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AUGMENTED DEMOCRACY: MORE OPEN, LESS FREE?

Constitutional democracies comprise high levels of freedoms' guarantees to meet the needs of an open and fair society. This overarching principle has inspired countless domestic policies addressing the conditions of access to information, participation in the public sphere, and the effective scrutability of rulers and policy-makers. The promising tale of the digital transformation as a catalyzer of democratic changes leading to more openness and, thereby, more freedom, proved to be less genuinely reflected into the reality. This article raises several critical questions about the linearity – often praised in the international debate – between digital opportunities and the improvement of democracy.

KEYWORDS *Freedom, Digital Democracy, Digital Transformation, Rule of Law.*

I am not fully free if I deprive someone else of her freedom.

(Nelson Mandela)

1. An overarching principle hard to be overruled

If any ideal is to be widely and consensually recognized as the cornerstone of democracy, this is freedom. Beyond the different angles taken to analyze the conditions that make first possible and secondly functioning a democracy, liberal thinkers have been in unison in saying that democracy could not exist without freedom. Even more demanding, democracy is deemed to arise in contexts that contain some 'seeds' of guarantees protecting fundamental individual freedoms from the potential abuse of power handled by rulers and pub-

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lic officers. This is the ultimate goal of those actions that put into motion constitutionalism as a principled idea (Morlino 2011). The echo of this simple but deeply rooted notion developed by modern political thinkers reaches out till our contemporary age: «we observe the end of freedoms» deplores Monique Canto Sperber (2018) intervening on democracy in the present time; watch out the state of the art of our freedoms, alerted the World economic forum (Wef) in a completely different perspective and across different networks of opinion leaders at the end of 2017. Although from the historical and empirical point of view the relationship between freedoms and democracy is more complex than this and does not take linear roads to come into actual terms, the notion of freedom offers a clear and unquestionable picture: freedoms gain empirical significance and functional salience in the way collective life is organized only when a necessary, preliminary, and indispensable condition is in place. This consists of a framework of rules, featuring an *impersonal scope* and an impartial stance toward any specific dimension of individual private life, such as religion, moral, visions of a good life, preferences, values: 'where there is no law there is no freedom' declares in simple and lapidarian words the key notion of liberal democracy (Rawls 1971; recalling Berlin 1969).

This core notion of liberal democracy has been very poorly questioned or even more generally recalled in recent times, notably if the freedom-focused debate is compared to the lively discussion and the worldwide mobilization rising across the last decade to promote equality. In many ways, the international debate which has been unfolded over the last twenty years with relentless reference to the blow-up of the economic crisis and the subsequent actions taken to tackle both its causes and (above all) its effects, touches predominantly the issue of equalities' danger rather than the issue of freedoms' restriction. In a way, the frame through which the crisis and all the remedies adopted to respond to it entered into the international narrative and the policy assessment exercises run worldwide, pivoted upon the aim of reducing inequalities and expanding the opportunities for inclusive growth (Oecd 2013 and 2017; European commission 2014).

Based on these premises 2020 is a watershed for many different reasons. Freedoms have been put under unprecedented tension both in terms of scope of action – mobility – and in terms of access to information to enjoy effectively the potential of choice embedded into this scope. Data collected and analyzed intensively and massively have been guiding the bulk of the government interventions all over the world. Furthermore, to mention but the most recent and equally most revealing case, the unprecedented act of muting and suspending Donald Trump's Twitter account in the aftermath of the dramatic breakout of protecting hitting Capitol Hill and more concretely the Congress

hall on January 6th, 2021 marks a milestone in the intense but relatively recent encounter between democracy and digital media (recent if assessed against the long-standing tradition of liberal democracy and more generally of constitutional state). Related to this the increasing efforts deployed within the regulative arenas mostly at the transnational level and with peculiar acuteness within the judicial spectrum of adjudication tells us a nuanced story about the sign of the digital impact impinging upon the effectiveness of the democratic rule of law. It dates to 2010 the first investigation launched by the European Union about the fairness of Google browsers searching algorithm, to 2013 the complaint filed by FairSearch to the Court of Justice of the European union claiming the breach of fundamental rights by the tycoon giant Google; to 2017 the decision to fine Google for breaching antitrust regulation within the European legal space. This is just to offer a snapshot of a much larger and comprehensive strategy of legal mobilization that has been targeting digital giants over the last years. A tormented story that of digital techs and democracy which deserves an in-depth appraisal to understand which rights and guarantees are at stake and which implications digital transformation has for the quality of our democratic institutions and our democratic lives.

Taking these points very seriously especially from the perspective of the freedoms enjoyed by citizens today, this article aims at disentangling the targets of the impact of digital technology and more precisely one of its more debated and contended side: artificial intelligence for the quality of liberal democracy. Addressing a paradox that seems to be consensually witnessed across countries: more openness less freedom.

2. Digital contexts, mathematical rationality, democratic qualities

Digital technologies and democracies met a few years ago. Back in the nineties, the first wave of information technology-fueled the reforms of the democratic States under the auspices of efficiency and effectiveness promoters. Detractors of public organizations as good candidates to deliver public services and promote welfare and growth started to call for a comprehensive action of modernization through the leverage of Ict. Since then, at least two waves of public policies targeting public sectors in all advanced democracies marked the sunset of the XX century and paved somehow the way to a new era for the digital transformation that was about to come. Digital transformation has been made possible within the spectrum of the liberal democracies by the encounter – and the praised enhancement – of the potential drawn from

big data and the spectacular growth of social media and networks. The combination of these two factors was unpredictable as much as disruptive: it has been made possible by the advancements of the applied mathematics which got across the outcomes of a massive digitalization and dematerialization of interactions, communicative and transactional behaviors.

If the above picture resembles a common sense of the diffuse discourse about the digital age, today at the aftermath of the unprecedented experience made in 2020 by democracies facing the pandemic and abruptly shifting most of their procedural actions and services toward digital platforms, the quest for a better and deeper understanding of the impact of big data and data-driven rationales on the quality of our democracies is a compelling and urgent need. In many respects, what we have observed across the last months may be considered as a litmus test of the potential disruption of this new functioning of democracies.

Democratic theory traditionally offered a very straightforward understanding of the role played by media and information sources within the engine of democratic institutions. If the ultimate source of democratic legitimacy stands in the hands and the minds of citizens, then the more these latter are enabled to think based on a comprehensive set of information and to decide upon a plural spectrum of notions and interpretations of social and political life, the more the democratic functioning will be rooted into a ground of consolidated legitimacy. Political theorists and political scientists have extensively argued in favor of a pluralistic setting as a preliminary condition conducive to more legitimated policies and more inclusive decisions in the public sphere (Dahl 1971). In many ways, once endorsed a pluralistic and inclusive view of a good democracy, the bottleneck to its *mise en oeuvre* is represented by the costs and the barriers that stand between citizens and information providers – both in the media and in the public sector. Access to information and access to salient knowledge has become patently a deeply impacting condition to ensure that an open society is governed by a legitimated democracy (Sunstein 2019).

Pluralism stretches the hand to the principle that more information is better than less information in a healthy democracy and that more voices are better than few ones to ensure that citizens rely on a vast – exhaustive – range of sources to make up their mind and to play the fundamental function that consists into holding democratic leaders accountable. For simple this story may sound this has been infusing a whole range of strategies within advanced democracies – to strengthen media pluralism – and within democratizing countries – to set up new or renovated guarantees of media pluralism.

Digital technologies have been welcome because of this expectation: more open access to contexts, sourcing worldwide, and decreasing costs for a

larger number of people regardless of the social and economic status. Technology has been interpreted as an enabler and a catalyzer of more open institutions and citizens/institutions interplay more suitable to gain in terms of transparency, readability, and accountability. Based on this premise the last twenty years witness a transformative wave of technological transformation. Whereas digital technology combined with the breakout of the corporate giants' power in driving and leading the international market marked the dawn of the XX century, the mathematical advancements applied to the big data availability – made possible by the digital technology itself – opened a new scenario. The oil of the new era is not represented by media themselves and the contexts that they channel as the interface between citizens and leaders. The new oil is represented by data. Digits in massive amounts treated with data analytics and profiling techniques are today a real – for immaterial – dimension of the exercise of power.

The advancements of computation and data sciences expanded far beyond all expectations the possibilities for human beings to engage in the analysis, the diagnosis, and the governance of amazingly complex phenomena. The promise rising from these advancements is in fact to elaborate from massive datasets better expert decisions. The generated consequences of this comparative advantage of artificial intelligence in complex computation, big data analysis, and pattern recognition (Russell and Norvig 2010) deeply touch our lives. Therefore, Ai growth and the widespread expectations rising from it are compelling reasons to acknowledge Ai the potential to change all dimensions of our world (Floridi 2018 and 2019; Dourish and Bell 2011). Yet, more data and information do not turn automatically into better policies and better decisions. If the quality of decisions impinging upon the lives of citizens is more than a robust mathematical method, then making Ai designs and uses consistent with principles of fairness, transparency and non-discrimination become a vital quest for all societies and governments (Wittkover 2018). Widespread awareness of Ai critical facets came in the aftermath of some happenings that recently hit the public community and called for strong attention to the Ai discriminatory potential. One of the most highlighted among those is the case of *Compass*¹, an Ai tool used to detect the propensity to become recidivist in the context of the criminal procedural law in the Us, subject to judicial review to counter-balance the potential discriminatory effect of its application (Pasquale 2019; Lacour and Piana 2019). The burning scandals eroding procedural and substantial legitimacy from electoral processes and political campaigns –

¹ For more details, see: <https://www.propublica.org/article/how-we-analyzed-the-compass-recidivism-algorithm>

such as Cambridge Analytica – created an alarm worldwide justifying a collective quest for transparency and accountability in the design and use of the Ai (Zuboff 2019). All international fora highlight that Ai is deeply reshaping the human-machine interaction (World economic forum 2019), the patterns of business and management (Oecd 2017), the way competencies are built: they maintain that Ai is a multi-faced phenomenon, impinging upon the foundations of societies at all levels at our living together. This is exactly the epistemological vision that inspires the European approach to Ai, which draws a line to tune Ai governance into the Eu approach toward privacy, data protection, and cyber-security (Aegis 2019)².

The issue of infusing better knowledge into better decisions does not come new to scholars and policymakers, nor does the issue related to the growth of the Ai potential in the Shs, one of the fundamental scientific puzzles since the first decades of the XX century. Over the nineties the dimensions of the complex puzzle information & governance took a new glamour (Woolgar 1991). More recently, the interplay between more accessible information, more transparent institutions, and more predictable decisions is at the center of the vision promoted at the international scale on artificial intelligence. Aspects recalled above are fundamental reasons altogether why Ai and applications of computational sciences in the public sector or the production of public services gained rapid prominence in the agenda of international and transnational fora. This holds in the setting of the United nations (Itu 2019) as well as within the Council of Europe, the Oecd, and the European union, and the most influential private actors and think tanks³. At the national level, this has taken the shape of experts committees such as in France⁴, or *Stiftungen* debates – such as the Bertelsmann in Germany⁵ and the Leonardo foundation in Italy⁶ – or technology assessment bodies as in Denmark and in the Netherlands.

Three compelling failures of the traditional modes of governance are an incentive for the adoption of an 'augmented intelligence' (Engelbart 1963; Xia and Maes 2013) in the public governance: a) discretionary power of public

² The European policies touching the issue of data are manifold. An important part is played by the economic understanding of data as a resource within the economic development. Balancing between privacy and economic growth has consequently become a key issue.

³ Cfr. http://www.unicri.it/in_focus/on/UNICRI_Centre_Artificial_Robotics.

⁴ Cfr. <https://www.cnil.fr/en/algorithms-and-artificial-intelligence-cnils-report-ethical-issues>.

⁵ Cfr. <https://www.bertelsmann.com/news-and-media/news/arvato-systems-creates-artificial-intelligence-competence-cluster.jsp>

⁶ Cfr. <https://fondazioneleonardo-cdm.com/en/ricerche-e-progetti/umanesimo-tecnologico-e-intelligenza-artificiale/>.

officers as a bug driving the public systems toward discriminations; b) inefficiency and ineffectiveness as a need for transparency oriented public management; c) opacity and lack of readability of expert-based decisions which calls for automated expert-systems where readability and accessibility may 'simply' depend on laypeople digital literacy.

Digital technologies and mathematical applications to it – such as the so-called big data analytics – impinge upon the procedural core of democracy as well as at the interplay between procedures and results. Of utmost and foremost importance turns out the impact on the rule of law and the effectiveness of the mechanisms of an inter-institutional accountability. This is the existence in the democratic setting of entrenched mechanisms of power limitations based on the separation of power as well as on the capacity of non-State actors to play as oversight institutions. Among these, the media's role is crucial. On the side of the contents channeled by democratic decision-making, the effects originated by digital technologies call for deeper and cautious consideration. The dominant narrative praising at the end of the XX century the venue of digital media within social and political life pivots around the promise of more openness to information and data as leverage for stronger protection and enforcement of fundamental freedoms for citizens. If the access to information and the access to the channels of information is less costly and more open then, being freedom directly related to this access, the ultimate effect expected may be reasonable more freedom. However empirical evidence seems to tell the story of a much less genuine relationship between digital context' availability and freedom' protection. The empirical evidence provided in Morlino and Piana (2020) and notably regarding the six biggest European democracies represents a first alert casting light upon the positive impact digital technologies may have in promoting freedoms in a genuine, even, and fair manner (Morlino and Piana 2020, 74-78). None of these three adjectives must be disregarded: genuine relationship between the digital transformation and the protection of the individual freedoms is patently praised and promised at the international level and therefore a critical stance toward it is mostly needed. An even impact should be ensured to avoid that the digital transformation does not create more opportunities accessible to the few rather to all. Finally, a fair impact must equally be guaranteed to avoid that the freedom of information does not turn out into a subversion of the other individual freedoms.

3. The paradox of more information less freedom

If the plea for freedoms and freedoms' protection is a red line linking up different scholarship developed in a liberal and demo-constitutional perspective, more recently the process of information growth and digital transformation urged scholars and policymakers to reappraise the role of a specific type of freedoms, notably those that relate to the interface between the autonomy of individuals and the role played by the information and the exchange of information in knowledge in a society made of individuals whose autonomy and free will is broadly and consensually acknowledged. Phrased differently, if social acts leave a digital trace which may represent – *at an embryonic stage* – a quid of information and if the information used by public authorities is considered as the common ground against which the legitimacy of their actions may be checked and scrutinized by ruled, therefore the asset of rules that 1. Assure access to digital data; 2. Assure an equal to all access to information that is salient for the public life; 3. The freedom to express, i.e., the freedom to use the information to shape opinions and communicative acts, becomes – all together – a pivotal set of rights in an 'augmented democracy'. Democracy as such will be governed by a complex combination of data-driven rules, soft laws, players operating in the media and through the digital media (Pasquale 2019). The 'augmented' side of the 'democratic coin' hides a promised land: the digital turn will decrease suddenly the costs of access to data and information and consequently enhance the capacities of all to enjoy effective political freedom⁷.

Access to and use of information, notably regarding the public sector and to the flow of data, determined or related to the citizens/public institutions interface, have been increased by concomitant chains of events: the push toward a more efficient and more transparent public governance, which regarded the European member States and other advanced democracies at beginning of the 1990s and through the next two decades; and the disruptive wave of technological innovation creating favorable conditions for fast and cross bordering flowing of data and information in a much more prominent way than ever earlier. The state of the matter in terms of easy access and decontextualized use of information has been a strong reason to justify high expectations of freedom widening. The implicit assumption was that freedom of choice is mitigated by a shortage of information made available to decision-makers – even more important if they are citizens and laypeople – whereas more information leads more or less directly to better choice and more freedom (Zuboff 2019).

⁷ For a recent operationalization of the freedoms that are salient for an advanced democracy see Morlino (2011) and Morlino and Piana (2020).

On top of the outbreak of Ict as a leverage to change the public sector alongside the implementation of standards of efficiency, transparency, and effectiveness, more normativity came along in the realm of the e-government. The regulative density of the Ict policy sector is also amplified by the external pressure – normative and political – exercised by the European union and, with particular emphasis, by the European parliament. Over the last two decades, the idea of a lighter, less expensive, and more efficient State dominated the international setting. Technology and digital transformation appeared as a viable way to reach and cluster three goals: making the public sector more transparent, more standardized, and more efficient. The ultimate positive achievement of shifting public organizations toward a dematerialized management of document delivery, document filing, document tracing, is to enable citizens and economic actors in terms of easier access – more freedom to access information, regardless of the initial asset of the citizens in terms of education or economic resources – and of faster response

To sum up, on the one hand, the massive injection of technology triggers a much higher level of mobility and a wider range of options for citizens to exercise their economic freedoms and their freedom to express their opinion, to express themselves, to move, to get informed. But, on the other hand, it also allows potentially illegal, unethical, and undemocratic behaviors to be undertaken into space, which is not subjected to the same intense legal protection as it happened to be the case in the material world. Kara Swisher (2018) rightly claims that the It platforms, such as Facebook, Twitter, and others, were «destined to become a template of all humanity, the digital reflection of masses of people across the globe. Including – and especially - the bad ones».

A more episodic and still deeply revealing event is worthy of further consideration. The abuse of the information-driven from the GAFAM companies perpetrated by Cambridge Analytica did not only accelerate the regulative turn deployed in the last two years in the European Union. It cast a somber light upon the genuine relationship between political freedom – and notably the freedom of speech and freedom of information – and technological development. The suspicious attitude endorsed as a reaction to the scandal should not be taken as a malaise of our *Zeitgeist* (Deloire 2018). It is rather the tip of the iceberg in a much more complex interplay between the demand for more information, the lack of trustworthy intermediation in the information production and distribution on the web, and the structural limits which come along with the growth of It density in the daily life of citizens.

For our discussion, this point deserves some consideration. The liberal vision which grants to the freedom of information a key role in ensuring the quality of democracy – at least of the procedural model of democracy as it has

been promoted and defined by the founding father of the liberal theory – takes for granted that information is produced based on a mechanism of intermediation where media companies and journalist professional orders play a role. This is not to say that intermediation is per se a condition of quality of information. This is rather to argue that the combination of a pluralist variety of information complemented by the existence of intermediaries created for decades and centuries in some cases – as in the United Kingdom – a favourable condition to provide citizens with a good source of data and information on the public and the power. The disruptive effect of the web is amplified by the massive erosion of all intermediating capacities on the side of the actors that transact across the web. Data can be stored by them and storages can be hacked. The very access – for instance, to the exercise of an individual right – is in itself already a way to trade-off and lose power on the web, without getting back in exchange the possibility of keeping readable and accountable those actors who exploit this power. The runback enacted by regulators to catch up with the lack of guarantees that comes with the digital is somehow falling short in terms of enforcement capacity and freedom protection. The technological development as a viable path toward a better public sector represents in itself a competitive and redistributing arena where actors vested with institutional responsibilities got hollowed out or empowered dependently on the position and the capacity they featured in handling the new digital world. In some cases, the creation of independent bodies with monitoring and oversight functions opened up a new space for new actors – such as independent authorities – as in Italy. In some other contexts, the executive branch took over and gained a stronger role in promoting, shaping, and maintaining the Ict policies, as in France. Countries like Poland experienced the weakening of the media and the outbreak of the Ict, with even weaker intermediation in the production and diffusion of data and information (Morlino and Piana 2020, 78-80).

4. Worsening freedoms by 'augmented governance'?

Any desire for more revelation about the potential of control embedded into the hyper-connectivity combined with big data and data analytics finds an easy answer in the observation of 2020, which has been marked by the exponential growth of governmental control. We should not fall victim to presbyopia. The year 2020 has been extraordinarily revealing, but much of the evidence we need to assess properly the risks were at our disposal for at least a decade.

Authorities cited Covid-19 to justify expanded surveillance powers and the deployment of new technologies that were once seen as too intrusive. The public health crisis has created an opening for the digitization, collection, and analysis of people's most intimate data without adequate protection against abuses. Governments and private entities are ramping up their use of Artificial intelligence (Ai), biometric surveillance, and big-data tools to make decisions that affect individuals' economic, social, and political rights. Crucially, the processes involved have often lacked transparency, independent oversight, and avenues for redress. These practices raise the prospect of a dystopian future in which private companies, security agencies, and cybercriminals enjoy easy access not only to sensitive information about the places we visit and the items we purchase but also to our medical histories, facial and voice patterns, and even our genetic codes.

The combination of the more recent overflowing effects engendered by governmental actions contrasting the diffusion of the Covid-19 and the more fundamental conditions facilitating the exponential intrusive potential of heteronomous decisions within the autonomous scope of actions enjoyed by citizens represents a clear call for action both in terms of rulemaking and in terms of policy implementation. The growth of technological applications and the widespread expectations rising from it are compelling reasons to acknowledge the digital infrastructures' potential to change the social and the institutional dimensions of our world and, by that means, to transfigure – for the better – the justice that is delivered to people. Yet, more efficiency, more data and information do not turn automatically into better policies and better decisions. If the quality of decisions impinging upon citizens' life is more than a robust mathematical method, then to make the design and the use of digital infrastructures consistent with principles of fairness, transparency, and non-discrimination becomes a vital quest for all societies and governments (Wittkover 2018; Sunstein 2019). The year 2021 experienced a strange and faded combination of promises and fears. Among the several actions taken to restore and to recover it is worth recalling the measures discussed by the European Union to fill the functional need of a better regulative framework ensuring freedoms and protecting the privacy and subjective rights of citizens in their interaction with digital devices and automated systems. It is too early to assess the effectiveness and the responsiveness of those measures. A way ahead must be traced not only in terms of quality of the rule-making design but also – and foremost – of quality of the implementation process. Here the capacities of the domestic institutions will play – once again – a key role and even more importantly actors engaging into it must represent urgently both governmental and non-governmental instances, private and public rationalities, because only

through a wide partnership based on mutual learning and clear distributed responsibilities we may find a way out to ensure that freedoms are effectively protected through the augmented democracy, rather than despite it.

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