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Normative Colonialism in the Age of Digitalization

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Abstract

This study analyzes the dynamics of harmonization, systematization, and normative attraction among European legal systems, within the context of a physiological regulatory fragmentation, particularly evident in the normative frameworks governing technological innovations. In this context, algorithmic processing, data protection, and national security express heterogeneous legal sensitivities and divergent interpretations, reflecting structural and conceptual differences among states. From a perspective of coherence and rationalization, the need for a unified normative framework rooted in the foundational principles of the Union emerges, capable of governing the emerging tensions between the European, American, and Asian regulatory models, whose comparison is becoming increasingly intense and globally relevant.

Keywords: data colonialism; Bruxelles effect; big data's relation; social contract theory; digital sovereignty; normative subjectivity

INTRODUCTION

Today, we are witnessing a novel form of regulatory colonialism, a result of the supremacy of the market over states and the pervasiveness of cultural hegemony (Gramsci, 2022) in normative production. This hegemony, carried out by large international economic actors, projects legal models beyond the borders of their respective systems, fueling a constant expansion of the European regulatory perimeter. In this scenario, legal scholars cannot simply reduce themselves to the role of 'technician of the particular', but must maintain a systematic vision, capable of grasping the profound dynamics of the normative phenomenon through a phenomenological-hermeneutic approach. The extensive and analogical interpretation, once the core of legal adaptation, now appears inadequate in the face of the complexity of global normative interactions. More than a mere adaptation to existing models, there is a need for a conceptual reformulation of traditional legal institutions, capable of absorbing technological and social transformations. Where a rule is not directly binding, it operates as soft law, radiating the national legal

system through a process of normative contagion (normative osmosis), where regulations and standards acquire interpretative value. This phenomenon is exemplified by dynamics such as the Strasbourg effect, the Brussels effect, and the California effect, which embody different manifestations of the regulatory hegemony exercised by major global normative hubs. In this regard, we express a critical dissent towards the theory of the attractive effect, arguing that the protection of normative and cultural diversity should be a fundamental principle of legal action. Forced uniformity of disciplines not only erodes the specificities of individual legal systems but risks compromising the balance between law and collective identity. An ancient Indian parable tells of a group of blind men who were made to touch an elephant: each described what they perceived, but none understood the totality of the animal. This metaphor applies to human knowledge and, in particular, to law, which is never an absolute system, but the result of a collective elaboration based on available data. Cognitive neurophysiology teaches us that self-consciousness resides in the cerebral cortex, while the cerebellum accumulates information in clusters (cognitive clustering); similarly, a people develops its normative consciousness based on the cultural and social data it has. Thus, the normativity (legislation) of a nation is never a static element, but the product of a historical stratification and an interpretative elaboration, reflecting its evolutionary baggage. This is why, even in the face of similar phenomena, different people can develop different legal sensibilities, to the point of interpreting even fundamental concepts, such as freedom, in opposite ways.

HUMAN INTERACTIONS AND NORMATIVE COLONIALISM

New technologies are testing the democratic resilience of states, redefining power balances and altering the checks and balances inherent in traditional normative frameworks. This change pushes towards regulatory liquidity, a fluid and reactive normative adaptation, often based on general principles rather than on consolidated legal structures. In such a context, the ambition for a supranational regulation that treats heterogeneous legal systems and peoples according to uniform schemes can only prove, in re ipsa, inherently flawed, leading to the need for critical reflection on normative hybridizations. The introduction of foreign legal institutions into systems that have not shared their evolutionary process generates problematic metabolization, often resulting in distorting effects rather than harmonizing ones. The failure to systematize such insertions leads to an application misaligned with the original matrix, as they do not represent an organic product of the host legal culture, nor do they emerge from a common path dependency. Normative contamination is the result of intensified global interactions and the progressive "datafication" of societies, amplified by massive digitalization; the expansion of the data-sphere generates new tensions around the concept of digital sovereignty, demanding a reconsideration of the limits of legal harmonization. The growing influence of the GDPR effect is a clear example: between 2019 and 2020, at least 13 states updated or replaced their data protection laws inspired by the European framework, while another 11 introduced legislative drafts to this effect. Overall, privacy-related legislative activity increased in around 60 countries, leading to the adoption of new regulations in at least 26 jurisdictions. The Brussels effect finds its most evident manifestation in the area of data portability. The right to data portability (Article 20 GDPR) has been recognized in over 35 global jurisdictions, including Brazil, China, and several US states, demonstrating the pervasive role of European regulatory standards. However, according to an EU study, even in the absence of a harmonized legal framework, the value of the data economy would still increase from 2.6% to 3.9% of the EU's GDP. This data highlights how the attractive power of regulation is driven not only by institutional mechanisms but also by impact-driven normativity induced by the market. The legal harmonization promoted by the EU thus represents an unstable balance between uniformity and flexibility,

characterized by a minimum level of harmonization that leaves room for autonomy to member states. This approach, however, overlooks the profound technical and structural differences between legal systems, triggering a normative contagion that leads to the proliferation of regulatory standards driven more by compliance needs than by a genuine legal convergence. The historical interactions between peoples, facilitated by technological connections, have always generated complex and hard-to-harmonize normative contaminations. The idea that cold fusion between heterogeneous legal models is possible thus seems a reckless assertion. The history of law is, first and foremost, an economic and cultural history, shaped by spheres of influence logic. Technological superiority, in fact, conditions satellite state organizations, transferring normative power into the hands of those controlling digital infrastructures, whether public or private actors. In this framework, some regulatory models enjoy greater normative resilience and ability to impose themselves compared to others, determining a power shift that redefines the logic of legal sovereignty in the global context.

THE BATTLE TO REGULATE TECHNOLOGY

Normative conflicts, technological wars, and strategic battles that will shape the future of the digital economy represent the core of contemporary debate. The outcome of these clashes, often conducted by bodies with little democratic legitimacy, will determine future geopolitical influences on a global scale. The new colonialism, in fact, increasingly takes the form of digital colonialism, based on control over computing resources, technological production, and access to information flows. Massive regulation (over-regulation) within a geopolitical block structured as a sphere of influence can produce two distinct effects: on the one hand, attraction for emulation and harmonization, i.e., normative alignment induced by soft power mechanisms, direct or indirect conditioning; on the other hand, attraction by reference parameter, through the adoption of a regulatory model in the absence of viable alternatives. However, a critical reflection emerges: the real regulators are no longer (or not only) governmental bodies, but the technology producers themselves, who are able to generate a unique normative effect. Corporate policies transform into de facto standards, imposing themselves as the reference parameter for public institutions. This results in a new phenomenon of contractual governance, where end-user agreements, unilaterally defined by large tech companies, end up influencing the evolution of positive law itself.

The adhesion contract imposed by technology producers becomes a social contract by default, a regulatory constraint expanding due to its pervasiveness in the global market. This model redefines legal relations between individuals and businesses, relegating state legal systems to a peripheral role in the regulation of the digital economy. An emblematic example of such privatized normativity is represented by the terms of service of artificial intelligence systems like ChatGPT. The intellectual property policy establishes that user-generated content is not transferred in ownership, but is licensed for use, remaining formally under the control of the software house. Consequently, the software producer does not guarantee the originality of the result nor assume responsibility for any violations of third-party rights. Even more significant is the fact that this contractual logic is replicated on an industrial scale: versions marketed for businesses, aimed at automating legal writings, emails, or advertising campaigns, do not offer any real guarantee regarding the quality or legality of the generated content. The fragmentation of norms manifests in the heterogeneous legal responses that emerge in different normative blocks. Local legislations, due to regulatory contagion, develop interpretative variants regarding "patentability" and the attribution of intellectual property, but overlook the core issue: the product generated does not belong to the user, but to the system that created it.

Ultimately, the real regulator is no longer the national or supranational legislator, but the legal department of large multinational technology companies, which establishes terms of use that exclude any responsibility for damages resulting from plagiarism or breach of contract. Digital geopolitics, therefore, is not only an arena of clash between states but reflects a growing symbiosis between the power of tech companies and global regulatory dynamics. Technology is no longer just a tool for progress: it is a device of control, a regulatory power exerted through the market, capable of redefining the boundaries of legal sovereignty.

INVISIBLE COLONIALISM AND DIGITAL SOVEREIGNTY

If we were to pose a simple question to the public—"Who owns the internet? Who holds the ownership of the networks, servers, submarine cables over which information travels, satellites, and the extracted data?"—few would be able to answer fully. Moreover, many would misunderstand, assuming these infrastructures to be public goods, underestimating the dominant role of private actors in governing digital society. Today, the true owners of the network and its infrastructure often remain anonymous, while states themselves purchase technologies from private entities, effectively delegating the functioning of governmental apparatus and entire state systems to a technological oligarchy. This phenomenon recalls the concept of normative and technological colonialism, where state sovereignty is eroded in favour of transnational corporations that impose their regulatory framework on a global level (Zuboff, 2019). During traditional colonialism, dominant powers imposed their legal, economic, and institutional systems on peoples considered "primitive" or "underdeveloped", deeply altering their social and political structures (Mamdani, 1996). Today, this dynamic reproduces itself in more subtle forms: international development policies, multilateral treaties, and global conventions serve as vehicles for imposing normative models born in specific socio-cultural contexts but applied uniformly to deeply different legal systems. The control of digital infrastructures represents the key to understanding the phenomenon. Large technology platforms not only hold the power to govern access to information and knowledge production but also shape law itself; code, computer code, is gradually replacing law as a tool for social regulation (Lessig, 1999). Today, the concentration of digital sovereignty in private hands results in the privatization of law, which is driven by the market and the logic of profit (Morozov, 2013). Faced with this scenario, legal scholars cannot remain passive. Fundamental questions arise: "Are we still in a democracy? Who now coins the norms that govern new technological apparatuses? Do states still have the normative and technological power to stem democratic decay? In relations between private parties, does a balanced contractual synallagma still exist when one party uses a product both as a customer and as a user?" Technology is not a mere neutral tool but a device of power that conditions society and collective behaviours (Foucault, 1977). It generates new rights but also imposes normative models that often disregard the cultural and legal specificities of different national realities. A significant example is the EU regulatory framework and overseas regulations, which tend to homogenize the global legal landscape. This regulatory homogenization results in an unnatural massification that flattens local specificities. For example, the concept of privacy has different origins and meanings in various European countries: the French tradition emphasizes individual protection (droit à la vie privée), while the Anglo-Saxon approach is based on an economic and contractual view of confidentiality—privacy as control over personal information (Solove, 2008). However, the push for regulatory uniformity imposes a single interpretation, limiting the ability of national jurisdictions to express themselves in differentiated ways. Another emblematic case concerns the difference between droit d'auteur and copyright. The former, rooted in French legal tradition, protects the authorship of a work as an expression of the author's personality; the latter, typical of common law, is a proprietary right granting control over the

reproduction of the work itself. Unifying these concepts under a single regulation, without taking into account the profound cultural and philosophical differences underlying them, is a clear example of how normative colonialism expresses itself through legal standardization.

CONCLUSIONS: NORMATION AS A TOOL OF DOMINATION

Contemporary normative colonialism manifests primarily through the imposition of legal and economic models that standardize political and social practices globally. Major normative blocks, thanks to their ability to define and enforce regulations and directives, act as true global normative powers, influencing countries both within and outside their spheres of influence. European and American regulations become de facto standards for the global market, pushing other nations to adapt, under the threat of exclusion from international trade and the global technological ecosystem. At this point, normation itself becomes a form of soft power, used as a tool for political and economic pressure (Keohane & Nye, 2001). Normative and technological colonialism are deeply intertwined: technologies developed by digital giants not only spread globally but also bring with them governance models that reinforce the dominance of big tech over normative processes. This form of domination, subtle yet pervasive, does not express itself through military occupation or territorial control, but through the imposition of rules, laws, and technological infrastructures that favour the interests of a few global actors to the detriment of others. The balance between global integration and the protection of normative diversities will be one of the most urgent challenges for the international community and, above all, for legal scholars, who bear the responsibility of safeguarding the specificities of national and local rights. However, legal scholars must also recognize the need to create common frameworks between states, as in the case of the EU, which have their roots in a shared constitutional Charter.

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