

Judicial dressing biocode: An analysis of Brazil's court bias of bodies' politics

Biocódigo da vestimenta judicial: Uma análise da política de corpos e do preconceito das cortes brasileiras

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Abstract: This study is about questioning the regulations still prevailing in the courts and other Brazilian Judicial bodies on what to wear, especially on the gender issue, forming a true exclusion, demonstrated by the mechanism studied by Zygmunt Bauman, and Metatheory of Fraternal Law by Eligio Resta. Through Foucault analyses of biopower and its biopolitics, it is possible to extract more understanding about its uses by the “owners” of power. For the colonial genealogy of these codes and conflicts with post-modernity. Decolonial feminism is used as a key for observing power relations and for that it uses Judith Butler and Rita Segato's references.

Keywords: Judicial power; Gender; Biopower; Biopolitics; Post-Modernity;

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Resumo: Este estudo trata de questionar as normas ainda vigentes nos tribunais e demais órgãos do Judiciário brasileiro sobre o que vestir, especialmente na questão de gênero, configurando uma verdadeira exclusão, demonstrada pelo mecanismo estudado por Zygmunt Bauman, e a Metateoria do Direito Fraternal de Eligio Restá. Por meio das análises de Foucault sobre o biopoder e sua biopolítica, é possível extrair mais entendimento sobre seus usos pelos “donos” do poder. Pela genealogia colonial desses códigos e conflitos com a pós-modernidade. O feminismo decolonial é utilizado como chave para observar as relações de poder e para isso utiliza as referências de Judith Butler e Rita Segato.

Palavras-Chave: Poder judiciário; Gênero; Biopoder; Biopolítica; Pós-Modernidade.

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Introduction

This study questioned the regulations still prevailing in the courts and other bodies of the Brazilian Judicial on what to wear in buildings, especially on the gender issue, forming a true exclusion, demonstrated by Zygmunt Bauman's mechanism and how it could be evitable with Eligio Resta's Metatheory of Fraternal Law. It reflects on the stranger role in the radical creation of separated dimensions in society, especially in the identity composition.

Entering through biopower and its biopolitics, analyzed by Michel Foucault and Judith Butler, it is possible to extract more understanding about its uses by the powerful. It is understood that the existence of power means the existence of resistance, in a situation of strategic field of power relations, that is, in a broader discussion, beyond purity.

Due to the colonial genealogy of these codes and conflict with postmodernity, the power imposition seen in its existing relationships and inserted in the morals and good customs conceptualizations, of a hitherto customary law, which encompasses colonial and rationalizing customs.

It is verified the resistances importance and their indication from the power existence, especially phallogentrism and heterosexuality. It deals with examples present in the Brazilian Judicial, with statements, defenses and conventionalities of legal operators on the moral clothing defense.

Maria Lugones and Rita Segato's decolonial feminism is used as a key to the power relations observation and also gives a reasonable explanation. It is provoked by a feminist judicial dress, freed from colonial domains and their exasperation in the persuasion form and social balancing. Liberation is demonstrated as a means within reach of the gender decolonization, imbricated in the masculinity deconstitution of those in power.

The current exclusion mechanism views

Postmodernity is characterized by a lack of solidity and stability, contrasting with the increase in total and biofabricated power. We are witnessing, for example, the disintegration of the nuclear type of family configuration and a sex re-disposition in the service of a new social integration pattern that has the body and health as central. At the same time, see the national states borders dissolve while a highly volatile global market generates economies in disparate locations in social realities terms (BAUMAN: 1998; p. 34), and also by a virus.

On the other hand, together with the economic globalization movements, we can observe the lag and the hierarchical intensification, within the population, of some groups over others, especially the no vulnerable persons over others. He says that contemporary societies have been experiencing a intensification process of some modern biopower elements, but that they also undergo transformations that impute movements of differentiation in relation to the aspects that characterized it.

This biopower mechanism is signaled to the fear of strangers who attempt against the “purity” conservation, in differentiation and dominance terms. Thus, it increases the anguish of this fear in everyday life and fulfills what is said of the human condition in its fracture (BAUMAN: 1998; p. 21). Then this defense of “purity” comes over anything and induces the institutions, especially Judicial's institutions to preserve that.

Once again, the modern world appears in its instability and constant hostility elevating separation as an order of a secure future. The “law and order” use is achieved by violating those vulnerables to fit in that order, so it is with the state and its judicial help, the rampant separatist mechanism. As seen, the Judicial system has a prevalent position in the oppression perpetuation of “purity”, as the “law and order” discourse and severe applications, especially in Brazil's courts.

Most of the power comes in the identity issue and its construction is given as a burden to those who do not control their daily lives (BAUMAN: 1998; p. 38). By placing the identity as those to be solid and persistent from a fair and secure position within a referentially immobile society, because for most people there is anguish and preoccupation with strangeness, a universal trait of these times. The stranger always gets reflected in the volatility and insecure of the principal domain, represented in this study by Judicial's institutions.

Understand the ecological model complexity of identity dimensioned by Marx, but previously present in Hegel about identity also being a determinant of society and not just the opposite (RESTA: 2014; p. 50). More precisely, Resta analyzes the ecological dimension as contingency and possibility:

Identity presents itself, therefore, not as a limit determined only by the external, but as something that its internal can observe itself through its multiple games of decomposition that have their variable limits. The theoretical inadequacy of identity reappears when it is given over to games of very simple definitions in which observation returns to a point of the binary code, to its interior, without assuming the complexity of the code itself. (RESTA: 2014; p. 52)

Resta argues that binary code establishes a denial of identity's diversity, and more that binary restricts the identity by biopower. Then binarity is a dimension created by the rejection of a complexity, that is, of a dimension contrary to the strange. And this denial so strong that it goes unnoticed, in tones of otherness, joy is found in rare spaces, as long as there is control, which takes place in a clear freedom loss (BAUMAN, 1998, p. 39):

Freedom is a relationship – a power relationship. I am free if and only if I can act according to my will and achieve the results I intend to achieve; it does mean, however, that

some other people will inevitably be constrained in their choices by the acts I have performed, and that they will fail to achieve the results they desired. (BAUMAN: 1998; p. 40)

Seeing that all transformations are part of a much broader and more complex ethical, political, economic and social change (BAUMAN: 1998; p. 45), it is possible to emerge from the complex of unethical and violence against gender that Brazil Judicial court uses to deny a free dressing code.

The effects analysis of progressive deregulation and privatization of all insurance and protection networks formerly provided by the State is awakened. Not by State's law and rights, nor by Judicial. That thinking is not a palatable one, especially for conservatives. On the other hand, neither for liberals, because freedom is not for all and at all, not even in the market. However, both defend the Judicial State, especially in Brazil's dominance.

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In this process, postmodernity becomes characterized by a desire for freedom that implies an uncertain, uncontrollable and frightening experience of the world, which deals with the universalization of fear or the losses derived from the order exchange for the pursuit of freedom. Freedom is not available in the globalization world for all, but is a utility claim for dominance and perpetuation by the State.

In the analysis of some processes that make up the current scenario, it can be argued that living under such conditions has become a distinct experience from a life subordinated to the building identity task in a world geared towards the modern order constitution. Bauman argues that at a time when all livelihoods are permitted but none are secure, totalitarian solutions are on offer at all times. Then we questioned if the increase in politics of extreme right and hate speed is Judicial addressed in origin when that power perpetuates all binary systems as a conflict between us and them.

Nonetheless what is seen, therefore, is the varied creation promises that aim to alleviate the burden of excessive and unbearable individual freedom, loneliness and abandonment induced by the laws of the market (BAUMAN: 2004, p. 50). Individual freedom is not achieved without community freedom, toward a fragil globalization promise of world community, based only on the one's rules and access to the blessings of the free market.

Observing the process described above, impermanence/inconsistency, as an identity problem, in line with Bauman's liquid world, is dissolved when reflective subjects enter the scene, whose identity mark is the engagement with risk (BAUMAN: 2004; p. 104). This risk is pursued by law and uses Judicial institutions on that, mainly operating to enforce binary code.

This, considered exactly as what is not known, which presents itself as unpredictable, from frameworks in probabilistic calculations and scientific correlations, starts to point out an imminent danger within a line of permanent control. Risk can be understood, therefore, as a way of thinking and acting, involving calculations about a probable future that inspire actions in the present with the controlling aim of this potential future.

Such an unveiling of binarism shows that "where there is power, there is resistance" (FOUCAULT: 1985; p.91) and the bodies designated as female are also agents of power and producers of resistance:

In the same way that the network of power relations ends up forming a thick fabric that crosses apparatuses and institutions, without being exactly located in them, so too the points pulverizing of resistance crosses social stratifications and individual units. And it is certainly the strategic codification of these points of resistance that makes a revolution possible, a bit like the State that rests on the institutional power relations integration. (FOUCAULT: 1985; p.92)

In the same way, the power production instances, as agents of knowledge, must be analyzed in the incitements, but also in the interdictions produced by them. In this sense, Foucault states that “the sciences of man are not separable from power relations” (FOUCAULT: 1985; p.82):

Power over sex would be exercised in the same way at all levels. From top to bottom, in its global decisions as well as in its capillary interventions, regardless of the apparatus or institutions on which it is supported, simply and infinitely reproduced by law, interdiction and censorship: from the State to the family, from the prince to the father, from the court to the trinkets of everyday punishments, from the instances of social domination to the constitutive structures of the subject himself, one would find, on different scales only, a general form of power. (FOUCAULT: 1985; p.82)

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In other words, it is these relationships that give rise to the knowledge that forms the knowledge, but that also prohibit, through their lines of force, certain approaches. Therefore, it is necessary to explore the logic of these knowledge-producing and power-generating mechanisms so that, by analyzing their emergency conditions, one can understand their functioning and formation, particularly the Judicial System itself.

With regard to the objective of this study, it is about defining the strategies that manage dress codes, as a means, sometimes in the technological device position of biopower, sometimes of biopolitics, in the formatting of certain female identities. These strategic powers are unable to create diversity identities emergence, mainly the female or “other” identity spectrum.

Following this reasoning, an utterance (smallest part of the speech) is analyzed on the boundary that separates it from what is not said. The “extra-discourse” (BUTLER: 2001; p. 63), therefore, is

delimited precisely by the discursive formation from which it seeks to free itself. Reading between the lines is a privilege of the main discourse that determines all binary dystopia.

In this sense, the power-knowledge binomial is an “transformation agent of human life” (FOUCAULT: 1985; p.134), being able to act through sovereignty, discipline and biopower. The latter violates rules aiming not only to dominate, but also to generate life. A life that is in power's creator as a hostage.

Thus, the power exercised is not the same as the laws interdiction, although it complements it. Legal subjects, in this context, “are invariably produced through exclusionary practices that do not appear once the legal structure of the policy is established” (BUTLER: 2003; p.19). In other words, subjecting discursive formations are linked to clear legitimation objectives, as well as exclusion. Such a process, however, remains hidden and naturalized under the norms and the disciplinary power.

By biopower (FOUCAULT: 1985; p. 201), therefore, we understand the ways in which bodies are invested in order to control the population. Such subjections fall into two broad categories. The first consists of training the body in order to promote its docility and usefulness under the determinations of political, economic or even religious control systems. The second takes place through interventions and controls that population's regulate, such as health status, life span, birth rate, longevity, etc.

Biopower is, therefore, an agent whose mission is to install norms that qualify, rank and evaluate aspects that concern life, shaping a reality in the truth form to the detriment of pure and simple repression. Allowing a feedback domain cycle, the oppression mechanism sustains itself with Judicial institutions connivance and acting.

The brazilian judicial dress code genealogy

The genealogy consists of a critical investigation that originated from the reformulation that Michel Foucault operated from reflections made by Nietzsche (BUTLER: 2003; p. 24). In this process, there is

no interest in looking for origins, cause and effect relationships or alleged truths and essences.

Instead, genealogy investigates how such categories are, in fact, effects of power relations that mediate institutions, practices and discourses whose points of origin cannot be counted and are scattered in a capillary way:

Genealogical criticism refuses to seek the origins of gender, the intimate truth of female desire, a genuine or authentic sexual identity that repression prevents from seeing; instead, it investigates political stakes, designating as origin and cause identity categories, in fact, are effects of institutions, practices and discourses whose origin points are multiple and diffuse. The task of this investigation is to focus – and decenter – on these defining institutions: phallogentrism and compulsory heterosexuality. (BUTLER: 2003; p. 10)

Butler's thinking express all multiples origins of a power made on patriarchalism and its norms, those are essentially the phallogentrism and compulsory heterosexuality institutions composed. Extremely enforcing these norms as a law and rights, Judicial institutions origins also arrived and established these patriarchal rules as normal rules. Normal here is debate as a total concept that only serves to exclude and justify violence against unnormal.

In other words, power is something that is produced at every moment and comes from everywhere. It is not a structure, but "(...) the name given to a complex strategic situation in a given society" (FOUCAULT: 1985; p.89). Unveiling the visibility and sayability regimes of knowledge is, therefore, to lay bare its power relations and, thus, the norms or regulations that it engenders:

And “the” power, in what is permanent, repetitive, inert, self-reproducing, is only the effect of the whole, sketched from all these mobilities, a chain that is supported by each of them and, in exchange, seeks to fix them. Undoubtedly, we must be nominalist: power is neither an institution nor a structure, it is not a certain power that some are endowed with: it is the name given to a complex strategic situation in a given society. (FOUCAULT: 1985; p.89)

For this, it is stated regarding the conceptions of “truth” and “natural”, that “it is necessary to expel them from the shadow where they reign” (FOUCAULT: 1995; p.24). Thus, the refusal of the naivety of chronologies is an important point questioned by the author.

This question is raised, therefore, in the paradigm of chronology, according to him: “(...) beyond any apparent beginning, there is always a secret origin – so secret and so original that we will never be able to fully regain possession of it.” (FOUCAULT: 1995; p. 28). Power is not an abstract concept if it has strong practical manifestations and orders in the concrete world.

In this logic, another point is to abandon the notion that all discourse rests on an “already said”, that is, it existed in something previous – some kind of cause. Seeing the dress code as a reproduction of the binary system and the biopower of Judicial institutions as reinforcement of patriarchalism.

In this perspective Butler discusses the existence affirmation of “sex” beyond a fiction, as something true. It questions the concept of fantasy given to sex and places it as cultural intelligibility, implying a social construction:

Admitting” the undeniability of “sex” or its “materiality” always means admitting some version of “sex”, some “materiality” formation. Is it not the discourse in - and through - which this admission takes place (and, yes, it is true that this admission invariably takes place in

reality), is not this discourse itself formative of the very phenomenon it admits? Claiming that discourse is formative does not mean claiming that it originates, causes or exhaustively composes what it admits; rather, it means affirming that there is no reference to a pure body that is not, at the same time, an additional formation of that body. (BUTLER: 2001; p. 7)

Therefore, the sex intelligibility would be instituted through “intelligible” genres, maintaining a coherence and continuity of heteronormativity and phallogocentricity. Biological sex is unaware of the culturally given gender in expressions and effects of this sexual existence in its practice and desire, as well as the power empire of the truth of sex, defining concepts of sexual identity.

When determining a dress based on binary, non-complex terms, ignoring the entire gender perspective and its cultural construction, the Brazilian Judicial power shows through its institutions the imposed power relations, by treating men and women in a universal, as true and pure, as ideal types and these must follow the dress code treated by male, white, heterosexual and classist reasonability, also called neutrality.

The Alagoas State Justice Court and its “Ceremonial Manual”:

Rigor: more formal, sophisticated, gala events. For the ladies, long dresses with embroidery, shoes or sandals, a tiny bag, and even gloves if convenient, the man wears a tuxedo or coat; Black tie: a little less sophisticated than formal, ladies, long dresses in taffeta, organza, etc. high heels and small bags, men wear tuxedos or Summer (in the morning); Sport: more relaxed attire but the use of sneakers, shorts or jeans is not allowed; Suggestion for men: denim or twill pants, polo shirt or short sleeves, moccasin shoes; For women: more relaxed dresses, capri, corsair or cigarette sets, lower sandals, medium bags. The

female costume that corresponds to the coat is always a long and sumptuous dress (but it is not used in Brazil). (FREITAS: 2011; p. 5)

The decora of justice is placed above a person, their identity, their gender identity. The Judicial points out in reverence and that the person should have respect, when understanding the morality to be preserved, especially the use of women's clothes that show part of their body, as is the prosecutor Enéias Gomes speech:

However, some forum directors prevent access to justice for people who attend the forums dressed in shorts and skirts, despite the requirement that they do not find support in the law and the Constitution. Magistrates make use of the provisions of article 125, II, of the Civil Procedure Code, which imposes on the judge the duty to "prevent or repress any act contrary to the dignity of justice". Certainly, any value judgment, in the context of this matter, necessarily passes through the limits of reasonableness. Evidently, guaranteeing respect and decorum in the forums are attributions of the magistrate, who is responsible for performing acts for this purpose. Thus, it is up to the Judge to prevent the person concerned from appearing in the courtroom wearing clothes that aim to confront the authorities present, such as, for example, in swimming trunks, bikini or even without a shirt. However, these are not everyday events. The Brazil reality shows that a large part of the jurisdiction is made up of poor, humble and semi-illiterate rural people, who, given their routine of life, are used to wearing shorts, T-shirts and flip-flops. With these attire, they perform all the acts of civil life, such as attending weddings, baptisms, grocery stores, etc. Therefore, according to local customs and their financial conditions, they also address the forum, without the intention of offending the Justice. (GOMES: 2010; p. 101)

In addition to clothing, tattoos and piercings also impress legal practitioners, afraid of discrimination, they try to get closer to the “people” (SALGADO: 2022). Also, it is common not to respect a person dressing if they aren't for cultural or religious purposes. Fear is the fear of the stranger, in the impurity face, of what is attentive to modesty, respect, nobility and rationality, statisticians of the Brazilian Judicial system, made by opulent and arrogant law operators in their institutions, as judges and prosecutors. They really are crystallized upper class against vulnerable peripheral Brazilian peoples, especially those who are homosexuals, female, economically underprivileged.

Confronting binary codes, such as dressing, resists the power of the Judicial as law and order, hidden under the shadow of impersonality, formality and professionalism (SALGADO: 2022). Neutralism must have be combate as the bias in intention of preserving all people's rights.

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A decolonial feminist vest

Aiming for an existing resistance talk through power as decolonial perspective implies the knowledge and colonizing power deconstruction and the other genealogical forms reconstruction of knowledge and power. In other words, only is possible to change a bias code if it opens the oppression system wide and constructs a new code, as a diversity code. Inevitably this new code must be the most freedom one, just a decolonial feminist dress code for Judicial roles.

Showing why masculinity is understood as the construction of the subject through status (SEGATO: 2012; p. 117), where it reconfirms resistance skills, aggressiveness, capacity for dominance and the sexual, military, political, intellectual, economic and moral power of the feminine:

And, on the other hand, when this colonial/modernity intrudes the village genre, it dangerously modifies it. It intervenes in the structure of relationships in the village, apprehends them and reorganizes them from within, maintaining the continuity appearance but transforming the senses, by introducing an order now governed by different norms. This is why I speak, in the subtitle, of verisimilitude: the nomenclatures remain, but are reinterpreted in the light of a new modern order. (SEGATO: 2012; p. 118)

The men's privilege as privileged main interlocutors and servants of the colonization interests is signaled, making it possible to establish control over a non-European community organization in the past. Thus, this imposition of the scientific rationality exteriority is understood, establishing sex pornography (SEGATO: 2012; p. 120). The roles are homogenized according to their color, ethnicity, shape, sex:

The "indigenous other", the "non-white other", the woman, unless purified of their difference or exhibiting an equivalent difference in terms of identity that is recognizable within the global pattern, do not accurately adapt to this neutral environment, aseptic, of the universal equivalent, that is, of what can be generalized and to which value and universal interest can be attributed. (SEGATO: 2012; p. 122-123)

The need to differentiate gender duality and binarism is alluded to, according to the author "in duality the relationship is one of complementarity, the binary relationship is supplementary, one term supplements the other and does not complement it" (SEGATO: 2012; p. 33). In the gender binary, therefore, the masculine becomes the universal equivalent from which the feminine is equated.

Gender coloniality, in turn, theorized “oppression is understood as a complex interaction of economic, racializing and engendered systems, in which each person in the colonial encounter can be seen as a living, historical, fully functioning being characterized” (LUGONES: 2014; p. 937).

The historical complexity of the construction of coloniality is seen by presenting resistance as a beginning and a possibility, not just as a final political goal. Liberation is, therefore, posited as adaptation and oppositional creativity (LUGONES: 2014; p. 940):

Resistance is the tension between subjectification (the subject's formation/information) and active subjectivity, that minimal notion of agency necessary for the oppression ← → resistance relationship to be an active relationship, without appeal to the subject's sense of maximum agency modern. (LUGONES: 2014; p. 940)

Legitimation, authority, voice, meaning and visibility of colonized existences that contest the dominant subjectivity are demanded, so that they have liberation mechanisms and an identity based on politics. Decolonial feminism shows itself as praxis and criticizes all gender, racial, colonial, capitalist and heterosexual oppression (LUGONES: 2014; p. 940). From decolonial feminism as a reference and its concern to consider gender identities, as well as gender relations, determined by sociocultural factors of coloniality, it will also be understood the definition of gender by fashion as a sociocultural and colonial:

Irene Silverblatt, Carolyn Dean, Maria Esther Pozo and Johnni Ledezma, Pamela Calla and Nina Laurie, Sylvia Marcos, Paula Gunn Allen, Leslie Marmon Silko, Felipe Guaman Poma de Ayala and Oyeronke Oyewumi, among others, allow me to affirm that the genre it is a colonial imposition. Not only because it imposes itself on life lived in harmony with cosmologies incompatible with the

modern dichotomies logic, but also because it inhabits understood, constructed worlds. And, according to such cosmologies, they animated the being-among-others in resistance from the colonial difference and in its extreme tension. (LUGONES: 2014; p. 942).

The gender binary of the colonial model that is verified in the micro forensic reality creates an abyss between lawyers and lawyers and those operators of the right of gender identity diverse to binary, heterosexual, universal normativity, so that the former become remainder and residue of the last.

Founded, therefore, in a binary and hierarchical society, the Brazilian Judicial maintains, through its internal regulations, the expressions of gender defined socioculturally according to colonial gender roles, which subordinates the knowledge and experiences of operators and newcomers to the legal field. to the detriment of colonial aesthetics (SEGATO: 2012; p. 34). In that perspective the Brazilian Judicial dress code must be over old mores by implementing a free dress code above all.

Feminist concept dressing without biopower assignments must compose the bowels of the Judicial Courts in Brazil by expanding access to gender policies and diversity, as in practice making visible and freeing them from the power assigned to them. A parity of number and gender is not only necessary but is also insufficient in the judicial sphere, since there is racial and economic parity as well. Because it is not acceptable for judicial institutions to reinforce moral bias rules dictated in all spheres of their salons. It is not acceptable for a female body to be more ostensibly ruled than male body, especially in a dressing rule clearly misogynists, and also a racial and class separatism. Justice must be fair and this perspective cannot just be the privilege of the same norm, as in the case of clothes and expressions of their identity.

Conclusion

Post-modernity brings the solid network absence of privileges revered by the blood bond of generations, broken by a so-called liberalism idealized by capital, of those who profit by power and dominion in all fields of modern life. Identity in this world is a weight to be carried alone and is confronted with countless violence strengthened by the great wall that separates the powerful and their oppression. One sees the confrontation of identity with its pulverization.

Foucault brings genealogy as the description of these relationships and how they are perceived, when treating the fear of the stranger and the other for the opportunity of total control. By relating this system of power and exclusion with gender and its identity, Butler claims a struggle for recognition and verification of gender in its cultural construction, defining discrimination.

Understanding the judicial mechanism provided by the dress code imposed by the Brazilian Judicial, in which forensic work is still separated between men and women only, without racial and class claim, the domain of those who have the law and order power appears. When a restriction to join your right as a citizen and more as a person is normal because of the way you dress, it is an alert that nothing has changed since colonial times.

It is explained by its screaming operators and absurd justifications for maintaining the same power relationship that comes from the beginnings of colonization, based on the rational imposition of its exteriority. The Judicial institutions reflect and by that reinforce all the State and economic system oppression with gender, racial and class violence, by ruling all bodies in their courts.

Faced with such expositions, it aims at the resistances study originated by the Lugones and Segato's decolonial feminism, in order to reach an understanding liberating capable through colonial unfreenesses. They argue as a solution to the way of well-being for all, and that must be internalized in this new society that

will be built with a large and ostensive resistance, as oppression deconstructs over the helm of power. The still present legacy of the force's mismatch and power is clear when analyzing the premises used by the Judicial in the defense of its binary and heterosexualized dress, with the use of "rationalities", such as morality and modesty and that has no longer place in this new era.

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