

# DIGITAL VIOLENCE: A THREAT TO HUMAN DIGNITY, A CHALLENGE TO LAW

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## 1. Human dignity

The starting point of my talk is the idea of human dignity which we deem deeply involved in the topic we're going to discuss, namely digital violence. Actually, we think that whenever something negative, harmful is present in a system, the major effort should be devoted not only or not so much to the encroaching variables to be checked, but rather to the positive ones whose enhancement can outweigh and thus drive away the negative ones simply not leaving space to them. Liberty, and also dignity, to be better preserved must be actively affirmed and exerted.

As the anthropologist Gregory Bateson once wrote

It used to be said that “Nature abhors a vacuum”, and indeed something of the sort seems to be true of unused potentiality for change in any biological system. In other words, if a given variable remains too long at some middle value, other variables will encroach upon its freedom, narrowing the tolerance limits until its freedom to move is zero or, more precisely, until any future movement can only be achieved at the price of disturbing the encroaching variables. In other words, the variable which does not change its value becomes *ipso facto* hard programmed. Indeed, this way of stating the genesis of hard-programmed variables is only another way of describing *habit formation*. As a Japanese Zen master once told me, “*To become accustomed to anything is a terrible thing*”. From all of this it follows that to maintain the flexibility of a given variable, either that flexibility must be *exercised*, or the encroaching variables must be directly controlled.<sup>1</sup>

Thus, one possible remedy to the enormous problem of digital abuse should consist in the strengthening, enhancement and protection of human dignity as well as in fostering the awareness of such endowment, in the sense we will try to describe.

<sup>1</sup> G. Bateson, *Steps to an Ecology of Mind*, Jason Aronson, Northvale, NJ-London, 1987, p. 508.

Pope Francis has referred to human dignity so many times, e.g. in the Apostolic Exhortation *Evangelii Gaudium* human dignity occurs 23 times. But every discourse on human dignity requires some assessment on the meaning of this multifaceted, really spawning idea, which makes up the mainstay of the recognition of human rights in most constitutions.

As stated by Judge Aharon Barak, “human dignity is the humanity of a person as such and, underlying that humanity, is a person’s free will and autonomy. It is a person’s freedom to write her life story”.<sup>2</sup>

However human dignity is a mobile idea, a spawning principle, as said. In its richness, it is clarified and deepened through the understanding stemming from any field of human experience and scholarship, especially whenever these fields can bear witness and denounce negations of the humanity of individuals or groups. As stated once by the international law scholar and judge Antonio Cassese, *ex iniuria, oritur ius*, namely it is drawing on the experience of offences and injustice that law can better define its principles, bound to protect effectively every person, especially the most vulnerable ones.

This perspective of the *homo in vinculis*, the “bonded, jailed man” is extremely thought-provoking to this effect. The mandate, in Italy at least, to criminal justice and punishment to strive for a *possible* rehabilitation of every offender is, as such, a development of the same idea of human dignity, as this key principle assumes that every individual, whatever crime he/she has committed, simply as a human being, *can* (re)“write his/her story” from the start.

It is just the idea of dignity we received as inheritance from the Renaissance culture. The same idea which inspired the great humanist Giovanni Pico della Mirandola when he described human beings as capable of any metamorphoses, to transform themselves in all conceivable creatures, either animals, or plants, through their ingenious mind and imagination.<sup>3</sup> Moreover, from human beings we can and must thus expect radical discontinuity in the course of their lives and this is the potential of metamorphoses which makes up an essential element of their dignity.

This perspective somewhat even trickles out of recent judgements by the Italian Constitutional Court (e.g. no. 56 of 31/03/2021), where the

<sup>2</sup> A. Barak, *Human Dignity. The Constitutional Value and the Constitutional Right*, Cambridge U.P., Cambridge, 2015.

<sup>3</sup> G. Pico della Mirandola, *La dignità dell’uomo*, ed. by R. Ebgli, Einaudi, Torino, 2021; E. Wind, *Pagan Mysteries in the Renaissance*, Yale U.P., New Haven, 1958.

openness to future changes of one's own personality (and thus to rehabilitation) is admitted in spite of the criminal category or classification inherent in the charge for which people have been convicted and detained; "the conduct subsequent to the crime committed is projected into the future and can mark a radical discontinuity in the person's attitudes and in his social relationships".

## 2. Violence and digital violence

Such feature of human dignity should be put to good use while discussing that particular kind of violence which is "digital violence".

Human dignity is offended as such whenever an attack comprehensively besets the humanity of an individual, and I therefore deem that the quintessential offence against human dignity is violence.

As aptly stated in innumerable international and national legal statements, e.g. in the Constitution of Greece (article 7 sub-article (2)): "Torture, any bodily maltreatment, impairment of health, or the use of psychological violence as well as any other offence against human dignity are prohibited and punished as provided by law".<sup>4</sup> And it is worth mentioning article 613-bis of the Italian criminal code punishing that kind of extreme violence which is torture, also defined as consisting in behaviours "involving an inhuman and degrading treatment for the dignity of the person". This article complies, at least in part, with the 1984 United Nations *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, which has affirmed that "equal and inalienable rights of all members of the human family", namely "the foundation of freedom, justice and peace in the world", "derive from the inherent dignity of the human person".

If violence is perhaps the most visible and clear-cut aggression upon human dignity, digital violence, albeit not carried out through physical means and not being strictly an "attack to the body", as violence is construed,<sup>5</sup> makes no exception.

This kind of violence has been defined as "discrimination, harassment and hate on the Web including flaming, trolling, misogyny, racism and Islamophobia".<sup>6</sup>

<sup>4</sup> Barak, *op. cit.*, p. 55.

<sup>5</sup> A. Ceretti, L. Natali, *Cosmologie violente. Percorsi di vite criminali*, Raffaello Cortina, Milano, 2009.

<sup>6</sup> K. Lumsden, E. Harmer, *Exploring Digital Violence and Discrimination on the Web*, Palgrave Macmillan, London, 2019, p. 1.

It apparently includes the hate speech which, according to the UNO definition,<sup>7</sup> is “any kind of communication in speech, writing or behaviour, that attacks or uses pejorative or discriminatory language with reference to a person or a group on the basis of who they are, in other words, based on their religion, ethnicity, nationality, race, colour, descent, gender or other identity factor”.

I would also quote from the Additional Protocol to the Convention on Cybercrime (2003), which defines as “racist and xenophobic material” “any written material, any image or any other representation of ideas or theories, which advocates, promotes or incites hatred, discrimination or violence, against any individual or group of individuals, based on race, colour, descent or national or ethnic origin, as well as religion if used as a pretext for any of these factors”.<sup>8</sup> Although hate speech and *ad personam* forms of hatred already existed before the diffusion of new digital technologies and continue to exist even offline, a few features of the web and social media platforms, such as their diffusivity and “permanency”, amplify their harmful consequences.<sup>9</sup> Moreover, the possibility of acting anonymously fosters mechanisms of “toxic disinhibition”<sup>10</sup> and the immediacy of online interactions does not stimulate web users to think enough before taking action.<sup>11</sup> In addition, we should be aware that before any single attack or *actus reus* is committed on the web, a kind of subtle and quite obnoxious violence is just inherent, even ubiquitous in the current digital environment, in the infosphere.<sup>12</sup> It may be called “algorithm violence” and has two relevant features, partially connected to each other.

On the one hand, numerous studies attest that the algorithms that govern the logic of visibility of the contents on the network favour and amplify digital violence. Actually, the automated processes of indexing content based on user profiling contribute to viralization, as well as to the trivialization of offensive contents. The posts containing incitement to violence

<sup>7</sup> UN Strategy and Plan of Action on Hate Speech, 18 June 2019, [www.un.org](http://www.un.org)

<sup>8</sup> Council of Europe, *Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems*, Strasbourg, 28 January 2003.

<sup>9</sup> UNESCO, *Countering Online Hate Speech*, Paris, 2015; B. Perry, P. Olsson, *Cyber-hate: The Globalization of Hate*, in *Info. & Comm. Tech. L.*, 18 (2008), pp. 185 *et seq.*

<sup>10</sup> See P. Wallace, *The Psychology of the Internet*, Cambridge U.P., Cambridge, 2016.

<sup>11</sup> See D. Kahneman, *Thinking, Fast and Slow*, Penguins Books, New York, 2011.

<sup>12</sup> L. Floridi, Ethics in the Infosphere, in *The Philosophers' Magazine*, 16 (2001), pp. 18-19.

and discrimination, intimidation and denigration, as intrinsically sensationalist, in fact risk activating the selective function of digital platforms, thus increasing the number of users and therefore the likelihood that they will be further appreciated and shared.<sup>13</sup> While contributing to the “media success” of such contents, they also support the mechanisms of moral disengagement, and in particular the so-called spread of responsibility: the more likes and shares a post gains, the less the user feels “responsible” for appreciating or sharing it in turn, thus contributing to the “normalization” of digital violence: the more frequently hateful contents appear, the greater the effects of the user’s addiction to verbal violence.<sup>14</sup> On the other hand, but I would say primarily, the handling of algorithms based on user profiling hinders effective pluralism and therefore the freedom of expression and the “full development of the human person” (as stated in the Italian Constitution).

As experts explain, the user finds himself in a sort of self-referential bubble, defined as a “filter bubble”, or, according to another quite revealing metaphor, in an “echo chamber”, that is, in a virtual space where the opinions he has already expressed or theories he has searched or shared are echoed. In this way, haters and conspiracy theorists’ rejection of fact-checking is facilitated by the scarcity of alternative content they can encounter and their delusional beliefs are strengthened and confirmed.<sup>15</sup>

In this sense new technologies, and especially the Internet, help people to listen to the opinions of other individuals of the same mindset and to isolate themselves from different ideas, thereby creating a fertile ground for polarization.<sup>16</sup> All these features somewhat seem to resemble in the digital era what P. Bourdieu<sup>17</sup> already remarked about television many years ago,

<sup>13</sup> See S. Pasta, *Razzismi 2.0. Analisi socio-educativa dell’odio online*, Morcelliana, Brescia, 2018; M. Mensi, P. Falletta, *Il diritto del Web*, Cedam, Padova, 2018; M. Santerini, *La mente ostile: forme dell’odio contemporanea*, Raffaello Cortina, Milano, 2021.

<sup>14</sup> A. Bandura, *Moral Disengagement: How People do Harm and Live with Themselves*, Worth Publishers, New York, 2015; Id., Failures in Self-Regulation: Energy Depletion or Selective Disengagement? in *Psychological Inquiry*, 7 (1996), pp. 20–24. See also S.U. Noble, *Algorithms of Oppression: How Search Engines Reinforce Racism*, New York U.P., New York, 2018.

<sup>15</sup> E. Pariser, *Filter Bubble: How the New Personalized Web Is Changing What We Read and How We Think*, Penguin Press, New York, 2011.

<sup>16</sup> C. Sunstein, *Republic.com*, Princeton U.P., Princeton, 2001. See also M. Castells, *Communication Power*, Oxford U.P., Oxford, 2013.

<sup>17</sup> P. Bourdieu, *Sur la télévision; suivi de l’emprise du journalisme*, Éditions Liber, Paris, 1996.

namely the might of these media of enclosing consumers within a “cognitive cage” whose bars are made either of commonplaces or of iconic impressive messages which replicate at high rate and spellbind audiences.

In this constrictive power lies the prime threat to human dignity which is effected before and apart from any specific violent or hate content, and is just the pinning of people to an everlasting “confirmation bias”<sup>18</sup> and thus the binding of them to the burden of their current or past views and tastes.<sup>19</sup> This binding force seriously thwarts the ability of people to change their minds, to look at the world with different eyes, to effect a “radical discontinuity in the course of their lives”. Briefly: to cherish those attitudes which are the prerequisite for creativity and, I dare to say, for a satisfying even happy life.

In this regard, the European Fundamental Rights Agency (FRA), in the manual *Preventing unlawful profiling today and in the future: a guide* (2018), focuses on the risks for human rights that the profiling activities carried out by the control agencies entail. Profiling is defined as “any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyse or predict aspects concerning that natural person’s performance at work, economic situation, health, personal preferences, interests, reliability, behaviour, location or movements”. In particular, “algorithmic profiling includes any step-by-step computerised techniques that analyse data to identify trends, patterns or correlations”.

Through profiling, the individual is selected “based on connections with others identified by the algorithm, rather than actual behaviour” and “individuals’ choices are structured according to information about the group, rather than according to their own personal choices”.<sup>20</sup> Accordingly, algorithmic profiling risks coming into conflict not only with the right to respect for private life (ECHR, article 8; EU Charter of Fundamental Right, articles 7-8) and the right for protection of personal data (GDPR, article 1),<sup>21</sup> but also with the prohibition of discrimination (EU Charter of Fundamental Rights, articles 1 and 21).

<sup>18</sup> D. Kahneman, *op. cit.*

<sup>19</sup> See M. Benasayag, *Tyrannie des algorithmes*, Éditions Textuel, Paris, 2019.

<sup>20</sup> B.D. Mittelstadt, P. Allo, M. Taddeo, S. Wachter, L. Floridi, The ethics of algorithms: Mapping the debate, in *Big Data & Society*, 2016.

<sup>21</sup> The GDPR explicitly grants the data subject “the right not to be subject to a decision based solely on automated processing, including profiling, which produces legal effects concerning him or her or similarly significantly affects him or her” (article 22, par. 1).

### 3. Remedies

These threats must be faced with the same kind of strategies (educational cultural, social and legal) put in effect to protect people against aggression to their personality. Among other means, it would be appropriate to focus on a richer (and constitutionally oriented) meaning of freedom, not sheerly conceived as absence of constraint but as experience of bonds, of relationships conducive to the ability of expressing one's own idea through a full gamut of channels including (among many other) the augmented one of the web.

Therefore, I particularly appreciated the idea of relational personalism and reflexivity exposed by Prof. Donati as well as the recommendation of a multiple perspective.

Thus, every educational program (and legal measures) must lead young people “to conceive of themselves not only as members of a nation or group, but also, and above all, as individuals dependent upon other individuals and linked to them by common interests and the need for mutual recognition”.<sup>22</sup> As such, fully aware of theirs and others' human dignity as well as of the equal right and ability to “re-write their own life stories” out of the jail-cage of algorithms.

Actually, alongside the essential activities of sensitization, digital and emotional education, fundamental for preventing and combating hate speech and *ad personam* forms of hatred, digital violence, in its various meanings, should be addressed by regulatory interventions adopted at a supranational, at least European, level, as the extraterritoriality of the network suggests.

As Prof. Stiglitz said in this conference, “regulating virality is not the same as denying free speech”, and “much of the damage of social media is related to virality”.

By the way, recently two Nobel prize economists – George Akerlof and Robert Shiller – have rightly highlighted the role of those they call “regulatory heroes”: “to the extent that the free market system works well, the credit is largely due to these heroes. To ensure the abundance we enjoy is not the immaculate action of the markets, because it is precisely the free market system that devises increasingly sophisticated forms of manipulation and deception”.<sup>23</sup> We will only mention synthetically three main

<sup>22</sup> M.C. Nussbaum, *Cultivating humanity: a classical defense of reform in liberal education*, Harvard U.P., Cambridge, Massachusetts, 1997.

<sup>23</sup> My own translation from the Italian edition of the book: R.J. Shiller, G.A. Akerlof,

(modest...) proposals of possible remedies. Each indeed have upsides but also downsides which however we haven't the time to analyse in detail. There are no simple solutions to complex issues and I agree with Prof. José Van Dijk that sheer legal means are quite insufficient to cope with problems and interests at stake.

1) Introduction of a new European regulation on Internet service providers (at least with reference to providers of social networking services) which derogates or exceeds that currently outlined by the "electronic commerce directive" (directive 2000/31/EC). On this point it should be noted that a review process of this European legislation has recently been launched.<sup>24</sup> 2) Still with a view to containing digital violence "in the strict sense", we could reflect on the opportunity to regulate anonymity online.

In particular, the two most advanced levels of anonymity could be contrasted: *disapproved anonymity* (subscription to platforms providing false, invented personal data) and *full anonymity* (use of sophisticated procedures and use of services that divert traffic and use encryption processes). A "controlled anonymity" could instead be allowed. By way of example, digital platforms could be required to ask users to identify themselves during registration, guaranteeing the scrupulous protection of the personal data provided in this way. In other words, without prejudice to the prerogative of pseudonymity, that is to express oneself and interact online through a pseudonym, it would be a matter of prescribing to the managers, at least of the social platforms, to ask users, as a condition for registration, to provide their personal details (some social networks have already begun to demand that users with "suspicious" profiles identify themselves by photograph or document).

3) Overcoming of or at least vigilance on algorithmic profiling especially indexing mechanisms based on the sensationalistic nature of the contents and on user profiling.

Alternatively, in order to tackle at least the problem of the many biases that, as emerged from various studies, contaminate the algorithms, it has been proposed to "subject these technologies at the basis of digital platforms to an auditing, consultancy system, which not only evaluates the functional effectiveness, but also the social consequences of their func-

*Ci prendono per fessi. L'economia della manipolazione e dell'inganno*, Mondadori, Milano, 2016, Kindle ebook, pp. 29-74 et seq.

<sup>24</sup> Proposal for a Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC, <https://eur-lex.europa.eu>



tioning”.<sup>25</sup> Finally, to foster and consolidate the virtuous use of algorithms, for example in order to identify offensive contents, verify them, report them or directly remove them in an automated way,<sup>26</sup> is an interesting idea, which should however be probed with caution, as the risk of arbitrariness inherent in the use of algorithms is very high. In particular, elements that could make this function of the algorithm difficult, insofar as characterized by uncertain outcomes, are the complexity of human language, with its infinite nuances, and the possible use of *ad hoc* strategies, or even analogous technologies, capable of bypassing the algorithmic filter.

But the real way to tread is to stimulate those variables whose enhancement can outweigh and thus drive away the negative ones simply not leaving space to them, and thus favouring flexibility (as Gregory Bateson, quoted above, puts it), namely those resources already mentioned by some reports during this conference like a relational personalism and the virtue of deep reading among them. In a word: dignity, namely the person’s full freedom to always write and re-write his/her life story.

<sup>25</sup> D. Bennato, *Se (anche) l’algoritmo è sessista: ecco perché Instagram preferisce la pelle femminile nuda*, 14 settembre 2020, [www.agendadigitale.eu](http://www.agendadigitale.eu)

<sup>26</sup> See G. Ziccardi, *L’odio online. Violenza verbale e ossessioni in rete*, Raffaello Cortina, Milano, 2016.