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Data Strikes Against Data Coloniality:
Hacking Labour Law

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Abstract

From a decolonial perspective, what is the relationship between the limits of the legality of strikes and boycotts in digital labour? Starting from Faustino and Lippold's framework, we will consolidate the idea that data coloniality is part of the dynamics of capitalist/racist accumulation, through the expropriation and exploitation of digital labour, especially in the Global South. In this dynamic, however, new forms of workers' resistance arise, finding gaps for reappropriating the immaterial labour that they produced. Among these collective resistances, we chose to investigate data strikes, analysing the case of the "breque dos apps" in Brazil, often related to boycott actions of digital platforms, that integrate the perspectives of hacktivism, considering McKenzie's thought. Therefore, legal analysis is required considering these new conflicts. How can labour law, from a decolonial perspective, contribute to the legality of forms of resistance compatible with the current capitalist dynamics? Considering the coloniality of knowledge that involves the right to strike, it may be more advantageous for digital workers to think about other legal instruments to protect their collective struggle, using data protection laws, in defence of workers' intellectual property. We need to hack the networks, but also find ways of hacking Law itself.

Keywords: Right to strike; Data coloniality; Hacktivism; Data strikes; Boycott.

1. Introduction.

The development of technology networks over the past two decades has enabled a new phase of capitalism based on data. Various terms are used to characterise these economic

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activities conducted through digital platforms[1] - "data-driven economy", "gig economy", "on-demand economy" or "platform economy". This economy can be described as "the ecosystem where digital platforms operate. It encompasses a wide range of activities, from global to regional to local, and includes multiple types of digital platforms, business models and operating sectors".[2]

The platform economy also has had a serious impact on the global morphology of work, with the expansion of temporary forms of labour, on-demand activities and informality.[3] However, this does not operate in a homogeneous way worldwide. In terms of total investment in platforms connecting businesses and clients with workers, it is estimated that Asia receives US$57 billion, North America US$46 billion and Europe US$12 billion, accounting for just over 96% of total investment globally. Around 60% of these platforms have their headquarters in the European Union (EU) or in the United States of America.[4] Nevertheless, 15 countries account for more than 80% of all workers on major online platforms globally, and, with the exception of the United States, Canada and the United Kingdom, all are from the Global South.[5]

The reality of workers in the Global South has always been marked by precariousness and informality, but with the introduction of digital platforms, these conditions have been worsening,[6] with work accidents, exhausting working hours and wages that prevent a dignified life. In India, for example, most platform workers, in particular in the food delivery sector, are migrants from rural areas, and despite working 12-13 hours per day, they cannot make the state stipulated minimum wage.[7] In South Africa, crowdworkers may take 50-60 hours of work to earn around US$20.[8] On microtask platforms, the majority of workers in developing countries (53%) work during the night (10 p.m. to 5 a.m.), as work is often posted during US business hours – evening or night time for workers in Africa and Asia.[9] In Kenya, in the passenger transport sector, daily working hours are between 18 and 24, forcing drivers to sleep in their vehicles, with serious effects on their health and wellbeing.[10] In Brazil, which,

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[1] A digital platform is "a 'digital interface' or an 'online service provider' … positioned between the providers of the services or goods and their clients". ILO, *Realizing decent work in the platform economy. International Labour Conference, 113th Session 2025*, International Labour Office, Geneva, 2024, 15.

[2] ILO, *ibidem.*

[3] *Ibidem.*

[4] *Ibidem.*

[5] The term "Global South" is also another form of dialectical inferiority, because there are several countries that comprise it, which makes this expression one more reduction of cultural, economic and social complexities based on the coloniality of knowledge.

[6] Fairwork, *Fairwork Annual Report 2023. State of the Global Platform Economy*, Oxford-Berlin, 2023, available at https://fair.work/en/fw/publications/fairwork-annual-report-2023-state-of-the-global-platform-economy/ (accessed on 7 November 2024).

[7] Mani M., Tiwari S., *Platform Employment During Covid-19: A Study of Workers in the Food Delivery Sector in Bengaluru*, Centre for Labour Studies - National Law School of India University, IPP, 2022.

[8] Fairwork, *Work in the Planetary Labour Market. Fairwork Cloudwork Ratings 2021*, Oxford, 2021, available at https://fair.work/wp-content/uploads/sites/17/2021/06/Fairwork-cloudwork-2021-report.pdf (accessed on 7 November 2024).

[9] O'Neill J., *From Crowdwork to Ola Auto: Can Platform Economies Improve Livelihoods in Emerging Markets?*, in Galperin H., Alarcon A. (*eds*), *The Future of Work in the Global South*, International Development Research Centre, Ottawa, 2018.

[10] Fairwork, *Kenya Ratings 2023. The Promise and Peril of Platform Work in the Kenyan Platform Economy*, Oxford-Berlin, 2023, available at:

together with Mexico, has the largest number of platform workers in Latin America, there are 366 thousand platform bike workers and an average monthly income of 1,650 reais (291.77 dollars), despite working weekly between over 49 hours.[11] Around 58.9% of delivery workers in Brazil report having suffered a traffic accident, fallen ill, been assaulted, attacked or shot at while working.[12]

This situation is quite different from labour conditions in countries in the Global North. For instance, Denmark and France have an hourly wage for delivery workers.[13] The collective agreement in Denmark has working time regulations for this sector, as does the Occasional Transport Act regulating rideshare activities in Austria.[14] On microtask and freelance platforms the average hourly earnings (paid and unpaid) for those in Global North countries are much higher (US$4 and US$12.6 respectively) than for those in Global South countries (US$2.1 and US$5.5 respectively).[15] This disparity is quite high on freelance platforms even after controlling for basic characteristics and type of task performed: workers in Global South countries tend to earn 60% less than their counterparts in Global North countries.[16]

Besides precariousness prevalent in the Global South, when we analyse the reality of platform workers, we can trace a common pattern of exploitation: racism.[17] The majority of platform workers tend to be migrants from colonised countries or racialized workers.[18] Fairwork estimates that over 60 million people are engaged in platform work, with the highest concentrations in India, Pakistan, Bangladesh and the Philippines.[19] Nearly 35% of the labour supply on major English-language platforms is located in India alone, while nearly 40% of the demand emanated from the United States, followed by the United Kingdom.[20] For instance, in London, research demonstrates that only 18% of app drivers are white.[21]

https://fair.work/wp-content/uploads/sites/17/2023/12/Fairwork_kenya_Report_2023.pdf (last accessed on 7 November 2024).

[11] Sacchet de Carvalho S., Oddo Nogueira M., *Plataformização e Precarização do Trabalho de Motoristas e Entregadores no Brasil*, in *Boletim Mercado de Trabalho no. 77*, Instituto de Pesquisa Econômica Aplicada (IPEA), Brasilia, 4 April 2024.

[12] *Ibidem.*

[13] International Social Security Association (ISSA), *Platform workers and social security: Recent developments in Europe*, 2 November 2023.

[14] *Ibidem.*

[15] For example, if we consider the average monthly cost of living in the United States (about US$3,000) and the average hourly wage of a microtask worker (US$5.40), it would represent only 0.18% of the cost of living in the US. If we compare the average monthly cost of living in Indonesia (about US$340) and the average hourly wage of a microtask worker (US$1.30), it would represent 0.05%. To learn more about the methodology for comparing these countries, *see* the statistical analysis in Appendix 4B in: ILO, *2021 World Employment and Social Outlook. The role of digital labour platforms in transforming the world of work*, International Labour Office, Geneva, 2021.

[16] ILO, *ibidem.*

[17] Grosfoguel R., *El concepto de racismo en Michel Foucault y Frantz Fanon: ¿teorizar desde la zona del ser o desde la zona del no-ser?,* in *Tabula Rasa*, 16, 2012, 79-102. According to the Latin American decolonial theory, racism is an ideology that creates relationships of domination, where whiteness (and the "West" or "Europe") is perceived as inherently superior to other ethnicities and cultures. Thus, racism, for this decolonial theory, is necessarily phenotypic and geopolitical, created by Eurocentrism for the domination of the colonised.

[18] Doorn Van N., *Platform labour: On the gendered and racialized exploitation of low-income service work in the 'on-demand' economy*, in *Information, Communication & Society*, 20, 2017, 898–91.

[19] Fairwork, nt. (6).

[20] *Ibidem.*

[21] *Ibidem.*

Migrant workers constitute over 70% of workers in the platform-based delivery sectors in Argentina and Chile.[22] Discrimination was overwhelmingly reported by crowdworkers and local-based app workers[23] who live in the Global South,[24] but racism also attacks "non-white" people located in the Global North. An African-American crowdworker based in the US reported that it can be hard to access sufficient work, because among requesters there is "a notion [about] the incompetence of African-American professionals".[25]

Race here has to be analysed through discrimination frameworks and uneven experiences of algorithmic management,[26] but also on how platformization itself relies on racial and migration politics in its transformation of work.[27] "Beyond identifying the over-representation of racial minorities in the platform economy, these processes of racialisation have been crucial at every stage of the platform economy's rise to dominance, and therefore constitutes a key organising principle of platform capitalism – hence the term 'racial platform capitalism"[28]. This includes racial and migrant divisions of labour which shape laws[29] and neoliberal public policies, considering "non-white" workers as inferior, disposable and dangerous, leading tech companies to take advantage of this structural racial discrimination to exploit cheap and precarious labour.[30]

This labour exploitation takes on an expanded meaning in the "racial platform capitalism". After all, all those who use digital platforms have their data expropriated[31] and commodified, that is, captured without direct remuneration, generating value for the big tech companies, majorly based in the Global North. Therefore, combined with the exploitation of labour, facilitated by racism,[32] this capitalist logic also commodifies every aspect of the lives of those who use such technologies, leading to the idea that social media users are also workers. The "free" services provided by digital platforms are not so free after all, because you are not just the consumer: you are also the service that is being consumed.[33] Considering

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[22] Gebrial D., *Racial platform capitalism: Empire, migration and the making of Uber in London,* in *Environment and Planning A: Economy and Space,* 56, 4, 2024, 1170-1194.

[23] ILO, nt. (1). Regarding platform work, there are location-based platforms, where the services are provided in a specific location by individuals, as, for example, deliveries and passenger transport. On the other hand, online platforms workers provide their services remotely (for example, software programming). Online platforms can be further categorised as crowdwork (or microwork) freelance and competitive programming platforms.

[24] Fairwork, nt. (8).

[25] *Ibidem,* 20.

[26] Kim P., Bodie M.T., *Artificial Intelligence and the Challenges of Workplace Discrimination and Privacy,* in *ABA Journal of Labor and Employment Law,* 35, 2021, 289.

[27] Gebrial D., nt. (22).

[28] *Ibidem,* 1170.

[29] Faustino D., Lippold W., *Colonialismo digital: por uma crítica hacker-fanoniana*, Boitempo, São Paulo, 2023. In 2012, Google joined the list of Washington's biggest-spending lobbyists in the US.

[30] *Ibidem.*

[31] Zbyszewska A., Maximo F., *Rethinking the labour-Environment Nexus: Beyond Coloniality, Towards New Epistemologies for Labour Law,* in *International Journal of Comparative Labour Law and Industrial Relations*, 39, 3-4, 2024, 293-313. The very essence of expropriation is that it rests on the historic and the ongoing dispossession and appropriation of resources (human or non-human) without any compensation at all, in a process inseparable from colonisation.

[32] Faustino D., Lippold W., nt. (29).

[33] Ekbia H., Nardi B.A., *Heteromation, and other stories of computing and capitalism*, The MIT Press, Cambridge, 2017, 33.

this intersection between workers (crowdworkers and app-based workers) and social media users, racism impacts the production, distribution and valuation of this data. Algorithmic racism is how "the discriminatory impacts of Artificial Intelligence (A.I) can intensify racial oppression and reproduction of white supremacy and how such an arrangement takes shape in the socio-technical context through algorithmic biases".[34] Therefore, the fictitious idea of racial democracy and technology's neutrality are united in "their purpose of hiding power relations that construct interpretations of the world, naturalising and deepening exploitation and inequalities".[35]

This suggests the maintenance of some patterns of exploitation and expropriation, which is called data coloniality. Deivison Faustino and Walter Lippold[36] understand data colonialism[37] as a new dynamic of capitalism, marked by two elements: first, a new territorial world division according to the interests of large monopolies of data industry; second, by the tendency to subsume human life and their dimensions of knowledge, creativity and production processes to extractive logics geared towards the interests of capitalist accumulation in data economy.

From this reality, in which big techs from the Global North grow through large economic monopolies, the elements of colonialism are still alive, in their repeated alliance with racism, as generators of new dimensions of capitalist accumulation. Through its association with colonialism, capitalism has been and continues to be characterised by a Eurocentric[38] world pattern called coloniality of power, which allows us to understand the contemporary continuity of colonial domination forms beyond colonialism itself.[39] According to Latin American decolonial theory, the phenotypic concept of race was created by Eurocentric rationality, to support a racial and sexual division of labour in the colonisation of the Americas, so that only white men could perform free work, i.e. outside the black slavery and indigenous servitude. Even with the end of colonialism, this racist pattern remains in capitalist labour relations worldwide.[40]

This pattern of colonial power was subsidised by a coloniality of knowledge, which recognizes Eurocentrism as the only scientific rationality, superior to other forms of

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[34] Silva T., *Racismo algorítmico: inteligência artificial e discriminação nas redes digitais*, Edições Sesc, São Paulo, 2022, 66.
[35] *Ibidem.*
[36] Faustino D., Lippold W., nt. (29).
[37] *See* Coulthard G., *Red Skin, White Masks: Rejecting the Colonial Politics of Recognition*, University of Minnesota Press, Minneapolis, 2014. Although the authors use the expression "data colonialism", the concept refers to the idea of coloniality. According to the decolonial theory from Latin America, coloniality differs from colonialism, as it is not restricted to the time of colonial territorial control by the metropolis. There are differences between decolonial theories developed in the Global North and the Global South. Specifically in North America/Turtle Island, decolonization theories understand that colonisation is a process that is still ongoing, especially for Black and Indigenous people. In Latin America/Abya Yala, decolonial studies differentiate colonization from coloniality, because it wants to draw attention to the fact that even in democratic sovereign states, including progressive ones, the genocide and enslavement of Black and Indigenous people persists. However, both seek common goals and that is why they are brought together in this paper without separation.
[38] Quijano A., *Coloniality of Power, Eurocentrism and Latin America*, in *Nepantla: Views from the South,* 3, 2000, 533-580.
[39] *Ibidem.*
[40] *See* Ashiagbor D., *Race and Colonialism in the Construction of Labour Markets and Precarity*, in *Industrial Law Journal,* 50, 4, 2021, 506-531.

knowledge production.[41] Eurocentrism does not refer to all western European cognitive history, but to a specific rejection of other non-European forms of knowledge, deeming irrational.[42] Under this power pattern, relations between Europe and the rest of the world were codified into binary categories: East-West, primitive-civilised, men-women, nature-society, with race as the central element of dehumanisation.[43]

Following the decolonial theory, Eurocentrism as a racial colonial/capitalist system of thought draws the coloniality of the world of work in the platform economy, but can also influence the legality of the collective resistance against it. Contra data coloniality, collective actions campaigns force changes in technology platforms by leveraging the value of user data and digital workers data. We understand these actions as data strikes, which is the suspension of data work, that includes the labour of platform digital workers and the work of network users, often related to boycott actions carried out by consumers of digital platforms,[44] as a form of hacktivism. Based on McKenzie's thought,[45] hacktivism can be considered as a type of collective action, dependent or not on the use of specific hacking capabilities, which have the political-ideological purpose of weakening, limiting or destroying the coercive power of technology companies, protected by the state. In this dynamic, hacker groups (platform workers and social media users) find gaps for reappropriating the immaterial work that they produced. In addition to the expanded notion of the working-class attributed to the hacker collective, there is also the resistance against stripping of intellectual property in digital platforms. In other words, if hackers are characterised by the production of information and if this information is necessarily appropriated by the ruling class, the core of the conflict in this phase of capitalism would reside in the dispute over intellectual property.[46]

However, to a greater or lesser extent, such collective actions were repressed by tech companies and the state, not being covered by the fundamental right to strike. Coloniality marks the legal marginalisation of certain types of labour and subjects, and, consequently, their forms of resistance, leading to the binary idea that there are strikes and "other collective actions". This leads to the main research question of this paper: *from a decolonial[47] perspective, what is the relationship between the limits of the legality of strikes and boycotts in digital labour?*

For the Latin American legal decolonial theory, strike was incorporated as a fundamental right by labour law as a reflection of the Eurocentric context of modernity, where the capitalist activity was deeply rooted in industrialization, full employment, with strong unions – traditionally occupied by male and white leaders – that were preserved by legal barriers provided by the nation-states, without being threatened by data technologies.[48] Considering

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[41] Quijano A., nt. (38).

[42] *Ibidem.*

[43] Quijano A., nt. (38).

[44] Vincent N., Hecht B., Sen S., *"Data Strikes": Evaluating the Effectiveness of a New Form of Collective Action Against Technology Companies*, in *The World Wide Web Conference on – WWW '19*, 2019.

[45] Wark M., *Um manifesto hacker*, Editora Funilaria, Sobinfluencia Edições, São Paulo, 2023.

[46] *Ibidem.*

[47] Ballestrin L., *América Latina e o Giro Decolonial*, in *Revista Brasileira de Ciência Política*, 11, 2013, 89-117. To overcome coloniality of knowledge, Latin American decolonial theory proposed the idea of decolonial turn. A decolonial turn is an effort at epistemic and political delinking from Eurocentrism.

[48] Máximo F., *Decolonizing the right to strike*, in Davidov G., Langille B., Lester G. (eds), *The Oxford Handbook of the Law of Work*, Oxford University Press, Oxford, 2024, 453-466.

this reality, the hegemonic concept of the right to strike[49] is as a group of employees who stop working to claim economic and social rights. However, this legal definition has never reflected labour relations from the Global South.[50] Labour law granted central visibility to one form of exploitation: the standard employment relationship. With this, Eurocentric labour sociality became the world's typical work. Namely, the right to strike became a legal resistance to only very specific ways of working, those in which the industrial capital relation is centred.[51] Thus, the lack of legal protection for other forms of collective actions, exercised by workers on the margins, mostly "non-white" people from the Global South, are largely ignored and can be seen as a result of coloniality in the right to strike. And this coloniality may still be reflected in the classification of the (il)legality of data strikes in the platform economy.

If what characterises this phase of capitalism is precisely the expansion of the possibilities of expropriation of value, with the prevalence of intellectual property[52] over public and workers' interests, the legal limits that are in force for the forms of resistance of working subjects – especially the right to strike – need to be updated. How can labour law, from a decolonial perspective, contribute to the legality of forms of resistance compatible with the current capitalist dynamics?

Among data strikes that challenge social and legal dimensions of coloniality, as Brazilian researchers, and due to Brazil's relevance in the Latin American platform economy, we chose to focus on our country experience, analysing the case of the "breque dos apps" - "a break from the apps", considering that its main characteristic was to bring together delivery workers with boycott's by app users, spreading throughout Latin America, addressing in a hybrid way work demands related to racism and colonialism.

To this end, this paper was developed through a bibliographic review and analysis of secondary data, based on decolonial theory, and will follow this order: in the second section, we will delimit the concept of data coloniality, using Faustino and Lippold's[53] research; in the third part, we develop the idea of hacktivism against data coloniality, based on McKenzie's[54] thought, to investigate "other collective actions" that are neglected by the right to strike drawn up in the Eurocentrism; in the fourth section, we will investigate data strikes as forms of hacktivism against data coloniality, using as an example the case of the "breque dos apps" in Brazil; in fifth section, we will investigate the relationship between coloniality, the limits of the legality of strikes and boycotts in digital labour, seeking strategies for the legal protection of these forms of collective struggle, and then move on to brief final considerations.

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[49] Sinay H., *La grève*, in Camerlynck G.H. (ed), *Traité de Droit du Travail*, Dalloz, Paris, 1966; Viana M.T., *Da greve ao boicote: os vários significados e as novas possibilidades das lutas operárias*, in *Revista do Tribunal Regional do Trabalho da 3ª Região*, Belo Horizonte, 49, 79, 2009, 101-121; Supiot A., *Revisiter les droits d'action collective*, in *Droit social*, 7-8, 2001, 687-704; ILO, *Freedom of Association. Compilation of decisions of the Committee on Freedom of Association*, International Labour Office, Geneva, 2018; Giugni G., *Diritto Sindacale*, Cacucci Editore, Bari, 2008.

[50] Máximo F., nt. (48).

[51] *Ibidem.*

[52] Based on the concept of Brazilian laws (Law n. 9.609/98 and 9.610/98), we consider that intellectual property is linked to the protection of intangible assets intended to satisfy people's needs.

[53] Faustino D., Lippold W., nt. (29).

[54] Wark M., nt. (45).

2. What is data coloniality?

As mentioned above, for Deivison Faustino and Walter Lippold[55] data coloniality is marked by two elements: first, a new territorial world division according to the interests of large monopolies of data industry; second, by the tendency to subsume human life and their dimensions of knowledge, creativity and production processes to extractive logics geared towards the interests of capitalist accumulation in data economy.

2.1. New territorial world division of data coloniality.

Delving into the first dimension, Faustino and Lippold[56] analyse the issue of the continuity of the colonial experience from the perspective of racist domination in the platform economy, which, articulated with the international division of labour, promotes renewed forms of exploitation and expropriation of work, especially in the countries of the Global South. The idea of coloniality does not consist of a metaphor, but a concrete economic and racist structure that ensures the maintenance of inequalities at a global level, deepening historically existing geopolitical fractures. "It refers, first of all, to a new division of the world that updates imperialism and sub-imperialism, by reducing the so-called Global South to a mere territory for extractive mining of informational data or to belated consumers of technology. These processes marked by expropriation and exploitation of digital labour, redefine and, at the same time, are made possible by new expressions of racism and racialization".[57]

To illustrate how this works, we must remember that, according to 2017 figures, three of the largest revenue IT companies in the world were headquartered in the US. Most of all cross-border data traffic passes through the United States and is subject to surveillance and alteration methods that this government deems necessary.[58] It is no coincidence that the US and other Global North countries, in the name of technology, progress and democracy, have been pressuring the countries of the Global South to open their digital borders.[59] The Global North still assumes the role of controlling the Global South: data flows continue to replicate the movement of resources from the colony to the metropolis. The Global North holds the means of data processing, expropriating the immaterial labour intrinsic to workers' intellectual property, and the colonised only provides the "raw" data.

Hence, data coloniality is the "use of digital technology for the political, economic or social domination of other nations or territories", which develops through the monopolistic tendency of the technology sector, combined with the appropriation of labour through data capture. This data expropriation is used by big tech companies to incite consumption,

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[55] Faustino D., Lippold W., nt. (29).

[56] *Ibidem.*

[57] Ekbia H., Nardi B.A., nt. (33), 96.

[58] *Ibidem.*

[59] *Ibidem.*

political and ideological trends, predicting behaviours.[60] Just remember Elon Musk's infamous post on his social network X (formerly Twitter), "We'll coup whoever we want! Deal with it". The message was a response to a user who claimed that Musk would attempt a coup in Bolivia to control lithium extraction in the country. Bolivia has the largest reserves of the resource in the world.[61]

This dynamic occurs unequally across the world, allowing the Global South and its populations to appear as territories and targets of data extraction, in exchange for the illusion that they are being inserted into circles of consumption and hyperconnectivity. Kwet describes this colonial process: "the engineers are the corporate armies of elite programmers earning lavish salaries of U\$250,000 and up. The exploited workers are the people of colour extracting the minerals in the Congo and Latin America, the armies of cheap labour annotating AI data in China and Africa, and the Asian workers suffering from post-traumatic stress disorder after scrubbing social media platforms of disturbing content.[62]

And this racist colonial process also operates internally in the countries of the Global South. Research in Brazil demonstrates that Black Brazilians "do not feel represented in developing digital technologies or in key spaces like policy-making or law-making".[63] In 32.7% of Brazilian companies, there are no single Black person on the technology teams.[64] The underrepresentation of black people in the predictive algorithms' programming process may reproduce some racist patterns in AI that are naturalised by white people, who dominate positions of power in tech companies.[65] In addition, the lack of access of "non-white" people to fast internet networks also impacts the lack of diversity in the data used by AI. For example, in Brazil, poor people who are limited to accessing zero-rated applications (such as WhatsApp and Facebook) are higher among black individuals than among non-black individuals.[66]

Complementing the racist geopolitics of data circulation, coloniality also manifests itself in algorithmic racism. For instance, Google labelling black people in photos as gorillas, Nikon's photography software that warns the photographer that someone blinked when it has people with Asian features or Google algorithm that notified the user of the existence of a greater search for criminal records in a job selection process with the names of black candidates than with the names of white ones.[67] AI does not prevent human error and, what is more serious, it can recreate racism imposed by coloniality and produce new patterns.[68]

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[60] Ekbia H., Nardi B.A., nt. (33), 71.

[61] Farias L., Zero M., *A volta do golpismo que nunca foi embora*, in *Carta Capital*, 2024.

[62] Kwet M., *Digital Colonialism. The Evolution of US Empire*, in *Transnational Institute (TNI) Longreads*, 4 March 2021.

[63] Silva F.S.R., Silva T. (orgs), *Artificial Intelligence and Racial Discrimination in Brazil: key issues and recommendations*, Institute for Research on Internet and Society, Belo Horizonte, 2024.

[64] *Ibidem.*

[65] Kim P., *Data-Driven Discrimination at Work*, in *William & Mary Law Review*, 48, 2017, 857-936.

[66] Silva F.S.R., Silva T., nt. (63).

[67] Kim P., nt. (65).

[68] *Ibidem.*

2.2. Extractiveness of data coloniality.

In this colonial dynamic, the so-called "primitive accumulation of data" proves to be essential. For Faustino and Lippold,[69] it is "set of practices, techniques and policies through which digital platforms create, in a sociotechnical manner, mechanisms to extract profit from the digitalized experience of individuals". Therefore, walking towards the second dimension of data coloniality, and drawing a parallel with the Marxist concept of primitive accumulation, Faustino and Lippold[70] understand that it does not only involve the exploitation of labour, but, above all, its expropriation, as it is a process which promotes the "permanent transformation of all means of life into capital". All behaviours and flows of life are being converted into data, with the subsumption of everyday life and its cognitive processes to the digital universe.[71]

In this scenario, human subjectivity, privacy, creative and cognitive capacity are appropriated as economic assets whose management is completely beyond our decision-making. As a consequence to the expropriation represented by this manipulative process, it is necessary to note that humanity involved in the dynamics ends up having its temporality, its rhythm and its forms of socialisation determined by and in the interests of big tech, in a true process of colonisation of life.[72] The longer digital platforms are used, the greater the amount of data it expropriates and the higher its value on the market.[73] The time a user spends on the app is an indicator monetized by platforms when selling their induction services to potential advertisers and for political predictions.[74] The work involved in this kind of economic articulation, recognized as immaterial labour, stands out for representing an expropriation of value that occurs beyond the productive sphere, but certainly in favour of capitalist accumulation, with emphasis on the domain of the spheres of circulation and consumption, in which a significant amount of unpaid labour[75] is captured by big techs.

It is important to emphasise that expropriation differs from (and complements) exploitation in racial/colonial capitalism. Classical Marxian accounts of capitalist formation and development tend to privilege exploitation of human labour as capitalism's principal dynamic and harm. Expropriation in the form of primitive accumulation features in these accounts as, among others, an antecedent to the (forceful) formation of an exchangeable labour and labour force. However, expropriation is not historically bounded, nor does it always lead to integration into formal wage relations and the attendant exploitation, which tends to be offset by some form of payment and forms of protection (i.e., those associated

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[69] Faustino D., Lippold W., nt. (29), 92.

[70] *Ibidem.*

[71] *Ibidem.*

[72] This has also been pointed out by other non-decolonial authors. *See*, for instance, Habermas J., *Technology and Science as "Ideology"*, in Habermas J., *Toward a Rational Society,* Polity, Oxford, 1968.

[73] Faustino D., Lippold W., nt. (29), 119.

[74] *Ibidem.*

[75] Ekbia H., Nardi B.A., nt. (33), 35. Here we include unpaid labour of platform workers, but also by the social media users, that is called heteromation.

with 'free' contractual labour).[76] On the contrary, as Nancy Fraser[77] observes, the very essence of expropriation is that it rests on the historic and the ongoing dispossession and expropriation of resources (be they human or non-human, natural or otherwise) without any compensation at all, or without one that is adequate to replenishment, reproduction, or regeneration of those various resources, intrinsic, therefore, to colonisation.

2.3. Definition of data coloniality.

Data coloniality reifies the gentrifications of class, race, and geopolitics of colonialism, transforming all the dimensions of worker's (which also includes social media users) life into inputs for capitalism, without the distribution of their wealth between Global South and Global North.[78] Consequently, the difference between exploitation and expropriation is also based on the legal status of the subject in class society. According to Latin American decolonial theory, phenotypic racism has placed black and indigenous people in the ontological category of anti-humanity.[79] Like minerals or oil, "non-white" bodies have been considered dead matter, fungible and accumulative,[80] as a mere means of production since the beginning of capitalism, which for Latin American colonial theory began with the invasion of the Americas in 1492. In this way, the process of diffusion of the commodification of life caused by the platform economy will have other ends for "non-white" people and for countries in the Global South.

Expropriated data poses risks to the fundamental rights, related to privacy, intimacy, health and social rights, but also to the democratic quality of social relations, as they remove transparency, political freedom and compromise the deliberative possibilities of the public sphere. However, in relation to the most vulnerable groups, use of expropriated information leads also to death policies,[81] whether through surveillance and repression instruments based on algorithms built on racist distortions, or through the instrumentalization of public security and war policies that amplify power in an increasingly asymmetrical way.[82]

Predictive policing is becoming the methodology in so-called crime prevention strategies. For instance, the Los Angeles Police Department had been using technology called "PredPol" "to examine 10 years of crime data, including the types, dates, locations and

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[76] Zbyszewska A., Maximo F., nt. (31).

[77] Fraser N., *Expropriation and Exploitation in Racialized Capitalism: A Reply to Michael Dawson*, in *Critical Historical Studies,* 3, 1, 2016, 163.

[78] Hassemer C., Máximo F., *Heteromation: labour and coloniality in data driven economy*, in *Sociedad Internacional de Derecho del Trabajo y de la Seguridad Social*, XXIII Congreso Mundial, 7-10 September, Lima (Perú), 2021.

[79] Mignolo W., *The Geopolitics of Knowledge and the Colonial Difference*, in *The South Atlantic Quarterly*, 101, 1, 2002, 57-96; Quijano A., nt. (38); Maldonado-Torres N., *A topologia do Ser e a geopolítica do conhecimento. Modernidade, império e colonialidade,* in *Revista Crítica de Ciências Sociais*, 80, 2008, 71-114; Lugones M., *Colonialidad y Género*, in *Tabula Rasa*, 9, 2008, 73-101.

[80] *See* Fanon F., *Black Skin, White Masks*, Grove Press, New York, 1952; Souza N.S., *Tornar-se negro ou As vicissitudes da identidade do negro brasileiro em ascensão social,* Graal, Rio de Janeiro, 1983; Hartman S., *Scenes of subjection: terror, slavery and self-making in nineteenth-century America*, Oxford University Press, Oxford, 1997; Mbembe A., *Necropolitics*, Duke University Press, Durham, 2019.

[81] Fanon F., nt. (80).

[82] Kim P., Bodie M.T., nt. (26).

frequency of crimes, to predict when and where crimes would likely occur over the next 12 hours. These data, gathered and categorised by police officers, are both the product and the cause of heightened surveillance in black and Latinx communities. Predictive policing reiterates and exacerbates the existing biases in the policing system, while providing the guise of objectivity because of the use of supposedly neutral algorithmic decision-making".[83] In Brazil, a report done by the Rede Observatórios de Segurança (Network of Public Security Observatories) showed that 90% of the arrests done with the help of facial recognition were of Black people. This includes several racist AI biases that lead to unjust imprisonment, such as a black man who spent 26 days wrongfully arrested because of a false-positive.[84]

Looking at social media users and workers, especially in Global South countries, is to perceive their subordinate insertion in processes of data expropriation to violate their individual and collective rights, in which these subjects end up acting as participants in the "mining of themselves".[85] Research has revealed the process of mining citizens' personal data for private use by large monopolistic tech companies, in a complex alliance between financialization and datafication, which allowed the transformation of a large volume of data into economic assets, without state regulation and the consent of the subjects involved.[86] The critical effort to relate this new dimension of colonial violence to the work of affected subjects (platform workers and social media users), recognizing their role in the creation of value and in the dynamics that expropriate their own data, allows us to understand the new expressions of work and the compliance of labour law in responding to these forms of action of capital. This raises the question of whether the current legal protections afforded - amongst which the right to strike - are still relevant and not bound to coloniality.

On the other hand, the possibilities opened by the informational sphere, while giving rise to new forms of domination, also do so in relation to new forms of struggle and resistance. If capital reinvents itself in its capacity for accumulation, the connections between subjects are also reinvented. Faustino and Lippold,[87] however, bring us two important warnings. First, it is not possible to dissociate resistance to expressions of this capitalist dynamic from its connection to racism. Thus, understanding the dynamics of accumulation in its bias towards inequality is essential to avoid falling back into digital activism that can be absorbed or captured by the system itself. Second, the authors[88] highlight the need for these forms of struggle to be understood and supported in favour of broader transformation projects, which we understand here as a special provocation so that the juridification[89] of these experiences is compatible with their potentialization, and not with their annihilation. We know that the juridification of collective struggles comes with procedural rules that can empty their political

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[83] Achiume T.E., *Racial discrimination and emerging digital technologies: a human rights analysis. Report of the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance*, Human Rights Council - United Nations, Geneva, A/HRC/44/57, 18 June 2020.
[84] Silva F.S.R., Silva T., nt. (63).
[85] Faustino D., Lippold W., nt. (29), 119.
[86] Kim P., Bodie M.T., nt. (26).
[87] Faustino D., Lippold W., nt. (29), 195.
[88] *Ibidem.*
[89] Teubner G. (ed), *Juridification of Social Spheres*, European University Institute – Series A, 6, De Gruyter, Berlin, 1987.

transformative potential[90]. This means that those forms of hybrid collective actions, historically neglected by labour law, shall be juridified and express those social spheres that colonisation oppressed.

We will reflect on this in the next topic, based on the analysis of the disruptive decolonial forces in these collective resistances, that converge with perspectives of hacktivism, destabilising the concept of intellectual property, as pointed out by McKenzie.[91]

3. Hacktivism against data coloniality: the master's tools can dismantle the master's house?[92]

The Hacker Manifesto[93] is based on the understanding of the existence of a new ruling class, the vectorial class, which would differ from the capitalist class precisely because it transforms information into a commodity, in a way that is unprecedented in our society, as described by Faustino and Lippold[94] as a data coloniality dimension. According to this Manifesto, the so-called "hacker class" would correspond to all people who produce information to be appropriated by the "vectoralist ruling class". In other words, the hacker condition would be the potential condition of all workers – crowdworkers and app-based workers, but also social media users – exploited and expropriated by this new economic dynamic. Here, we will use the Hacker Manifesto to understand this expanded notion of the working-class in the context of the platform economy, as well as to frame their new forms of collective actions.

The idea that social media users are also workers is shared by several authors,[95] since data labour is the result of the exploitation, but also the expropriation of immaterial labour by the vectorialist class, maintaining the circuits of coloniality of power. Tech companies often rely on the user's data labour to power mission-critical intelligent technologies.[96] For Ekbia and Nardi's, for example, the conceptualization of this unpaid work is heteromation, that is "is the extraction of value from low-cost or unpaid labour in computer-mediated networks".[97] Data expropriation is the backbone of platform capitalism. For example, 63% of Amazon's revenue does not come from physical or virtual retail, but from cloud computing and hosting services. The case of Uber and other sharing platforms such as Airbnb and its derivatives is

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[90] On the advantages and disadvantages of the juridification of collective struggle, *see* Edelman B., *A legalização da classe operária*, Boitempo, São Paulo, 2016; Máximo F., *Para além da greve: diálogo ítalo-brasileiro para a construção de um direito de luta*, Editora Letramento, Belo Horizonte, 2020.

[91] Wark M., nt. (45); *See* also Jordan T., Taylor P., *Hacktivism and Cyberwars*, Routledge, London, 2004; George J.J., Leidner D.E., *From clicktivism to hacktivism: Understanding digital activism*, in *Information & Organization*, 29, 3, 2019.

[92] The title is a reference to Audre Lorde, already used by Faustino and Lippold and by the research of Raissa Alves. Faustino D., Lippold W., nt. (29); Alves R., *Entre o silêncio e a negação: trabalho escravo contemporâneo sob a ótica da população negra*, Editora Letramento, Belo Horizonte, 2019.

[93] Wark M., nt. (45).

[94] Faustino D., Lippold W., nt. (29), 195.

[95] *See* Arrieta-Ibarra I., Goff L., Jiménez-Hernández D., Lanier J., Glen Weyl E., *Should we treat data as Labor? Moving beyond "Free"*, in *AEA Papers and Proceedings*, 108, 2018, 38-42.

[96] Vincent N., Hecht B., Sen S., nt. (44).

[97] Ekbia H., Nardi B.A., nt. (33), 35.

no different. In many of the applications that make this sharing possible, we find not only the exploitation of other people's work, but also the expropriation by mining, not always authorised, of data generated by network users.[98] And, as demonstrated in the previous section, this expropriation, combined with labour exploitation, does not operate in a homogeneous way, articulating axes of racism, capitalism and coloniality, to maintain historical intersectional inequalities.

Wark[99] highlights that there would have been an appropriation, by the vectoralist class, of the popular movement for the free circulation of information fostered by the advent of the internet. This dominant class would have expropriated the unpaid work developed by a huge range of subjects interested in the broad and democratic sharing of information. Hackers, therefore, would be a working-class that uses its knowledge to maintain its autonomy, despite the attempts at appropriation promoted by the so-called vectorialist class.

In this sense, hacktivism can be considered as a form of collective action, dependent or not on the use of specific hacking capabilities, which have the political-ideological purpose of weakening, limiting or destroying the coercive power of technology companies, protected by the State.[100] Some of these actions may transcend the limits of legality, since laws tend to protect entities that hold greater economic power.[101] We therefore understand that data strikes and boycotts are forms of hacktivism, which provides social media users and platform workers with a new source of leverage in their relationships with technology companies.[102]

The Manifesto seeks to distinguish hacker activity from the stigmatised criminal perspective, to broaden the horizons of defence of access to information and the creative capacity of working individuals, as a form of collective agency of the working-class. "The apologists of vectorial interest want to limit the semantic productivity of the term 'hacker' to a mere criminality, precisely because they fear its more abstract and multiple potential – its class potential".[103]

The point that stands out for our analysis in the Hacker Manifesto is – in addition to the expanded notion of the working class attributed to the hacker collective – the discussion regarding the stripping of intellectual property. In other words, if hackers are characterised by the production of information and if this information is necessarily appropriated by the ruling class, the core of the conflict in this phase of capitalism would reside in the dispute over intellectual property. While stripped by capital of its intellectual property, the power of the hacker class lies in its ability to hack this same property through subversive means based on creativity: "When the hack is represented in the abstraction of property rights, information as property creates the hacker class as a class".[104]

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[98] Fairwork, nt. (6).

[99] Wark M., nt. (45).

[100] *Ibidem.*

[101] We are not making a distinction between cyberactivism and hacktivism, as we are starting from a broader notion of the working class, regardless of who holds the technological skills in collective resistance. To better understand these concepts, *see* Jordan T., Taylor P., nt. (91).

[102] Vincent N., Hecht B., Sen S., nt. (44)

[103] Wark M., nt. (45), 47-48.

[104] *Ibidem*, 49.

Wark[105] points out that the development of hacking activity is encouraged by capitalism itself, but only within the legal limits of its possibility of market expropriation. By projecting this activity against the boundaries of accumulation, the subjects would have the same behaviours reinterpreted as undesirable, whether under the sign of invisibility/negligence by market actors or state repression: "When the State recognizes intellectual property, it creates a plane in which the vectorialist class can develop as the ruling class, the one that possesses the most abstract plane in which objects and subjects can be productively brought together. At the same time, the State assumes the responsibility of policing the vectorialist class, of containing information within the property, of stopping any hack outside the vectorialist class' interests".[106]

Based on this overview, it is possible to rethink: in a phase in which capitalist accumulation is focused on the expropriations of data, even without remunerating their true producers, does restricting the right to strike to actions that exclude disputes over intellectual property truly enable an equitable balance of power between collective actors? What are the possible reinterpretations of the right of strike for protecting Global South's resistance practices that are facing the coloniality of data? We will use the example of "breque dos apps" in Brazil, for later understanding the role of labour law in determining the limits of legality in relation to different forms of collective struggle.

4. Data strikes as hacktivism: the case of "breque dos apps" in Brazil.

To reflect on the possibilities of resistance and their respective legal frameworks, we chose to analyse the "breque dos apps" movement that occurred in Brazil in July 2020, which we understand to be a form of hacktivism. The "breque dos apps" consisted of a strike movement organised by delivery platform workers combined with a boycott of users, as a way of demanding better working conditions, given the intensification of exploitation and health risks during the Covid pandemic. This data strike began in Brazil, but later spread to Argentina, Mexico, Chile, Costa Rica, Peru, Ecuador, and Guatemala.[107] These workers united through WhatsApp groups where they exchanged information with those who wished to join in the action. Most of them were not organised in mainstream unions, but in networks or cooperatives such as Agrupación de Trabajadores de Reparto (Argentina), Entregadores Antifascistas (Brazil), and Rider Unidos Ya Chile (Chile).[108] They invited consumers to boycott the usage of delivery apps and to rate them with just one star in PlayStore and Apple Store. Consumers also created videos to reveal the differences in values between the delivery fees paid by them and the amounts received by delivery workers.[109]

The movement included a series of strikes. The strike on July 1, 2020, was followed by two other strikes in July and September of the same year, which led to the reiteration of these

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[105] Wark M., nt. (45), 65.
[106] *Ibidem*, 118-119.
[107] Máximo F., nt. (48).
[108] *Ibidem*.
[109] *Ibidem*.

strikes in 2021 and 2022.[110] These events, procedurally articulated, highlighted not only the strength of mobilisation and the political impact of app-based delivery workers, but also a heterogeneity of political positions and a lack of restriction of their demands to strictly corporate agendas.[111] There was a plural spectrum of representations and political perspectives that emerged during this data strike, in the highly politicised trend led by the actions of the Antifascist Delivery Workers, a collective that appeared and expanded rapidly in the recent process of struggle against the Bolsonaro government, in defence of democracy and against colonial racism.[112]

This experience demonstrated the use of data strikes to challenge the very concept of work and the workers' status of those involved. The fragmentation of the working-class identity has always existed as a mechanism of exploitation under colonialism and capitalism. However, through the scale of expropriation, that is optimised in the platform economy, as Faustino and Lippold[113] pointed out, it is also possible to blur the boundaries between data labour and intellectual property for the purposes of collective resistance, in an expanded notion of the working-class – crowdworkers, app-based workers and social media users – as a hacker collective, as indicated by Wark.[114] Through the recognition of the collective identity between consumers and platform workers, this movement combines the change in the flux of data production, causing damage to tech companies, both in relation to the exploitation of rider's work and crowdworkers who deal with this data flow, and in relation to the expropriated labour of app users.

This data strike also involved an anti-colonial and, therefore, anti-racist dimension. Research carried out by Aliança Bike revealed that the profile of delivery workers in Brazil is composed of 71% black people and has an average age of 24 years.[115] These delivery workers are in a state of social vulnerability, informality and marginality, circumventing protective labour regulations, reaffirming colonial labour patterns even in progressive democratic states. The "breque dos apps", in addition to revealing a collective identity between platform workers and network users, demonstrates that even in platform capitalism, there is the essential work carried by black bodies. Only through the physical effort of young and black people on bikes, risking themselves at high speed on public roads, the data flow operation is completed. As we have already mentioned, the racist and geopolitical flux of primitive accumulation continues in platform capitalism. The Global North holds the means of data processing and the colonised only provides the "raw" data, without the distribution of their wealth between Global South and Global North. Causing damage to this logic, demonstrating that "non-white" workers from the Global South are not dead matter, but

[110] Queiroz Dutra R., *Sujeitos coletivos interseccionais? Uma interpelação ao direito de greve*, in Melo Filho Cavalcanti H. (coord), *Direito do trabalho e teoria social crítica: homenagem ao professor Everaldo Gaspar Lopes de Andrade*, Grupo de Pesquisa Direito do Trabalho e Teoria Social Crítica, RTM, Belo Horizonte, 2022.
[111] Carvalho F.S.E., dos Santos Pereira S., Sobrinho G.S., *#BrequeDosApps e a organização coletiva dos entregadores por aplicativo no Brasil*, in *Revista Jurídica Trabalho e Desenvolvimento Humano*, 3, 2020.
[112] Correia M, *Entregadores antifascistas: Não quero gado. Quero formar entregadores pensadores*, in *Apublica*, 7 June 2020, https://apublica.org/2020/06/entregadores-antifascistas-nao-quero-gado-quero-formar-entregadores-pensadores/ (last accessed on 14 November 2024).
[113] Faustino D., Lippold W., nt. (29), 195.
[114] Wark M., nt. (45), 65.
[115] *Ibidem.*

class-conscious workers, this movement challenges Eurocentrism, demonstrating that they are the protagonists of collective resistance in this phase of capitalism.[116]

Aware of the racial characteristics of the group of workers involved, this movement sought, not only at the time of the strike but also in subsequent developments in the actions of its leaders, to intertwine the issue of work with the colonial racial issue, acting, for example, in a symbolic destruction of a public monument that paid homage to colonisers in the city of São Paulo. One of the Entregadores Antifascistas' leaders, delivery man Paulo Galo, was detained by the police due to his involvement with the movement that set fire to the statue of the coloniser, hunter of black and indigenous slaves, Borba Gato.[117]

"Breque dos apps" was also severely reprimanded in other Latin American countries, for example, in Peru. On July 8th 2020, "Pedidos Ya" workers in Peru received the following notification: "We have information that a group of riders and ex-riders intend to carry out a strike next week. In light of this, we are taking the necessary measures with the National Police and will proceed with legal action against the people who intend to harm the company's operations again". On July 9th of 2020, José Chacón, a migrant worker and organiser of the strike, received an email notification that "the misuse of the account was detected and the business relationship was terminated and payment withheld."[118] More than 200 workers were dismissed due to their participation in the strike.[119]

Since the first strike in the "breque dos apps", it has been reported that digital platform companies have promoted strategies to divide or weaken the movement: many activists reported that the apps released workers who were blocked or on the waiting list to join work during the strikes, as well as threatened to block those who joined the data strike.[120] In 2022, the Brazilian report "The Ifood propaganda machine", published by Agência Pública, demonstrated how the predatory practices of this app company operated against the collective organisation of workers.[121] Using a company that is already a specialist in marketing distorted political practices, Ifood financed an orchestrated action to "demobilise the movement, disqualify those who fought for better working conditions, polarise the delivery workers, undermine the role of its leaders and create narratives that delegitimize the collective action".[122] The facts reported are classified as anti-union behaviour, reprimanded by international standards for the protection of freedom of association.[123]

What remains clear from this data strike is that, even under different names, workers not included in the colonial perspective of the subject of labour rights, demand, in practice, the

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[116] About this, Gago V., *A potência feminista ou o desejo de transformar tudo*, Editora Elefante, São Paulo, 2020.
[117] Queiroz Dutra R., nt. (110).
[118] *Pedidos Ya despide y amenaza con la policía*, in *Periodismo de Izquierda*, 12 July 2021, available at https://periodismodeizquierda.com/peru-pedidos-ya-despide-y-amenaza-con-la-policia/ (last accessed on 14 November 2024).
[119] *Ibidem*.
[120] Levy C., *A máquina oculta de propaganda do iFood*, in *Apublica*, 4 April 2022, available at https://apublica.org/2022/04/a-maquina-oculta-de-propaganda-do-ifood/ (last accessed on 14 November 2024).
[121] *Ibidem*.
[122] Associação Brasileira De Estudos Do Trabalho, *Nota pública sobre as condutas antissindicais praticadas pela empresa iFood,* 8 April 2022, available at http://abet-trabalho.org.br/nota-publica-sobre-as-condutas-antissindicais-praticadas-pela-empresa-ifood/ (last accessed on 14 November 2024).
[123] *Ibidem*.

right to strike and express through this instrument their disagreements related to class exploitation, but also to other expropriations that they suffer from an intersectional perspective in the platform economy. However, in doing so, they find themselves excluded from even the most basic protections of the right to strike.

Although Article 9 of the Brazilian Constitution has a broad definition of the right to strike – "The right to strike is guaranteed, and it is up to the workers to decide whether to exercise it and the interests that they should defend through it"[124] – without restricting ownership to unions, the interests to be defended to professional goals, and the forms of struggle to employment stoppages, the strike law (Law n. 7.783/89) excessively restricted this right to this perspective, defining it as a collective, temporary and peaceful suspension, total or partial, of the personal provision of services to an employer.

Therefore, most political collective actions – like "breque dos apps" – are deemed to be illegal by Brazilian labour law. Although the "breque dos apps" did not become a labour lawsuit in Brazil,[125] any strike that involves political demands, that is, beyond economic-professional interests, is considered illegal by the Brazilian Superior Labour Court.[126] Besides this, despite the divergences with the Superior Labour Court, the Brazilian Constitutional Court is recognizing that riders are self-employed workers. If these workers are organised in a "formal" union, courts are issuing precautionary measures against them, applying millionaire fines to the groups involved.[127] If they are without a "formal union", organised in informal collectives, such as "Entregadores Antifascistas", the courts do not recognize their right to collective bargaining with digital platforms or the right to go on strike, deeming the action illegal.[128] Some Brazilian authors[129] have already been seeking other legal devices outside of Labour Law for the protection of these collective political actions, in order to expand the right to strike, such as political pluralism, the right to the city[130] or the right to protest.

However, this discussion on the legality of the "breque dos apps" in Brazil is focused only on the conditions of riders' work, without considering violations of the intellectual property

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[124] Constituição da República Federativa do Brasil, 1988.

[125] As a result of "breque dos apps", a mediation process between social actors began in São Paulo, with a hearing held at the Regional Labor Court. However, this was not a collective bargaining process or an analysis of the strike movement, but rather a mediation between the parties with the aim of bringing them together to meet the demands on the movement's agenda. There was no formal legal recognition or even a declaration of illegality related to the right to strike regarding the "breque dos apps", since what culminated in the Judiciary was only the mediation process mentioned above. The legality of the boycott and the suspension of users' digital labour was not even considered by the courts. Da Costa I.G., Balthazar B., *Movimento "a breque dos apps": plataformas digitais no brasil e o direito fundamental à greve dos trabalhadores por aplicativos*, in *Revista Estudos Institucionais*, 9, 2, 2023, 555-580.

[126] *See* Lawsuit no. 51534-84.2012.5.02.0000 of 09/06/2014, Minister Walmir Oliveira da Costa, Specialized Section on Collective Disputes (publication date: 20/06/2014).

[127] Máximo F., nt. (90).

[128] *Ibidem*.

[129] Viana M.T., nt. (49); Máximo F., nt. (90); Queiroz Dutra R., nt. (110).

[130] The right to the city is enshrined in the 1988 Brazilian Constitution in articles 182 and 183. "The right to the city is far removed from individual freedom of access to urban resources: it is the right to change ourselves by changing the city. Moreover, it is a common right rather than an individual right, since this transformation inevitably depends on the exercise of a collective power to shape the process of urbanisation. The freedom to build and rebuild the city and ourselves is, I will argue, one of the most precious and neglected of human rights". Harvey D., *O direito à cidade,* in *Lutas Sociais*, 29, 2012, 73-89.

of workers and users who have their data expropriated by the delivery company. We will try to address the relationships between the legality of data strikes and boycotts of digital platforms and the violation of workers' intellectual property in the next section.

5. Limits of the legality of strikes and boycotts in digital labour: a decolonial analysis.

A boycott consists of a contractual blockade of a businessperson by a collective antagonist, with the purpose of making demands. A boycott can take many forms, since the objective is to hinder the company's commercial transactions. Thus, such collective action can manifest itself in the conduct of workers who resign or do not apply for employment in that company; in the persuasion of other workers not to provide services to the boycotted company or in the conduct of consumers who refuse to purchase products from the company.[131]

For the International Labour Organization (ILO), as well as for Brazilian legislation[132] boycott is a lawful form of collective struggle, as are atypical strikes, if it does not involve violence. However, the ILO considers that legal restrictions on the actions of workers from another company who carry out a secondary[133] boycotts do not necessarily correspond to a violation of freedom of association.[134] Besides this, as regards the legislative ban on including secondary boycott clauses in collective agreements, the ILO has considered that restrictions on such clauses should not be included in the legislation.[135] The ILO also recognizes that by "excluding sympathy strikes, secondary boycotts and industrial action in support of multiple-enterprise agreements from the scope of protected industrial action, legal provisions could adversely affect the right of organisations to seek and negotiate multi-employer agreements, as well as unduly restrict the right to strike".[136]

In this sense, boycotting is not a crime, but it is also not a fundamental right, like striking. There is a distinction between the right to strike, which protects workers at the level of labour contracts, civil and criminal offences, and the freedom to exercise other forms of struggle, such as boycotting, in which there is a mere exclusion of the crime.[137]

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[131] Viana M.T., nt. (49). *See* also Supiot A., nt. (49).

[132] Código Penal brasileiro, *Decreto-Lei n. 2848 de 7 dezembro de 1940*. Art. 198 – *Violation of the freedom of employment contract and violent boycott*: "Forcing someone, through violence or serious threat, to sign an employment contract, or not to supply another person or not to acquire from another person raw materials or industrial or agricultural products: Penalty - detention, from one month to one year, and a fine, in addition to the penalty corresponding to the violence".

[133] Sinay H., nt. (49). A primary boycott would be one carried out only by workers from the boycotted company, and a secondary boycott would be one that involves third parties – whether workers from other companies that provide services to the boycotted company or consumers.

[134] ILO, nt. (49). "The boycott is a very special form of action which, in some cases, may involve a trade union whose members continue their work and are not directly involved in the dispute with the employer against whom the boycott is imposed. In these circumstances, the prohibition of boycotts by law does not necessarily appear to involve an interference with trade union rights".

[135] ILO, nt. (49).

[136] *Ibidem.*

[137] Calamandrei P., *Importanza costituzionale del diritto di sciopero*, in *Rivista giuridica del lavoro*, 1952.

This difference can be a result of a larger system of thought derived from modernity, that also leads to this binary idea that there are strikes and "other collective actions". Strike was incorporated as a fundamental right by labour law as a reflection of the Eurocentric context of modernity, where the capitalist activity was deeply rooted in industrialization, full employment, with strong unions – traditionally occupied by male and white leaders – that were preserved by legal barriers provided by the nation-states, without being threatened by data technologies.[138]

Considering this reality, the hegemonic concept of the right to strike[139] is as a group of employees who stop working to claim economic and social rights, also expressed in the Brazilian strike law. However, this legal definition has never reflected labour relations from the Global South.[140] Labour law granted central visibility to one form of exploitation: the standard employment relationship. With this, Eurocentric labour sociality became the world's typical work. Namely, the right to strike became a legal resistance to only very specific ways of working, those in which the industrial capital relation is centred.[141]

This may represent a legal coloniality in the right to strike created by the Global North, legitimised by the ILO and imposed on the Global South, promoting a restricted juridification of some forms of collective struggle. This coloniality privileges the legality of collective actions created by the working class in a Eurocentric context to the detriment of other forms of struggle, maintaining the same power structures of colonisation.

Nonetheless, in the digital work environment, as occurred in the case of "breque dos apps", there was an overlap between the two collective actions: a physical and a data strike by platform delivery workers consequently generated a data strike and a consumer boycott. We must also consider that "most traditional boycotts against a company operating data labour-dependent intelligent technologies will implicitly also include a data strike".[142]

Thinking about breaking with this coloniality in the juridification of collective actions, even if we adopt a broad doctrinal concept of the right to strike, as a disruption of the ordinary rhythm of services, in accordance with the conception of Sinay[143] and Viana[144], to encompass the boycott in its status of fundamental right, this is not the concept adopted by the ILO, by the Brazilian legislation and courts and by most of the legislation of democratic countries.[145]

Given the restrictive conception of the right to strike and the mere freedom to carry out a boycott, it is necessary to consider other strategies to recognize the legality of data strikes

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[138] Máximo F., nt. (48).
[139] Sinay H., nt. (49); Viana M.T., nt. (49); Supiot A., nt. (49); ILO, nt. (49); Giugni G., nt. (49).
[140] Máximo F., nt. (48).
[141] *Ibidem.*
[142] Vincent N., Hecht B., Sen S., nt. (44). However, the authors also consider "that data strikes can also occur independently from boycotts. For example, a consumer who continues to purchase products from an online retailer could engage in a data strike by using private browsing windows and not providing product ratings".
[143] Sinay H., nt. (49).
[144] Viana M.T., nt. (49).
[145] It is worth remembering the emblematic judgments of the Laval Case and the Viking Case of the European Court of Justice, in which boycotts and strikes were restricted by the freedom of economic initiative. Magnani M., *Diritto Sindacale Europeo e Comparato*, Giappichelli, Turin, 2015.

and boycotts of tech companies, with the aim of confronting legal coloniality in the collective struggle and, consequently, facing the social phenomenon of data coloniality.

In the digital world, the relevant legal regulations are data protection laws, such as the EU General Data Protection Regulation (GDPR, EU Reg. 2016/679) and the Brazilian General Data Protection Law (LGPD – Law n. 13.709/2018). However, the legal regulation of data is still made in a privatistic and personal perspective, ignoring any protection of digital workers.[146] Considering the ideas of the Hacker Manifesto, perhaps a strategic use of the law to legally protect data strikes is to consider such collective actions as a form of resistance to the expropriation of data by tech companies, which promote the violation of the intellectual property of network users – who are mostly workers – and platform workers.

Using data protection laws to grant legality to collective resistance against working class data expropriation can be strategic as a bargaining and pressure mechanism. The fines for violating the GDPR and the LGPD are considerable. In GDPR, there are two tiers of penalties, which max out at €20 million or 4% of global revenue (whichever is higher), plus data subjects have the right to seek compensation for damages. In Brazil, the LGPD has a fine that can be up to 2% of the company's revenue, with a maximum limit of R$50 million per violation (around €8 million).

Occupying hegemonic categories within the system itself, with the political intention of undermining its power structures is a decolonial method called strategic essentialism[147], which consists in changing the meanings of hegemonic categories to claim rights for subaltern subjects. The process of legalising data strikes, as well as the boycott of networks, must be strategic. We cannot use the same instruments of legal protection that restrict collective struggle, which represent an epistemology of labour law based on Eurocentric modernity, if we want to expand the status of fundamental rights of collective actions beyond the right to strike.

6. Final remarks.

This paper was developed based on the following question: *from a decolonial perspective, what is the relationship between the limits of the legality of strikes and boycotts in digital labour?* We understand that the coloniality present in the juridification of the collective actions in labour law establishes a binary distinction between the fundamental right to strike and "other forms of collective actions". Labour law granted central visibility to one form of exploitation: the standard employment relationship. With this, Eurocentric labour sociality became the world's typical work. Namely, the right to strike became a legal resistance to only very specific ways of working, those in which the industrial capital relation is centred. Consequently, boycotting is not a crime, but it is also not a fundamental right, like striking.

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[146] *See* Hassemer C., Máximo F., nt. (78); Abraha H., *Regulating algorithmic employment decisions through data protection law,* in *European Labour Law Journal*, 14, 2, 2023.

[147] Spivak G., *Can the Subaltern Speak?*, in Nelson C., Grossberg L. (eds), *Marxism and the Interpretation of Culture*, Macmillan, New York, 1988.

However, in the digital work environment, as in the type of hacktivism analysed, the "breque dos apps" case, there is an overlap between these two collective actions. In this example, we observed a collective struggle that disputed the very concept of work and the status of worker-users of those involved. In this way, the conflict between capital and labour is shifted to a broader and less tangible sphere, invading the intellectual property category, due to the expropriation of data carried out by big techs.

Thinking strategically from a decolonial standpoint, it may be more advantageous for workers-users of networks from the Global South to think about other legal instruments to protect collective struggle, using data protection laws. We need to hack the networks, but also the (labour) law itself to confront data coloniality.

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