
Carmelo Nigro is a research fellow in the Dipartimento di Scienze Giuridiche at Università degli Studi di Salerno. Among his publications: *Los Umbrales del Derecho. La Fictio Iuris entre norma y vida*, (Theory Now. Journal of Literature, Critique and Thought); *Institucionalismo y pluralismo jurídico en los procesos de construcción de la paz a partir del caso colombiano* (Cultura Latinoamericana. Revista de Estudios Interculturales); *Sovereignty on the Border: Spaces and Subjects of Contemporaneity*, in AA.VV. *Rights without Space?* (Mimesis); *Democracy on the Move: Neoliberal Exception and Neoliberalism as Exception*, in AA.VV. *Capitalism without democracy? Freedom, Equality and Rights in the Neoliberal Age* (Giappichelli).

Contact: cnigro@unisa.it

EDITORIAL

ON THE DOORSTEPS: POLITICS, LAW AND ECONOMICS WITHIN AND BEYOND THE PUBLIC/PRIVATE DICHOTOMY*

Carmelo Nigro

Università degli Studi di Salerno

In a science fiction short story titled *Steadfast Castle*, Michael Swanwick (2016) stages an interesting dialogue between man and machine. In a world where «medical cards» report the *life-functions* of every citizen in real time, James Albert Garretson's suddenly stops working. The policeman in charge of investigating his alleged death questions the AI that runs the victim's home, which leads to the discovery that the real victim, a woman named Chrysoberyl Scofield, was killed by the house itself, as ordered by its master in the heat of an erotic game involving the three of them. In love with its own master, the house eventually makes a further extreme gesture in an attempt to buy time for Garretson's escape.

The thriller, developed entirely in dialogic form, contains in a few lines, as only science fiction can do, many of the elements that characterize the present and preoccupy our visions of the future, suggesting various points for reflection: from the relationship with technology to gender violence, from the objectification of the other to the pervasiveness of biopolitical techniques of control and the clash between privacy and security.

Perhaps one detail, surprisingly absent in the title, can serve as a *fulcrum* to summarize many of these topics: the name of the protagonist artificial intelligence. The home is named by its master and identifies itself as Cassie, short for Castle: «He called me Cassie», the AI reveals to the policeman, «It's short for Castle. As in a man's home is his castle».

*Reception date: 22th March 2023; acceptance date: 25th March 2023. The essay is the issue of a research project carried out within the Dipartimento di Scienze Giuridiche, at Università degli Studi di Salerno.

The absolute alliance between the man and his property, personified by an entity with not coincidentally female caring functions, opposes the investigator's public authority, assuring the man impunity from a crime as horrific as it is senseless, despite the methods of control with which the author's imagined future is pervaded.

The semi-eponymous phrase in the story is so famous that it has become commonplace, and its best-known formulation can be traced back to Edward Coke's *Institutes of the Laws of England*:

That the house of every one is to him as his Castle and Fortress as well for defence against injury and violence, as for his repose; and although the life of man is precious and favoured in law; so that although a man kill another in his defence, or kill one *per infortuntun'* (by misfortune), without any intent, yet it is felony, and in such case he shall forfeit his goods and chattels, for the great regard which the law hath of a mans life; But if theeves come to a mans house to rob him, or murder, and the owner or his servants kill any of the theeves in defense of himself and his house, it is no felony, and he shall lose nothing, and therewith agreeth 3 Edw. 3. Coron. 303, & 305. & 26 Ass. pl. 23. So it is helden in 21 Hen. 7. 39. every one may assemble his friends or neighbours to defend his house against violence: But he cannot assemble them to goe with him to the Market or elsewhere to keep him from violence: And the reason of all the same is, because *domus sua cuique est tutissimum refugium*. (Coke, 2003, p. 137)

The distinction between public and private has remained a central pivot in legal-political thought, a harbinger of numerous problems and questions that are largely unresolved and have become even more complex in the context of contemporary transformations. Norberto Bobbio describes it as one of the great dichotomies of legal thought. Noting the difficulty against which them who attempt to define its limits with precision often run up, Bobbio resolves the contrast by making it a comparison between two different ways of viewing the same object, rather than two species of a single genus (Bobbio, 2007).

From the more immediately political point of view, the contrast between the space of the public and the private is already a central issue in both Plato and Aristotle. For both, the *oikos* —the re-productive and potentially chrematistic space of the home— is the private place of 'natural' inequality and domination, and it's functional to public life. However, they resolve the relationship between *oikos* and *polytheia* in radically different ways. For the former (1995), according to an organicist approach, *oikonomia* is nothing more than the satisfaction of material needs for the maintenance of the state (*polis*). Thus, Plato hierarchically

subjects both *oikos* and *nomos* to the science of government, i.e. to *polytheia*, as philosophically valid knowledge of justice and the usefulness of the city.

For Aristotle, too, the economic dimension is functional to *polytheia*, but only in the sense that the satisfaction of economic needs is preparatory to the individual's free participation in the public sphere, which is the good life (*euzein*) for a political animal (*politikòn zôon*) (Aristotle, 1995; Bien, 1973).

Hannah Arendt (1958) will also start from the same distinction. On the one hand, the private, the *oikos* as the realm of *homo laborans* and *homo faber*, engaged in the dimension of labor and work to accumulate goods and property; on the other hand, the authentically public sphere, the *in-between* in which action is possible as the free and creative appearance of individuals as plurality: in other words, authentic politics, understood by Arendt as natality. Arendt preserves this rigid distinction between *zoè* and *bios*, between biology and bibliography, private and public, on which she builds the contraposition between dominion and power (Forti, 2006). Indeed, what worried Arendt, facing the development of her (and ours) contemporaneity, was the expansion of a third sphere of human existence, capable of making the other two disappear, i.e. the social. In her words:

What we called earlier the rise of the social coincided historically with the transformation of the private care for private property into a public concern. Society, when it first entered the public realm, assumed the disguise of an organization of property-owners who, instead of claiming access to the public realm because of their wealth, demanded protection from it for the accumulation of more wealth. (Arendt, 1958, p. 68)¹

As it has been observed, her partition is maybe excessively austere and artificial due to the fact that it runs the risk of obscuring the perversions related with participation and consents (Bazzicalupo, 2013, p. 23). What remains alluring in Arendt's vision is the possibility to conceptualize politics as detached both from 'natural' determinism and artificial projects. Rethinking politics as radically plural and unpredictable, Arendt inverts the expropriation of power made by domination, handing it back to the participation of non-predetermined —and therefore authentically free— subjectivities within the public space, i.e., that *in-between* that is the human reality.

¹ For a reconstruction of Arendt's positions on this subject, see Bazzicalupo (2013), Forti (2006), Dal Lago (1997). For a comparison with two other fundamental interpretations within the 20th century thought, namely those of Habermas and Dewey, see also Venco (1976).

The issue of the relation between public and private is also extremely felt by Coke's contemporaries at the dawn of modernity. For this era, too, we can observe a particularly illustrative pair of authors. On the one hand, Hobbes (1651), a theorist of absolutism, entrusts the sovereign with the task of ensuring social security, reducing in the name of the latter the private sphere to a mere moral sphere (internal forum); the conflict between the One and the many is thus expelled into the sphere of natural law, and preserved at the only point where its persecution by the sovereign would collapse the legal forms of coexistence (internal forum), namely the inner conscience (Catania, 1996).

On the other hand, the liberal Locke (1690) increases the tasks and obligations of public power, expanding the individual and private sphere to include the three rights of the emerging bourgeois class: *life, liberty and property*. Within the space circumscribed by this triptych, actively and passively protected by public power, private power knows very few limitations. Locke's position is, in short, not far so from that already observed in Coke: «Every man's home is his castle»; where castle takes up the dimension of sovereign power, and the reference to 'man' is a very concrete abstraction, so as to speak. In other words, the abstract silhouette of the citizen, who is the master of the house and the subject of rights, is conceived on a very concrete model, characterized by specific sexual, social, economic, ethno-racial and cultural characteristics.

In contrast with both of these perspectives, emancipation movements, feminism in particular, have progressively highlighted how much the space of the home, the private, can prove to be the site of paternalist inequality and patriarchal oppression (Pateman, 1988), as highlighted by the first essay in this issue of the journal (Cossutta). This analysis focuses, precisely, on the evolving role of the home in North American society and its political relevance. Being a place of choice for the private, the home proves to be anything but the neutral and irenic realm of the proper. Rather, it is the battleground of the production and reproduction of power dynamics and exclusion. It is precisely the obscurity into which its private membership relegates it, forcing it from participation and control, that has made it—and continues to make it—a space as much of exclusion from public life to the detriment of women as of perceptions of male domination. The article addresses the paradoxical nature of sentimentalism, unveiling the ideological character of the home as 'separate sphere', in which women remain excluded from direct political action. Finally, it highlights the feminist effort to bridge the gap between domestic and public life, in order to both recognize women's rights in the home and advocate for the visibility and political recognition of domestic work in the public space.

If the *oikos* is the paradigm of the private sphere, the dimension removed from the gaze in which inequality and domination are consumed and reproduced, money may

represent the ambiguous bonding element between this dimension and the public. From different perspectives Raparelli and Di Stasio address the problem of money and the economy, as well as the relationship between capitalism and public institutions.

The former, starting with currency as a political institution, shows the close connection between payment methods and the role of the state in capitalist development. Alongside currency as a private institution, modernity develops a series of public institutions essential for the development and defense of the capitalist market. Fundamental in this regard is the role of central banks developed since the 17th century. By analyzing the decisive function played by the rapid development of the System of central banks with respect to the government of public debt, business credit and financial markets, the essay clarifies the centrality and complexity of the *institutional assemblage* that has sustained and sustains the Capitalist System.

Thus, the capitalist system —especially in its neoliberal incarnation, as Michel Foucault's studies show— is not the effect of a 'natural' market freedom at all, but rests on politically determined institutional arrangements. Along similar lines are the positions of an author like Karl Polanyi (1944), for whom a free market has never existed, nor can it exist. As Block and Soamers argue, “Indeed he calls the very idea of an economy independent of government and political institutions a 'stark utopia'-utopian because it is unrealizable, and the effort to bring it into being is doomed to fail and will inevitably produce dystopian consequences” (Block, Soamers, Farrell, 2014; Block & Farrell, 2014).

Money can then be seen as “Fictitious commodities” (Polanyi, 1944), that is, as an extra-economic matrix just as other productive and vital forces, for example labor and nature. Rather than as an abstract and neutral signifier, currency constitutes a terrain of conflict that, if tuned to appropriate production relations, appears reshapeable within mechanisms of coordination and social validation alternative to those typical of the commodity form. Di Stasio's contribution to this issue asks, therefore, if currency could be configured as a *common* and which consequences would that entail.

Starting from an analysis of the geopolitical strategies of Chinese soft power, Gallagher shows another point of overlap between public and private dimensions: the ideological representation of conflict —in this case of geopolitical conflict— conveyed by the complex media sphere. Their use is neither new nor the prerogative of any particular regime, and its origin is lost in History, adapting from time to time to the needs of power and the technological, social, economic and cultural possibilities made available by the various eras. Precisely for this reason, this trait deserves special attention today, given given the omnipresence of information technologies (infotainment), as well as their pervasiveness and that of the tools of control, propaganda

and construction of reality that determine the extreme polarization of clashes in contemporary times.

Evidence of this extreme polarization is the success of the hard-to-define phenomenon that goes by the name of *populism*. Widespread across the political spectrum, now as much in the informal as in the institutional sphere, populist discourses can be said to have in common the extreme simplification of language, functionalized to the evocation of a unified and molar 'We', the people, existentially and axiologically threatened by an equally coherent enemy. Such a juxtaposition of identity and existentiality cannot fail to bring back to the exacerbating relationship between law and violence and to the categories of the political of Carl Schmitt, an author on whom the interest and debate of recent years has not surprisingly focused. In order to clarify some aspects of Schmittian thought, Mancuso's essay analyzes the relationship between law, play and war from two authors such as Johan Huizinga and Giorgio Agamben: the broader goal is to shed light on the problematic nexus that links without possibility of synthesis the forms of law and the dark core of violence.

Moving away from rigid substantive oppositions can then be a way to restore democracy's ability to reshape conflict in an increasingly plural society, such as ours, without excluding transformative energy but rather containing its most destructive instances. Recovering the political reflections of Hans Kelsen, expressed especially in *The Essence and Value of Democracy* (2013) and in the *Foundations of Democracy* (1955), Sferazza Papa seeks in the not evaluative definition of democracy—seen as a way of achieving legal-binding social decisions (Catania, 2018)—a set of tools useful for the formalization of the clash between divergent values and visions. Rather than as an axiological model, democracy is seen in this perspective as a specific technique that enables plural participation in normative production. Therefore, for Kelsen democratic pluralism is necessarily accompanied by epistemological and moral relativism. However, the absolute adherence to an axiological relativism is not without its issues, on which the last part of the essay is focused.

Finally, Luce's analysis takes up the topic of populism, addressing the various post-foundationalist proposals that put people's power at the center of their strategy, despite their different starting points.

Proposals of radical politics such as those of Rancière (2005), Mouffe or Laclau (1985) see in the people a subject not only active, but susceptible to a coherent and unified construction, and thus capable of action disengaged from traditional mechanisms of delegation. The people would be the subject capable of reactivating the political sphere neutralized by the hegemony of *neoliberal governance*.

Although the reactivation of a political energy that takes away from the market the monopoly in the legitimization of decisions—in accordance with the hegemonic neoliberal ethos—is seen as necessary, the author is well aware of the limitations implicit in strategies of radical re-politicization that feature the concept of the people. The main risk is that the unique circumstances of the individuals involved may be obscured; in other words, once again ignoring the multiplicity of demands for recognition that press at the margins of the public space, often precisely from the opaque corners of a 'private' in which heterogeneous forms of inequality, exclusion and exploitation are concealed, but from which, perhaps, also arise the practices of adaptation, subjectification and resistance to government of life, from which the subjects may begin to imagine alternative forms of coexistence. It is the opaqueness of this ambiguous threshold—through which human life proposes its forms—that this volume aims to help illuminate; an attempt to pass over the doorsteps in order to free life from domination of castles and men.

References

- Arendt, H. (1958). *The Human Condition*. The University of Chicago Press.
- Aristotle (1995). *Politics*. E. Barker, R. F. Stalley (Eds.). Oxford University Press.
- Bazzicalupo, L. (2013). *Politica. Rappresentazioni e tecniche di governo*. Carocci.
- Bien, G. (1973). *Die Grundlegung der politischen Philosophie bei Aristoteles*. Verlag Karl Alber.
- Block, F. & Soamers, M. R. (2014). *The power of market fundamentalism: Karl Polanyi's critique*. Harvard University Press. <https://doi.org/10.4159/harvard.9780674416345>
- Block, F., Soamers, M. R., Farrell, H. (July 18, 2014). "The free market is an impossible utopia". *The Washington Post*. <https://www.washingtonpost.com/news/mon-key-cage/wp/2014/07/18/the-free-market-is-an-impossible-utopia/>
- Bobbio, N. (2007). *Dalla struttura alla funzione. Nuovi studi di teoria del diritto*. Laterza
- Catania, A. (1996). *Lo Stato moderno. Sovranità e giuridicità*. Giappichelli.
- Catania, A. (2018). *Effettività e modelli normativi. Studi di filosofia del diritto*. Giappichelli.
- Coke, E. (2003). *The Selected Writings and speeches of Sir Edward Coke*. Vol. 1. S. Sheppard (Eds.). Liberty Fund.
- Dal Lago, A. (1976). "La città perduta". In H. Arendt, *Vita Activa. La condizione umana*. Bompiani.
- Forti, S. (2006). *Hannah Arendt tra filosofia e politica*. Mondadori.
- Hobbes, T. (1651). *Leviathan or the Matter, Form, & Power of a Commonwealth Ecclesiastical and Civil*. Crooke.
- Kelsen, H. (1955). "Foundations of Democracy". *Ethics*, 66 (1/II), 1-101. <https://doi.org/10.1086/291036>
- Kelsen, H. (2013). *The Essence and Value of Democracy*. Rowman & Littlefield.
- Laclau, E. & Mouffe, C. (1985). *Hegemony and Socialist Strategy. Towards a Radical Democratic Politics*. Verso.
- Locke, J. (1690). *Two Treatises of Government*. Awnsham Churchill.
- Pateman, C. (1988). *The Sexual Contract*. Stanford University Press.
- Plato, (1995). *Platonis Opera*. E. A. Duke, W. F. Hicken, W. S. M. Nicoll, D. B. Robinson, J. C. G. Strachan (Eds.). Oxford University Press.
- Polanyi, K. (1944). *The Great Transformation. The Political and Economic Origins of Our Time*. Rinehart.

- Rancière, J. (2005). *La haine de la démocratie*. La Fabrique éditions. <https://doi.org/10.3917/lafab.ranci.2005.01>
- Swanwick, M. (2016). “Steadfast Castle”. In M. Swanwick, *“Not So Much,” Said the Cat*. Tachyon Publications.
- Venco, L. (1979). “Il concetto di «pubblico»: tre interpretazioni”. *Il Politico*, 44 (3), 513-539.