

RESEÑAS

THE DIGITAL REVOLUTION: ALGORITHMIC GOVERNMENTALITY AND WORKERS' RIGHTS

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The Cyberspace

In recent decades, the exponential development of new technologies, particularly in the areas of information and communication, has brought about a series of political and socio-economic changes so significant as to suggest the use of an evocative expression: there has been talk of a “digital revolution” (Floridi, 2017).

“Revolution”, as is evident, is by no means a neutral term. It evokes radical and at the same time inescapable upheavals in society, as were those brought about by the French Revolution, for example. It is legitimate to suspect, then, that the emphasis on the revolutionary character of new technologies may conceal a specific ideological intent: to represent a certain technological development as a destiny, or even as a prognostic sign of constant progress toward the best of humanity (Balbi, 2022).

There has been no shortage, especially in the past, of readings along these lines, which have betrayed an overconfidence in the ability of new technologies to renew society by conveying rights and freedoms.

Emblematic in this regard can be considered the Declaration of Independence of Cyberspace, presented by essayist John Perry Barlow during the 1996 World Economic Forum in Davos, Switzerland: a kind of manifest of the faith reposed, still in the late 1990s, in

the cathartic character of technology. Addressing the governments of the world, defined as “weary giants of flesh and steel”, John Perry Barlow proclaimed:

I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather. We have no elected government, nor are we likely to have one [...]. I declare the global social space we are building to be naturally independent of the tyrannies you seek to impose on us. You have no moral right to rule us nor do you possess any methods of enforcement we have true reason to fear. [...] Cyberspace does not lie within your borders. Do not think that you can build it, as though it were a public construction project. You cannot. It is an act of nature and it grows itself through our collective actions. [...] We are creating a world that all may enter without privilege or prejudice accorded by race, economic power, military force, or station of birth. We are creating a world where anyone, anywhere may express his or her beliefs, no matter how singular, without fear of being coerced into silence or conformity”. (Barlow, 1996)

Nearly three decades later, Barlow’s expectations have been largely unfulfilled: virtual space has proved neither free (Frosini, 2019; Rodotà, 2012, Cap. XIV), nor equal (Sartori, 2006; Van Dijk, 2020; Vantin, 2021), nor even democratic (Barberis, 2020; Sunstein, 2017; Vitale & Cattaneo, 2018). It is not necessarily the theatre of the free circulation of ideas and is moreover riddled with several dangers to individuals (Stazi, 2019; Murino, 2021, Cadoppi et al, 2019; Di Tano, 2019, 2021; Bello, 2021). In addition, it does not at all escape the conditioning put in place by existing powers. The network continues to suffer from the strong conditioning by political power that Barlow had already denounced. For example, as documented in the Freedom on the net report produced by the Freedom House Research Center, the network is subjected to various forms of censorship by governments, which have even intensified in the last three years (Freedom House, 2021). Some of them are radical, such as Internet shutdown, that is the total blocking of the net; others are more targeted and capillary, such as those put in place in some Western democracies, which nevertheless prove to be decidedly invasive. Even more constraining, however, turn out to be some powers that Barlow's statement did not consider at all: private ones.

This is the main reason why much of the scientific community in recent years has increasingly manifested a more disenchanted attitude toward the digital revolution, identifying its potential, but also signalling the need to critically equip itself to assess its risks. Legal science has actively participated in this reflection (Rodotà, 2014; Brighi &

Zullo, 2015; Amato, 2020; Casadei & Pietropaoli, 2021; Sartor, 2022). In this direction, the book of Giacomo Pisani (Pisani 2023) addresses one of the most relevant effects of the digital revolution, namely the development of the platform economy.

Algorithmic governmentality

The platform economy consists of an economic model in which individuals, organizations and resources connect and interact with each other through the use of new technologies within a system. This process enables the creation and exchange of value. Platforms today are countless and, as Pisani's mapping documents, different from one another, not only in their intent but also in the way they operate through digital infrastructures governed by algorithms. The latter represents a series of calculations performed by a computer after being translated into a machine language called programming language (Vecchi, 2017).

The algorithm works schematically in this way: it takes input data and, through a series of calculations, translates them into output data. It may be more or less articulate, that is, it may achieve a different degree of autonomy from the person who programmed it (Nuzzo, 2019). The algorithms that govern the economy of platforms are all very complex and refined: that is, they manifest a high capacity for self-learning, often using ideas and concepts from an area called "machine learning". This means that the outcome they arrive to is given by the interplay of the implemented algorithm and the learning part, usually obtained given some training input data. This leads to a sort of "black box"¹ not immediately traceable even for the best-equipped observer by a kind of almost inaccessible.

The degree of autonomy achieved by algorithmic rationality and at the same time the pervasive character it manifests in society calls into question many disciplines, including legal theory, for the following reasons.

Firstly, algorithms are used extensively in the legal sphere, such as in the courts. However, there is no guarantee that they are neutral technologies. Indeed, one cannot underestimate the risk that their black box may incorporate several subjective biases, which are conveyed by the programmer in the construction phase of the algorithm (Kahneman, 2011). As is evident, this could lead to severe effects.

¹ These processes can be so complex that they mimic the mechanisms of human neural networks. For more details, the reader can refer to Wang & Siau, 2019; Amato Mangiameli, 2019.

This has already happened in the COMPAS case (Correctional Offender Management Profiling for Alternative Sanctions): a software produced by a private company to assess the risk of recidivism through statistical analysis. An independent investigation showed how the software was discriminatory against people of colour, due to a bias transmitted during its design. But there is more. An algorithm, before it goes live, is generally set through a sort of training on a limited sample of people.

It may happen, however, that the sample turns out to be misleading and that this leads to a series of chain errors in the development of algorithmic rationality. Giacomo Pisani cites as an example the case of Skynet, a system developed to identify members of terrorist groups linked to Al-Qaeda using the mobile traffic data of about 55 million Pakistanis. It was calculated that the algorithm's error rate, in that case, was 0.18 per cent: a seemingly negligible figure, but when projected onto a population of 55 million, it would be equivalent to about 99 thousand people falsely accused of terrorism (Sabelli, 2018).

Secondly, legal science cannot ignore that algorithms determine the risk of reproducing or exacerbating strong power asymmetries on the social level. This issue is one of the crucial matters discussed within Pisani's text. The author highlights how the platform economy poses a load of exploitation and conditioning at different levels. First, the retrieval of big data takes place, that is, a gigantic amount of sensitive data that is provided (for free) by users every time they access a platform.

This could be interpreted as a kind of original 2.0 expropriation on the global level of a property intangible but not for this reason without value: personal data, which contemporary capitalism is storing on a colossal scale. Due to their sheer volume, these data make it possible, through processes of statistical inference, to effectively interpret and use it to predict preferences, habits, moods, behaviours, and lifestyles of a very large number of subjects.²

This, however, is but the first part of the platforms' work. In fact, algorithmic rationality is not limited to a data cataloguing function or even to predictive work concerning users' choices. It increasingly turns out to be able to condition, through more or less surreptitious strategies, the choices of subjects. In other words, platforms are a device, perhaps the best performing of those tested so far, of "surveillance capitalism" (Zuboff & Schwandt, 2019), whose primary objective is to replace autonomy, a possible matrix

² On the exploitation capacity of platform capitalism, the reader can refer to Cuppini et al, 2022.

of instability, with heteronomous action, that is, to limit users' freedom of choice to the point of making it only apparent, illusory (Orrù, 2021).

Using a Foucaultian reading key, Pisani highlights how algorithmic orientation devices exert on subjects what can be called a governmental power, which functions to the extent that it recognizes freedom but at the same time shapes it, that is, molds it into the most advantageous form (Luce, 2023).

Pisani states that “the devices included within algorithmic relationality tend to produce an immediate adherence of the subject, through stimulation of his unreflected impulses, which allows him to bypass the moment of decision [...]. At stake in data management is the ability of users to exercise their right to self-determination, the protection of which can only take place within algorithmic rationality” (Pisani, 2023, pp. 40-45).

Between users and platforms, an osmotic relationship is determined that prevents one from understanding whether a decision put in place by the subject can be said to be truly autonomous. For this reason, there is no possibility of resistance concerning algorithmic governmentality, except by reckoning with the full extent of its power over the lives of subjects.

Any critical reading on the platform economy must consider that algorithmic rationality does not merely condition users, rather it determines them, makes them subjects, and “any hypothesis of subjective emancipation that claims to place itself ‘outside’ algorithmic power relations is doomed to failure. Any reflection on the possibility of protecting the right to self-determination in the digital age can only start from the assumption of the constitutive exposure of the subject's identity to the digital horizon, marked by algorithmic data management” (Pisani, 2023, p. 44).

On-demand economy

Platforms promise the disintermediation and self-determination of the individual, but at the same time they prove capable of exercising widespread social control, which affects every aspect of life: from education, consumption, health, the sentimental and sexual life of subjects, to the world of work.

The latter is the subject of a particularly meticulous analysis by Pisani, who highlights how the model of algorithmic governmentality proves suitable for interpreting platform-mediated work: work in the times of the on-demand economy.

The function of platforms is, in many cases, to allow individuals to “sell” their workforce (Raimondi, 2019). This is, apparently, a possibility that expands the freedom of

choice of the individual, who can skip all forms of intermediation (except for the “invisible” one of the platform itself) and choose when and for whom to work, accessing an alternative recruitment system (apparently more welcoming and rewarding) than the traditional ones.³ As Pisani highlights in the volume, the freedom granted to the worker in the on-demand economy, however, is more apparent than real (Donini, 2015).

This appearance of freedom and the mechanisms of exploitation it veils can be made explicit in the following examples. First, platforms play the role of work designers, putting in place a series of “hegemonic control strategies, with sometimes very pervasive effects” in the lives of workers (Pisani, 2023, p. 50). They govern every stage of the labour relationship: from selection to disciplining and controlling personnel. The contractual condition recognized on paper to the subject — who remains, formally a self-employed worker — in many cases does not leave him with greater margins of freedom than those of an employee: for example, the platforms ensure employees forms of control (such as GPS) and determine reward and punitive measures that can go as far as account deactivation: a euphemism for termination of the employment relationship. They also devise very stringent shift patterns by providing various grey times when workers, while not formally on duty, are still found to be on call. This is the case, for example, with riders, who may sometimes be logged into the platform even when their shift is over. This, of course, contributes to blurring the boundary between work time and free time for workers⁴ and, in general, to limiting the tools of defense against possible harassment and injustice suffered by the employer (Armano et al, 2017).

Second, the on-demand economy presupposes that everyone is operating in a labour market characterized by an inexhaustible labor pool, within which the worker is in a condition of constant competition with others, often exacerbated by wage poverty, extreme contractual precariousness and the expectations of stabilization that he legitimately cultivates (Mazzetti, 2021). It becomes de facto obligatory, for anyone who wants to endure in his or her job position, to continually adapt to the standards dictated by the degree of satisfaction manifested by the customers that the platform records and reworks (Bano, 2019; 2021). Every worker, we could say, must become “entrepreneurs of themselves.” This formula, a true mantra of the neoliberal age, indicates in this case the need on the part of the individual to carry out his or her job performance not merely by using normal diligence, as required in a traditional labor

³ Some authors have interpreted this “governed freedom” of digital workers through the interpretation of voluntary servitude illustrated by Étienne de la Boétie. For more details, the reader can refer to Messinier, 2022.

⁴ These gray areas between work time and life time often exist for remote workers as well. For more details, the reader can refer to Senatori, 2021; Balzano, 2021.

relationship, but by capitalizing on all the resources at one's disposal. The worker is especially required to have so-called soft skills: empathy, emotional skills, personal relationships, and lateral thinking (including making up for errors attributable to the operation of the platform).

Hetero-organized collaboration

The innovations introduced by the on-demand economy highlight the transformations that labour has undergone in organizational models since the crisis of Taylorism-Fordism. The Taylorist model fits quite neatly into the pattern identified by Marx in the *Grundrisse*: it presupposed the sale of the creative force of the worker (capable of producing wealth) to capital. In this scheme, the greater the creativity sold to capital, the greater the profit the latter could make. In the age of the on-demand economy, things become more complicated: it is insufficient for workers to simply work longer hours to produce more wealth, instead they must work in a different manner that demands they put their entire existence in service of profit.

The primary problem to be addressed on the legal level, then, is to rethink the forms of protection offered to the worker. Many of them have been elaborated using the Marxian-Taylorist framework as reference, that is, dwelling on the degree of exploitation that the worker may be subjected to in a physical place (e.g., the factory) and at a precise time (the working hours, precisely). In a reality in which the physical boundaries between work and home environments or the temporal boundaries between work time and life time are becoming more blurred, the law must equip itself to read the new forms of subalternity or exploitation that the worker may suffer. Pisani carefully analyses the interventions that legislature and jurisprudence have so far accomplished in this direction. He carefully illustrates, for example, how L. 128/2019, through the notion of hetero-organized collaboration, has allowed platform workers to be differently framed, bringing their status (and the protections attached to it) closer to that of employees in Italy (Forlivesi, 2022). The author also dwells on the case law that, starting with the Palermo Court ruling N. 3750, 24/11/2020, has realised an avowedly evolutionary interpretation of the concept of subordination, using it “as a possible scheme through which to arrive at the qualification of platform labour relations” (Pisani, 2023, p. 85).⁵

Algorithmic governmentality seems so unbridled, however, that individual corrective interventions in a general framework of rules that remain unchanged will

⁵ Pisani, 2023, p. 85. For more details, the reader can refer to Perulli, 2021.

not suffice to protect people, nor will the work of enlightened jurisprudence that proves particularly diligent in the vigilant care of rights. Rather, the goal for the future remains to rethink not only the catalogue of workers' rights to thwart old and new forms of exploitation but, more radically, to review the very conditions of the social compact (Carrà, 2020). This, as is evident, cannot be an endeavour for jurists and scholars alone. To fulfil it will require collective action, recognizing the indispensable role of citizens "both as individuals and in social formations" (Art. 2 Const.). Because, as the author says, only "Subjects, acting within collective organizations that assume a regulatory function within the legal system, can become active participants in the construction of the digital horizon in which they now lead much of their existence" (Pisani, 2023, p. 170).

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