Dialogue

General Data Protection Regulation—A Global Standard? Privacy Futures, Digital Activism, and Surveillance Cultures in the Global South

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Abstract

This paper asks the question whether current data regulations designed to curb digital surveillance are enabling for Global South activists seeking to create systemic social change in today's data-driven societies. This text proposes five measures to answer this question and devise a decolonial pathway to improve the human condition, namely: a) Recognize the long legacy of distrust of the law among activists; b) Channel our energies more on local governance and less on (trans)national regulation; c) Shift focus from the individual to the collective rights approach; d) Attend to motivations for publicity over privacy; e) Re-frame activism from grand movements to everyday creative insurgencies. This paper starts with the premise that laws and regulations have deep political interests often rooted in neocolonial ideologies and are not necessarily designed and executed for the protection of all citizens. Laws may evoke different meanings among the world's marginalized communities, far from the sacrosanct position they hold among many in the West. This work argues for a decolonial approach—to go beyond the data-centric and individual consent framework to genuinely understand the complex relationship between surveillance, privacy, activism, and law at the peripheries in the Global South and to foster dignity for all.

Introduction

In a “favela” (an informal settlement) ruled by the drug lords in Rio de Janeiro, an activist uses Facebook Live to capture the dealings in his neighborhood, putting himself and some of his community members at risk. In Jeddah, Saudi Arabia, a few teenage girls Instagram the fashions of the week, unveiled, an act that can be persecuted by the morality police. In Jammu and Kashmir, some media activists break the privacy law on revealing identities of minors by using the hashtag #justiceforkathua to draw attention to the case of an eight-year-old nomadic girl who was gang raped. These are just some of the cases that shed light on the tensions between privacy, law, surveillance, and protest as we span cultural borders. Contrary to activists seeking to be protected through anonymity, as some of the current research alludes to (Brunner 2015; Yang 2009), those at the margins may choose to put themselves at high risk to be visible and heard.

Following the media rhetoric on the General Data Protection Regulation (GDPR), a European-based law on data protection, we hear a different story. The law is being celebrated as a milestone for privacy rights in this data economy (Albrecht 2016). There is tremendous enthusiasm for this new regulation, as it promises to put consumers before corporations by protecting them from indiscriminate data surveillance of their everyday lives. It is viewed as a key weapon to fight against rising privacy violations, given that many of the business models of technology companies continue to rest on harvesting as much data as possible from their users. This law is, indeed, a groundbreaking reform as it is the first legitimate and impressively comprehensive measure that demands major reform by reining in corporations and pressuring them to move

toward governance rooted in universal human rights. These regulatory measures go beyond the capitalist ideology that has long commodified our social interactions. While regulation is worthy of celebration, we need to curb our claims about what such regulations can do for the world's majority of people at the margins.

Most countries outside the West have lax or no privacy laws (Taylor, Floridi, and van der Sloot 2016). Brazil passed its first privacy laws in 2014, while India passed some in 2017. Several developing nations are currently shaping their new privacy laws in the image of GDPR (Safari 2016). Understandably, there is much faith that this new rights-based framework will empower these regions and protect them from North–South exploitations as well as internal privacy violations. While indeed driven by good intent, this faith is a naïve position to take. Implicit in these efforts is a belief that laws are sacrosanct and are crucial drivers to deliver social justice, which is unfortunately not the case in most parts of the world. Only five percent of the world's population enjoy a full democracy (*Economist* 2018b). Many governments and elites in power, particularly in the Global South, weaponize laws against their people to sustain their regimes. These authoritarian governments rule by the law while being above it.

Laws in these regions come with a long history of being shaped by those in power to preserve their privilege. With centuries of colonialism in many of these contexts, rules emanated as a means to legitimize exploitation in the name of social order (Arora 2019a). To sustain these systems of oppression, social surveillance was repackaged as instruments for social harmony. Even after the dismantling of the colonial project, much of this surveillance apparatus remains in the form of laws and institutional design. For the vast global marginalized public, the current legal bureaucracy is often an obstacle to justice and may be subservient to the parallel systems of governance and local social norms. Time and again, social movements have broken these laws to deliver better justice (McCann 2017). Given the chronic invisibility and relative voicelessness of this population in the media and public policy, social media platforms provide an alternative public sphere that allows these groups to make their plights known and shareable—in spite of the high privacy risks.

In an age where data regimes are the new surveillance regimes, the question can be asked whether online privacy and activism are compatible when it comes to the Global South. Given the diversity of contexts and cultures, there is a possibility that most of the world may perceive, experience, and value privacy in unpredictable and varied ways, far from the Western constructs that frame privacy in terms of individual choice and data protection. GDPR, while well intentioned, may be creating a *privacy universalism*, the flattening of privacy values across cultures and contexts. In recent years, a call has emerged for decolonization using communicative action, that which “substitutes the systemic logic of money and power” with spaces of critical cooperation (Fuchs 2015: 64). I have recently argued that the way in which we can decolonize privacy and surveillance studies is by “questioning the normative understandings of selfhood, community, and nation, juxtaposed against the territorial, ownership and propertied notions that pervade privacy discourse” (Arora 2018: 4). Hence, this paper starts with the premise that laws and regulations have deep political interests often rooted in neocolonial ideologies and are not necessarily designed and executed for the protection of all citizens.

Laws may evoke different meanings among the world's marginalized communities, far from the sacrosanct position they hold among many in the West. The question arises as to whether current digital regulations are friends or foes for South activists seeking to create systemic social change, especially in today's data-driven societies. I propose five measures to steer these regulations toward a better outcome and devise a decolonial pathway to improve the human condition:

1. Recognize the long legacy of distrust of the law among activists.
2. Channel scholarly and policy energies more on local governance and less on (trans)national regulation.
3. Shift focus from the individual to the collective rights approach.
4. Attend to motivations for publicity over privacy.
5. Re-frame activism from grand movements to everyday creative insurgencies.

I argue that we need to go beyond the data-centric and individual consent framework to genuinely understand the complex relationship between surveillance, privacy, activism, and law at the peripheries in the Global South and to foster dignity for all.

Recognize the Long Legacy of Distrust of the Law among Activists

There is a deep legacy of normalizing injustice through the legal legitimization of exploitation as well as the criminalization of those who have opposed such systems (Eubanks 2018). These histories can inform us of possible resistance or concern regarding contemporary data regulations, particularly at the margins. Take India, for instance. It has one of the largest biometric identity projects running worldwide. The goal of the Aadhaar project is to provide a unique identification number (UID) to each of the 1.2 billion Indian citizens through the capturing of their fingerprints, iris scans, and photographs. This consolidated digital identity serves as a primary portal through which citizens gain access to government services such as welfare, banking, and food rations. It aims to bring all of the undocumented poor into the system (Arora 2016b). There has, however, been a mixed track record of this digital inclusion process, with incidents of data breaches, third-party vendors illegally accessing citizen databases, fake identity scams, and, more recently, a 2018 Supreme Court verdict that questioned the validity of this initiative.

The roots of this “apparatus of care” go well into the mid-nineteenth century (Arora 2019a). During the British colonization of India over two centuries, the colonizers pioneered the first forms of biometric surveillance through fingerprinting. The fear of an uprising was a constant motivator to identify and track their “unruly” subjects, particularly the so-called troublemakers who were organizing against the colonizers. The very essence of personhood—the fingerprint—was used against the self in the name of social order. In order to make bodily surveillance more palatable, the British rulers repackaged this system under the *Sedition Law Act* of 1870. The natives were told that fingerprinting was a way to protect them from social unrest and disruption. Connecting surveillance with legislation to regulate the everyday lives of the native subjects normalized this system and gave it the appearance of benevolence.

Sedition laws have remained in the Indian legal system post-independence and have experienced a resurgence to manage social media platforms (Rajkhowa 2015). These laws continue the criminalization of select organizations’ and citizens’ speech that challenges the established political order and social harmony. Issues such as criticizing India’s Kashmir policies, the beef ban, demonization, and other negative remarks on social media about the ruling party have led to the imprisonment of individuals over these years.

In the last decade, a number of surveillance studies have emerged that document how new “infrastructures of care” have extended paternalistic and patriarchal systems into the digital domain (Johnson 2015). Everyday movements of “dependents” are being datafied, for instance with the Saudi app that alerts male guardians of their women’s whereabouts and tracks migrant workers’ locations, amplifying already constrictive laws in place over these populations. New technologies can lean illiberally by deterring even a brief escape from these social confines. Hence, when we critically examine the impact of laws on social inclusion and justice, we need to account for the fact that they are often intertwined with traditional and everyday governance measures.

Governance demands citizen compliance in sharing their data in exchange for a functional social system. It is a misperception that this trade-off relies on trust in state entities and the law to prevent the data from being misused. The history of such data infrastructures across the globe reiterates how these information systems have time and again been transformed into surveillance weapons against the marginalized. Compliance becomes coercion, not cooperation. These tools gain legitimization through new regulations and laws that convert defiance into criminality and activism into anarchism.

Channel Our Energies More on Local Governance and Less on (Trans)National Regulation

When we speak of regulation, our context falls either at the transnational level (universal rights) or national (state reform). However, many developing countries do not enjoy a liberal democracy. They are infused with a spectrum of authoritarian regimes, fragile institutions, and an overburdened and often weak legal system. In practice, the developing world experiences a plurality of legal orders, with the official/unofficial, formal/informal, and traditional/modern juxtaposed (Brown 2015). The law of the land often plays out at far more communal and local levels, which pose their own sets of challenges that are being neglected due to the disproportionate focus on transnational and state-centric notions of regulation. The fact is that a majority of the citizens in developing countries live in informal habitations and, due to their unofficial status, governments often deprive them of state services (de Soto 2000). This informal status has created a parallel system of governance and a gray and even black economy that come with their own rules.

Take Brazil, for instance. The citizens enjoy a relatively high freedom of expression on social media and have, through their collective activism, brought down entire governments and figureheads in the last few years (Bainbridge 2014). In 2016, more than a million Brazilians took to the streets to participate in anti-government rallies across the country, mobilizing through Twitter and Facebook. Of the 53.5 million Brazilians online, almost two-thirds of the population use some kind of social media platform. At the national level, the Marco Civil internet laws from 2014 have been upheld in terms of protecting such speech. However, constraints on social media activism can take on a local flavor.

What tends to be neglected are local and interpersonal surveillance, which pervade the everyday lives of Brazil's vast marginalized groups, many of whom live in favelas. In highly urbanized Latin America, one-third of all city dwellers live in such informal conditions (Gledhill 2015). In the city of Rio alone, close to 1.5 million people, about twenty-four percent of the population, live in favelas. Many of Brazil's favelas are dominated by different gangs, and security is bought through informal tax systems. Some of these young gang members are on Facebook (Arora 2019a). The tracking of their businesses continues even behind prison walls through updates and stalking of others on social media. Gang members may hunt for profiles online and make people their targets for robbery and kidnapping. People living in the favelas do not have a choice to reject a "friend" request by these members. Young Brazilians have developed an aversion to any location-disclosure behavior, including tagging, to protect their personal safety. Hence, multiple worlds are being experienced simultaneously.

At a global level, Brazil is an emerging market with a vibrant and active young social media user base. They have proven to be unafraid in using their country's data infrastructures and internet laws to serve them well. Another reality is where digital platforms become local surveillance machines that keep favela residents in line and allow the mafia to regulate and govern their fiefdoms through these novel datafication tools. The informal rules often reign over state laws for the marginalized majority who need to survive in such precarious conditions.

Shift Focus from the Individual to the Collective Rights Approach

Individual rights and consent can give us limited insight into activism in the Global South. Activism in these contexts comes with a strong tradition in collective rights movements and cooperatives for social change and has manifested its connective action online in powerful ways (Brosius, Tsing, and Zerner 1998; Franck 2000). Take property law and the decades of fair land rights movements that have pervaded these contexts. After colonialism, land remained primarily in the hands of the church, the military, and certain communal groups who were privileged by the colonizers during their rule (think Afrikaans, the Dutch settlers in South Africa; Spanish settlers in Latin America; the Brahmins in India; and so on). Hence, many disadvantaged communities, given their mutual interests and earned special legal protections, have fought as a group to conserve their culture and their lived environments.

For instance, indigenous tribes earned the right to their groups' livelihood in the Amazon forest through a long and collectively fought battle (Schrag 2006). Himalayan women have pushed to collectively govern the natural resources as part of their conservation movement (Arora 2016a), and herders in Ethiopia earned the right to collectively graze their cattle after much tribal strife (Donovan and Assefa 2003). Given the enormous inequalities in these regions and the forces against them, these communities have been fighting to establish cooperatives among themselves that defy the market system of individual ownership. This is impressive given that sometimes they sit on land that is rich in mineral resources and ripe to be mined by corporations.

Beyond land ownership, other sectors have also experienced the impact of collective rights. Take for instance Muhammad Yunus, the Bangladeshi Nobel Peace Prize laureate and founder of Grameen Bank, a microloan organization. Ninety-seven percent of the bank's small loans went to poor women groups through his "self-help group" (SHG) initiative. What this entailed was treating this collective as an individual in the eyes of the banking industry. He realized that one of the reasons why poverty persisted generation after generation was the lack of access to small amounts of capital. Banks were risk averse when it came to lending to a low-income person with no assets. However, Yunus structured a microfinancial system and a legislation that allowed groups of women to be viewed as an individual when receiving these loans. This is not to say that collective rights do not come with their own set of problems.

Over the decades, the practice of SHGs and microfinance has faced a number of hurdles and critiques including forced communalism and pressuring women to bear the burden of socio-mobility (Badola and Hussain 2003). The fact remains, though, that this creative legal solution helped the banking industry go beyond the individual/private loan model while helping those in desperate need of capital. The argument of romanticism of women and marginalized collectives is a legitimate one. We cannot see this as a permanent solution to the ecological or banking crisis. We should see this, instead, as a way to humble large and seemingly inflexible social institutions by leveraging collectivism when needed. This is the beginning and not the end of reforms in such contexts.

In line with this rich history of collective activism, privacy activists and legal scholars are deliberating a similar kind of intervention. The notion of "group privacy" has emerged as an expansion to the otherwise constrained individual consent framework (Taylor, Floridi, and van der Sloot 2016). In principle, with the collective action lawsuits, there is a rising call to address the gaps that are being left in the violations emerging from the application of data analytic technologies. These technologies have proven to target not just individuals as popular media narratives emphasize, but also groups of people. In other words, algorithms produce "calculated publics" (Gillespie 2010) through which people are influenced, nudged, or herded to behave in certain ways. Computing these group datasets can modulate behavior with profound implications that may not be transparent to members of these groups.

This process of algorithm-driven clustering continues to remain a black box but has shown possible discriminatory implications. For instance, a number of scholars have recently highlighted how groups of people can be segmented and targeted negatively through such datafication methods based on race (Noble 2018), class (Eubanks 2018), and caste (Arora 2019a). For example, search results for "woman" on Google images often yield results of a white woman. Or take the case of the Uighurs, the largest Muslim group in China, who get tracked far more than the Hans who happen to live more in urban areas (*Economist* 2018a). In Xinjiang, Uighurs are regularly asked for their identity cards, photographs, fingerprints, and iris scans. They need to turn on their phones and enter their passwords to show the police, who download the content for analysis. This "web cleansing" policy has been stated as necessary to prevent terrorism. Hence, such targeted data surveillance based on group identities creates fractures in Chinese communities, especially along ethnic lines.

To conclude, we are in an age where we are inadvertently clustered in group sets and computed on an everyday basis. This automation of our identities has proven to amplify discrimination of already vulnerable

and targeted groups. It makes sense then to attend to collective identities and pay heed to new forms of social activism by diverse communities trying to game these new rules of datafication.

Attend to Motivations for Publicity over Privacy

In many developing countries with strict cultural norms, few enjoy the freedoms of the public space, particularly women. The privacy of a woman is the property of her family as she is an upholder of the family virtue (Arora 2019a). Privacy in these contexts is tremendously burdensome on these young girls as their reputation is an extension of their family, their village, and often even state honor. In many of these conservative societies, local family courts trump the Supreme Court when administering formal punishments on women when these social rules are broken. The intersectionality of caste, class, religion, and/or tribal affiliation compounds this process to produce severe consequences for breaking these local laws.

Take the case of Asia Bibi in Pakistan (BBC 2018). In a country where the blasphemy law enjoys popular support, there have been numerous protests against the recent overturning of her conviction. She has already spent eight years in solitary confinement for reportedly making a blasphemous remark. Taking a stand for Asia Bibi has transformed many ordinary people, organizations, and officials into activists as they put their lives in real danger by their mere support. In my fieldwork with low-income teens in the slums in India, there is much fear among young girls about getting on social media lest their posts get misinterpreted, their photos get doctored into fake pornographic material, or their private messages get forwarded into the public domain (Arora 2019a). So often they abstain from these digital worlds.

Staying away from such media is part of a larger trend of women in the Global South. A 2018 Intel report on women and the web in the Global South found that, on average, twenty-three percent fewer women than men are online in developing countries (Intel Corporation 2019). This represents 200 million fewer women than men. In regions like sub-Saharan Africa and South Asia, the size of the gap exceeds forty percent, amplifying existing inequalities between the sexes. Hence, when young girls go online in spite of these high social risks, we need to recognize the courage embedded in these everyday digital activities.

Online actions to know and express oneself, often perceived as publicity-seeking behaviors, are not just confined to women in developing countries. It pervades any group of people who are actively trying to defy the social order that is oppressing them and infringing on their universal rights and dignities. Seeking digital freedoms can be as humble as the words they choose to enter on search engines, for instance, speaking about state-banned topics in China such as Tiananmen Square or the Dalai Lama. It could be the cartoons they choose to share on Twitter that mock those in power in Syria, Egypt, and many Middle Eastern regimes. It could simply be the questions they pose on Facebook about the Kashmir dispute between Pakistan and India. This publicity seeking may not be a signal of naivety about the data surveillances around them. These behaviors could also be microaggressions in spite of the pervasive data surveillance mechanisms. In these small acts of cumulative defiance, there is hope to collectivize, aggregate, and go viral, using the same data logic but for a good cause.

Re-Frame Activism from Grand Movements to Everyday Creative Insurgencies

We need to look at privacy values and social surveillance through the ludic context as we have amassed much evidence to show that much of what we do online is not driven by rationalism or utility maximization but by affect and aspiration. A majority of what people do online is driven by their leisure pursuits—gaming, media consumption, socializing, romancing, and pornography—shaping the digital commons into what I have argued is a “leisure commons” (Arora 2014b). This intersects well with Kraidy’s (2016) call to move away from the grand movement narratives on activism and focus more on what he terms “creative insurgencies.” Here, activism is framed less in totalizing terms like “revolution” and more in everyday,

deliberate, and willful actions that operate in a gradual or a radical mode, contributing to undermining the oppressive regimes.

“Creativity” can take many forms. Rhetorical strategies manifest through the mocking of the regime in protest signs to the appropriation of powerful symbols like helmets as flower pots. This destabilization of overarching control regimes helps oppressed communities cope with power structures on an everyday level. The body itself can be a medium of protest, through nude activism, scatological protest, and self-immolation, captured and circulated online (Kraidy 2016).

Take the case of the Oromo movement in Ethiopia, where Oromo people have been fighting for their own homeland for decades. A simple item like clothing comes to the service of politics as it makes their cause more visible and penetrates the imagination on a daily basis, normalizing the cause. Oromo clothing has long served as a symbol of self-expression and identity (Einashie 2016). Regimes of the past, in their attempt to eradicate the Oromo culture and thereby their collective identity, banned the wearing of such attire. Beads on the neck, a bracelet, or the colors of a skirt transformed into an act of creative insurgency.

Oromo women put themselves in the way of bodily harm by the very act of adorning themselves with traditional clothing. The beads, in this sense, become compressed political messages that can be circulated through urban and digital networks, for instance, via a Facebook selfie of oneself wearing traditional Oromo beads. One of the most infamous events was the incident in 2016 where, during a widely-attended Irreecha (Oromo Thanksgiving) festival, the military is reported to have killed several unarmed Oromo civilians for displaying their culture in public (Dugo 2017).

Clearly, online creativity can be viewed as microinsurgencies as the pastiche of media enables users to obfuscate easy tracking. The “cute cat theory” of activism (Zuckerman 2014) gets reignited through diverse cultural productions that can circulate below the radar through their seemingly trivial, mundane, and entertaining nature. I argue that we should protect creativity cultures even more so if we are to bolster these vulnerable communities in their pursuit of freedom of expression and self-actualization.

Ironically, the European Union’s new Directive on Copyright in the Digital Single Market may inadvertently hurt the very groups it may be seeking to protect (Panezi 2018). With a goal to foster fair competition for indigenous platforms, stricter regulations on the use and the reproduction of the copyrighted content are being passed to constrain American-based tech giants. However, there is a growing concern that these new reforms may negatively impact the smaller content creators and particularly the users instead of the tech oligarchs who are well equipped and resourceful enough to deal with these new laws. The stricter copyright regime can dispute the lay user’s creation, since it may create an over-filtering issue.

Article 13 of the Directive has become particularly controversial, earning the moniker “The Meme Ban” (Tangemann 2019). With memes being not just a staple of cultural communication and creativity online but also one of the most effective ways for activists to draw attention to their causes, this can be a dangerous tilt in the wrong direction. After all, memes come with a long history of pushing the legal frontiers on media copyright due to their inherent remix and distributive character. Snippets of popular movie scenes, catchphrases, and visual content are “mashed up” or re-appropriated to globalize a social cause. Parody, humor, pastiche, satire, and other forms of communicative deviance have long been some of the few resources left for protest communities who are otherwise under constant surveillance. As European law is driving internet regulation and being imitated around the world, there is a moral responsibility to rethink, in global terms, the implications of legal reforms on audiences well beyond the EU market.

Conclusion

“Gold standards” serve a purpose. Creating aspirational common spaces, laws, rules, norms, and values is inherent in human nature to build society. Shared visions can inspire shared actions for a better and more dignified life. We are intrinsically future-oriented beings. It is not surprising that the “level playing field”

ideal of free markets was quickly embraced across cultural borders or that universal human rights became a template, an ideal, and a measure for a good life for many to follow. Our particularities, however, need balancing with the universal to achieve a just society. Universalisms of any kind are a double-edged sword. They come with the flattening of cultures and identities and have at times become a paternalistic rubric to justify the oppression of certain groups.

The notion of GDPR as a golden and a global standard is commendable. However, regulations are meaningless without enforcement. And yet we disproportionately focus on the design of the law and far less on the implementation. Partly this focus is to do with the former being in some sense easier to fabricate with its clean theorization that is free of context. Conceptualizing a privacy universalism in today's global data economies was an inevitability. We cannot serve a global data regulation without assuming a shared privacy culture. While this standardization makes for a neatly packed set of rules to address the globalizing of data surveillance, the fact remains that when we deal with enforcement, culture becomes the essential translator.

Enforcement comes with the demand to engage with culture, which is essentially messy, unpredictable, and often burdened with legacies of inequalities and distrust. Hence, this paper urges us to get messy and shift, temporarily, from the positionality of data-centrism and individualism of choice to that of local praxis that emanates from the history of power and resistance. This paper takes us out of surveillance/media studies and into the parallel worlds of social life to emphasize the networked character of surveillance and trust and the overlapping structures of governmentality that transgress across institutional practice. I argue here to put the humble "locality" into central position without romanticism, as we see it span from empowerment to that of oppression. We need to re-center the "collective" without the essentializing of communal behavior, driven less as an innate character of marginalized groups but more as a strategic necessity to resist massive apparatuses of surveillance. This paper also reminds us of how privacy is a luxury and how the need for freedom to be seen and heard becomes an essential ingredient for the vast and long-standing invisible populations to be seen and heard. And lastly, it situates the seemingly trivial "creativity" as that which is fundamental to everyday resistance. These micro-creative acts challenge the grand revolutions for a more realistic vision of the excruciating patience of these communities that strive to chip away at controlling regimes until the form of the normative order gets shaped in a way that is more humane and inclusive.

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