Retro Spective

Techno

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2020
WHAT IS TECHNO-AUTHORITARIANISM?

Technologies can enable democratic or authoritarian contexts. There is no technology outside politics. The idea of techno-authoritarianism may be used to explain expansion processes of state power through the use of cutting-edge information communication technologies, aiming to increase surveillance and control capacities over the population through violation of individual rights or major expansion in risks of violation of fundamental rights. Techno-authoritarian practices help to erode inside the pillars that sustain democracy, creating structures able to increase surveillance, repression, and suppression over the exercise of rights.

Techno-authoritarianism is revealed as a global phenomenon, in a scenario where democracies are falling ill. This is not a country-specific phenomenon.

In Brazil, techno-authoritarianism is more prominent through practices such as centralized personal databases and its use for public safety purposes.
or intelligence activities; hiring or partnering with the private sector to increase surveillance capacity and shared use of personal data from Brazilian citizens – e.g., implementing technologies for facial recognition; deviation in purposes of databases with potential damage to the LGPD (the General Data Protection Regulation of Brazil); and even through the development of new information systems and cybersecurity projects, with or without direct involvement of the Armed Forces.

In countries with authoritarian and dictatorial backgrounds, such as Brazil and other Latin-American countries, techno-authoritarianism presents specific characteristics, connected with social and political history.

WHY SHOULD YOU WORRY ABOUT IT?

Throughout 2020, we identified a series of initiatives dedicated to monitoring and building databases regarding aspects the everyday life of from all Brazilians. The General Data Protection Regulation of Brazil came into force in September 2020 after a failed attempt from the
President of the Republic to approve a new postponement. Prior to the entry into force of the LGPD, the Federal Government created the Citizen Base Register (Cadastro Base do Cidadão), that works like an uber database containing personal data from every person enrolled in it, allegedly implemented to build and make public policies feasible. Moreover, other initiatives, such as the creation of dossiers containing names of activists with a political position declared to be against the current government, are worrying incidents and point out to a resurgence of authoritarianism or authoritarian tendencies in governments. Even the use of data for purposes of fighting the pandemic caused by COVID 19, if not controlled accordingly, may represent a risk for citizens.

The practices listed above indicate a scenario in which the expansion of state power is increasingly rooted in the use of cutting-edge information communication technologies and, therefore, rights holders (and their personal data) are increasingly vulnerable. In this sense, quick responses are needed to mitigate the risks imposed on individual freedoms and fundamental rights due to the rising phenomenon we call techno-authoritarianism.
HOW DID WE DO THIS RESEARCH?

To identify the events that we list and discuss in this retrospective, we started our research by looking into the events repository registered in the Emergency Agenda produced by the Center for Analysis of Freedom and Authoritarianism - LAUT (agendadeemergencia.laut.org.br), focused on violations with an authoritarian bias. We sought, in the universe of events occurred in 2020, those related to the topic of data protection.

We also did a complementary thematic search on InternetLab's weekly repository (internetlab.org.br/en/semanario) and on the website of the news organization The Intercept (theintercept.com). Finally, we researched reports published in 2020 by specific journalists specialized in themes of technology and data protection in media such as Folha de São Paulo, Estadão and The Intercept.

Among the events identified in this first phase of the survey, we excluded (1) acts related to drafting, presentation, and prosecution of bills, as well as extra-legislative discussion related to them, (2) acts of local government competence and (3) government acts practiced in years before 2020, but only published in
2020, via reports or other sources of information.

Finally, the events that constitute this retrospective are those that reveal the usage, by the State, of information communication technologies, aiming to increase surveillance and control capacities over the population, through the violation of individual rights and freedoms or major expansion of the risks of violation of those rights and freedoms.
MARCH 5
Public servants data is shared without breach of confidentiality

MARCH 18
Decree allows the sharing of sensitive personal data without authorization
APRIL 17

Government tries to obtain data from millions of clients of telecoms for research purposes. [+ Info]

APRIL 29

District Attorney's Office produces report on “anti-fascist” security agents. [+ Info]
APRIL 30
GOVERNMENT POSTPONES THE ENTRY INTO FORCE OF THE LGPD

MAY 18
COURTS FORCE WHATSAPP TO REVEAL AUTHORS OF MASSIVE MESSAGE-BASED ATTACKS AGAINST CONGRESSMAN
JUNE 1
CONGRESSMAN RESPONSIBLE FOR LEAKING “ANTI-FASCIST DOSSIER” IS INVESTIGATED IN INQUIRY + INFO

JUNE 3
THE NATIONAL TELECOMMUNICATIONS AGENCY (ANATEL) AUTHORIZES THE BREACH OF CONFIDENTIALITY OF REGISTRY DATA WITHOUT A COURT ORDER + INFO
JUNE 6
BRAZILIAN INTELLIGENCE TRIES TO ACCESS DRIVER LICENSES DATA
+ INFO

JULY 24
BRAZILIAN MINISTRY OF JUSTICE RELEASES AN “ANTI-FASCIST DOSSIER”
+ INFO
OCTOBER 1
Brazilian Congress approves National Register of Convicts for Rape

+ INFO

OCTOBER 15
Bolsonaro appoints a majority of military personnel to the Data Protection Authority

+ INFO
DECEMBER 1

GOVERNMENT MONITORED JOURNALISTS, CONGRESSMEN AND OPINION MAKERS ACCORDING TO IDEOLOGICAL POSITION AND CLASSIFIED PART OF THEM AS ‘DETRACTORS’ + INFO
PUBLIC SERVANTS DATA IS SHARED WITHOUT BREACH OF CONFIDENTIALITY

The Superior Court of Justice (STJ) considered there was no confidentiality breach in data exchanging within the scope of Public Administration [1]. The decision denies the appeal from a Federal Revenue tax auditor against the federal government. He declined to submit his bank statements in an administrative proceeding, claiming the impossibility of breaching fiscal secrecy, and had such data directly disclosed by the Office of Internal Affairs of the Internal Revenue Service. The STJ understands that Public Administration has acted within the legal and constitutional limits, since the information was acquired directly by the Internal Revenue Service and not shared with third parties. Last year, a decree was issued providing for the sharing of personal data between federal government agencies, in order to create the Citizen Base Register [2] [3]. In 2020, a Presidential Provisional Measure on data sharing of telecommunications companies with the Brazilian Institute of Geography and Statistics, IBGE, was also issued, thereafter reverted in the Judiciary Branch [4]. ← timeline
President Jair Bolsonaro issued a decree [1] allowing the government to share classified personal data with other public agencies without the need for express authorization from citizens. That measure fills the gap of another decree [2], responsible for creating the Citizen Base Register, a government platform able to register not only biographic data, but also biometric data. The motivation behind that new decree is not clear, but it may be related to possible needs of sharing data to identify suspected COVID cases [3]. This is not the first government action aimed at making personal data sharing more flexible during the pandemic. On another occasion, the Provisional Presidential Decree determined that personal data would be shared by telecommunication companies to be used by the Brazilian Institute of Geography and Statistics (IBGE) in order to fight the pandemic, an act reverted by the Judiciary Branch. ← timeline
GOVERNMENT TRIES TO OBTAIN DATA FROM MILLIONS OF CLIENTS OF TELECOMS FOR RESEARCH PURPOSES

Provisional Presidential Decree 954 [1] determined the sharing of data by telecommunications companies with IBGE for the production of the Continuous National Household Sample Survey [2] in the pandemic period. Consumers’ names, phone numbers and addresses must be provided. The reactions to the measure were varied. Coalizão Direitos na Rede stressed that the provisional decree may violate citizens’ privacy [3]. Furthermore, four political parties [4] [5] [6] [7] and the Brazilian Bar Association (OAB) [8] filed suits with the Brazilian Federal Supreme Court - STF [9]. On April 20, Supreme Court Justice Rosa Weber suspended the Provisional Decree's efficiency [10], in a non-definitive way, stressing that it breaches the privacy of citizens and is unclear as to what were the purposes of data sharing [11]. Even though the pending suit in the STF, IBGE even asked telephone operators to send their clients’ data urgently [12]. On May 7, the en banc Federal Supreme Court held the provisional decree's effectiveness suspended [13]. Nonetheless, on June 10, the President of the Board of the National Congress extended the provisional decree's effectiveness [14] until August 14 [15].

← timeline
The District Attorney's Office of the state of Rio Grande do Norte produced a report on ‘anti-fascist policemen’, under the justification of allegedly creating a ‘paramilitary’ group in the state [1]. The document contains personal data from 23 public security staff, including names, home addresses, photographs, and posts on social media [2]. The organ responsible for the making of this report is Gaeco (Special Action Group to Combat Organized Crime), whose attributions include external control of police activity. According to them, the report would have been produced only with public data, it is not clear how the addresses and personal data were obtained [3]. In September, police officers were subpoenaed to testify. After strong criticism, the inquiry was dismissed in November 2020. Government considered it an “illegal act derived from political persecution” [4] [5].

← timeline
GOVERNMENT POSTPONES THE ENTRY INTO FORCE OF THE LGPD

Presidential Provisional Decree 959 [1] postponed the General Data Protection Regulation (LGDP) to May 2021. The main provisions would come into force in August 2020. Recitals point to a possible inability by part of the society to implement LGPD, due to the economic and social impacts caused by the pandemic [2]. It was the second time that the regulation was postponed [3]. The Prosecution Office spoke out against the Provisional Measure, claiming that LGDP could help the country in collaborating with foreign actors during the pandemic [4]. Specialists also criticized the Provisional Measure, stating that the new postponing the enforcement date creates legal uncertainty and maintains the problem of the lack of a regulatory body [5]. Subsequently, the Federal Senate approves the anticipation of the LGPD's enforcement date [6], setting the date back to August 2020 [7]. On June 29, the President of the Senate extended the Provisional Measure for another 60 days [8]. However, on August 28, the Senate rejected part of the Provisional Measure. Therefore, the LGPD's term depended on the presidential sanction [9]. On September 18, presidential sanction was published and LGDP came into force [10]. ← timeline
COURTS FORCE WHATSAPP TO REVEAL AUTHORS OF MASSIVE MESSAGE-BASED ATTACKS AGAINST CONGRESSMAN

In the state of Alagoas, Courts determined, by preliminary injunction, the blocking of WhatsApp accounts that allegedly would have made massive message-based attacks with an edited video against Congressman João Henrique Caldas (Brazilian Socialist Party - PSB), as well as the provision of information by Facebook [1]. The accounts would have allegedly sent videos containing a ‘meme’ in which Caldas appears carrying a coffin and dancing, along with the top five people who most profited from the coronavirus in Alagoas [2]. According to the decision from the 2nd Civil Court from Maceió, the message would be ‘notably offensive to the Plaintiff’s honor and image’ [3] and would fall under the law of the Brazilian Civil Rights Framework for the Internet, that establishes that the internet provider can be held responsible should they not take steps to make the infringing content unavailable after a court order, and which allows the provision of connection or access records through applications [4]. ← timeline
The District Attorney's Office of the state of São Paulo opened a civil inquiry procedure against São Paulo state representative Douglas Garcia (Brazilian Social Liberal Party - PSL) and Edson Salomão, Garcia’s chief of staff and Brazilian Conservative Institute's president [1]. The investigation aims to determine if there were any demonstrations of hatred against public figures, sharing of posts from the Conservative Institute and incentives for signatures collection to build a new party called "Alliance for Brazil" (from Brazil’s President Jair Bolsonaro) at the Legislative Assembly of the state of São Paulo, during business hours and using public financial resources [2]. Garcia asked for personal data from people who have declared themselves ‘anti-fascists’ to be sent to his e-mail address. The following day, he recorded a video with a dossier [3], in the context of protests from those groups against the government. Thus, many attribute to this representative the subsequent leak of a list with personal data from around 900 people (ordinary citizens classified as anti-fascists) [4]. In August, Garcia was sentenced by the courts of the state of São Paulo to pay a compensation of BRL 20,000.00 [5]. ← timeline
THE NATIONAL TELECOMMUNICATIONS AGENCY (ANATEL) AUTHORIZES THE BREACH OF CONFIDENTIALITY OF REGISTRY DATA WITHOUT A COURT ORDER

Brazilian National Telecommunications Agency (Anatel) approved an amendment to the General Regulation on Consumer Rights in Telecommunications Services (RGC), providing for the possibility of a telephone line owner gaining access to the registration data of users who started calls [1]. The operator may demand from the requester the date and time of the unwanted call and proof of ownership of the telephone line, as well as charge for the provision of registration data, which will be their full name and tax information of the person or entity who originated the call. This data concession may be carried out without a court order. The new writing of the regulation [2] [3] comes into effect in January 2021 [4], and was designed to meet a court decision from the federal courts of the state of Sergipe demanding Anatel to regulate data concession cases without a court order [5]. There has been a dispute in this regard since 2010 [6] and last year Anatel opened a public consultation for the inclusion of telecommunications operators in the process [7]. ← timeline
BRAZILIAN INTELLIGENCE TRIES TO ACCESS DRIVER LICENSES DATA

Brazilian Intelligence Agency (Abin), directly linked to the federal government, made an agreement with the Brazilian Federal Data Processing Service about sharing personal data of all people with a National Driver’s License (CNH) [1] [2] [3]. The agreement will give access to the name, parents’ names, tax identity number, address, telephone number, photo, and vehicle data of more than 76 million people [4]. The Brazilian Socialist Party (PSB) filed a lawsuit with the Federal Supreme Court (STF) to suspend the deal, as it violates constitutional guarantees to privacy and freedom, since the data would be shared without the consent of the holders and without transparency about the use of the data [5]. Abin justified their request on a decree from 2019 that regulates data sharing between organs of the federal public administration and institutes the ‘Citizen Base Registration’ [6]. Specialists, in a statement to STF, affirm that the decree does not meet the transparency requirements stated on the LGPD [7] and does not provide for data sharing for purposes of intelligence or public security, supporting the illegality of the agreement [8]. On June 24, Brazilian government revoked Abin’s authorization to obtain access to the requested data [9].
Brazilian Ministry of Justice and Public Security, through its Secretary of Integrated Operations (Seopi), started a secret investigation about 579 people identified as anti-fascists [1]. The dossier contains photographs and social media accounts in some cases [2] and would have been based in an anti-fascist manifest signed by public servants of the public security sphere back in May [3]. Seopi’s acts are not monitored by the courts, as it is considered intelligence service as per a presidential decree [4] [5]. The Federal Police of Brazil, the Brazilian Intelligence Agency and Seopi’s ‘intelligence venues’ are among the organs who would have been given this dossier [6]. The Inter-American Commission on Human Rights states that the attitude goes back to the military dictatorship days [7] and that the dossier would be an affront to free thought [8]. The Rede Party filed a suit with the STF [9], requesting the opening of an inquiry, the court stated on April 4 that the dossier was incompatible with democracy [10]. Minister André Mendonça provided clarifications in Congress [11] after changing Seopi's director [12]. On August 20, STF determined the suspension of the dossier elaboration, considered unconstitutional [13] [14].

← timeline
Brazilian National Congress approved an Act [1], sanctioned by President Bolsonaro the following day, creating a national register of convicts for rape [2]. The database will contain information such as physical features, fingerprint, genetic profile and pictures from home and work addresses of the convicts [3]. The act does not specify whether the registry will be publicly accessible, but provides for use by states and municipalities [4]. Specialists point out risks of offending fundamental rights and encouraging state surveillance and criticize the lack of specifications regarding the type of conviction, how long it will be in the register and whether the supply of genetic material is mandatory [5]. Another criticism pointed out is that the act does not present innovations in the national legal system, since the National Bank for Genetic Identification already exists in the country and is used to monitor convicts and because rape is already considered a heinous crime, with a high penalty [6]. ← timeline
Bolsonaro Appoints a Majority of Military Personnel to the Data Protection Authority

President Bolsonaro appointed five directors to the Executive Board of the Brazilian Data Protection Authority (ANPD) [1], three of whom are military [2]. Waldemar Gonçalves Ortunho Junior, current president of Telebras [3], Arthur Pereira Sabbat, director of the Information Safety Department of the Institutional Security Office [4] and Joacil Basilio Rael, Telebras collaborator [5] were appointed for terms of, respectively, six, five and four years – the other two appointments have shorter terms, three and two years [6]. ANPD is an organ from the federal public administration and has technical and decision-making autonomy, as well as regulatory powers regarding the protection of personal data in the country [7]. Experts fear that these appointments may create incentives to state surveillance [14] and to the confusion of data protection with the area of information safety, which presupposes low transparency and social control over information [15].

← timeline
Federal government hired a company to write a report categorizing journalists and opinion leaders as ‘detractors’, ‘neutral’ and ‘favorable’ [1]. Posts from 77 professionals were monitored and eight of them had their personal phone number indexed to the report [2]. Minister Paulo Guedes claimed he was unaware of the report's content and assured there are communication problems within the government [3]. After the existence of the document became public, the Ministry of Economy broke connections with the company [4]. Federal representative Jandira Ferghali (PCdoB - Communist Party of Brazil) collected signatures aiming to open a Congress Committee of Investigation (CPI) to investigate the case [5]. In parallel, in November, it was revealed that the Special Secretariat for Social Communication (Secom) also monitors the digital behavior of opposition parliamentarians and those allied [6]. President Bolsonaro, the minister of the Secretariat of Government and the head of Secom were summoned to submit documents on the monitoring that has been done [7].
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