitive” (Article 5, II, of the LGPD) is solid evidence of this concern of the legislator. Another evidence of this is the aforementioned structuring of automated decision reviews (Article 20 of the LGPD), although not necessarily by human agents. If insufficient protection cannot be accepted, control mechanisms must be structured.¹⁵

According to Cass Sunstein:

When people use simple heuristics, or mental shortcuts, it is generally because they work well, in the sense that they enable us to make good decisions. But even if heuristics usually work well, they can lead to big errors. When we make inaccurate assessments of probabilities, it may well be because simple heuristics are leading us astray.¹⁶

¹² Cf. A. Quijano, *Colonialidade do poder. A colonialidade do saber: eurocentrismo e ciências sociais. Perspectivas latino-americanas*, CLACSO, Buenos Aires 2005.

¹³ Cf. C. Walsh, *Insurgency and Decolonial Prospect, Praxis, and Project*, [in:] *On decoloniality: Concepts, analytics, praxis*, eds. W.D. Mignolo, C. Walsh, Duke University Press, Durham 2018.

¹⁴ V. Trstenjak, *General report: The influence of human rights and basic rights in private law*, [in:] *The influence of human rights in private law*, eds. V. Trstenjak, P. Weingerl, Springer, Cham 2016, p. 48.

¹⁵ S. Moyn, *Not enough: human rights in an unequal world*, Harvard University Press, Cambridge 2018, p. 220. According to the author: “Human rights will return to their defensible importance only as soon as humanity saves itself from its low ambitions. If it does, for the sake of local and global welfare, sufficiency and equality can again become powerful companions, both in our moral lives and in our political enterprises.”

¹⁶ C. Sunstein, *Valuing life: humanizing the regulatory state*, The University of Chicago Press, Chicago 2014, p. 137.

The resurgence of value in human rights does not imply considering an anthropocentric, selfish rescue of the individual to the center of the legal system – as was the case in the Liberal State – that is, it is not the economic man (*homo economicus*) the figure that is intended to be included in the constitutional vertex, although also deserving of specific protection at a fundamental level that prevents the resurgence of a more robust and sophisticated form of colonialism.¹⁷

Rather, the greatest protection of the individual from an “existential” perspective is deeply desired and conceived from the protection of individual experiences that have a useful projection for the holder and for the community. In simple terms, it’s all about disregarding the purely market-oriented concept of “user” to allocate the much more adequate concept of “individual”. It is in this context that the greatest value of the delimitation of normative foundations in the introductory provisions of the standard is reaped. Postulates instituted with such a character act beyond the law specifically considered and inspire the order as a whole.¹⁸

The Brazilian case: human rights protection in the legal framework for the protection of personal data

Article 2, item VII, of the LGPD is categorical in listing, in its first passage, the protection of human rights as one of the law’s fundamentals. Naturally, so that there is no going back, especially regarding the legal protection that should be assured to individuals in regard of such rights¹⁹, it is imperative to reconcile innovation and regulation. Undoubtedly, global legal pluralism must act as a vector of the promotional function of human rights²⁰, opening spaces for the

¹⁷ On such topic, it is important to check the conclusions of S. Mohamed, M.-T. Png, W. Isaac, *Decolonial AI: Decolonial Theory as Sociotechnical Foresight in Artificial Intelligence*, “Philosophy & Technology” 2020, 33, pp. 659–684, doi: 10.1007/s13347-020-00405-8; S. Cave, *The Problem with Intelligence: Its Value-Laden History and the Future of AI*, Proceedings of the 2020 AAAI/ACM Conference on AI, Ethics, and Society, February 2020, doi: 10.1145/3375627.3375813; S.M. Ali, *Towards a decolonial computing*, [in:] *Ambiguous Technologies: Philosophical Issues, Practical Solutions, Human Nature*, eds. E.A. Buchanan, P.B. de Laat, H.T. Tavani, J. Klucarich, International Society of Ethics and Information Technology, Porto, Portugal 2014, pp. 28–35; S. Castro-Gómez, R. Grosfoguel, *El giro decolonial: reflexiones para una diversidad epistémica más allá del capitalismo global*, Siglo del Hombre Editores – Universidad Central, Instituto de Estudios Sociales Contemporáneos y Pontificia Universidad Javeriana, Instituto Pensar, Bogotá 2007.

¹⁸ S.M. Ali, *Decolonizing Information Narratives: Entangled Apocalypics, Algorithmic Racism and the Myths of History*, “Proceedings” 2017, 1(3), doi: 10.3390/IS4SI-2017-03910.

¹⁹ J.O. Ascensão, *A dignidade da pessoa e o fundamento dos direitos humanos*, “Revista da Faculdade de Direito da Universidade de São Paulo” 2008, Vol. 103, p. 278.

²⁰ L. Recaséns Siches, *Filosofía a del derecho*, Porrúa, México 2008, pp. 1–19.

person's underlying-evaluative tutelage, even in an environment permeated by technological disruption.²¹

Since the law is an open and second-rate system composed of a true hierarchical network of principles and rules that orbit the Constitution²², the importance of the subject to establish some essential premises of the problem under investigation is indisputable, since the achievement of this desideratum, in the wake of what Gustavo Zagrebelsky defends, will only occur if certain structural conditions are present, of which the “ductibility” (malleability) of constitutional legal systems is the most relevant, as it promotes pacifism and democratic integration “through the network of values and communicative procedures, which is, moreover, the only possible and non-catastrophic view of politics in our time.”²³

Although one cannot fail to consider the impacts that cultural peculiarities entail for any community, to the point of rushing a conjectural analysis based on the idea of society²⁴, from the point of view of human rights²⁵, identity and individual positions impose consideration, especially for that the foundations of the intertwining between the public and the private be firmly fixed.

Instrumental power, in such context, carries out the expropriation of human experience as an economic imperative, decisively processing the redistribution of elementary human rights from individuals to capital.

The products and services of surveillance capitalism are not objects of exchange or promptly perceivable value, nor do they establish constructive reciprocities between the producer and consumer. In fact, they are “hooks” that attract “users”/people to their operations of extraction and appropriation of personal experiences in order to use them in the accumulation of wealth. Arguably, the individual becomes a product of this emerging form of capitalism, which consequently generates undesirable social inequalities. In this sense, the person becomes the object of extraction and technologically advanced

²¹ Cf. L. Floridi, *The method of abstraction*, [in:] *The Routledge handbook of philosophy of information*, ed. *idem*, Routledge, London 2016.

²² H. Ávila, *Teoria dos princípios: da definição à aplicação dos princípios jurídicos*, 5th ed., Malheiros, São Paulo 2005, p. 167.

²³ G. Zagrebelsky, *El derecho dúctil. Ley, derechos y justicia*, transl. by M. Gascón, Trotta, Madrid 1995, p. 15. In the original quoting: “a través de la red de valores y procedimientos comunicativos que es además la única visión no catastrófica de la política posible en nuestro tiempo.”

²⁴ Cf. J. Thatcher, D.O'Sullivan, D. Mahmoudi, *Data colonialism through accumulation by dispossession: New metaphors for daily data*, “Environment and Planning D: Society and Space” 2016, preprint, pp. 1–17, doi: 10.1177/0263775816633195.

²⁵ J. Herrera Flores, *Teoria crítica dos direitos humanos: os direitos humanos como produtos culturais*, transl. by L. Caplan, Lumen Juris, Rio de Janeiro 2009, pp. 97–98.

raw material and increasingly inevitable, and the “real customers” of this surveillance capitalism are the companies that use these human raw materials for strengthening of their wealth.²⁶

This new form of colonialism emerges from the appropriation and extraction of social resources for profit, and unlike historical colonialism, in which pre-conditions were created for what is known as industrial capitalism, digital or data colonialism emerges against the background of the entire intertwined history of colonialism and capitalism.²⁷

That said, Big Data not only represents a new use for technology, but is an essential component for digital colonialism that is based on the logic of intentional accumulation²⁸ to produce profit from the capture of data and information from users who use certain services in digital environments. In the same sense, surveillance capitalism produced by digital colonialism qualifies a new form of capital accumulation through a new politics and social relations that replace contracts, the Rule of Law and social trust for the sovereignty of the “Big Other”.²⁹

This means that the digital colonial process works alongside social arrangements and technological infrastructures, as they allow data to be transformed into a commodity, in fact, an input for contemporary capitalist production.³⁰ In this perspective, especially considering the new digital colonialism imposed by hegemonic persuasive technology companies, it is necessary to reinforce critical positions in order to seek possible rupture or decolonization, since said paradigm is being imposed and consolidated during a transitional period. And this critical view becomes feasible as digital spaces and Artificial Intelligence mechanisms form digital “territories” that, like physical spaces, have the propensity to become places of extraction and exploitation and, therefore, places of coloniality, which is also manifested through the coloniality of power.³¹ Therefore, considering that emerging technologies, such as Artificial Intelligence, are directly subject to the coloniality of power, a study on their decolonization allows the avoidance of increasingly emerging social inequalities³² facing the strengthening of surveillance capitalism and digital colonialism.

²⁶ S. Zuboff, *The age of surveillance capitalism...*, *op. cit.*, p. 17.

²⁷ N. Couldry, U.A. Mejias, *The costs of connection: How data is colonizing human life and appropriating it for capitalism*, Stanford University Press, Stanford 2019, p. 9.

²⁸ S. Cave, *op. cit.*

²⁹ S. Zuboff, *Big Other...*, *op. cit.*, p. 83.

³⁰ N. Couldry, U.A. Mejias, *op. cit.*, pp. 9–10.

³¹ S. Mohamed, M.-T. Png, W. Isaac, *op. cit.*

³² Cf. A. Quijano, *Colonialidad y modernidad/racionalidad*, “Perú indígena” 1992, Vol. 13(29), pp. 11–20.

Concluding remarks

Unregulated spaces in which the fervent action of agents who seek at all costs to occupy data-driven markets may lead to the ill-fated extraction of data by sophisticated algorithms, which generate a reprehensible tendency and endanger human rights, with violations resulting from unforeseen and incalculable situations that exploit vulnerabilities in the Infosphere.

In this context, a conceptual distinction between dangers (and the corollary precaution) and risks (and the corollary prevention) is necessary in order to identify extra-normative parameters to fill in true 'grey zones' from colonial exploration that challenge Legal Science to the presentation of solutions to a complex problem shaped according to algorithmic models developed for the benefit of some and to the detriment of many.

If it is not possible for the State to regulate, by law, any and all contingency resulting from the misuse of data, at least while the state of the art evolves and undergoes sharp changes in these dangers and risks, to admit axiological vectors that aim to guide the development of algorithms, taking care at least of what is predictable and calculable, in a preventive nature, might be a fruitful path.

Human rights cannot be violated and it is not even conceivable that violations of any kind shall be tolerated in any specific settings. Its role is to functionalize the limits imposed on algorithmic development. In this sense, from what was observed in the course of the research, the research hypothesis is confirmed, denoting the need for widely recognized rights of such a nature to be preserved at the expense of algorithmic structures that may violate them, even under the cloak of innovation.

The role of the conceptualization attributed to sensitive personal data by the governing legislation provides an exemplary source of rights that bear this characteristic and that should receive greater protection from the legal system. Furthermore, the very institution of the protection of human rights as the foundation of the Brazilian LGPD (Article 2, VII) denotes the legislator's concern with the construction of a structure of postulates that goes beyond the individual and that inspires the entire system, connecting sources and setting the brakes on unregulated development.

In this sense, although they can be collected and even processed for lawful purposes – including waiver of consent, in the cases provided by law – it is imperative that any violations be punished more severely. Likewise, it is essential that its preservation becomes a major goal for every data processing agent. The protection of human rights, as said, acts exactly in this sense, offering an increase in the conditions for identifying spaces that are more prone to failure and damage.

A critical reading is required regarding the possibility of breaking or deconstructing the ill-fated digital colonialism that is already being exercised by technological companies in the Global North. Thus, ICTs that are booming, such as Artificial Intelligence algorithms, should be considered in view of their propensity for the coloniality of power, which requires studies on their decolonization so that, when developed, they can mitigate the resulting social injustices. surveillance capitalism.

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Abstract

Decolonial thinking in Brazil: perspectives for overcoming digital colonialism through the protection of human rights

The effects of colonialism persist until the present day, although many of its characteristics have been transformed through digital information technologies that enable algorithmically-driven environments in which the lack of regulation and governance perpetrates the exploitation of vulnerabilities. These colonial characteristics are equivalent to current digital information activities and they refer to the more general concept of coloniality.

Thus, unlike colonialism, coloniality continues as a way of relating power, knowledge, being and gender, but on a more sophisticated environment. The emergence of new information and communication technologies, based on the mechanisms of Artificial Intelligence, has favored a virtual environment called Infosphere, in which informationally embodied organisms (*inforgs*), as well as the strengthening of a digital colonialism formed by technological companies from the Global North, allow the accumulation of wealth and profit at the expense of inequalities and social injustices imposed by a new hegemonic digital colonialism that emerges and is guided by surveillance capitalism, which, once again in history, causes epistemic violence in relation to other virtual knowledge sources, insofar as it considers people as the product or raw material of this nefarious system. The emergence of data protection laws all throughout the globe is still a recent phenomenon, but clearly not sufficiently effective as a counterpoint for the problem at hand. Improving information and AI ethics and algorithm development governance have been widely discussed and praised as adequate means to overcoming and/or diminishing the impacts of such unwanted practices. Even though that might still be regarded by some as a far-fetched idea in a world of intercultural variety, pluralistic approaches to its understanding are an essential way of improving regulation. The Brazilian legal frameworks for Internet, privacy and data protection, which the research article will seek to deeply analyze, are still surrounded by skepticism due to the incipient sanction and liability enforcement mechanisms. Decolonial thinking is definitely an important subject and critically discussing the ever-challenging reality of the few global elites that currently dominate the Infosphere is an important step towards the desired ethical approach in Brazilian AI development. The forthcoming article has its main objective focused on the study of decolonial thinking in the aforementioned context of new hegemonic digital colonialism in Brazil. To achieve that goal, the deductive approach method shall be used, from the analysis of general premises in order to reach a particular conclusion, as well as bibliographic research.

Key words: digital colonialism, inforgs, decolonial thinking, human rights, Brazil