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Towards a Critical Legal Tech Education: A Decolonial Approach

Diego H. Alcalá Laboy

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INTRODUCTION

For the 2025 Justice Innovation panel at the American Association of Law School's annual conference, I was asked to discuss ways that legal education can use legal tech innovation to expand access to justice. Panelists presented their own projects related to emerging uses of technology in legal spaces aimed at addressing access to justice issues.

This paper expands on ideas I posited during that conversation, particularly the opportunities that a robust engagement with critical theory could offer to interrogate some of the assumptions that permeate legal technology studies. This paper proposes that decolonial theory offers a uniquely powerful framework for interrogating the intersection of law and technology in both scholarship and pedagogy. In the first part of this piece, I explain how my professional experiences with technology have shaped my critique. My approach is grounded on my experiences growing up an Afro-Latino in the colony of Puerto Rico,[1] along with my exposure to the ways many racial and ethnic groups are treated in the criminal legal system of the United States.

I expect that focusing on law and technology from a decolonial theory perspective will be difficult given the disincentives in the legal academy that can discourage non-tenured law professors of color from pursuing this path. Nevertheless, creating scholarship for the current legal order would require that my time and energy is invested in the very same legal structure that is designed to keep me subjugated. Through this exploration, I believe strongly that a more equitable system, grounded on the dignity of all, can be developed.

I. A TECHNOLOGICAL CONTRADICTION

To make sense of my approach, I begin by explaining how my experiences with technology throughout my career have shaped critique. Before transitioning to academia, my career as a criminal defense attorney exposed me to how law enforcement has long deployed technology as a surveillance tool.

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1. Puerto Rico has been defined as an unincorporated territory of the United States through a series of judicial opinions known as the Insular Cases, which explored the relationship between the United States and its newly acquired overseas territories in the early twentieth century. The Insular Cases include De Lima v. Bidwell, 182 U.S. 1 (1901); Dowdell v. United States, 221 U.S. 325 (1911); Ochoa v. Hernández, 230 U.S. 139 (1913); Balzac v. Porto Rico, 258 U.S. 298 (1922). The status of "unincorporated" territory allows the United States selective application of rights and liberties under the Constitution to the territory of Puerto Rico. This reasoning was recently justified in United States v. Vaello Madero, 596 U.S. 159, 164 (2022) and Puerto Rico v. Sanchez Valle, 579 U.S. 59, 71 (2016). JORELL MELÉNDEZ BADILLO, PUERTO RICO: A NATIONAL HISTORY 82–84 (2024).

This was starkly evident to me in one of my first cases from my first week as an assistant public defender in 2005. The evidence against my client consisted of an undercover agent's testimony, which included a recitation of the agent's special training in surveillance operations, his experience conducting drug trafficking investigations, and the steps he took to prepare for his interactions with my client. The undercover agent would also authenticate a couple of photographs taken by a standard nondigital camera used in this operation.

By the time I joined legal academia seventeen years later, the volume of surveillance evidence available in an average criminal case had ballooned. Even in routine cases charging low-level offenses, prosecutors would routinely amass hours of digital images collected from multiple devices operated by law enforcement, such as Body Worn Cameras, CCTV footage, drones, and even video from equipment worn by informants or placed surreptitiously at a location. Additional troves of data, such as videos, photographs, social media posts, contact lists, and location information, were extracted from my clients' seized electronics, who on many occasions consented to a warrantless search and seizure of their electronic property without understanding the dearth of an electronic search.[2] On occasion, a case may include evidence collected by a third party, such as cellphone tower records,[3] GPS location data,[4] geofencing data,[5] Bluetooth location data point aggregations,[6] and automated license plate readers,[7] all of which enable the prosecution to account for defendants' smallest movements and amount to "near perfect

2. *See generally* PRIVACY INTERNATIONAL, A TECHNICAL LOOK AT PHONE EXTRACTION (2019), https://privacyinternational.org/sites/default/files/2019-10/A%20technical%20look%20at%20Phone%20Extraction%20FINAL.pdf [https://perma.cc/V6MF-7PVC].

3. *See, e.g.*, Carpenter v. United States, 585 U.S. 296, 302 (2018); Sarah Olson, *Using Cell Tower Data to Track a Suspect's Locatio*n, FORENSIC RESOURCES, OFFICE OF INDIGENT DEFENDER SERVICES (July 2, 2014), https://forensicresources.org/2014/using-cell-tower-data-to-track-a-suspects-location/ [https://perma.cc/45ZJ-76EW].

4. United States v. Jones, 565 U.S. 400, 403 (2012); Lars Daniel, *Google to Stop Giving Location Evidence to Law Enforcement*, FORBES (Oct. 8, 2024), https://www.forbes.com/sites/larsdaniel/2024/10/08/google-to-stop-sharing-location-data-with-law-enforcement/ [https://perma.cc/6JNK-GVYQ].

5. United States v. Smith, 110 F.4th 817, 822 (5th Cir. 2024); Andrew Crocker, *Federal Appeals Court Finds Geofence Warrants Are "Categorically" Unconstitutional*, ELEC. FRONTIER FOUND. (Aug. 12, 2024), https://www.eff.org/deeplinks/2024/08/federal-appeals-court-finds-geofence-warrants-are-categorically-unconstitutional [https://perma.cc/K3KM-PE6D].

6. *See* Zach Whittaker, *Despite Promises to Stop, US Cell Phone Carriers Are Still Selling Our Real-Time Phone Location Data*, TECH CRUNCH (Jan. 9, 2019), https://techcrunch.com/2019/01/09/us-cell-carriers-still-selling-your-location-data/ [https://perma.cc/YAQ2-JMKD].

7. *See Automated License Plate Reader Dataset*, ELEC. FRONTIER FOUND., https://www.eff.org/pages/what-alpr [https://perma.cc/JVT9-MLAW].

surveillance."[8] Even when technology has been shown to have significant reliability flaws,[9] law enforcement routinely relies on evidence produced by audio sensory enhancement technology to distinguish gunshots from other sounds,[10] facial recognition technology to aid in the identification of suspects,[11] and analytical tools to extract previously unknown insights from disparate data.[12] If law enforcement wanted to bypass their constitutional requirements, they could easily purchase the same information directly from data brokers, who sell data aggregated from individuals' numerous interactions with digital products and the omnipresent digital tracking and surveillance that ensues.[13] Some commercial products, such as Ring video security systems,[14] owned by Amazon, and consumer vehicles, including those manufactured by Tesla,[15] record and store audio and video footage from their security cameras. Through partnership programs, many of these systems have historically

8. *Carpenter*, 585 U.S. at 311–12 (2018). Chief Justice Roberts argued that, through the constant tracking of a cellphone users' location, "near perfect surveillance" is achieved, as if there were an ankle monitor on the phone's user. *Id.*

9. The rules regulating the admissibility and reliability of the technology have been used to challenge ShotSpotter evidence. Motion to Exclude ShotSpotter Evidence Pursuant to *Frye* and Rule 403 at 1-3, People v. Williams, No. 20 CR 0899601 (Ill. Cir. Ct. Cook Cty. April 22, 2021); Regarding Clearview's facial recognition software evidence, see Lucas Daprile, *Cleveland Police Used AI to Justify a Search Warrant. It Has Derailed a Murder Case*, CLEVELAND.COM (Jan. 25, 2025), https://www.cleveland.com/news/2025/01/cleveland-police-used-ai-to-justify-a-search-warrant-it-has-derailed-a-murder-case.html [https://perma.cc/GY9H-GEPE]; Predictive algorithms were also questioned in State v. Loomis, 881 N.W.2d 749, 257 (Wis. 2016).

10. SOUNDTHINKING, https://www.soundthinking.com/ [https://perma.cc/DS36-MH55]; *see* Sophia Tareen, *Chicago to Stop Using Controversial Gunshot Detection Technology This Year*, ASSOCIATED PRESS (Feb. 13, 2024), https://apnews.com/article/shotspotter-chicago-gunshot-technology-mayor-f9a1b24d97a1f1efb80296dbe9aff1ed [https://perma.cc/8VRX-5MW2].

11. See, for example, Clearview, a software technology company that offers facial recognition services to law enforcement. CLEARVIEW, https://www.clearview.ai/ [https://perma.cc/ZKS7-WH52]. Efforts against this company by the ACLU allege privacy violations. *ACLU v. Clearview AI*, AM. C.L. UNION (May 11, 2022), https://www.aclu.org/cases/aclu-v-clearview-ai [https://perma.cc/TAZ5-6C7A].

12. *See* Mark Harris, *How Peter Thiel's Secretive Data Company Pushed into Policing*, WIRED MAGAZINE (Aug. 9, 2017), https://www.wired.com/story/how-peter-thiels-secretive-data-company-pushed-into-policing/ [https://perma.cc/8EG6-TD8J].

13. *See* Elizabeth Goiten & Emile Ayoub, *Data Brokers are Running Wild, and Only Congress Can Rein Them in*, BRENNAN CTR. FOR JUST. (Feb. 13, 2024), https://www.brennancenter.org/our-work/analysis-opinion/data-brokers-are-running-wild-and-only-congress-can-rein-them [https://perma.cc/267J-V9QT].

14. *See* Daniel Wroclawski, *What to Do If the Police Ask for Your Security Camera or Video Doorbell Recording*, CONSUMER REP. (May 2, 2023), https://www.consumerreports.org/legal-rights/police-ask-for-video-doorbell-recordings-what-to-do-faq-a8950763605/ [https://perma.cc/T2RY-8XLC]; *Neighbors Public Safety Services*, RING https://ring.com/neighbors-public-safety-service [https://perma.cc/B7RZ-UMA9].

15. Owen Bellwood, *Teslas Are Getting Towed by Police Because Their Cameras Might Have Evidence of Crimes*, QUARTZ (Sept. 3, 2024), https://qz.com/tesla-sentry-mode-towed-police-evidence-crime-1851638303 [https://perma.cc/4NHV-NKA5].

shared accumulated data of customers with law enforcement, even without a warrant.[16] Other surveillance technology tools are marketed with prediction capabilities, providing law enforcement with algorithmic predictions of locations where the program anticipates that crimes may be committed.[17]

Being exposed to these rapid changes at times felt overwhelming. Nevertheless, it was my ethical obligation to represent my client competently,[18] so I attended multiple training sessions on these new technologies. Understanding how these technologies worked not only made me a better advocate, but it also triggered a desire to educate myself on the use of technology in an area commonly referred to as legal technology.[19] Learning about data science, large language models, artificial intelligence, and chatbot technology[20] fortified my belief that legal technology could be leveraged to improve access to justice.[21] I participated in multiple legal tech events[22] and even launched a short-lived online legal marketplace that would provide solo practitioners with a

16. The Associated Press, *Ring Will No Longer Allow Police to Request User's Doorbell Camera Footage*, NAT'L PUB. RADIO (Jan. 25, 2024), https://www.npr.org/2024/01/25/1226942087/ring-will-no-longer-allow-police-to-request-users-doorbell-camera-footage [https://perma.cc/4LE2-RX5X].

17. *See* William Douglass Heaven, *Predictive Policing Algorithms Are Racist. They Need to Be Dismantled*, MIT TECH. REV. (July 17, 2020), https://www.technologyreview.com/2020/07/17/1005396/predictive-policing-algorithms-racist-dismantled-machine-learning-bias-criminal-justice/ [https://perma.cc/23RV-DMFU].

18. For a discussion on the ethical standards applicable to the criminal justice system, see Martin Marcus, *The Making of the ABA Criminal Justice Standards*, CRIM. JUST., Winter 2009, at 10, 10–15; CRIM. JUST. STANDARDS §§ 4-1.2, 4-1.9, 4-1.12 (AM. BAR ASS'N 2017); *see generally* AM. BAR ASS'N COMM'N ON ETHICS 20/20, RESOLUTION 105A REVISED 1–6 (2012), https://www.americanbar.org/content/dam/aba/administrative/ethics_2020/20120808_revised_resolution_105a_as_amended.pdf [https://perma.cc/L9QZ-2YY4] (discussing the duty of technology competence); Robert Ambrogi, *Tech Competence,* LAWSITES, https://www.lawnext.com/tech-competence [https://perma.cc/SK9K-S6KC].

19. Chris O'Leary, *Legal Technology's Authoritative Guide on Use Cases and Benefits*, THOMPSON REUTERS LEGAL (Sept. 9, 2024), https://legal.thomsonreuters.com/blog/technology-in-law-is-the-new-norm/ [https://perma.cc/5MM5-HZWV].

20. I completed multiple certificates from various service providers which include Python for Data Science and AI, Getting Started with AI Using IBM Watson, Introduction to AI, Building AI Powered Chatbots Without Programming, among others.

21. *See* THE GEEK IN REVIEW: *A Chat about Chatbots and the Law with Katherine Lowry and Diego Alcalá* (Spotify, Mar. 5, 2020); THE LAWDROID PODCAST, *Puerto Rican Legal Tech Is on the Rise,* (May 2020).

22. Amongst these I include the following speaking engagements: Presentation, *Understanding Deep Fakes*, Developer's Circle - San Juan Chapter (July 2020); *Facial Recognition, A.I., and the Law*, Auditorium Podcast Interview (Jul. 2020); Interview, *Legal Tech Innovations in Law*, Microjuris News (Mar. 6, 2020); Panelist, *Legal Innovation Conference*, Emory University Law School, Tiger Law Program, (Feb. 2020); Presentation *Automation for Solo Attorneys*, PuertoRicoLegalTech, (Feb. 2020); Presentation, *Techtools for yourlegal practice*,PuertoRicoLegalTech (Nov. 2019).

platform that would allow them to contract at scale with multiple litigation support providers, such as interpreters, translators, and court reporters.[23]

Despite this effort, examples of how technology was impacting my clients, mostly members of marginalized communities, provided tangible evidence of the nefarious results of these technologies. It became impossible to ignore the contradiction between the rhetoric surrounding the opportunities of using technology to assist marginalized communities that have significant access-to-justice issues, with the actual deployment of technology—more specifically, surveillance technologies—that harm these same people. These contradictions forced me to develop a more critical perspective on the intersection of technology and the law. In response, I began to study critical theories that interrogate technology's intersection with other fields, including media studies, Black studies, and feminist theory,[24] eventually leading me to explore decolonial theory.

II. DECOLONIAL THEORY

I will not attempt to capture the dehumanization and horror of colonization in this piece, but I will note that with Columbus's arrival to the Americas in 1492, colonization was the composite made from the ongoing acts of conquest, pillaging, usurping, and above all, the subjugation of one group of people to another by a few Western European empires into the newly identified lands in the Americas.[25] A primary part of that conquest was the imposition of colonialism, defined as the invented asymmetrical intersubjective relations between the colonizer and the colonized,[26] and the accompanying economic, cultural, and legal frameworks that compel the dispossession and transfer of resources from the colonized to the colonizer.[27]

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23. I decided to shut down Tiago, the online marketplace, after just six months and documented my experience on X. Diego Alcala Laboy (@DiegoAlcalaPR), X (May 28, 2019, 18:56 PT), https://x.com/DiegoAlcalaPR/status/1133552564199403520 [https://perma.cc/L5Y3-R24G].

24. *See generally* RUHA BENJAMIN, RACE AFTER TECHNOLOGY: ABOLITIONIST TOOLS FOR THE NEW JIM CODE (2019); Joy Buolamwini & Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in Commercial Gender Classification*, 81 J. MACH. LEARNING RSCH. 77 (2018); CODED BIAS, PBS (7th Empire Media 2020). For more information, see CODED BIAS, https://www.codedbias.com/about [https://perma.cc/ZR7X-QGDY].

25. Nelson Maldonado Torres, *El Caribe, la Colonidad y el Giro Decolonial*, 55 LATIN AM. RSCH. REV. 560, 560–62 (2020).

26. The dichotomy of colonizer-colonized has been expressed in different ways including metropole-periphery, core-periphery, citizen-subject, civilization-barbarity, among others.

27. Duncan Omanga, *Decolonization, Decoloniality, and the Future of African Studies: A Conversation with Dr. Sabelo Ndlovu-Gatsheni*, ITEMS: INSIGHTS FROM SOC. SCIS., (Jan. 14, 2020), https://items.ssrc.org/from-our-programs/decolonization-decoloniality-and-the-future-of-african-studies-a-conversation-with-dr-sabelo-ndlovu-gatsheni/ [https://perma.cc/J2W4-B5XJ]; MAHMOOD MAMDANI, DEFINE AND RULE, NATIVE AS POLITICAL IDENTITY 24–26 (2012).

Two particularly important features of the colonization project were the creation of "race" as the legal codification of difference and power between the colonized and the colonizer, and the implementation of a new system of control of labor and its resources and products.[28] As a result, the classification of persons determined their role (*encomendados*, wage laborers, or slaves) in the labor economies,[29] directly benefiting Europeans while exploiting subjugated people. These roles produced a disproportionate economic benefit to the Western European colonizer, while ensuring the commodification of the lives of the Indigenous, Black, and other nonwhite persons—all seen as inferior races.[30]European colonialists imposed their economic advantage to control ever-increasing markets, ultimately leading to world capitalism.[31]

The colonial project not only extracted both labor and natural resources from the colonized but also appropriated any Indigenous cultural knowledge that benefitted them. It then destroyed knowledge or beliefs that threatened or weakened the classifications of race and labor identified above.[32] By imposing European cultural knowledge, such as Judeo-Christian theology, colonialism manufactured a reinforcing power imbalance between the colonizer and the colonized. This process centered Europe as the genesis of all human events, positioning it as a civilizing project and removing any recognition of the Indigenous.[33] This feature permitted the promotion of Euro-centered universal categories for national, racial, ethnic, religious, and gender classifications of a society.[34]

Decolonization was the process of national liberation that occurred in the twentieth century by the Asian and African colonies of the imperial European nations.[35] While the liberation movements succeeded in obtaining national independence, the structures of colonialism entrenched within the legal, political and economic world systems impeded the

28. Aníbal Quijano & Michael Ennis, *Coloniality of Power, Eurocentrism, and Latin America*, 1 NEPANTLA: VIEWS FROM S. 533, 534 (2000).

29. *See* ENRIQUE DUSSEL, 1492: EL ENCUBRIMIENTO DEL OTRO: HACIA EL ORIGEN DEL "MITO DE LA MODERNIDAD" 41 n.10, 42 (Facultad de Humanidades y Ciencias de la Educación & UMSA eds.,1994), https://biblioteca.clacso.edu.ar/clacso/otros/20111218114130/1942.pdf. Dussel defines *encomendado* as an indigenous person who would be ordered to serve their conquistador to perform unpaid labor in the extraction of gold and silver, and then in agricultural or extraction economy. Slaves were primarily referencing Black Africans kidnapped and brought into the continent for labor. *Id.*

30. Quijano & Ennis, *supra* note 28, at 535.

31. *Id.* at 536.

32. *Id.* at 541.

33. DUSSEL, *supra* note 29, at 62–66.

34. Lena Salaymeh & Ralf Michaels, *Decolonial Comparative Law: A Conceptual Beginning*, 86 J. COMPAR. & INT'L PRIV. L. 166, 178–79 (2022).

35. *See* RICHARD WRIGHT, THE COLOR CURTAIN: A REPORT ON THE BANDUNG CONFERENCE 11–13 (1956).

successful delinking of these former colonies from their colonizers.[36] As these movements struggled to implement a successful transition onto liberation and independence, theories rejecting colonialism emerged from a variety of liberation workers and thinkers, each from specific contexts.[37] One of the decolonial theories[38] that emerged was the Latin American and Caribbean decolonial school of thought.[39] Although almost all the Latin American countries gained their independence from their colonial powers by the nineteenth century,[40] they continue to struggle with the presence of colonialism.[41] This decolonial school of thought explores the interplay of colonialism and current systems. In examining ways to transcend these states,[42] the approach introduces the triad of modernity/coloniality/decoloniality as a framework for delinking from Western epistemologies.[43]

Coloniality and decoloniality emerged after the end of the Cold War[44] as conceptual tools to examine the interplay between colonialism and the economic, political, cultural, and legal structures of the state. Coloniality aimed to identify how the continuity of the power imbalance between the colonizers and colonized—as it is not limited to a spatial

36. Omanga, *supra* note 27.

37. FOLÚKÉ ADÉBÍSÍ, DECOLONIZATION AND LEGAL KNOWLEDGE, REFLECTIONS OF POWER AND POSSIBILITY 21 (2023).

38. *Id.* at 22–23. Prof. Folúkẹ́ Adébísí categorizes distinct schools of decolonial theorists emerging from specific contexts which include the following: Post-colonialist and neocolonialist thinkers, including Aimé Césaire, Frantz Fanon, Kwame Nkrumah, Prof. Eve Darian-Smith, Albert Memmi, along with political leaders who engage in rigorous theoretical work, such as Thomas Sankara, Julius Neyuere and Amilcar Cabral. Another school of decolonial theory is that which has been developed by Indigenous people within settler states, which include Prof. Eve Tuck and Prof. K. Wayne Yang, Prof. Lorenzo Veracini, Patrick Wolfe, and Prof. Nick Estes. The Latin American and Caribbean School includes Anibal Quijano, Nestor Maldonado-Torres, Prof. Walter D. Mignolo and Prof. Arturo Escobar, among others. Finally, Prof. Folúkẹ́ Adébísí recognizes the contributions brought force by two African American Schools of thought: Critical Race Theory, which include scholars such as Prof. Richard Delgado and Prof. Jean Stefancic, Prof. Kimberly Crenshaw, Prof. Derrick Bell, and others along with those from the Black Radical Tradition, composed of thinkers such as Marcus Garvey, W.E.B. Dubois, and Black Marxists such as Cedric Robinson. *Id.*

39. One of the main figures in the Latin American and Caribbean decolonial theory was Aníbal Quijano. Although his work was heavily influenced by many Black intellectuals who came before him, Quijano never cited them. These Black intellectuals included Cedric J. Robinson, W.E.B Dubois, Frantz Fanon, Kwane Nkrumah, Stuart Hall, among others. *See* Ramón Grosfoguel, *¿Negros marxistas o marxismos negros?: una Mirada Descolonial*, 28 TABULA RASA 11, 14–16 (2018).

40. The most notable exception to this is Puerto Rico, known as the "Oldest Colony in the World." *See generally* JOSÉ TRIAS MONGE, PUERTO RICO: LAS PENAS DE LA COLONIA MÁS ANTIGUA DEL MUNDO (2000).

41. Adébísí, *supra* note 38, at 26–29.

42. Nestor Maldonado Torres, *Latin American and Caribbean Colonial Studies and the Decolonial Turn*, in ROUTLEDGE HISPANIC STUDIES COMPANION TO COLONIAL LATIN AMERICA AND THE CARIBBEAN (1492–1898) 117, 127 (2020).

43. Adébísí, *supra* note 37, at 27–29.

44. Omanga, *supra* note 27.

location—was ever present.[45] Coloniality created a dual reality: modernity, the product of an enlightened process originating in Europe based on the idea of its civilization's superiority, and its underbelly, coloniality,[46] the structures employed by the colonizing forces for domination over the rest of the world.[47]

Aníbal Quijano theorized that coloniality operates its "coloniality of power" in four interrelated domains: authority; economy; knowledge production; and gender and sexuality.[48] Coloniality imposes, in these domains, strategies geared toward the conceptualization and control of centers of authority (government, army, education); the economy (exploitation and accumulation); knowledge production (science, philosophy, law, aesthetics, theology, etc.); and gender and sexuality (thought concepts such as man-woman, heterosexual normativity, and racism to classify and rank ethnicities).[49]

Decolonization, understood as the process of dismantling coloniality, then takes on two distinct dimensions: (1) the return of land and its resources to its Indigenous occupants, and (2) the process of undoing embedded universal categorizations.[50] Decolonial theorists aim to identify ways that communities can resist the power of coloniality by rejecting the imposition of a homogeneity through the development of anti-colonial epistemologies from the remaining Indigenous populations or from those in previously colonized regions.[51] One useful tool in this process is pluriversality, which proposes that decolonial thinkers reveal new alternatives without making a claim for "universal truth or objectivity".[52] Like abolitionists,[53] who theorize a world without the prison industrial complex, decolonial theorists reframe the narrative to replace the alternatives produced by modernists methodologies to present distinct solutions.[54]

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45. Adébísí, *supra* note 37, at 27–29.

46. WALTER D. MIGNOLO, THE DARKER SIDE OF WESTERN MODERNITY: GLOBAL FUTURES, DECOLONIAL OPTIONS 2 (2011).

47. Lena Salaymeh & Ralf Michaels, *Decolonial Comparative Law: A Conceptual Beginning*, 86 J. COMPAR. & INT'L PRIV. L. 166, 177 (2022).

48. Quijano & Ennis, *supra* note 28, at 557.

49. Walter D. Mignolo, *Introduction: Coloniality of Power and De-Colonial Thinking*, 21 CULTURAL STUD., 155, 156 (2007).

50. Shakir Mohamed, Marie-Therese Png, & William Isaac, *Decolonial AI: Decolonial Theory as Sociotechnical Foresight in Artificial Intelligence*, 33 PHIL. & TECH. 659, 664 (2020).

51. Salaymeh & Michaels, *supra* note 47, at 180.

52. *Id.*

53. *See generally* ANGELA Y. DAVIS, ABOLITION DEMOCRACY: BEYOND EMPIRE, PRISONS, AND TORTURE (2005).

54. Salaymeh & Michaels, *supra* note 47, at 180.

A. Decolonial Theory & Technology Studies

Decolonial theorists have deployed many of these concepts to critique technology and artificial intelligence. For example, concepts such as algorithmic colonialism or AI colonialism,[55] data colonialism,[56] and data capitalism,[57] are used to recognize the continuity of material resources and data exploitation for capital.[58] Theories explaining universalism in the digital space[59] and how digital infrastructures permit the historical extraction of resources from traditionally colonized spaces[60] owe much of their development from scholars of feminist studies,[61] critical race theory,[62] new data epistemologies,[63] and environmental justice[64] in their analysis of technology.[65]

These concepts assisted Professors Shakir Mohammed, Marie-Therese Png, and William Isaac to develop an integrated methodology to examine algorithmic systems that has substantial application to my examination.[66] They find that the modernity-coloniality analogy developed by decolonial thinkers can be repurposed to examine the power imbalances within the technology spaces.[67] This then provides a powerful

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55. *See generally* Karen Hao, Heidi Swart, Andrea Paola Hernández & Nadine Freischald, *AI Colonialism*, MIT TECH. REV. (2022), https://www.technologyreview.com/supertopic/ai-colonialism-supertopic/ [https://perma.cc/P2NW-3HRJ]; Abeba Birhane, *Algorithmic Colonization of Africa*, 17 *SCRIPTED* 389 (2020); Rumman Chowdhury, Global Lead for Responsible AI, Accenture, Keynote Address at MUTEK_IMG5: Algorithmic Colonialism (May 4, 2020), https://mutek.org/en/news/mutek-img-5-algorithmic-colonialism-rumman-chowdhury [https://perma.cc/94BX-BN84].

56. *See generally* Jim Thatcher, David O'Sullivan & Dillon Mahmoudi, *Data Colonialism Through Accumulation by Dispossession: New Metaphors for Daily Data*, 34 ENV'T & PLAN. D: SOC'Y & SPACE 990, 999 (2016); *See generally* Paola Ricaurte, *Data Epistemologies, the Coloniality of Power, and Resistance*, 20 TELEVISION & NEW MEDIA 350 (2019).

57. *See generally* SHOSHANA ZUBOFF, THE AGE OF SURVEILLANCE CAPITALISM: THE FIGHT FOR A HUMAN FUTURE AT THE NEW FRONTIER OF POWER (2019).

58. Mohamed, Png & Isaac, *supra* note 50, at 665.

59. Ricaurte, *supra* note 56, at 352–53.

60. *See generally* NICK COULDRY & ULISES A. MEJIAS, THE COSTS OF CONNECTION: HOW DATA IS COLONIZING HUMAN LIFE AND APPROPRIATING IT FOR CAPITALISM (2019).

61. *See generally* CATHERINE D'IGNAZIO & LAUREN KLEIN, *The Power Chapter, in* DATA FEMINISM (2020), https://data-feminism.mitpress.mit.edu/pub/vi8obxh7.

62. *See generally* BENJAMIN, *supra* note 24.

63. *See* Stefania Milan, & Lonneke van der Velden, *The Alternative Epistemologies of Data Activism*, 2 DIGIT. CULTURE & SOC'Y 57, 62 (2016).

64. *See generally* Inge Røpke, *New Technology in Everyday Life–Social Processes and Environmental Impact*, 38 ECOLOGICAL ECON. 403 (2001); Gilberto Gallopin, *Science, Technology and the Ecological Future of Latin America*, 20 WORLD DEV. 1391 (1992); U.N. ECON. & SOC. COMM'N FOR LAT. AM. & THE CARIBBEAN, SCIENCE AND TECHNOLOGY FOR SUSTAINABLE DEVELOPMENT: A LATIN AMERICAN AND CARIBBEAN PERSPECTIVE, at 19, U.N. Sales No. E.02.II.G.5 (2003).

65. Mohamed, Png &Isaac, *supra* note 50, at 665.

66. *Id.*

67. *Id.* at 664.

framework for identifying who controls the technology and how these centers of powers develop asymmetrical systems that perpetuate the exploitation of a specific group of people. Additionally, they reconceptualize "coloniality of power" into "algorithmic coloniality" which then becomes visible in distinct categories: algorithmic oppression, algorithmic exploitation, and algorithmic dispossession.[68] By utilizing "pluriversal epistemologies," the authors also propose different tactics for the development of future AI design that aim to dismantle power asymmetries and universalist conceptions of knowledge.[69]

III. LAW

A. Decolonial Theory & The Law

Decolonial theory has attracted legal scholars from various fields,[70] including: decolonial legal pedagogy,[71] decolonial constitutional law,[72] decolonial philosophy of law,[73] decolonial law and gender,[74] decolonial

68. *Id.* at 665-71.

69. *Id.* at 672.

70. For a comprehensive list of sources on Decolonial Legal Studies, see *Bibliography of Decolonial Legal Studies*, MAX PLANCK INST. FOR COMPAR. & INT'L PRIV. L., https://www.mpipriv.de/1204322/website_bibliography_decolonial_legal_studies.pdf.

71. Folúkẹ́ Adébísí, *Should We Rethink the Purposes of the Law School? A Case for Decolonial Thought in Legal Pedagogy*, 2 AMICUS CURIAE 428, 439 (2021); AITOR JIMÉNEZ GONZÁLEZ, UNSETTLING EUROCENTRISM IN THE WESTERNIZED UNIVERSITY, DECOLONIZING LEGAL STUDIES: A LATIN AMERICANIST PERSPECTIVE 138 (2018); Patricia Barkaskas & Sarah M. Buhler, *Beyond Reconciliation: Decolonizing Clinical Legal Education*, 26 J.L. & SOC. POL'Y 1, 13 (2017).

72. Salaymeh & Michaels, *supra* note 47, at 182–83; *see generally* CATHERINE WALSH, INTERCULTURALIDAD, ESTADO, SOCIEDAD: LUCHAS (DE)COLONIALES DE NUESTRA ÉPOCA (2009); César Augusto Baldi, *New Latin American Constitutionalism: Challenging Eurocentrism & Decolonizing History*, CRITICAL LEGAL THINKING (Feb. 6, 2012), http://criticallegalthinking.com/2012/02/06/new-latin-american-constitutionalism-challenging-eurocentrism-decolonizing-history/ [https://perma.cc/5K3D-HSEG]; César Augusto Baldi, *From Modern Constitutionalism to New Latin American Decolonial Constitutionalism*, 23 CLR JAMES J. 307; Maria Itati Dolhare & Sol Rojas-Lizana, *The Indigenous Concept of Vivir Bien in the Bolivian Legal Field: A Decolonial Proposal*, 46 AUSTL. J. INDIGENOUS EDUC.19 (2018).

73. Salaymeh & Michaels, *supra* note 47, at 184; *see also* Peter Fitzpatrick, *The Revolutionary Past: Decolonizing Law and Human Rights,* 2 METODO. INT'L STUDS. PHENOMENOLOGY & PHIL. 117, 125 (2014).

74. Salaymeh & Michaels, *supra* note 47, at 184–85; *see also* Maria Lugones, *Heterosexualism and the Colonial/Modern Gender System*, 22 HYPATIA 186, 189 (2007); Mendez Xhercis, *Notes Toward a Decolonial Feminist Methodology: Revisiting the Race /Gender Matrix*, 5 TRANS-SCRIPTS 41, 48 (2015).

law and religion,[75] and decolonial comparative law.[76] Like other decolonial legal literature, Professors Lena Salaymeh and Ralf Michaels have found that some of the epistemic assumptions that help fortify the coloniality of power include the "prioritization of formalized law, methodological nationalism, assumed homogeneity within legal traditions/systems, and implied superiority of the Global North."[77] And like others, they propose that "pluriversality, as a decolonial tool," can help mitigate these shortcomings.[78]

B. Technology & The Law

To apply these logics into an academic environment, I first interrogate how legal academics address technology in the classroom and in scholarship. Examining a popular AI and Law Professors website,[79] I found that at least 286 academics are currently teaching one of the 131 technology and law-related courses identified on the site.[80] Most courses are classified within one of the following categories: AI Policy and Governance, AI Ethics, Law of AI, AI for Legal Services, AI and Legal Reasoning, Coding for Lawyers, AI and Legal Writing, AI Law (building technology solutions), AI and Legal Research, and "other".[81] However, a closer examination of the course descriptions revealed[82] that only five academics self-reported that their courses examined any harmful impact that technology may have on a population.[83]

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75. Salaymeh & Michaels, *supra* note 47, at 185–86; *see also* RALF MICHAELS, *Religiöse Rechte und postsäkulare Rechtsvergleichung*, *in* ZU-KUNFTSPERSPEKTIVEN DER RECHTSVERGLEICHUNG 39 (Reinhard Zimmermann ed. 2016); Lena Salaymeh & Shai Lavi, *Religion Is Secularized Tradition: Jewish and Muslim Circumcisions in Germany,* 41 OXFORD J. LEGAL STUD. 431, 436 (2021); *see generally* TIMOTHY FITZGERALD, RELIGION AND THE SECULAR: HISTORICAL AND COLONIAL FORMATIONS (2007).

76. Salaymeh & Michaels, *supra* note 47, at 186–87.

77. *Id.* at 186.

78. *Id*.

79. April Dawson & Daniel W. Lima, *AI & Law Related Courses Professors List*, https://www.ailawprof.com/ [https://perma.cc/K2KF-C8YB] (last visited May 28, 2025).

80. *Id*.

81. *Id.* The members of the AI & Law Professor website can self-report the appropriate category for their course from the following categories: AI Policy & Governance, AI Ethics, Law of AI, AI for Legal Services, AI and Legal Reasoning, Other, Coding for Lawyers, AI and Legal Writing, AI Lab (building technology tools), and AI and Legal Research. *Id.*

82. Using the AI & Law Professor website, the author examined the specific terms within the available in the course description section. The searched terms were: "harm," "race," "critical," "marginalized," "human rights," and "power." For a Course Descriptions page, see April Dawson & Daniel W. Lima, *AI & the Law Related Courses*, https://www.ailawprof.com/list-of-courses-with-descriptions [https://perma.cc/BBD2-5TJ9] (last visited May 28, 2025).

83. The five identified courses are *AI and the Law*, Prof. Darrell Mottley, Assistant Clinical Professor of Law, Suffolk University Law School; *AI and the Law, Introduction to AI and the Law*, Becka Rich, Assistant Dean for the Law Library and Technology, Drexel University School of Law; *AI and Human Rights*, Arul George Scaria, Associate Professor of Law, National Law School of India

Although a comparable review of the self-listed scholarship by these legal academics was not feasible at this time,[84] I believe that it is likely that few legal scholars examine the power dynamics at play in the cross-section of technology and law, which replicate existing racial, gendered, and classed structural harms. Professor Jessica A. Eaglin recently classified much of the current law and technology scholarship as "Techno-Correctionist"[85] as it aims to fix the technical deficiencies (design, production, or execution) of a technology that does not harmonize with the current legal or regulatory framework,[86] and considers the law as a passive facilitator for the use of technology.[87]

While most academics fail to address the harmful impacts that legal technology has on populations, there are a few who incorporate critical perspectives into their analysis. Eaglin interrogated the intersection of law and technology from a Critical Race Theory perspective.[88] Additionally, other academics expanding the scholarly critical analysis of technology include Professor Margaret Hu, who uses critical theory, [89] and Professor Emile Loza de Siles, who uses slavery studies methodology.[90] Through my work, I adopt an anti-colonial theory developed in the critical surveillance studies field.[91] In any case, scholarship and pedagogy that critically interrogate technology and law remain underexplored.

IV. CREATING DECOLONIAL LAW & TECHNOLOGY

There are ample opportunities to develop scholarship from a decolonial theory paradigm.[92] I have developed the following framework

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University*; Artificial Intelligence and Its Impacts on Human Rights*, Isabela Moreira Domingos, PhD Student, Santiago de Compostela, Spain; *Agentic Artificial intelligence and the Law*, Joshua Joseph, Lecturer, Harvard University Law School. *Id.*

84. Although the AI & Law Professor website includes a "Scholarship" page in which the academics listed their scholarship, the information was either limited to the law review article's titles or hyperlinks to the articles themselves. A more appropriate review would entail a review of, at least, the article's abstracts.

85. Jessica M. Eaglin, *When Critical Race Theory Enters the Law & Technology Frame*, 26 MICH. J. RACE & L. 151, 157 (2021).

86. *Id.* at 157-58.

87. *Id.* at 157.

88. *See generally* Eaglin, *supra* note 85.

89. *See generally* Margaret Hu, *Critical Data Theory*, 65 WM. & MARY L. REV. 839 (2024).

90. *See generally* Emile Loza de Siles, *Slavery.AI*, 30 WASH. & LEE J. CIV. RTS. & SOC. JUST. 1 (2024).

91. *See, e.g.*, Diego H. Alcalá Laboy, *The Founder's Gaze: How the Fourth Amendment Is a Surveillance Technology That Enables AI to Scale Control of the Subaltern*, MICH. J. RACE & L. (forthcoming 2025).

92. I want to note that legal scholarship is usually limited to the publication of law review articles at a prestigious law review. This narrow construct needs to be "decolonized" and reformed to recognize alternative means of knowledge creation methods by academics, especially those who have a colonized background.

to help myself, and hopefully others, chart a path to a more robust development of decolonial law and technology.

A. Colonizer/Colonized Framework

As noted earlier, the modernity-coloniality analogy can be repurposed to explore the power imbalances that are prevalent in the intersection of law and technology. The dichotomy of "colonizer" and "colonized" is useful to identify who benefits from a specified technology (such as a corporation or government) and who is exploited (such as the subjects of algorithmic oppression, extraction, and dispossession). Through this lens, we can embark on an analytical examination of the development of products, predictions, and the structures that support them (data, networks and policies), and more clearly identify the coloniality of power in law and technology.

B. Power from Below

Pluriversality can help disrupt the epistemology of the coloniality of power by producing alternatives to universalism. To achieve this, the identification and promotion of traditionally marginalized people is paramount. Developing structures, such as people's councils, worker's councils, or Indigenous people's councils, for example, can lead to the recovery of traditional knowledge and help elevate distinct epistemologies that can be useful to counter the homogeneity and universalism of the law.[93] This process gives voice to the "colonized" and forces the recognition of knowledge creation by non-state actors through non-formal legal processes.[94] Importantly, this process can be reinforced through the insertion of interdisciplinary methodologies that can help in the creation of heterogeneity problem solving. This shift in power dynamics can prepare space to question the basic assumptions for an apparent need for a proposed technological solution and even develop alternative mechanisms better suited to address these identified problems. As an academic, I can focus my "scholarship" towards the facilitation of community knowledge creation and then center it as an alternative to the homogeny and universalism of law and technology.

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93. *See* JIMÉNEZ GONZÁLEZ , *supra* note 71, at 135. Jiménez González recounts how the political mobilization of workers, Indigenous communities, and previously persecuted intellectuals helped produce a new and radical decolonial constitution. Similarly, Prof. Nick Estes invites us to acknowledge and support traditional Indigenous resistance. *See* NICK ESTES, OUR HISTORY IS THE FUTURE: STANDING ROCK VERSUS THE DAKOTA ACCESS PIPELINE, AND THE LONG TRADITION OF INDIGENOUS RESISTANCE, 256–57 (2019).

94. *See generally*, Boaventura De Souza Santos, *My Law and Modernization Theory*, 7 J. INSTITUTIONAL STUD. 768 (2021).

CONCLUSION

My path in developing critical contributions to the law and technology space is in its infancy, but I am eager to contribute towards making decolonial legal scholarship and pedagogy a robust field of knowledge. The framework of decoloniality, particularly using the modernity-coloniality analogy and pluriversality to engage in critique, can produce powerful alternative modalities that challenge the assumed impartiality common to popular views of both law and technology.