

The human person in the “silicon universe”*

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Abstract

Digital platforms, through artificial intelligence, challenge the categories ‘person’ and ‘self-determination’ in the virtual reality.

The state abdicates in favour of sovereigns with a silicon crown.

Against this backdrop lies the classic theme of the relationship between power and authority, between constitutionalism and digital sovereignty.

The human being abandons the habeas corpus that classical constitutionalism wants to preserve because he surrenders himself to digital platforms.

Digital platforms manifest themselves as new and unprecedented centres of power that national and European regulation attempts to curb with difficulty.

Summary

1. The new era in the “silicon universe”: from Artificial Intelligence to Metaverse. - 2. The theoretical aspect. - 3. The legal aspect. - 4. Conclusion

Keywords

digital platforms - artificial intelligence - constitutionalism - digital sovereignty

1. The new era in the “silicon universe”: from Artificial Intelligence to Metaverse

The law regulates with considerable delay the critical consequences that technological progress generates.

Science and technological progress move the law as pawn in a chessboard and, often, the law is under checkmate.

It happened in the field of ethically sensitive matters as abortion, medically assisted procreation, end-of-life; it also happened for the critical aspects of the Artificial Intelligence, even if this topic has been discussed in the U.S.A. since 1950¹.

The European legislator and some doctrines are comparing on a new world founded on mechanisms of algorithms and Artificial Intelligence only recently: the world of

*L'articolo è stato sottoposto, in conformità al regolamento della Rivista, a referaggio “a doppio cieco”.

¹ A. Turing, *Computing machinery and intelligence*, in *Mind*, 236, 1950, 433 ss.

digital platforms², a sort of “silicon universe”³, where the fundamental rights are under pressure.

In the universe of digital platforms (where the Metaverse is the ultimate frontier), there are opportunities, of course, but also a lot of risks⁴ for human persons and for the human rights, even though they are recognized, over the long course of centuries, in the Constitution and in the Human Rights Charters.

In fact, digital platforms put pressure on the person and his/her rights that are subjected only to economic profit in favour of the silicon sovereigns⁵.

So, what is the role of the law? It is the regulation, it is to anticipate the events, it is to adopt a position to legally relevant facts that affecting the behaviour of the people, putting under stress both human rights, both legal system.

Nowadays, someone has faced the problems brought by digital platforms⁶ and Metaverse⁷, where human person genetically mutates in a virtual body, a sort of “digital immigrant”⁸.

The telematic network surely is a fundamental step for the progress of society but, in this world, there are a lot of traps: digital sovereigns manifest themselves as centres of power, they extract and manipulate big data, so virtual person is exposed to a lot of illegal practices in these “cloud empires”⁹.

Fundamental rights are not maximized, and the financial gain is the best into the platform world, so one of the most important achievement of the constitutionalism – the *habeas corpus* – is not preserved by a social and economic power exercised by “virtual sovereigns”¹⁰.

Therefore, it is very difficult to practice classic categories of constitutionalism in this

² R. Larson, *Law, Society and Digital Platforms: Normative Aspects of Large-scale Data-Driven Tech Companies*, in *The RCSL-SDJ Lisbon Meeting 2018 “Law and Citizenship Beyond The States”*, Lisbon, 2018, H. Sheikh, *European Digital Sovereignty: A Layered Approach*, in *Digital Society*, 1, 2022, L.S. Jones, *On the Systemic Importance of Digital Platforms*, in *University of Pennsylvania Journal of Business Law*, 25, 2023

³ *Silicon* is the adjective that we can utilize to identify this unusual world. See, on this field, J. Gonzalez, *The Silicon Doctrine*, doctoral thesis, University of Auckland, 2021.

⁴ On these aspects, see A. D’Aloia (ed.), *Intelligenza artificiale e diritto. Come regolare un mondo nuovo*, Milan, 2021, V. Zeno Zencovich, *Artificial intelligence, natural stupidity and other legal idiocies*, in *Rivista di diritto dei media*, 1, 2024.

⁵ D. Haberly, *Asset Management as a Digital Platform Industry: A Global Financial Network Perspective*, in *Geoforum*, 106, 2017, J. Andersson Schwarz, *Platform Logic: An Interdisciplinary Approach to the Platform-Based Economy*, in *Policy & Internet*, 2017. The paper by World Economic Forum, *Platforms and Ecosystems: Enabling the Digital Economy*, 2019, is available online.

⁶ Above all and recently, F. Paruzzo, *I sovrani della rete. Piattaforme digitali e limiti costituzionali al potere privato*, Naples, 2022.

⁷ M. Zaihd Iqbal – A.G. Campbell, *Metaverse as Tech for Good: Current Progress and Emerging Opportunities*, in *Virtual Worlds*, 2, 2023 and, in this journal, 1, 2023, L. Di Majo, *L’articolo 2 della Costituzione e il Metaverso*.

⁸ L. Floridi, *The Onlife Manifesto. Being Human in a Hyperconnected Era*, Berlin-Heidelberg, 2015.

⁹ V. Lehdonvirta, *Cloud empires. How digital platforms overtaking the State and how we can regain control*, Cambridge, 2022.

¹⁰ M. Kelton – M. Sullivan – Z. Rogers – E. Bienvenue – S. Troath, *Virtual sovereignty? Private internet capital, digital platforms and infrastructural power in the United States*, in *International Affairs*, 6, 2022, 1977 ss. For S. Polsky, *The End of the Future: Governing Consequence in the Age of Digital Sovereignty*, Washington-London, 2019, we are in a critical era.

new era, even if (in this new and impervious dimension) it is necessary try to take new juridical route that can regulates the parallel universe, where fundamental rights are submitted to financial gain.

Digital platforms are managed by external agents who aim to maximize economic profit.

To understand the problems, on this theme, we have to consider two aspects: a theoretical aspect and a juridical aspect, from an analysis of a new era brought by the Metaverse.

The “silicon universe” is based on “blockchain” mechanisms and algorithms that influenced the digital migrants.

Specifically, regarding the Artificial Intelligence, the best experts of the subject debated both the opportunities and risks that may arise from the use of disruptive technologies that are revolutionizing the world, that’s to say human life and its activities.

Now, over the algorithm, we have an “extra” problem: the Metaverse, one of the most debated concept of this new era. The Metaverse is the last frontier of the development of digital platforms.

The word Metaverse was coined by Neal Stephenson, in a famous novel called *Snow Crash*, where the author described a virtual world that persists over time and involves almost every area of human existence, raging and interacting with it.

Up to now, the legal order has not find yet a shared definition of Metaverse. Only in a document of *European Parliament Research Service*, we have a first description of what the Metaverse is. It is considered as «an immersive and constant virtual 3D world where people interact by means of an avatar to carry out a wide range of activities. Such activities can range from leisure and gaming to professional and commercial interactions, financial transactions or even health interventions such as surgery»¹¹.

But it is not sufficient to try to regulate this new parallel world founded on algorithm and on economics Artificial Intelligence models, characterized by persistence, interactions, pervasiveness, economic influence on virtual person¹².

The bosses of these immersive platforms decide architecture and protocols of the “silicon universe”, where economic gains exceed fundamental rights that recede in this world.

Fundamental rights recede because legislator has not yet bothered to regulate Metaverse; fundamental rights recede because the new virtual sovereigns capture personal data, control and build loyalty and absorb people in these digital platforms: in short, your device knows you, it knows where you are and in which moment. The virtual body is subject to unlimited economic initiative.

Fundamental rights recede because in the Metaverse, but also in all the other platforms, unsanctioned illegal practices are widespread, such as verbal harassment, incitement to hatred, anti-Semitic projections, sexual assaults or pornographic content, dissemination of defamatory content, fraud, malware, tracking aimed at illegally accessing digital wallets storing, No Fungible Tokens, cryptoassets, money laundering

¹¹ [Metaverse Opportunities, risks and policy implications.](#)

¹² L. Floridi, *The Onlife Manifesto Being Human in a Hypervconnected Era*, Edinburgh, 2014.

activities, gambling¹³.

Virtual reality systems are capable of capturing biological data expressed by the users through their virtual body language, such as pupil dilation, eye movement, facial expressions, skin temperature and emotional responses, so treating people no longer just for what they have already manifested to be, but for what they are believed to be in the future.

As the human person immerses himself/herself and his/her physical characteristics in the Metaverse (but also into other types of platforms), more and more personal information about the behaviour assumed is collected to be used to draw individuals, groups, and collective profiles, in order to frame the person in logics of normality or usability by economic subjects.

Through means of probabilistic technologies, the “Big Techno Companies” create a distinct profile on the person. They assemble all the information gathered and they not only create a snapshot of the person, but they are able to derive, with a high level of certainty, the possibility of establishing what the individual’s future behaviour will be.

Individual privacy seems, therefore, to be under attack in a system characterised by innovative data acquisition through “biometric psychography”¹⁴: for example, digital immersive platforms collect and use biological data which are functional to detect intimate details on a user’s likes, dislikes, preferences, interests. This information can lead to even more opaque and intrusive methods of profiling, categorising, manipulating sensitive and vulnerable groups beyond any human relationship¹⁵.

It is, on closer inspection, a standard method of intrusive profiling, loss of control of a virtual body that is continuously subjected to aggressive digital marketing activities and capillary surveillance, and it proves that the «idea of privacy is more “malleable” than you’d expect»¹⁶.

These aspects are closely linked to the economic nature of virtual worlds. Digital companies are sensitive to increasing business and perpetuate anti-competitive and self-referential practices. They are aimed to favouring the “digital home-made” product through the design of websites and application interfaces for mobile devices which influence the behaviour and decision-making process of users. That happens through machine learning models that track and monitor end users through companies that are operating yet in the Metaverse in real time¹⁷.

¹³ A. Fuccillo – V. Nuzzo – M. Rubino de Ritis (eds.), *Universi paralleli. I diritti costituzionali nel metaverso*, Naples, 2023.

¹⁴ Electronic Frontier Foundation (EFF), *Virtual Worlds, Real People: Human Rights in the Metaverse*, 9th December 2021.

¹⁵ On these aspects, see S. Rodotà, *Tecnopolitica. La democrazia e le nuove tecnologie della comunicazione*, Roma-Bari, 2004.

¹⁶ Z. Yang, *The Chinese surveillance state proves that the idea of privacy is more “malleable” than you’d expect*, in *MIT Technology Review*, 10th October 2022, but also A. Ollier-Malaterre, *Living with Digital Surveillance in China: Citizens’ Narratives on Technology, Privacy, and Governance*, London, 2023.

¹⁷ According to research conducted by the Irish company *Research and market*, 55 companies are active in the *Metaverse*, including Meta Platforms Inc., Apple Inc., Google, Tencent Holdings, Microsoft, ByteDance Ltd., Alibaba Cloud, Sony Corporation, Baidu, Binance, Walmart, Nike, Gap. Inc, Netflix, Adidas and Atari.

So, is the Metaverse, that is founded on Artificial Intelligence models, really intelligent and smart? Who controls personal data? Who is responsible for the processing of personal data? Where is personal data stored? Is personal data marketed?

Currently, there are no answers to these questions.

This is not a very reassuring prospect for the law.

The Metaverse is an extraordinary example of a world where the society is organized on individuals to whom will be assigned different functions not based on a political or social decision, but through biological conditioning¹⁸.

In this “silicon universe” relive some historical questions: are we animals or are we automatons¹⁹? Are we becoming happy slaves of machines? Are we losing our naturalness or is there some element that will continue to differentiate us from pure being and from pure belonging to the world of machines²⁰?

The human person is really vulnerable in front of the economic power that is exercised into the digital ecosystem, where it is consuming the third anthropological threshold: the crisis of being in the world, the crisis of presence in the world, indeed innovative, and in some ways unusual, to live it through parallel projections in completely unknown digital ecosystems.

The person is profoundly different in parallel universes as compared to his real paradigm.

Probably people are progressively moving away from the *habeas corpus* that classical constitutionalism has intended (and it intends) preserve, circumscribing the State in the exercise of the power of empire and in the legitimate exercise of force.

The network shapes man and submits him to its own rules, because the rules that digital sovereigns impose themselves look to the maximization of profit at the expense of the solid guarantees of fundamental rights recognized by the Charters and implemented by the Courts.

On this scenario, we have to consider two aspects: the theoretical aspect and the legal aspect.

2. The theoretical aspect

Well, human beings have been influenced by scientific and technological revolutions and they now relate to others in a new ecosystem. It is not a matter of the so-called “body swapping”²¹, but something wider, because the new world (were digital immigrants move) is a sort of “The Big Brother”²², another dimension respect to the

¹⁸ A. Huxley, *A Brave New World*, London, 1932. In this sense J.E. Butler, *The Double Standard of Morality*, in *Friends' Intelligencer and Journal*, XLIII, Philadelphia, 27th November 1886, 757-758, talks about a «double standard».

¹⁹ W. James, *We are Automata?*, Moscow, 1956.

²⁰ S. Butler, *Erenhon*, Milan, 1988.

²¹ V.I. Petkova – E. Ehrsson, *If I Were You: Perceptual Illusion of Body Swapping*, in *PlosONE*, 3, 2008.

²² The problems about surveillance, was were already confronted by, M. Anthony, *The New China: Big Brother, Brave New World or Harmonious Society?*, in *Journal of Futures Studies*, 4, 2007.

human life.

Let's take a step back.

Many years ago, Stefano Rodotà defined the human person like “neurobioinforma-chine”²³.

From this neologism, we can extract four words (“neuro”, “bio”, “info”, “machine”) that resume all the technologies who conform the body not only into the physical point of view, but also with regards to mental processes and into the mood of the communication.

We are now in a new era, where the palimpsest of life is written by the biology and not only by the law.

We know that life is subjected to regulation. For some years, the palimpsest of life was written by law.

After the discovery of DNA (thanks to Watson and Creek) biology starts writing the palimpsest of life and the human being becomes a “neurobioinforma-machine”, similar to the figure of the *homme machine*, described by Julian Offray de La Mettrie²⁴.

Our body is continuously invaded, conditioned and reconstructed through data from the biological revolution, from genetic and computer science.

This is the starting point, but probably this reflection has very deep roots.

We can refer to Bacon, that wrote an amazing essay, *The new Atlantis*, where described a society projected into the future: «the prolongation of life. The restitution of youth in some degree. The retardation of age. The curing of diseases counted incurable. The mitigation of pain. More easy and less loathsome purgins. The increasing of strength and activity. The increasing of ability to suffer torture or pain. The altering of complexus, and fatness and leanness. The altering of statures. The altering of features. The increasing and exalting of the intellectual parts. Versions of bodies into other bodies. Making new species. Transplanting of one species into another»²⁵.

It is the description of what's happening, isn't it?

All these themes are incorporated into the post-humanist and transhumanist ideology, especially in the studies of Nick Bostrom that follows Bacon's position to find the same perspective that shows how this strand looks at what science can determine for the destiny of the human person²⁶.

On this topic, we can also mention an amazing book written by Gunter Anders, in 1957, *The obsolescence of man*²⁷: this title is written without the question mark. He describes a cleavage into the human history and into the human destiny, from the drama of the atomic bomb: what is the relationship between people and technology? Anders describes a transcendental human person that crosses the congenital limits of its nature and passes from a natural sphere in a hybrid and artificial reign.

Similarly, but before him, Aldous Huxley, in *Brave New World*, stated how technology

²³ S. Rodotà, *L'uso umano degli esseri umani*, in *Micromega*, 8, 2015, 121.

²⁴ See A. Vartanian, *La Mettrie's "L'homme machine", a Study in the origins of an Idea*, Princeton, 1960.

²⁵ F. Bacon, *The New Atlantis*, 1626.

²⁶ N. Bostrom, *Transhumanist Values*, in *Journal of Philosophical Research*, 30 (Supplement), 2005, and N. Bostrom, *A history of transhumanist thought*, in *Journal of Evolution and Technology*, 14, 2005.

²⁷ G. Anders, *Die Antiquiertheit des Menschen*, München, 1956.

pushes human beings transcend themselves²⁸.

Well, the teaching left from this extraordinary author is that the technological progress is unstoppable and we have to deal with it. At the same time, the human person will remain a human person, but he will realize new possibility for himself and for his body: it is not a radical passage into an artificial world because the human nature is still its reference. Especially Aldous Huxley spoke about this subject.

Moreover, before the advent of these new immersive ecosystems, the relationship between human and technologies was limited to surgical interventions on the human body: for example, screws and bolts to rebuild the bones, and pacemakers to track heartbeat.

So, the symbiosis between human and technologies is daily life.

Currently, it's possible to link human brain with machine through neuronal system that can extract a lot of information from the brain. We can find one of the best expressions that resume the new scenario into a book written by Hans Jonas²⁹ and into the studies of Mirelle Delmas-Marty who reflected on the scenarios brought by technoscience, in particular on the issue of the relationship between hominization and humanisation³⁰. The first word refers to biological evolution, a sort of unification process of the human species, while the second one take on the differences among human groups founded on different culture: hominization is moving away from Darwinian logic, and is determined by technology.

So, all these novelties are producing a need for universalism that translates into common rules, international conventions.

What are the problems for law caused by the new technological world?

The first issue is the law as arbiter between two anthropologies: the millenary one, linked to the nature, and the technological one, linked to the “body swapping”.

Can the law reproduce natural conditions? Or, on the contrary, does the law maintains a datum of artificiality that does not allow to reproduce the passage from the situations in which there was only case, destiny, necessity to the situations in which there is a choice, decisions, freedom of determinations?

The law, of course, can limit, can regulate, but cannot reproduce the situation that existed in the past. For example, in the past, the way of procreating occurred in only one way; nowadays, instead, the methods of procreation are multiple. For this reason, the law does not preserve the naturalness of procreation, rather the alternative way to birth, in different aspects.

The second issue was debated also in 1927, by Julian Huxley. The problem was “double standard”³¹: we have a lot of possibilities to modify the human bodies, so the risk is to generate a contrast between “people in” and “people out” the processes of “body swapping”, aimed to improving the quality of human nature.

²⁸ A. Huxley, *Brave New World*, United Kingdom, 1932.

²⁹ H. Jonas, *Philosophical Essay: From Ancient Creed to Technological Man*, New Jersey, 1974.

³⁰ M. Delmas Martin (eds.), *Le clonage humain, droits et sociétés, recherche franco-chinoise*, vol. 1, Introduction (with Z. Naigen), Paris, SLC, 2002, M. Delmas-Marty – A. Jeammaud – O. Leclerc (eds.), *Humanisme et droit* éd. Classiques Garnier, 2015.

³¹ J. Huxley, *Religion Without Revelation*, London, 1927.

The third issue concerns the rights to the future. The law, as we said, is characterized by a stabilization function; the law must take note of the reality and it must attribute the most intense protection to the legally relevant behaviour. But, in a future perspective, how do we measure the evolving reality that moves on the unstable ground? Can we reflect on the rights of the future? How can uncertainty be governed by the law? The fourth issue is very simple to formulate, but it is the most difficult to deal with: if we are in a post-human or transhuman era, can rights (as we know now) exist without human person?

So, we can try the answer to this question in the Italian Constitution.

Nowadays we use different adjective referred to rights: we use human rights and inviolable rights, but we often use the expression fundamental rights every time, in particular to the rights recognised in the Constitutions, in the European Charters and in the International Treaties.

It's not a coincidence: we use two expressions as synonymous like human rights and inviolable rights, but we often use another expression, not surprisingly, that is fundamental rights. This expression appears only once in the art. 32 of Italian Constitution in relationship to the health.

This is very important because where the importance of the body is immediately established, the fundamentalism of right is caught by the Constituents, who had the culture of the inviolable human rights and the extraordinary ability to intuit the data of reality.

This is an aspect that brings crucial questions in relation to a new idea of body, that here we can consider as a virtual body: can human rights exist without human person? Do we have to recognize human rights in other directions, instead, than what we identify under formulas like “cyber” or “robots”?

These are questions strictly related to a human person that call a rethinking of legal categories and to the idea of the modernity based on the equality of people, abstracting the natural dimension in which they are located.

We live in a different world respect to the feudal society, where the man is nailed to his birth condition. But now we can consider all people equally, as the great Charters and the great Declarations of human rights said: the people are born free and equal. We must not abandon this route, especially in the “silicon universe”, even if human person is replaced by digital person, because the person, regardless of his/her nature, is anyway protected in the Charters of rights.

The referment of the person is very strong, it structures the entire legal order and it is at the centre of a new technological world, where fundamental principles are equality, autonomy and dignity.

How anachronistic are these values?

For nothing. In fact, they live of an extraordinary continuity because great values, born from a long elaboration, maintain their persistence in this different dimension with characteristics that are linked to the novelty of the situation.

But in the “silicon universe”, people are not free, not equal and not independent because they live under a new form of power³².

³² L. Di Majo – F. Paruzzo, *Nuovi aspetti del potere nel Metaverso*, in M. Calamo Specchia (ed.), *Processi*

We can open a very similar discussion about the dichotomy between bioconservatives and transhumanists, that reflects a dichotomy between *homo sapiens sapiens* and *homo technologicus*³³. Bioconservatives are opposed to any form of change and anything that may represent a threat to society and democracy³⁴, while the transhumanists want to leave to the natural condition of human people thanks to the scientific progress.

I propose an example to explain better what is the problem and how people live in the “silicon universe” under a different power that is exercised by the sovereigns with a “silicon crown”³⁵.

We can consider the differences between morphological freedom and procreative freedom. Thanks to the first one we use the scientific progress without any kind of obstacle, while, thanks to the second one, a human person can extend his/her physical characteristics in another body.

So, the morphological freedom is more acceptable than procreative freedom because the effect of using his/her own body is extend on his/her body too. But, if we consider the procreative freedom in an absolute idea, we don't consider that the juridical effect from an individual choice is produced exactly in the sphere of the unborn that will be limited in their autonomy.

The famous example is a disability replication: a deaf-mute LGBT couple, through a donation of seed of a deaf-mute friend of theirs, gave birth to deaf-mutes. This example is believed as legitimate exercise of procreative freedom, because if a new birth is considered a blessing, more a new birth of deaf-mute is considered a double blessing, because the host community welcome with much more intensity³⁶.

My opinion is radically negative: the human person, born with these disabilities, is conditioned and destined to move in the world with less autonomy: his/her existential dignity is violated without knowing if the unborn child would have wanted this.

In the parallel universe, at the same, the virtual person is conditioned, like the deaf-mute. Conditioning is exercised by a different power coming from digital sovereigns that act through the economic power.

So, we have physician constraints and economics constraints that the law cannot ignore

3. The legal aspect

Well, what is the role of law in this scenario, where the classic theme of the relationship between power and authority emerges declined in the logic of the relationship

politici e nuove tecnologie, Turin, 2024.

³³ A.F. De Toni – C. Battistella, *Dall’Homo sapiens sapiens all’homo technologicus: biconoservatori versus transumanisti*, in *Teoria*, 27, 2007.

³⁴ F. Fukuyama, *The End of History and The last Man*, London, 2020.

³⁵ A. Venanzoni, *Cyber-costituzionalismo: la società digitale tra silicolonizzazione, capitalismo delle piattaforme e reazioni costituzionali*, in *Rivista italiana di informatica e diritto*, 1, 2020

³⁶ On these aspects, see A. Bashford – P. Levine, *The Oxford Handbook of the History of Eugenics*, Oxford, 2010.

between constitutionalism and digital sovereignty³⁷?

The world of digital platforms is a particular ecosystem, in which new and unprecedented centres of power are manifested through opaque procedures, extract data, manipulate behaviours. The “silicon sovereigns” influence private dynamics, they penetrate the sphere of individual rights and freedoms, altering the traditional mechanisms of functioning of democratic dialectics.

In particular, in the dual perspective of philosophy and constitutionalism, it is clear there’s a full awareness of the difficulty of practising the classical instruments.

At this time, we have to identify legal paths that can guide progress in the right direction and guarantee the protections that have been offered to people for so long through the Charters³⁸, also on this new and impervious terrain.

Certainly, the law must regulate, as much as possible, all the legally relevant phenomenon, even the scientific progress.

The law of the economy is the privileged observatory.

After all, the power of platforms was manifested a long time ago, when the trading on line started, thanks to exchange software as B2B and B2C. Verily, some trading systems brought a lot of problems for copyright, as we can remember *Napster*, considered a pirate platform, like many others, where music and video tracks were downloaded. So, the legislator intervened with a very severe punitive law.

Some years later, with the first social networks (*Badoo, Facebook, Instagram, X*), the digital evolution of the platforms starts, and reality has been translated, the bytes took the place of the atoms, the body was dematerialized.

The evolution of the human species has represented a slow growth of the intellectual functions of the human being, excepting the rapid passage from *homo sapiens sapiens* to *homo technologicus*, with the great problems about the governance of the big data by a few of Big Tech Companies.

Here, the DLT technologies (Distributed Ledger Technology), also called blockchain, has upset the idea of currency that is no longer a monopoly of the State, but it begins to be attracted by digital sovereigns in the form of cryptocurrencies like BTC (bitcoin), Stellar (XLM), Litecoin (LTC), Binance Coin (BNB), Tether (USDT), Ether (ETH), USD Coin (USDC), etc.

But what are the limits? Do these digital platforms conflict with European standards and internal rules, especially with *Digital Market Act, Digital Services Act, AI Act* and the art. 41 of Italian Constitution?

In other words, how much do constitutional and European values escape from the market?

This is an important point: when we talk about platforms, considered as places of exchange, we inevitably talk about the market.

The ordinary legislator intervened after a careful analysis of the phenomenon and for the legal profiles of the economy, after a careful analysis of the possible repercussions on the economic-financial system, for example the speculation of Initial Coin Offer-

³⁷ M. Kelton – M. Sullivan – Z. Rogers – E. Bienvenue – S. Troath, *Virtual sovereignty? Private internet capital, digital platforms and infrastructural power in the United States*, cit.

³⁸ L. Di Majo, *L’articolo 2 della Costituzione e il Metaverso*, cit.

ing (ICO), the “derivates”, that are structured around highly volatile cryptocurrencies that have destroyed hundreds of thousands of investment portfolios.

In these fields the role of the legislator is essential to regulate the critical aspects³⁹.

The art. 41 of Italian Constitution, moreover, is a preceptive norm which attributes a static legal situation, a real status in the legal system. At the same time, freedom of economic initiative encounters a limit that resides in the social utility (an expression certainly attributable to the merit that must underlie any atypical negotiating relationship) and, in any case, freedom of economic initiative itself cannot harm health, environment, security, freedom and human dignity.

The freedom of economic initiative must respect a double prejudicial which requires looking at individual utility (economic transactions on platforms) from a recessive point of view with respect to social utility (saving, economic stability, fundamental rights and more).

Italian and European legislators have guaranteed economic freedom within certain limits, with a “soft” approach.

In particular, European legislator is concerned about the drift of the fundamental rights of people, as emerges from the “digital regulatory box” in this field.

Regulation (EU) 2016/679, *General Data Protection Regulation*, manifests the will of the legal right to govern scientific and technological progress. The legislation represented a first step towards the complexity and uncertainty of digital platforms, only recently regulated by Regulation (EU) 2019/1150 on promoting fairness and transparency for business users of online intermediation services, Regulation (EU) 2022/1925, on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (*Digital Markets Act*) and Regulation (EU) 2022/2065 on a single market for digital services and amending Directive 2000/31/EC (*Digital Services Act*)⁴⁰.

The “digital regulatory box” places the person at the centre of the regulation and it’s full of alerts and dripping with finalistic affirmations.

The European legislator has built a perimeter around the person: there are a lot of obligations to the data controller (Regulation (EU) 2016/679), to gatekeeper (art. 5, 6, and 7, Regulation (EU) 1925/2022), to intermediary service providers and information storage (Regulation (EU) 2022/20165).

In particular, the *DSA* and the *DMA* were issued to limit platforms and to provide new obligations for host providers. In these regulations the demand for transparency and guarantee of personal data find a significant space in the procedures of protection and in a paradigm that must be different from the previous regulation on host providers that, currently, are subjected to further forms of liability, not limited to trade in counterfeit or terrorist content (Regulation (EU) 2021/784).

The European Union has grasped the most problematic element of the profitable use

³⁹ On these aspects, see M. Passaretta, *La nuova disciplina antiriciclaggio: tra sistemi di pagamento innovativi e nuove forme di finanziamento alle imprese*, in F. Fimmanò – G. Falcone (eds.), *FinTech*, Naples, 2019.

⁴⁰ A. de Streel – P. Larouche, *The European Digital Markets Act proposal: How to improve a regulatory revolution*, in *Concurrences*, 2, 2021; M. R. Allegri, *Il futuro digitale dell’Unione europea: nuove categorie di intermediari digitali, nuove forme di responsabilità*, in *Rivista italiana di informatica e diritto*, 2, 2021.

of information projected in digital spaces of any type: market, services, information, data governance.

The European package guarantees information in the digital market, monitors investment products, tracks the circulation of money, obliges providers to provide services under transparent objective and subjective conditions, regardless of the location of the platforms.

Of course, respect to the privacy regulation, the object of the protection has taken on a more strictly economic connotation for the progressive change of interpersonal relationships that assume mostly negotiating aspects in the digital dimension.

It is an important awareness of the European legislator, probably deeper to the European Member-State Constitutions (some of those very dated) that could not know such complex phenomena, brought by the technological progress. It seems a proportional approach and also respectful of what is never private initiative that, obviously, must channelled and well identified both subjectively and objectively.

To date we do not know whether the Union legislator has worked well in this jagged and evolving obstacle course, but the criterion of proportionality and a soft attitude seems to be a method that favours the balance between private economic initiative and the protection of fundamental rights, also with regard to the social peculiarities of individual Member States.

The prevalence of economic and trade profiles of the European model does not amount to an underestimation of vulnerability.

Indeed, the close link between the economic exploitation of the virtual person and the transfiguration of one's own intimate sphere finds a place of protection in Regulation (EU) 2022/2065, where the sacrifice of fundamental rights is not the price to pay to allow gatekeeper to open the threshold of the digital worlds, but rather it is the profile on which to measure the degree of protection that platforms are obliged to reserve for digital immigrants.

The cost of fundamental rights, in the virtual dimension is like, a light that turned on harmful practices towards minors (Para. 63, 95, 104 of the preamble) and all those users attracted by those who offer the opportunity to satisfy their own needs, obliging platforms to take measures to avoid or minimise distortions that lead to discrimination against in vulnerable situations, in accordance with data protection law, especially when the information is customized on the basis of particular categories of personal data referred to in art. 9 of Regulation (EU) 2016/679.

4. Conclusion

Is everyone safe? Will this discipline endure over time?

We don't know for sure.

Actually, for example, European legislator still disciplines the "traditional" platforms, but not new immersive world of Metaverse, even if European Commission has approved, on 11 July 2023, has adopted a new strategy on *Web 4.0* and virtual worlds to steer the next technological transition and ensure an open, secure, trustworthy, fair

and inclusive digital environment for EU citizens, businesses and public administrations⁴¹.

But now, we don't know if the *package*, that includes also *AI Act*, will be sufficient. Certainly, in this scenario, the role of the Courts will be fundamental in the process of recognition of rights in the virtual world in the same way as in the real world, but is very difficult to monitor this legislation with the classical instruments of the better regulation.

Experience has shown that the quality of regulation is measured at least every two years.

But if, in such a long period of time for impact studies, new technologies continue their unstoppable race, then we can only hope in a softer discipline.

This means dynamicity and adaptability to the signs of the times generated by progress.

But this continues, at the same times, to put the human person at the centre of the issue, even if in different areas, where constantly his/her fundamental rights must be defended, since they deserve a different fate from the apocalyptic one that philosophers and jurists sometimes imagine.

⁴¹ European Commission, *Towards the next technological transition: Commission presents EU strategy to lead on Web 4.0 and virtual worlds*, available online.