Revista GLOBAL CROSSINGS GC

Co-funded by the European Union

O CONSTITUCIONALISMO GLOBAL COMO UM NOVO PARADIGMA PARA O DIREITO À PRIVACIDADE E PROTEÇÃO DE DADOS

GLOBAL CONSTITUTIONALISM AS A NEW PARADIGM FOR THE RIGHT TO PRIVACY AND DATA PROTECTION

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Palavras-chave: Privacy. Global Constitutionalism. Data Protection.

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1. Introdução

According to Italian jurist, Luigi Ferrajoli (2022), due to globalization, the future of each country depends less on internal politics and more on external decisions, both political and economic. The author questions the vacuum in public law produced by the asymmetry between the global nature of today's rampant market forces and the still predominantly local nature of politics and law (FERRAJOLI, 2022). In Ferrajoli's view, to address issues such as hunger, predatory capitalism, inequality, global warming, and wars, there would need to be a Constitution at a global level, as state policies alone cannot solve global problems.(Ferrajoli, 2022).Funneling into the problem to be addressed here, predatory and savage capitalism embodied by the figure of large companies, operates today with a new form of capital generation: the monetization of data. In the context of big data, large corporations often have free access to sensitive user data and, despite claims to the contrary, they frequently sell or share this data (HOOFNAGLE, 2021). Legally, this practice raises several concerns, because sharing data and information about the user is today a universal dilemma and one that, on many occasions, State legal systems are unable to resolve. Fitting perfectly into the theory proposed by Ferrajoli (2022).

In this sense, it is important to remember that each country deals with privacy and data protection differently, and some States began regulating these important guarantees later than others. For example, Brazil only enacted the General Data Protection Law (Lei Geral de Proteção de Dados- LGPD) in 2018, inspired by the European Union's 2012 General Data Protection Regulation (GDPR). The latter one, made out of 99 chapters, is considered by many researchers to be a milestone in the expansion of data protection and privacy, serving as a legislative foundation for subsequent regulations. Note that the GDPR was a pioneering piece of legislation concerning the protection of personal data. It is important to remember that, since the last century, the European Union has been concerned with legislating on issues related to privacy protection and the collection of internet user data. In 1995, the EU unified these regulatory acts in the so-called Directive 95/46/EC, aimed at protecting the freedoms and fundamental rights of individuals (UNIÃO EUROPEIA, 1995).

In other words, there is greater adherence to the GDPR, yet countries, like the United States, still lack a consolidated Data Protection Law. While the European framework is highly protective and has served as an inspiration for other legal systems, the level of protection afforded to users is not uniform worldwide. Observing the example of the United States, it is evident that the country has scattered data protection laws and a concern with adhering to the mandates of the First Amendment (SCHWARTZ; SOLOVE, 2022). This poses a significant problem, especially considering that many major capitalist companies and large data sharers are located in Silicon Valley, within the United States.

This highlights the problem to be studied: How could Ferrajoli's proposed idea of a 'Constitution of the Earth' contribute to data protection and privacy in the online environment?

To answer this question, in this work, as for the methodology adopted, it will be based on the scientific method of hypothetical-deductive approach, in which the scientific instrumentation relates to deductive hypotheses that outline consequences to be subjected to empirical verification or refutation (GIL, 1994). However, this work will predominantly use a bibliographic and documentary research technique.

Furthermore, the procedural method will be monographic, based on the study of institutions to derive generalizations, and the method of legal interpretation will be sociological (Fincato, 2014), as data protection and privacy studies are consistent with a new social, cultural, and economic aspect arising from the digital age in which we are immersed.

2. Desenvolvimento

In today's information society, as described by Manuel Castells (2016), the context in which we are situated is based on the rapid distribution of information. Every day, we produce millions of data points and share various information about ourselves and others. This is intrinsically linked to the fact that a significant portion of social and economic relationships today are maintained via the internet.

This vast amount of data has led to the digital era being known as 'The Age of Big Data' (PARENTONI, 2021). In summary, Big Data involves the processing of a large volume of data with accuracy, value, speed, variety, and volume. Regarding Big Data and the ease of data circulation, Parentoni concludes that 'the increasing digitization of life in society would make no sense if the resulting data could not circulate' (2021).

The problem is that large companies exploit this extensive data circulation to invade individual privacy and sell user data. Unfortunately, since there is no unified legal framework to address this global issue, solutions are fragmented and do not transcend borders. This paper aims to discuss how a unified legal framework could protect individuals from the oppressive algorithms of current capitalism.

Regarding specific objectives, this research will explore the themes of global constitutionalism and universal jurisdiction, with Luigi Ferrajoli's 'Why an Earth Constitution?' (2022) and Professor Claudia Loureiro's 'Universal Jurisdiction: Pandora's Box or a Path to the Realization of Humanity's Interests?'(2022) serving as the theoretical framework. Additionally, still regarding specific objectives, the case of Cambridge Analytica will be examined, along with a reflection on how Facebook and Google are the new data brokers, based on Professor Chris Hoofnagle's (2021) article “ Facebook and Google are the new data brokers".

3. Conclusão/Principais resultados

It is noteworthy that issues concerning privacy are as old as humanity itself (PARENTONI, 2015). In 1890, the seminal article 'The Right To Privacy,' published in the Harvard Law Review by Warren and Brandeis, addressed the erosion of privacy and intimacy in the face of new technologies in the 19th century.In other words, two centuries ago, issues related to privacy and new technologies were already being questioned, yet there still does not exist truly effective protection for individuals.

From this perspective, it is important to state that a pressing emblem of the digital age is the maintenance of privacy amid extensive data sharing. In this regard, this research aims to demonstrate that the current legal approach fails to adequately protect this right, as users do not have sufficient safeguards against the use of algorithmic tools. Therefore, the study seeks to analyze how the doctrine of universal jurisdiction can contribute to resolving this issue.

As a conclusion, the research aims to argue that with a unified regulatory framework on privacy and data protection, users worldwide would feel more secure. Ultimately, it is now abundantly clear that the algorithmic strategies of major companies often supersede state regulations. Finally, the aim is to conclude that with a single regulatory framework for all regions, people would be equally protected, achieving equity in data protection worldwide, rather than privacy being prioritized only in more developed countries.

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