

**FREEDOM OF THOUGHT  
IN THE ALGORITHMIC ERA:  
ELECTORAL PROCESS  
AND «BUBBLE DEMOCRACY»**

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# FREEDOM OF THOUGHT IN THE ALGORITHMIC ERA: ELECTORAL PROCESS AND «BUBBLE DEMOCRACY»

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## 1. THE NEW PUBLIC FORUM: FILTERS AND BUBBLES

There are many ways used to define the era in which we live, dominated by technologies: Algocracy<sup>2</sup>, 4<sup>o</sup> industrial revolution all based on the consideration that data and algorithms are more than ever at the centre of the human being's everyday life. As analysed in the best seller «The Surveillance Capitalism»<sup>3</sup>, the new era of the market economy is inextricably linked to two fundamental elements: data and artificial intelligence. The author points out that what is defined as a new era of capitalism was born with the discovery or intuition — attributed to Google — of the so-called behavioral surplus. In a nutshell, it was found that within the vastness of Big data produced, that portion of data previously considered as waste could be transformed into extraordinary tools to enlarge the audience of users/consumers and business partners; in fact, in addition to those data used to obtain useful information to improve the services offered, there is a large amount of data previously unused and through which it is possible to obtain useful information to predict behavior and choices starting from market ones.

To achieve this objective, it was therefore necessary to process data with new tools capable of processing this information to arrive at certain predictions, combining developments in computer engineering with behavioral economics and psychology.

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<sup>2</sup> Dahnaer, J., «The Threat of Algocracy: Reality, Resistance and Accommodation» in *Philosophy & Technology*, 2016, 245, 268

<sup>3</sup> Zuboff, S., *The age of Surveillance Capitalism*, New York, Public Affairs, p.199

Among the methods used to obtain a certain consumer choice through platforms are in fact nudging techniques<sup>4</sup>, a tool from behavioral economics that is able to 'push' the recipient to perform an action as if he or she had wanted to perform it freely.

The predictions obtained through the accumulated and processed data lead to practices of personalising the offer based on the interests of each individual, starting with those of a commercial nature. It should be pointed out that customisation does not, at least at the moment, go so far as to be so specific as to be different for each user of the Web; however, for the big tech companies, it is sufficient to subdivide the audience of users into certain groups categorised by different characteristics, precise enough to make the offer of content coincide with the preferences previously expressed by Web surfers.

Analysing the issue from a purely market point of view, concerning the relationship between the professional/seller of goods and services online and the digital consumer, this would seem to be a mere evolution of sales methods, also in favour of the consumer himself, who is thus able to find what he is looking for more easily. In fact, it has been pointed out that this leads to a not insignificant increase in purchases, as users who are subject to sponsorships akin to their interests purchase goods and services that they would otherwise not even consider buying<sup>5</sup>. If the phenomenon was established within commercial dynamics, in a historical moment in which the online dimension seems to have almost replaced the real dimension, it soon went further, affecting every dynamic that takes place through the web, reaching every sphere of personal and working life by exploiting the fact that the 'digital' human being produces an enormous amount of data, using it in a continuous loop between its production and its use to increase relations with potential and future users. All this is only set to get bigger and bigger; it is estimated that 2025 will see 175 zettabytes of data being produced and that most of it, around 80 per cent, will be the product of the Internet of things<sup>6</sup>, all those intelligent objects now used in homes and cars, aimed at making our lives ever easier.

These dynamics, through platforms that become true digital ecosystems<sup>7</sup>, are transferred to the field of access to information and knowledge, which is relevant for the smooth running of democratic processes.

There is no doubt that the Internet has overturned the way of communicating and accessing culture, with a huge step forward in terms of quick and easy access to

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<sup>4</sup> Thaler, R.; Sunstein, R.C., *Nudge: improving decisions about health, wealth and happiness*, New Heaven & London, Penguin, 2008

<sup>5</sup> Ezrachi, A.; Stucke, M., «Virtual competition: the promise and perils of the algorithmic-driven economy», Cambridge, *Harvard University Press*, 2016

<sup>6</sup> Farhan, L.; Kharel, R.; Kaiwaertya, O.; Quiroz-Castellanos, M.; Alissa, A., «A concise review on Internet of Things (IoT) – Problems, challenges and opportunities», *11th International Symposium on Communication systems, networks, and Digital Processing*, Budapest, 2018

<sup>7</sup> Bassan, F., *Digital platforms and global law*, Cheltenham, Edward Edgar Publ., 2021

content for all, but beyond the obvious negative effects, there are many more in the opposite direction.

Despite the fact that, probably for a short time yet, the most widely used means of getting information on current affairs is the 'traditional' media — in Italy in 2020, 59% of citizens used television news<sup>8</sup>— the role of social media and search engines is increasingly incidental. More and more, in fact, the search for information takes place online and the debate and circulation of journalistic and in-depth articles takes place largely on social networks, with rules totally left to the discretion of private individuals, who are now able to condition freedom of expression.

The undescrivable quantities of data that can easily be accessed online could potentially turn the culture of every individual around; however, paradoxically, the opposite effect is generated: the more data there is, the more we are pushed to filter and select only some of it, that is, to select what is already filtered by third parties, such as the Daily Me scenario through which every individual receives daily only the news that interests him or her<sup>9</sup>.

As several studies point out, the vast majority of web users (91%)<sup>10</sup>, when carrying out any search through search engines, stop only at the first page of results. Beyond the purely quantitative side of the number of results that are actually consulted, if the first page contained results from different sources and reporting different views on the same search, the problem of information distortion would not arise; however, right from the search, the effects of customisation entrusted to algorithms can be seen.

Suffice it to think of how the largest search engine and discoverer of the behavioural surplus, namely Google, operates, mainly through its famous Page Rank algorithm and the amount of Big Data that only the monopolistic platform in online search can hold. Through them, the list of results that are proposed is categorised according to the individual user's preferences demonstrated through prior browsing actions.

Someone states, in a surely provocative tone, that Google does not show us the world, it creates the world we see<sup>11</sup>, because that algorithm does not merely list the results based on user input but chooses which outputs to show and in which order, shaping and modelling what will then be the view on that searched topic<sup>12</sup>.

In addition, it should not be overlooked that beyond the generic way in which sites are listed on search pages, it is not known in detail how Page rank and most of

<sup>8</sup> CENSIS, 16th Censis Communication Report 'The media and the construction of identity

<sup>9</sup> Sunstein, R.C., *Republic.com*, Princeton, Princeton University press, 2001

<sup>10</sup> Laidlaw, E.B., *Regulating speech in cyberspace*, Cambridge University Press, 2015, 46

<sup>11</sup> V. BOEHME-NESSLER, *Digitising Democracy*, Berlin, 2020, 45

<sup>12</sup> Emblematic was a statement made by former Google CEO Eric Schmidt himself, who in 2010 said «*We know who you are, what you are interested in... if you need milk, Google will point it out to you*», Jenkins, H.W., «Google and the Search for the Future», in *Wall Street Journal*, 14 august 2010, <https://www.wsj.com/articles/SB10001424052748704901104575423294099527212>

the algorithms used by the web giants operate, which in various areas and ways affect various economic and even social dynamics cloaked in such an aura of opacity that we now rightly speak of a black box society<sup>13</sup> a world in which decisions are taken behind closed doors and contribute to shape public reactions through inclusion, exclusion and classification of the content to be viewed. However, the lack of democracy of the platform is not an argument, because no one expects a private entity to act democratically and transparently<sup>14</sup>. In the meantime, such systems continue to evolve, to the point that for a few years now Page Rank itself has been enhanced with Rank Brain, a machine learning algorithm capable of recognising the meaning of a search according to correlations with previous queries<sup>15</sup>.

While access to information is already filtered through these modes, the issue of personalisation within social media is even more complex.

The world's largest social network, Facebook, has around 2.9 billion users<sup>16</sup>, and through other platforms belonging to the same company, Instagram and Whatsapp, holds a kind of monopoly in digital social relations — so much so that some consider it a super-state<sup>17</sup> — and uses systems similar to those of Google. Facebook's 'noticeboard', the newsfeed, was governed by the EdgeRank algorithm, and although there have been corrections following criticism of the apparent lack of transparency of the systems used, the principles governing the functioning mechanisms are still the same: the personalisation of content.

In order to settle the ideal groups created by the algorithms through the predictions generated by the behavioral surplus and to be able to sell commercial sponsorships to third parties, the interest of a private platform such as a social network is to avoid encounters with different ideas that would lead to uncertainty about the most suitable advertisements. In pursuing this aim, therefore, the various algorithms operating within Facebook, and not only there, seek to reinforce personal interests and convictions that result in an exaggeration of thought, evidently also political.

The enormous amount of information with which we are constantly bombarded, makes each individual a «pre-intentional consumer of information»<sup>18</sup>, understood as a passive subject rather than an active user of the freedom to inform himself. In the attempt to absorb an excessive amount of data, the human being is forced to carry out an automatic selective process, through a mental filter that leads him to discard

<sup>13</sup> Pasquale, F., *The black box society: The Secret Algorithms That Control Money and Information*, Cambridge, Harvard University press, 2015

<sup>14</sup> Zuboff, S., *The age of Surveillance Capitalism*, New York, Public Affairs, p.199

<sup>15</sup> Fasan, M., «Intelligenza artificiale e pluralismo: uso delle tecnologie di profilazione nello spazio pubblico democratico», in *Bio Law Journal*, 1/2019, 101ss

<sup>16</sup> Simonetta, B., «Quanti utenti ha Facebook? Gli account doppi mettono in discussione i numeri ufficiali», in *ILSole24ore*, 22 ottobre 2021, <https://www.ilssole24ore.com/art/quanti-utenti-ha-facebook-account-doppi-mettono-discussione-numeri-ufficiali-AEggjkr>

<sup>17</sup> Foer, F., *World Without Mind: The Existential Threat of Big Tech*, New York, Penguin, 2017, 120

<sup>18</sup> Pitruzzella, G., «La libertà di informazione nell'era di internet», in *Media Laws*, 1/2018, 6

everything that is mentally distant to him. This merely exploits the confirmation bias, a cognitive problem of selecting only that which confirms one's pre-existing thinking, and consequently eliminating that which is not similar or coincides with one's own convictions<sup>19</sup>.

The consequent effect of the selection of related content is the increased sharing of the same to individuals who are likely to filter and take on that information in turn<sup>20</sup>, helping to strengthen the chain of prejudices of homophily-prone third parties, the instinct to surround oneself with people with whom one shares the same beliefs<sup>21</sup>.

What had already been imagined by one of the most prominent behaviorist psychologists of the last century, a technology that would enable methods of modifying the people's behavior, therefore came about<sup>22</sup>.

The ways in which digital platforms operate and the factual consequences, dictated by psychological elements, create a world of filter bubbles, individual or group spheres in which people enclose themselves by selecting because of their own convictions the elements already received because of personalisation<sup>23</sup>.

## 2. DIGITAL MARKETPLACE OF IDEAS WITHOUT COMPROMISE

An ecosystem formed by bubbles is a closed environment, made up of seemingly and theoretically hyper-connected subjects, but which in reality find themselves enclosed as if in cocoons, in what Sunstain calls echo chambers<sup>24</sup>, in other words, closed environments in which previously formed thinking is amplified and extremised and in which the debate on any subject is taken to extremes, sometimes even conditioning democratic processes<sup>25</sup>.

In this regard, there is discussion of Bubble Democracy<sup>26</sup>, a new phase of democracy that would subsume and in turn derive from those that alternated previously, party democracy and public democracy, with the latter having disappeared with the more

<sup>19</sup> Van Dijk, J.A.G.M., Hacher, K.L., *Internet and Democracy in the network society*, London, Routledge, 2018, 94

<sup>20</sup> Willingham, A.J., «Study: Facebook can actually make us more narrow-minded», in CNN 22 January 2017, <https://edition.cnn.com/2017/01/22/health/facebook-study-narrow-minded-trnd/index.html>

<sup>21</sup> Corazza, P., «Filter Bubbles and Echo Chambers: Pre-digital Origins and Elements of Novelty - Reflections from a Media Education Perspective», in *Formazione & insegnamento*, XX-1-2022, 856ss

<sup>22</sup> Skinner, B., *Beyond freedom and dignity*, New York, Pelican, 1971

<sup>23</sup> Parisier, E., *Filter bubbles: what the internet is hiding from you*, New York, Penguin, 2012

<sup>24</sup> Sunstain, R.C., #Republic : *divided democracy in the age of social media*, Princeton, Princeton University press, 2017, 154

<sup>25</sup> Montaldo, R., «La tutela del pluralismo informativo nelle piattaforme online», in *Media Laws* 1/2020, 224, 227

<sup>26</sup> Palano, D., *Bubble democracy. La fine del pubblico e la nuova polarizzazione*, Brescia, Scolè, 2021

recent party crisis that has led to the deterioration of credibility in politics and the traditional media<sup>27</sup>.

Within these bubbles, information flows are nurtured through which those news or concepts selected on the basis of what is considered to be closest, the so-called cybercascades<sup>28</sup>; this only fragments public opinion and foments individual ‘truths’ that are unlikely to come together in the absence of a comparison between them.

In fact, an experiment carried out by Facebook itself in 2015 on two million users showed how an ‘alternative’ news story has four times the reactions that a scientific news story on the same subject will elicit, making it clear how the proven reality of the facts has become irrelevant<sup>29</sup>.

At the altar of the online public spheres, objective reality is thus sacrificed in the name of a freedom of expression that translates into a freedom to spread one’s own worldview as objective reality, creating a paradox whereby lying is the result of the freedom not to tell the truth<sup>30</sup>. This does not mean that it is a totally unconscious or unwanted phenomenon, as it is the will for truth itself and the distinction between reality and falsehood that is lacking, since in a fragmented and de-pluralised society it is no longer the evidence of facts that counts but the defence of one’s own beliefs<sup>31</sup>.

It is precisely fragmentation that has become a weapon used by big techs as a means of keeping users tied to platforms (lock-in), provoking in them emotional reactions that drive them not to leave the platforms and continue to offer data that is then exchanged for money for customised advertisements, themselves contributing to the loss of the desire for truth and the search for different sources and comparison; rather than a compromising democracy, we therefore have an emotional democracy, in which reason is lost in the presence of emotions that are constantly encouraged<sup>32</sup>.

A natural consequence of this is the proliferation of fake news, a topic now also at the centre of daily political debate. Although contrary to what is often believed, the phenomenon goes back a long way, several factors make the existence of false or fake news extremely more incidental in the internet world. The decentralisation of information, the filtering of algorithms, the decreasing credibility of traditional media — which have suffered from their characteristic of being generalist, thus not personalising content — and the polarisation in the bubbles have meant that they have added such a dimension that they have become confused with opinions<sup>33</sup>.

<sup>27</sup> Pitruzzella, G., *La libertà di informazione*, op.cit., 6

<sup>28</sup> Sunstein, R.C., *#Republic : divided democracy* op.cit., 98

<sup>29</sup> Ainis, M., *Il regno dell’uroboro. Benvenuti nell’era della solitudine di massa*, Milano, La nave di Teseo, 2018, 78

<sup>30</sup> Arendt, H., *Verità e Politica*, ed.it. a cura di V. SORRENTINO, Torino, Bollati Boringhieri, 2004, 30

<sup>31</sup> A clear reinterpretation of the ‘*will to power*’ elaborated by Nietzsche, Han, B.C., *Infocracy*, Hooboken, John Wiley and Sons Ltd, 2022, 61

<sup>32</sup> Boehme-Neßler, V., *Digitising democracy*, Berlin, Springer, 2020, 51

<sup>33</sup> Capodiferro Cubero, D., «La libertad de información frente a *internet*», in *Revista de derecho político*, 100/2017, 701, 707



The lack of truth-seeking, now more than ever, has prompted more and more people have come to doubt science, fueling and making even more extreme time-honored positions that, however, had not yet found such fertile ground as social networks.

A current example is that of the proliferation of fake news during the covid 19 pandemic, which pushed the no vax movement to extremes through news stories about dreaded links between vaccines and autism, or even DNA modification or spy microchips, with predictable harmful repercussions for public health — because extreme groups move more easily in dangerous directions if they feel supported by a stream of information. Another example is the spread of the fake news that still floats online on the subject of the war in Ukraine from different directions, making it difficult for the average user to have an objective opinion supported by proven facts. The period we have just gone through has shown us even more clearly that de-pluralisation, if especially combined with fear and uncertainty, is an important source of infodemia<sup>34</sup>.

A further, not insignificant negative externality for the health of democracy, thanks to the anonymity that the net guarantees and the absence of the control that the traditional media can have, is the establishment of a pyramid of hate speech that poisons public debate and conditions politics itself<sup>35</sup>.

The fact that news production is decentralised and regulated by internal dynamics within the platforms, despite several attempts at moderation, is not sufficient to guarantee an adequate panorama of information because it is enough not to forget an obvious assumption: the platforms remain private entities that follow profit logics or contingent interests, even political ones, depending on the influences they may be subjected to, and although they try to comply with the laws in force, this does not translate into a good for the free formation of thought<sup>36</sup>.

The scenario just outlined raises a fundamental question: does the sacred freedom of expression, through the distorted use that can be made of platforms and the bias exploited by them through algorithms, make thought formation truly free?

For these reasons, the theory of the free marketplace of ideas born with the dissenting opinion of Justice Holmes of the Supreme Court, endorsed by Justice Louis Brandeis, in the celebrated *Abrams vs. United States* case of 1919, is now frequently cited on the topic<sup>37</sup>. This theory can be summarised in the part of Holmes' reasoning in which he stated: But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of

<sup>34</sup> Nicita, A., *Il mercato delle verità. Come la disinformazione minaccia la democrazia*, Bologna, Il Mulino, 2021, 55ss

<sup>35</sup> Pitruzzella, G., Pollicino, O., *Disinformation and hate speech. A european constitutional perspective*, Milano, Egea, 2020

<sup>36</sup> Lamberti, A., *Libertà di informazione e democrazia ai tempi della società digitale: problemi e prospettive*, in *Consulta Online*, 2/2022, 749, 764

<sup>37</sup> *Abrams v. United States*, 250 U.S. 616 (1919)

their own conduct that the ultimate good desired is better reached by free trade in ideas – that the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out.

Thus, even the most unpopular and uncomfortable opinions and ideas must enjoy protection, as part of a marketplace of ideas that constitutes their natural playground and at the same time the best test for these ideas, depending on their content and authority, to gain agreement or not<sup>38</sup>. This thinking was later consolidated in various pronouncements that constituted the free marketplace of ideas doctrine with regard to the First Amendment of the United States Constitution, which linked individual freedom of expression with the attainment of the public good represented by the achievement of truth<sup>39</sup>.

This idea of free expression was also endorsed by the European Court of Human Rights in *Handyside v. Royaume Uni* which expressed itself in favour of guaranteeing the circulation of all information, including information that offends the state itself or part of the population, as part of the spirit of pluralism without which democratic society cannot exist<sup>40</sup>.

If we read through the eyes of a hyper-connected and filtered world a theory born in times long gone by from a technological point of view, we can see how this imaginary ideal market responds more to economic logic than to the principles of democratic debate, because the personalised exclusion of information makes the free market of ideas a privatised and fragmented market, which undermines any space for constructive confrontation with a management of the circulation of content entrusted to algorithms aimed at circumscribing the field of recipients of certain advertisements.

In order to highlight how the relationship between the free confrontation of ideas and the manipulation of information caused by algorithms and social networks entails serious problems for the health of the community, part of the US doctrine adopts the metaphor of the public forum, which is essential for a healthy and vital democracy, and which needs to be inclusive and open to all citizens, and therefore should be protected from excessive restrictions and regulations that could limit freedom of expression and access to information<sup>41</sup>. This imaginary space of dematerialised public debate, according to some, is already dead and has irreversibly caused the demise of the constitutional protection of thought<sup>42</sup>.

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<sup>38</sup> Pollicino, O., «La prospettiva costituzionale sulla libertà di espressione nell'era di Internet», in *MediaLaws*, 1/2018, 17ss

<sup>39</sup> Nicita, A., *Il mercato delle verità*, 136ss

<sup>40</sup> Pinelli, C., «Postverità, verità e libertà di manifestazione del pensiero», in *Media Laws*, 1/2017, 41, 46

<sup>41</sup> Sunstein, R.C., *Republic 2.0*, Princeton, Princeton University press, 2007, 6-7

<sup>42</sup> Nunziato, D.C., «The death of the public forum in cyberspace», in *Berkeley Tech Law School*, 1115/2005, 5

The ideal, but difficult to implement, solution, according to Sunstein, would consist in a kind of valorisation of uncertainty and randomness, meaning that every citizen, digital and non-digital, would be exposed to materials and encounters that he or she would not have chosen in advance, unplanned and unanticipated, so as to ensure the encounter of the most distant experiences, an element of the foundations of a digital politeia.

### 3. PRIVATE CENSORSHIP AND LACK OF SOVEREIGNTY: CONSIDERATIONS STARTING FROM THE TRUMP'S CASE

The problems briefly analysed above are part of the same framework — and at the same time one of the causes — of the phenomenon of censorship and its new privatised dimension.

The same assumption that leads to the formation of bubbles, that is, the combination of data, algorithms and the initial insufficiency (if not absence) of rules, also allows private powers to decide what is legitimate and what is illegitimate, and to decide accordingly.

In the same way that they allow, in theory, an unprecedented manifestation of thought, they envisage forms of control of the same through surveillance tools initially designed for economic purposes<sup>43</sup>.

The emblematic case that triggered a huge debate among legal practitioners around the world on the relationship between freedom of expression and private platforms was the one concerning Trump's censorship and expulsion from social networks after the storming of the Capitol Hill. It is not here to deal in detail with the antecedents and the fact itself that we all know about, namely the attempted coup on Capitol Hill fomented by the president himself while still in office through his posts on various social networks according to which the election of Joe Biden from the White House to his detriment was the result of electoral cheating. It is enough to recall one of the posts written during the assault: «These are the things and events that happen when a sacred landslide election victory is so unceremoniously viciously stripped away from great patriots who have been badly unfairly treated for so long. Go home with love in peace. Remember this day forever!», immediately removed from Facebook because it contravened Article 2 of the Community Standards on Dangerous Persons and Organisations<sup>44</sup>.

The episode and the scenes that the whole world witnessed aroused the indignation of democratic countries towards a US president who publicly accused his

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<sup>43</sup> Conti, G.L., *Manifestazione del pensiero attraverso la rete e trasformazione della libertà di espressione: c'è ancora da ballare per strada?*, in *Rivista AIC*, 4/2018, 200, 202

<sup>44</sup> Gerosa, A., «La tutela della libertà di manifestazione del pensiero nella rete tra Independent Oversight Board e ruolo dei pubblici poteri. Commenti a margine della decisione n. 2021-001-FB-FBR», in *Forum di Quaderni Costituzionali*, 2/2021, 427, 428ss

own country of falsifying the election result and called on his supporters to physically intervene at the Capitol, the symbolic place of American democracy. If therefore the merits of the issue concerning the former US president are not up for debate, as the condemnation of his actions and the consequences of his words are unanimous, the actions taken by the likes of Facebook and Twitter are highly perplexing. On the one hand, it is understandable and understandable that, given the dangerous consequences for public order and democratic order itself, the social networks have deleted the president's incriminated posts, but his subsequent expulsion, initially for an indefinite period of time, is a cause for concern.

The decision to prevent Trump from continuing to communicate through platforms that reach billions of people has brought to light the problem of censorship, aggravated by the fact that in this case we are not dealing with ordinary citizens but with a person democratically elected by the people. The crux of the matter, however, is not the expulsion from the social network but who took the decision: subjects who do not hold any institutional role and who are therefore not subject to public law rules like any judicial body, or who are not regulated in detail like traditional press or television organs.

It is now superfluous to reiterate how political communication and the same relationship with the community to which one belongs in the digital age passes fundamentally through online channels and thus in particular through social networks, therefore, preventing a person at the centre of the political arena from being able to communicate with his constituents and with the supporters of the opposing party is an extreme limitation of freedom of expression and an extreme downsizing of the debate in the public forum by not allowing a clash of different ideas and visions, even if some of them are subversive, provided, of course, that these ideas do not incite the commission of crimes. Indeed, this would be a more or less explicit limitation of freedom of expression according to the principles of the US Supreme Court ruling 'Brandenburg v. Ohio'<sup>45</sup>, perfectly applicable here as an attempt to subvert the democratic order and consequently a crime not protectable by the First Amendment on free expression<sup>46</sup>.

Alongside the media-political process and, more importantly, the proceedings in the US Congress to call for the impeachment of the President, a para-jurisdictional process all within the Meta-run platform has been established.

In 2019, Facebook had proudly announced the establishment of the Facebook Oversight Board (FOB), an independent oversight board based in London, which was given the task of It was the social network itself, after deciding to 'ban' Trump's profile 'indefinitely and for at least the next two weeks until the peaceful transition of power is complete', that referred the matter to the Board the day after Joe Biden's

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<sup>45</sup> UNITED STATES SUPREME COURT, 395 U.S. 444 (1969), *Brandenburg v. Ohio* 27 febbraio 1968

<sup>46</sup> Manetti, M., «Facebook, Trump e la fedeltà alla Costituzione», in *Forum di Quaderni Costituzionali*, 1/2021, 194, 198

inauguration in the White House; despite being set up to allow ‘censored’ users a second judgement, Facebook can refer the matter directly to the Board for a rapid and priority analysis of its decisions ‘when content may have serious repercussions in the real world 37’ under Art. 3, point 7.2 of the Deed of Incorporation. This exception leaves a wide range of discretion to the FOB in deciding which issues to deal with, casting doubt on the requirement of transparency as one of the body’s founding principles<sup>47</sup>.

The ‘judges’, in their decision FB-691QAMHJ on case 2021-001-FB-FBR of 5 May 2021, endorsed the platform’s measure, effectively excluding the former US president indefinitely for violating Facebook’s community standards, while expressing mild misgivings about the permanent nature of the sanction<sup>48</sup>.

This jurisdictional body is at the heart of the question of the legitimacy of censorship by companies and the relationship between public and private powers.

First of all, it is necessary to start from the assumption that a decision-making body that presents itself as jurisdictional, even if it is private in nature, must respect the fundamental principle of independence with respect to the person who issued the act it is called upon to judge, in order to protect the person who has been subjected to the decision. Although the FOB is described as independent in every aspect, it is easy to see that this is not strictly true.

From an economic point of view, it can be seen that the board is directly financed by a trust, but that the latter is itself financed by Meta, which therefore economically supports, albeit indirectly, those who must judge its ‘cancellations’. Moreover, from a purely legal point of view, the members issue their ‘rulings’ on the basis of, in addition to the ‘community standards’, a number of soft law norms such as the UN Guiding Principles<sup>49</sup>.

The absent, or at least insufficient, independence of the board was evident from Facebook’s refusal to answer questions posed by the committee members about the role of algorithms on the visibility of the former president’s posts and whether or not political figures were pressurised by the action taken.

Many of this body’s decisions, unlike the one on Trump, have unexpectedly been in the opposite direction to the challenged Facebook measures, but, while statistically it can be noted that the ‘judges’ who are part of it have often given reason to those who complained of having suffered arbitrary censorship, this «does

<sup>47</sup> Pelleriti, S., «La governance privata di Facebook e la presa di coscienza del regolatore europeo: qualcosa sta cambiando?», in *Rivista della Regolazione dei Mercati*, 2/2021, 428,438

<sup>48</sup> Fricano, A., «Prove tecniche di resilienza costituzionale: l’assalto a Capitol Hill e la censura mediatica di Donald Trump», in *Gruppo di Pisa, fasc. speciale* 3/2021, 733, 741

<sup>49</sup> Iannotti della Valle, A., «La giurisdizione privata nel mondo digitale al tempo della crisi della sovranità: il modello dell’Oversight Board di Facebook», in *Media Laus*, 26/2021, 144, 154 ss

not cure its genetic flaw: it remains the justicial arm of one of the parties, moreover of the stronger one»<sup>50</sup>.

To the aforementioned issue, which has inevitably had a huge media impact on a global scale, one must add the thousands of cases of arbitrary censorship carried out within Big Tech with the aggravating circumstance of having been decided, at least in the first instance, by algorithms operating in an opaque manner and deciding to silence citizens outside of any authority and without a party responsible for the decision. If now one of the gatekeepers, can limit, or in this case in fact almost eliminate, the possibility of expressing oneself online, in the not too remote future, one day tomorrow ('but tomorrow for real'<sup>51</sup>) in an increasingly digital and connected society, the same problem will arise for an increasing number of behaviours.

The question that a constitutional law scholar must ask himself is: can a private judge decide almost as a last resort to restrict the free online expression of a rights-bearing subject, be it an ordinary citizen or a president democratically elected by millions of people? Should such a decision not be taken only by a public entity, or at least be delegated by it through the provision of specific limits and regulations to be applied in deference to the basic principles of judicial protection? In the words of an Advocate General at the EU Court of Justice, «Is it possible to entrust a handful of multinational companies, each with enormous economic power and an unbelievably vast capacity for influence, with a monopoly on the control of information on the Net (a sort of private censorship)?»<sup>52</sup> Quis custodiet ipsos custodiet?

However, it is necessary to reflect deeply on this phenomenon since, due to the dissemination of hate content through platforms, these have been pushed to an interventionism that risks resulting in de facto censorship on a large scale<sup>53</sup>. Looking at the issue from a broader point of view, the problem of censorship operated and operable, through automated tools in the first phase and screened by less than independent entities later, combined with profiling and micro-targeting, makes thought-forming and debate processes, and thus electoral processes, susceptible to being distorted by the will or by undemocratic entities.

The protection of individual rights and the provision of rules to ensure proper democratic debate is the responsibility of the public authorities, whose sovereignty is increasingly eroded by the growth of private powers that reach beyond geographical borders through the Internet<sup>54</sup>, having succeeded in eluding state and supranational

<sup>50</sup> De Minico, G., «Le fonti al tempo di internet: un personaggio in cerca d'autore», in *Osservatorio sulle Fonti*, Editoriale, 1/2022, 4

<sup>51</sup> Scorza, G., «Blocco di Trump e Parler, a rischio la democrazia: ecco una possibile soluzione», 12 dicembre 2021, <https://www.garantepriacy.it/home/docweb/-/docweb-display/docweb/9518671>

<sup>52</sup> Pitruzzella, G., *La libertà di*, op.cit., 26

<sup>53</sup> Lo Presti, I.M., «CasaPound, Forza Nuova e Facebook. Considerazioni a margine delle recenti ordinanze cautelari e questioni aperte circa la relazione tra partiti politici e social network», in *Forum di Quaderni Costituzionali*, 2/2020, 924, 937

<sup>54</sup> Gatti, A., «Istituzioni e anarchia nella rete. I paradigmi tradizionali della sovranità alla prova di internet», in *Rivista di diritto dell'informazione e dell'informatica*, 3/2019, 711, 718

authorities that until recently left far too much room for self-regulation, causing the centrality of the hierarchical relationship between the state and businesses to fade away at the expense of the vertical relationship, so much so that they have assumed the role of both law-makers and judges.

All this goes far beyond the principles of a democratic order, regardless of the concrete or presumed good faith of the Big Techs.

#### 4. PRIVATIZATION OF ELECTORAL PROCESSES

I meccanismi che hanno portato alla formazione delle bolle e la lentezza dei processi regolatori pubblici inizialmente frenati dalla paura di limitare un fenomeno economico in espansione, uniti alla volontà di alcuni di sfruttare a proprio vantaggio tali elementi, hanno portato a vere e proprie distorsioni dei processi elettorali attraverso molteplici modalità.

Political exponents, parties or, more simply, autonomous groups of sympathisers could manipulate and divert political debate through various expedients by exploiting the consequences of resonance chambers, and what must be pointed out is that this can happen even without the specific intent to distort communication in the digital agora.

The manipulation ways have been effectively summarised in four categories: unintentional dissemination of fake news, intentional spreading of disinformation, intentional pushing of propaganda content and unintentional dissemination of information with no direct political content that is then addressed to politically sensitive subjects by the various algorithmic systems<sup>55</sup>.

The historical period in which we are living is a clear example of how medical or geopolitical news takes on a political significance and contributes to the polarisation and extremisation of various groups that use it as a propaganda tool against governments; suffice it to think of the protests organised around the world against vaccination restrictions and impositions, supported by conspiracy and pseudo-scientific news. To be fair, the extremes caused by information cascades on social media, even if channelled in certain directions for political reasons, have led to phenomena of historical importance such as the 'Arab Spring' however, if the task of law is to regulate phenomena in such a way that they do not lead to degeneration, it is necessary to analyse the other side of the coin.

The first potentially distorting element arises from legitimate online electoral campaigning: platforms offer specific paid services that are purchased by parties or candidates in electoral campaigns to reach their potential voters and avoid dispersing

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<sup>55</sup> Nguyen, H.T., «The disruptive effects of Social Media platforms in democratic will formation processes», in Belov, M., (ed.), *The IT revolution and its impact on state, constitutionalism and public law*, Londra, Bloomsbury Publishing, 2021, 93, 94

a political message to individuals not interested in that content. Using the metaphor of the public forum, it is as if the owner of a public place is paid to be able to express himself within it, with the not insignificant difference of being able to select the passers-by who listen to the political message. This specific market sector sees the crystallisation of a duopoly between Facebook and Google Ads, with a predominant position of the former; in 2017, for instance, UK parties spent a total of £1 million on Google and more than three times as much, around £3.2 million, on Facebook, in a framework that, so far at least, does not guarantee stringent transparency obligations on such advertisements.

The difference between the two services lies in the fact that while the search engine allows priority in search results, as well as advertising on YouTube, the social network allows targeted micro-targeting through its algorithms. The International Institute for Democracy and Electoral Assistance (IDEA) has highlighted how parties, through big data and machine learning are able to have a detailed account of voters' opinions and sentiments, and exploit this knowledge consequently, categorising them into complex groups to be reached with targeted and personalised messages<sup>56</sup>, hidden from other consumers<sup>57</sup>: this is called *digital gerrymandering*<sup>58</sup>.

The new propaganda adapted in the era of surveillance capitalism, if at first glance it almost seems legitimate, raises serious questions about the fairness<sup>59</sup> of the process that begins with the formation of political thought and ends with the moment of choosing representatives, sacred to democracy.

The fact that the various elements are governed by contractual policies and pass through commercial transactions poses a sort of assimilation between mere commercial advertising and political propaganda, mercifying the latter and leaving it at the mercy of competitive dynamics in which the economically weaker gives way to the stronger to the detriment of pluralism and the democratic nature of the debate, which is not guaranteed by public law<sup>60</sup>.

<sup>56</sup> Hardt, S., Data revolution and public will formation, in Belov, M., (a cura di), *The IT revolution and its impact on state*, cit., 109

<sup>57</sup> Hidden messages are called *dark ads* and have been in use for several years . v. Allegri, M. R., *Oltre la par condicio*, Milano, Franco Angeli, 2020, 29ss

<sup>58</sup> Zittrain, J.L., «Engineering an election. Digital gerrymandering poses a threat to democracy», in *Harvard Law Journal*, vo.127. issue 8., 2014, 335ss

<sup>59</sup> Caterina, E., «La comunicazione elettorale sui social media tra autoregolazione e profili di diritto costituzionale», in Di Cosimo, G., (a cura di), *Processi democratici e tecnologie digitali*, Torino, Giappichelli, 2021, 19, 24

<sup>60</sup> Cardone, A., «Profilazione a fini politico-elettorali e tenuta della democrazia rappresentativa: una lezione per le riforme istituzionali e per la regolazione del pluralismo democratico in rete», in Adinolfi, A., Simoncini A., (a cura di), *Protezione dei dati personali e nuove tecnologie. Ricerca interdisciplinare sulle tecniche di profilazione e sulle loro conseguenze giuridiche*, Napoli, Edizioni Scientifiche Italiane, 2022, 133, 137



In addition, the tendency to personalise messages to gain consensus from the division into 'bubbles' leads to a strong disarticulation of political representation<sup>61</sup>, which is pushed to individualise content on the basis of continental situations and 'fashions', completely losing the ideology and worldviews that underpin the differentiation between parties.

The correlation between having enough funds and the right relationships can allow access to the immense amount of data obtained from some platforms decisively distorts the electoral battle. In the first election of Barack Obama to the White House in 2008, there were predictive studies based on the data collected by Google and the predictions its algorithms were able to come up with to the extent that members of his election staff were able to claim: «we knew who ... people were going to vote for before they decided»<sup>62</sup>.

If this first disruption stems from tendencies to exploit the new tools that the net proposes to broaden the audience of voters, the second, much more serious, has a malicious element characterised by the precise will to knowingly manipulate the electoral will.

In 2014, a Harvard lecturer imagined a situation in which, absurdly, the CEO of Facebook decided to support a candidate, all he would have to do was disincentivise potential voters of the opposing party from going to the polls and incentivise his voters.

The hypothesis was not pure fantasy but was based on experiments carried out by Facebook in 2010<sup>63</sup>. In brief, during the midterm elections, Facebook managed to increase the turnout of 60,000 voters and with a knock-on effect, they pushed 340,000 Americans to vote, simply by making the location of polling stations and the possibility of using an 'I Voted' button appear in the news feed.

A few years later, with different subjects but using the same mechanisms, the whole world could see how it was actually possible to manipulate elections on a large scale through digital platforms. It seems almost superfluous to recall the examples of spreading fake news to exploit a media wave for popular votes, as in the case of the Brexit or the election of Donald Trump in the US presidential elections.<sup>64</sup>

The last one caused the most stir, not least because of the media impact of Mark Zuckerberg's summons to the US Congress to explain Facebook's involvement in the Cambridge Analytica affair.

<sup>61</sup> Cardone, A., *Brevi note di sintesi sulla distinzione tra misure individuali e decisioni politiche nella regolazione degli algoritmi e nella definizione dei poteri delle autorità garanti*, in *Osservatorio sulle fonti*, 2/2021, 929, 933

<sup>62</sup> Issemberg, S., *The victory lab: the secret science of victory*, New York, Crown, 2013, 271

<sup>63</sup> Zittrain, J.L., *Engineering an election*, cit., 335

<sup>64</sup> Candido, A., «Libertà di informazione e democrazia ai tempi delle fake news», in *Federalismi.it*, 20/2020, 105, 106; De Minico, G., *L'amministrazione e la sfida dei Big Data*, in AA.VV., *L'amministrazione nell'assetto costituzionale dei poteri. Scritti in onore di V. Cerulli Irelli*, Torino, 2021 573 ss

The same election, however, showed a third and certainly more disturbing aspect of the ability to influence the voter's choice, that of national security to protect against external attacks through those same platforms. It is well known that there was probably also external influence from Russia, through social bots capable of spreading fake news with content that was not directly political but indirectly in favour of Trump's election, precisely in those decisive states because they were in the balance between Republicans and Democrats<sup>65</sup>.

All this has happened, and continues to happen, in the absence of adequate regulation and an increasingly necessary re-appropriation of sovereignty by public actors in dictating the rules of the democratic game.

Decades ago, the economist Coase posed a simple question: why are there precise rules for the market of goods and are they not extended to the market of ideas?<sup>66</sup>.

## 5. THE ROLE OF STATES AND CONSTITUTIONS IN THE ALGORITHMIC ERA

The rules governing various aspects of online relationships have for too long been established by soft law enforced by private entities with their own self-regulations and responding to the logic of profit and often also to ideologies or contingent political convenience. This hybrid form of regulation between self-regulation and co-regulation clearly proved to be inadequate and pushed the EU institutions towards the elaboration of rules of positive law entrusted to the instrument of regulation.

In particular, the importance of the Digital Services Act<sup>67</sup> emerges as an attempt, perhaps not quite conclusive, to re-appropriate European digital sovereignty.

The Digital Services Act, in fact, aims to protect the rights of users of online platforms to ensure a digital environment that is as safe and transparent as possible. This should be achieved through the obligation to remove violent content, illegal services and products and, for larger platforms, also the obligation to monitor and possibly remove (mis)information, misleading and unsourced content through an annual risk assessment. Among the specific provisions are some that would prevent the use of tools hitherto used to condition users: the ban on nudging and dark patterns or the ban on profiling data to identify vulnerable categories and groups, and transparency obligations on online advertising<sup>68</sup>.

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<sup>65</sup> Gori, G., «Social media ed elezioni. I limiti del diritto e il rischio di una modulated democracy», in *Informatica e diritto*, XXVI, 2017, 200, 204

<sup>66</sup> Coase, R.H., «The markets of goods and the market of ideas», in *The american economic review*, vol.62, n.2, 1974, 384-391

<sup>67</sup> Regolamento UE 2022/2065, 22 ottobre 2019, *Regolamento relativo a un mercato unico di servizi digitali e che modifica la direttiva 2000/31/CE*

<sup>68</sup> Cremona, E., *Poteri privati nell'era digitale. Libertà costituzionali, regolazione del mercato, tutela dei diritti*, Napoli, Editoriale Scientifica, 2023, 225

If the DSA would seem to be the act capable of definitively freeing the web from the instruments of alteration of democratic rights and processes at the hands of private powers, so much so as to have it defined as the first act of European Digital Constitutionalism<sup>69</sup>, a careful analysis of the points of the regulatory text reveals how what should be a curb on growing private power contains a sort of delegation of para-normative powers to the platforms themselves<sup>70</sup>. From the content of some of the provisions, it appears that one of the founding objectives of European action, namely to cleanse the Internet of illegal content of all kinds, is 'delegated to private self-regulation'<sup>71</sup>.

In fact, analysing Article 35, according to which platforms may participate in the drafting of codes of conduct 'to contribute to the proper application of this regulation, taking into account in particular the specific challenges of tackling different types of illegal content and systemic risks, in accordance with Union law', it is noted that a further slice of regulatory sovereignty in the digital sphere is in fact transferred by the regulation itself. Ultimately, this provision, combined with the continued exemption from liability for Internet service providers, establishes a form of co-regulation between the public and private sectors<sup>72</sup>.

Beyond the criticisms levelled at the Digital Services Act, one can broadly agree with those who argue that the principle of digital sovereignty envisaged by the DMA on the one hand, with the principle of transparency envisaged by the DSA on the other, is on the whole guaranteed a sort of i-rule of law<sup>73</sup>, which is necessary in order to protect in the digital dimension the individual spheres both of subjects who operate as mere users of social networks in the free market of ideas, and of those who access them as consumers, as well as those who act in the exercise of business activities; This is based on the consideration that the ever-increasing importance of the media in democratic societies and the role that gatekeepers have in fulfilling a function that should be the public's must be regulated.

The limits of such a regulation, which although registers significant but probably not decisive steps forward, can only be overcome with the concrete implementation of western constitutional principles.

On the profile of the freedom to form the will of the electorate, taking the Italian constitutional system as a reference, the conception that Article 21 of the Italian Constitution, which protects the freedom of expression, has a dual meaning in the

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<sup>69</sup> Di Gregorio, G., *The digital services act: a paradigmatic example of European digital constitutionalism*, in *Diritti Comparati*, maggio 2021

<sup>70</sup> Betzu, M., «Poteri pubblici e poteri privati nel mondo digitale», in *Rivista «Gruppo di Pisa»* 2/2021, 166, 180

<sup>71</sup> De Minico, G., «Fundamental rights, european digital regulation and algorithmic challenge», in *Media Laws*, 1,2021, 9, 21

<sup>72</sup> Vigevani, G.E., «Piattaforme digitali private, potere pubblico e libertà di espressione», in *Diritto Costituzionale*, 2/2023, *Diritti di libertà e nuove tecnologie*, 41, 51

<sup>73</sup> Engel, A., Grassot, X., «The digital market act. A new era for competition law and fundamental rights in the EU digital single market», in *Eu Law Live, weekend edition*, 11/2022, 7

direction of configuring it as a right essentially aimed at guaranteeing individuals' participation in shaping national politics, is now well established<sup>74</sup>.

The Italian Constitutional Court has repeatedly had occasion to emphasise that, in addition to the active profile of the freedom to express oneself and thus to inform, there is also the passive side of the right to be informed, which in turn places positive obligations on the State to guarantee a reception of information that is free, transparent, unfiltered and above all pluralist<sup>75</sup>.

This second aspect of the constitutional principle thus affirms a participatory dimension of law that binds the freely expressing subject to the recipient of the information, who must be in a position to receive information that is reliable and contains ideas of different signatures from each other<sup>76</sup>.

In Judgment No. 112 of 1993, it was specified that «the right to information» should be «determined and qualified with reference to the founding values of the form of state outlined by the constitution, which require that our democracy be based on free public opinion and be able to develop through the equal competition of all in the formation of the general will.» Hence the need to characterize and qualify the right by reason of the pluralism of sources of information; the objectivity and impartiality of the data provided; the completeness, fairness and continuity of information activity; and respect for human dignity and other primary values guaranteed by the constitution<sup>77</sup>.

Ensuring a full right to be informed means guaranteeing a free formation of the electoral will and the proper conduct of democratic electoral processes, and guaranteeing these must necessarily be the state through the force of its constitutional principles implemented through positive state intervention; this does not mean limiting the economic freedom of digital platforms but ensuring that in the exercise of their business activities the founding principles of democracies are not harmed and, on the contrary, contribute to the social value of private activities as a useful tool for community growth.

The establishment of state sovereignty, together with the indispensable supranational regulation, would ensure the persistence of the democratic form of state even in its abstract and digital dimension, through the protection of the sovereignty of the citizen, threatened by the risk of becoming a mere consumer even in political dynamics. Legislators, both in European and American environment, has to share

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<sup>74</sup> Barile P., *Libertà di manifestazione del pensiero*, Milano, Giuffrè, 1975, 10

<sup>75</sup> Nicastro, G., «Libertà di manifestazione del pensiero e tutela della personalità nella giurisprudenza della Corte Costituzionale», in *CorteCostituzionale.it*, Maggio 2015, p.4, [https://www.cortecostituzionale.it/documenti/convegni\\_seminari/stu\\_284.pdf](https://www.cortecostituzionale.it/documenti/convegni_seminari/stu_284.pdf)

<sup>76</sup> Papa, A., «Democrazia della comunicazione e formazione dell'opinione pubblica», in *Federalismi.it*, 1/2017, 6 ss

<sup>77</sup> Cheli, E., Libertà di informazione e pluralismo informativo negli indirizzi della giurisprudenza costituzionale, in Pisaneschi, A., Violini, L., (a cura di), *Poteri, garanzie e diritti a sessanta anni dalla Costituzione. Scritti per Giovanni Grottanelli De' Santi*. Vol.II, 2007, Milano, Giuffrè, 1405

the common idea to overcome the State Action Doctrine<sup>78</sup> that is still alive in United States. In fact, according to this ancient theory, constitutional norms are designed to protect citizens only against the abuse of public power, and not also against private actors, basically in a vertical perspective. Nowadays is clear that private powers are attempting to individual rights, and they must respect all constitutional rules, acceding to the opposite, and European, doctrine of *drittwirkung*<sup>79</sup>.

Ultimately, but as a first objective, it must be ensured that the online world does not, due to the crisis of the modern state, become a state in its own right, with absolutist (or neo-feudal<sup>80</sup>) dynamics steeped in capitalist philosophies and impermeable to constitutional values<sup>81</sup>, in which democratic processes are mere commercial relations.

**Título:**

Libertad de pensamiento en la era algorítmica: proceso electoral y «democracia burbuja»

**Sumario:**

1. EL NUEVO FORO PÚBLICO: FILTROS Y BURBUJAS. 2. MERCADO DIGITAL DE IDEAS SIN COMPROMISO. 3. CENSURA PRIVADA Y FALTA DE SOBERANÍA: CONSIDERACIONES A PARTIR DEL CASO TRUMP 4. LA PRIVATIZACIÓN DE LOS PROCESOS ELECTORALES. 5. EL PAPEL DE LOS ESTADOS Y LAS CONSTITUCIONES EN LA ERA ALGORÍTMICA.

**Resumen:**

La «era algorítmica» está dominada por actores privados digitales que condicionan la vida cotidiana de las personas. La nueva fase del capitalismo

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<sup>78</sup> Gardbaum S., «The «Horizontal Effect» of Constitutional Rights,» in *Michigan Law Review*, 102, 2003, 388-458

<sup>79</sup> About this whole topic, Pollicino, O., «L'efficacia orizzontale dei diritti fondamentali previsti dalla Carta La giurisprudenza della Corte di giustizia in materia di digital privacy come osservatorio privilegiato», in *MediaLaws*, 3/2018

<sup>80</sup> Cerrina Feroni, G., «Il metaverso tra problemi epistemologici, etici e giuridici», in *MediaLaws*, 1/2023, 20, 32; Venanzoni, A., «Cyber-costituzionalismo: la società digitale tra siliconizzazione, capitalismo delle piattaforme e reazioni costituzionali», in *Riv. it. Informatica e diritto*, 1/2020, 5, 11. Both referring to the perspective of Metaverse as a further level of dematerialisation of social and electoral processes, underling the fact that they are completely ruled by private actors

<sup>81</sup> Di Majo, L., «L'art.2 della Costituzione e il Metaverso», in *MediaLaws*, 1/2023, 35, 49

con el big data y la IA como pilares está cambiando el acceso a la información y, en consecuencia, la libertad de moldear nuestro pensamiento. A través de la personalización de cualquier contenido digital, se anima a todo el mundo a enfatizar sus prejuicios, haciendo que el debate público y político sea más polarizado y con menos diálogo y compromiso. En este trabajo se analizará cómo las nuevas tecnologías, a través de las plataformas digitales, están condicionando los procesos electorales, la libertad de expresión y la libre formación de la voluntad electoral. Por último, se hará hincapié en cómo la correcta regulación de la Unión Europea debe fortalecerse con el papel de las constituciones nacionales capaces de proteger a los ciudadanos y al orden democrático.

**Abstract:**

The «algorithmic era» is dominated by digital private actors who condition everyday life of people. The new phase of capitalism with big data and AI as pillars is changing the access to information and consequently the freedom to shape our thinking. Through the personalization of any digital content, everyone is encouraged to emphasize their prejudices, making public and political debate more polarized and with less dialogue and compromise. This paper will analyse how new technologies, through digital platforms, are conditioning electoral processes, freedom of expression and the free formation of the electoral will. Finally, it will be emphasised how the proper regulation of the European Union must be made stronger by the role of national constitutions capable of protecting citizens and the democratic order.

**Palabras clave:**

democracia digital; proceso electoral; libertad de expresión

**Keywords:**

digital democracy; electoral process; freedom of expression