

информационной и кибербезопасности. Например, существует наука о данных<sup>181</sup>, которая отдельно рассматривает методы обработки данных, исследует процесс обработки и использования данных.

Основы данной науки могут помочь сформировать прикладной инструментарий для собственно международно-правовых подходов к проблемам, одновременно создавая эмпирический материал для правового регулирования. Наука о данных включает в себя следующие направления: машинное обучение, коммуникации, экспертный опыт в предметной сфере, этику и регулирование использования данных, очистку данных, базы данных, компьютерные науки и высокопроизводительные вычисления, визуализация данных, статистика и оценка вероятности. Эмпирический материал необходим для более тонкого понимания процесса работы с данными, их передачи и алгоритмов действий с ними.

В этой связи важно получить новый материал как с позиции практической, так и с позиции теоретической для исследования перспектив защиты данных на цифровых платформах. На наш взгляд, исключительно в подобных условиях может формироваться грамотная практическая и теоретическая позиция в сфере защиты персональных данных на международном уровне в условиях новых вызовов Big data.

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## ПРАВО ИСКУССТВЕННОГО ИНТЕЛЛЕКТА

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### NEUTRALIZATION, TECHNOLOGY, ALGORITHM: REFLECTING ON ARTIFICIAL INTELLIGENCE STARTING FROM CARL SCHMITT

**Abstract:** *Carl Schmitt's contribution to the study of law is of great proportions, especially since his approach to the subject has always been hybridized with the great themes of politics and technical development. This is why his work is still relevant today, and can be applied, as this essay does, to the question of the development of artificial intelligence and its practical applications. The essay therefore proposes to trace, through an immersion in Schmitt's thought, an examination of the problem of artificial intelligence in the face of matters of law.*

**Keywords:** *Carl Schmitt; Artificial intelligence; Philosophy of Technology; Philosophy of Law; Neutralizations.*

### Introduction

Carl Schmitt is an author who was rightly considered an anticipator. Anticipator, because he was able to see within the historical period in which he lived — undoubtedly a crucial period — all those trends that then developed, and are still developing. Carl Schmitt also had a taste for great forecasts himself, which he emphasized in personalities that he explored in depth such as Donoso Cortés and Alexis de Tocqueville. If in Donoso Cortés he traced the awareness of the political potential of Russia, which he foresaw would first

carry out a socialist revolution, in Tocqueville there was an element strictly connected to the quantitative questions of the masses and of technology, which already led to foresight regarding certain phenomena still in development today.

«*Democracy in America*, by the great French historian Alexis de Tocqueville, pulled the rug out from under Europe's self understanding, and produced the prognosis that an inevitable democratization and centralization of humanity would be fullfield in America and Russia. [...] Tocqueville is also the first author who provided a cultural and historical-philosophical diagnosis closely tied to the above-mentioned foreign policy prognosis [...]. For Tocqueville, the 1789 revolution was a symptom of a process of irresistible centralization»<sup>182</sup>.

«Tocqueville's prognosis states that humankind will irresistibly and inevitably continue further along the path it has long been on, toward centralization and democratization. But the forward-looking historian does not rest content with having determined a general developmental tendency. He identifies simply and clearly the concrete historical powers that [will] carry and accomplish this development: America and Russia<sup>183</sup>.

It is in fact extraordinary that a young European jurist could have conceived of such a prognosis over a hundred years ago, when the dominant picture of the world of his age was still entirely Eurocentric. [...] What Tocqueville predicted in this way was no vague oracle, no prophetic vision, and no general historical-philosophical construction. It was a real prognosis, won on the basis of objective observations and superior diagnoses, registered with the courage of a European intelligence and expressed with all the precision of a French mind<sup>184</sup>.»

<sup>182</sup> Carl Schmitt, A pan-european interpretation of Donoso Cortés, in *Telos — Critical Theory of the Contemporary*, issue 125, 2002, p. 104.

<sup>183</sup> Carl Schmitt, *Historiographia in nuce. Alexis de Tocqueville*, in *Ex Captivitate Salus. Experiences 1945–47*, Polity Press, Cambridge 2017, p. 27.

<sup>184</sup> Ivi, p. 28.

This approach that Schmitt shared with Tocqueville led him to meditate on those phenomena that would prove to be long-term. We ourselves can use this type of approach to reflect on the premises and the results of those aspects of contemporary technical development that will condition and already condition the sphere of law and society.

Carl Schmitt, whose versatility is widely recognized, remains primarily a jurist. His reflection hinges on that close and inextricable link that law has with history and politics. Furthermore, in history, following the path of German thought at his time, some forces of various kinds move, such as capitalism, secularization, technology and so on. These trends affect the future as much as the present, and develop towards their logical conclusions. In this sense, Carl Schmitt's thinking can provide us with excellent starting points for a broader reflection on artificial intelligence and the issues it raises.

First of all, it is important to understand what technology represents in Schmitt's discourse. The discourse on technology, as anticipated, has a great importance in the German philosophy of the early twentieth century, and unfolds in the problem of changing ways of life and society set by technological advances. In this sense, the problem of the machine develops the question of human alienation in the object as described by Marx himself.

The question of technology is not for Schmitt only a problem linked to the transformation of the natural and social ecosystem of the human being, although there is also this element — he describes in a few lines the planet transfigured by technology as «the mechanistic world of big Cities, whose stone, iron, and glass structures lie on the face of the Earth like colossal Cubist configurations<sup>185</sup>» —, but it has to do with much deeper issues, linked to the destiny of human society and of man himself. The problem, as posed by Schmitt, takes on a philosophical dimension of great significance, which

<sup>185</sup> Carl Schmitt, *Roman Catholicism and Political Form*, Greenwood Press, Westport 1996, p. 10.

in its most important passages compared to the thought of Plettenberg's jurist becomes specifically philosophical-juridical. Indeed, separating the question of technology in Schmitt from the juridical dimension is strictly speaking impossible, since it is closely linked to it, especially with regard to that process of *neutralization* and *depoliticization* to which he referred in his work.

### Technology and the juridical problem

Carl Schmitt, in *The Concept of the Political*<sup>186</sup>, argues that a slow but inexorable process is underway in the world. This neutralizing process seeks to prevent the possibilities of conflict, while paradoxically exasperating them in its final stages. The neutralization of every divisive element, both of the social world within the communities and of the international world that brings them together, takes place from time to time according to more general and less partisan principles. Towards the climax, this process is substantiated more and more explicitly in the pre-eminence of technology over any other issue.

«The process of progressive neutralization of the various areas of cultural life has come to an end since it has arrived at technology. [...] Large masses of industrialized peoples still adhere to a dark religion of technicism today because they, like all the masses, seek the radical consequence and believe they have found here the absolute depoliticization that has been chasing each other for centuries and with which the war ends and universal peace begins»<sup>187</sup>.

However, according to Schmitt, technical neutralization was preceded by various other neutralizations, the first of which was the neutralization of theology by jurisprudence. It is from this that the European public law on which the Eurocentric world order was founded for a long time is born<sup>188</sup>.

<sup>186</sup> Carl Schmitt, Il concetto di 'politico', in *Le categorie del 'politico'*. Saggi di teoria politica, Il Mulino, Bologna 1972, pp. 89–208.

<sup>187</sup> Ivi, pg. 182 [translated from Italian].

<sup>188</sup> Cfr. Carl Schmitt, *The Nomos of the Earth in the International Law of Jus*

«This is how *ius publicum Europaeum* emerged from the confessional civil wars of the sixteenth and seventeenth centuries. At its beginning stands an antitheological slogan, a call for silence that a founder of modern international law directs to the theologians: *Silete, theologi, in munere alieno!* [“Keep quiet, theologians, on alien territory (sc. on matters outside your remit)!”]. This is what Albericus Gentilis shouted against them, on the matter of the just war debate.»<sup>189</sup>

At the time of law, and specifically of European law, that of technology finally followed. The phantasmagoric possibilities of creation and destruction arising from technology have surpassed the law in its capacity to contain phenomena.

«It was the consistently technical age that [...] completed the profanation without remainder. This age laid bare with inexorable logic where jurisprudence stands, namely between theology and technique, and placed the jurists before a difficult choice, in that it immersed them in the new objectivity of pure technicity. [...] Instead of a comfortable hotel, the bunkers and barracks of the technical age open up. Now it is the jurists who receive a call to silence. Now it is to them — should there still be enough Latin — that the technicians of potentates and dogmatists can shout: *Silete jurisconsulti!* [“Keep quiet, lawyers!”]»<sup>190</sup>

In reality, in Schmitt's work one can glimpse an even greater possibility of neutralization in the capitalist economic phenomenon, which “allies itself” with technology, but represents the extreme enemy of the political form<sup>191</sup>, where technology can still hypothetically be subjected to this last one<sup>192</sup>.

*Publicum Europaeum*, Telos Press Publishing, New York 2003.

<sup>189</sup> Carl Schmitt, *Ex Captivitate Salus*, in *Ex Captivitate Salus. Experiences 1945–47*, Polity Press, Cambridge 2017, p. 56.

<sup>190</sup> Ivi, p. 60.

<sup>191</sup> Cfr. Carl Schmitt, *Roman Catholicism and Political Form*, Greenwood Press, Westport 1996.

<sup>192</sup> Cfr. Carl Schmitt, *Dictatorship: From the origin of the modern concept of sovereignty to proletarian class struggle*, Polity Press, Cambridge 2014.

The theme of law thus becomes fundamental in the relationship with politics and technology, since in Carl Schmitt's thought all these elements are only functions of a broader historical process, and manifest, in a never univocal way, certain basic tendencies. In other words, law and technology in history have moved towards complete neutralization in the economy at the expense of politics and religion (which also constitute a sort of equation in Schmittian thought, hence the theme of "political theology"), but law tends to be neutralized by technology and economics as a vestige of certain principles and presuppositions of a metaphysical nature.

In fact, the technical (or economic) temptation for Schmitt tends to be around the corner, especially in the political sphere, which risks being captured, in his reflection, by purely formal conceptions of the same. Moreover, these conceptions would be legitimized by certain ideas in the field of law, and especially of constitutional law. Hence his famous diatribe with Kelsen.

### **The machine and representation**

What distinguished Kelsen's normativistic approach from Schmitt's was the role of politics with respect to law. Notoriously, Kelsen proposed a "pure" vision of law, in which the political problem was not posed. Plettenberg's jurist was of a different opinion, opposing his "decisionist" theory to it.

«Kelsen advocated, along neo-Kantian lines, a pure theory of law, where judgements are given following existing laws. He wanted to purify legal practice from all the political, sociological and arbitrary elements that might distort it. Similarly, the political aspect of decisionism was directed against legal positivism and against Kelsen's theory of a pure law. The debate culminated in a direct confrontation between Schmitt and Kelsen on the question of the relationship between the sovereign and the constitution. Who should be the guardian of the constitution in times of

crisis? Who should be given extra-legal powers to save the constitution and to restore public order and security when the welfare of the people is under threat? In other words, who is the sovereign?»<sup>193</sup>

The problem raised by Schmitt with respect to the Kelsenian vision was that of the law conceived as a machine: a self-sufficient system which, once started, did not need to be stopped. The jurist's only duty, according to Kelsen, was therefore to serve this machine. Schmitt's opposition to this thesis was part of a greater political-cultural climate that opposed, on various fronts, a necessary and pre-established dimension<sup>194</sup>. This demonstrates very well the risk of the technicalization of law, which is also inherent in the possibilities of the political dimension.

From here we can draw even better the features of the technical question in Carl Schmitt's thought: the machine world, is one in which a fundamental element of the sphere of human society is absent — namely *decision*. This principle, that of decision, is in turn associated with the sphere of politics, which completely overlaps with that of associated life. In its turn, however, it determines the juridical universe, starting from those fundamental laws that organize societies — namely *constitutions*. Going to the root of the juridical problem, Schmitt sees in it the political cause, or rather the taking of a position regarding what a state and a social community should be. In opting for this choice, or rather for one reality rather than another, a community defines itself through its decision maker. The decision maker can obviously be any human subject who expresses, through this stance, a free will in the right conditions. Hence the famous Schmittian concept according to which «whoever rules over the state of exception therefore rules over the state, because

<sup>193</sup> Michael Hoelzl e Graham Ward, Introduction, in Carl Schmitt, *Dictatorship: From the origin of the modern concept of sovereignty to proletarian class struggle*, Polity Press, Cambridge 2014, pp. XXII–XXIII.

<sup>194</sup> Cfr. Orazio Maria Gnerre, *Prima che il mondo fosse. Alle radici del decisionismo novecentesco*, Mimesis Edizioni, Milano 2018.



he decides when this state should emerge and what means are necessary<sup>195</sup>».

The state of exception is nothing other than that chaotic moment in which the political protoplasm of any juridical position is crystallized, in other words the point from which laws and regulations emerge. The close relationship that emerges from this between politics and jurisprudence can only apparently be ordered chronologically, since politics in this sense constitutes the area constantly underlying the legal screen, without thereby affecting its nature. In other words, this does not mean that jurisprudence is necessarily “captured” by mere questions of partisan political interest, but that it derives from the primitive decisive moment.

Obviously, a jurisprudence conceived in this way has some results, and a jurisprudence conceived in a different way has others. These results are in any case found in society, since law governs it. A state in which the apparent neutrality of the law is in force (which here does not mean the equality of people before the law itself) is a state whose political element is subjected to a technology. This technology can disguise itself as legality, technocratic politics, domination of the markets, but the same thing remains in the claim of neutrality.

There are two risks involved in this possibility, and both actually converge. The first risk is that of the interested exploitation of the claim of neutrality. The latter was advanced in the twentieth century by political liberalism, but it does not represent a disinterested position. Although it was substantiated by opposition to the sphere of politics, nevertheless liberalism did politics, that is, it entered a polemical, conflictual plane.

«As a historical reality, liberalism has escaped the ‘political’ just as little as any other human movement, and even its

<sup>195</sup> Carl Schmitt, *Dictatorship: From the origin of the modern concept of sovereignty to proletarian class struggle*, Polity Press, Cambridge 2014, p. 14.

neutralizations and depoliticizations (of education, economy and so on) have a political significance»<sup>196</sup>.

In this sense, any neutralization ultimately does not respond to any neutrality of the results. Just as jurisprudence, which asserted itself against the theological sphere in a process of pacification between European nations, was produced by politics, a principle easily traceable in the work of Thomas Hobbes<sup>197</sup>, so technology can serve very specific partisan interests, as well as certain neutralistic positions of international law<sup>198</sup>.

«Technology is no longer neutral ground in the line of that neutralization process and any politics of power can make use of it. [...] The final meaning is only gained when it becomes clear which type of politics is strong enough to master the new technology.»<sup>199</sup>

On the other hand, a great Schmittian teaching is that according to which every claim to neutrality always conceals a vested interest.

Regarding the problem of the decision, the other sore point towards the technology manifests itself. The technology is to be considered what is completely different from the human being. Within his domain, nothing reaches decisive and exceptional moments, but everything proceeds according to rhythms marked by strict regulatory structures. The problem of technique is above all a representative problem, and which therefore has to do with the deprivation of the aesthetic and theological sphere, where the latter is the

<sup>196</sup> Carl Schmitt, *Il concetto di ‘politico’*, in *Le categorie del ‘politico’*. Saggi di teoria politica, Il Mulino, Bologna 1972, p. 155 [translated from Italian].

<sup>197</sup> Cfr. Carl Schmitt, *Sul Leviatano*, Il Mulino, Bologna 2011.

<sup>198</sup> «In short, the League of Nations is an instrument of “indirect” politics, for the protection of the victors and their spoils, and for the punishment of the vanquished; its universalism is in reality imperialism, a weapon of war that presents itself as an instrument of peace.» Carlo Galli, *Lo sguardo di Giano*. Saggi su Carl Schmitt, Il Mulino, Bologna 2008 [translated from Italian].

<sup>199</sup> Carl Schmitt, *Il concetto di ‘politico’*, in *Le categorie del ‘politico’*. Saggi di teoria politica, Il Mulino, Bologna 1972, p. 182 [translated from Italian].

reservoir from which jurisprudence has drawn the symbols for its charismatic legitimacy.

«The jurists' withdrawal from the church was no secession to a holy mountain, rather the reverse: an exodus from a holy mountain to the realm of the profane. On leaving, the jurists took some holy trappings [*Heiligtümer*] with them, whether openly or secretly. The state decorated itself with some simulacra of ecclesiastical ancestry. The power of earthly princes was augmented by attributes and arguments of spiritual descent.»<sup>200</sup>

However, the technology annihilates this use of symbolic trappings, which refer to orders of metaphysical ideas: «it was the consistently technical age that first eliminated [the holy trappings] and completed the profanation without remainder»<sup>201</sup>.

The representative dimension, however, according to Schmitt, belongs at the same time to the religious and political sphere, and remains in the juridical one. This remoteness of the world of technology from this dimension, indeed its real negation, contrasts it in substance with the world of law<sup>202</sup>. This is all the more true when the aims of the technique are purely economic:

«Economic thinking knows only one type of form, namely technical precision, and nothing could be further from the idea of representation. The association of the economic with the technical (their inherent disparity is still to be noted) requires the actual presence of things.»<sup>203</sup>

All this because «the technology remains [...] culturally blind<sup>204</sup>», that is, it lacks that linguistic dimension that would make it representative.

<sup>200</sup> Carl Schmitt, *Ex Captivitate Salus*, in *Ex Captivitate Salus. Experiences 1945–47*, Polity Press, Cambridge 2017, p. 57.

<sup>201</sup> Ivi, p. 60.

<sup>202</sup> Cfr. Carl Schmitt, *Roman Catholicism and Political Form*, Greenwood Press, Westport 1996, p. 22.

<sup>203</sup> Ivi, p. 20.

<sup>204</sup> Carl Schmitt, *Il concetto di 'politico'*, in *Le categorie del 'politico'*. *Saggi di teoria politica*, Il Mulino, Bologna 1972, p. 179.

## Artificial intelligence and decision

Having explained how for Carl Schmitt neutralizations steer the world in a certain direction, it is easy to understand the trends that are developing today. The question of decision and sovereignty set by Carl Schmitt is indeed of burning topicality, and the problematic possibilities of technology have not only not been stemmed, but are visibly increasing with the exponential growth of calculation and operational skills.

Schmitt in his text on the *Dictatorship* raises the essential problem of political sovereignty<sup>205</sup>. The latter, which is realized with the decision within the state of exception, is what constitutes the substance of the political sphere, whether it is the prerogative of men, parties or social classes.

As we have said, it is the decision which, according to Schmitt, founds the social orders and substantiates the constitutions. The decision is the sphere of action of the human being in his fundamental social and relational essence. What happens when machines can simulate the decision? The problem bursts into his treatment of Hobbes' thought.

«The functionalism [of] “objective legalities” [of technology], coherent in itself, eliminates the notion of a personal decision precisely because it does everything “by itself” according to its own type of logic, without any specific decision. Talking about “decisions” in this area would be as absurd as trying to pretend that the alternation of red and green in the traffic lights of a modern road is a series of “administrative acts”, that is, decisions, in order to organize it according to legal concepts and to insert it into the system of traditional administrative law: it would be a completely unscientific procedure, as it is naively anthropomorphic.»<sup>206</sup>

The machine therefore does not have the power to make

<sup>205</sup> Carl Schmitt, *Dictatorship: From the origin of the modern concept of sovereignty to proletarian class struggle*, Polity Press, Cambridge 2014.

<sup>206</sup> Carl Schmitt, *Il compimento della Riforma. Osservazioni e cenni su alcune nuove interpretazioni del Leviatano*, in *Sul Leviatano*, Il Mulino, Bologna 2011, pp. 161–162 [translated from Italian].

an authentic decision, for the simple reason that it is not a human being, and cannot replicate (if not in appearance) human behavior right down to its deepest springs. The problem that is posed in this Schmittian passage is basically that of the algorithm, through which the machine produces results even more precise than human ones, but which are not composed of forms of reasoning and — above all — of expression analogous to those of man.

The process of neutralizations therefore turns out to be a movement of progressive annihilation of human nature and its power over the world. Neutralizing thought, which Schmitt identifies with liberalism, is a great attempt at the expulsion of sovereignty from the social sphere<sup>207</sup>. In doing so, however, there is also the supreme possibility of the abdication of every issue to the computing power of the machine.

On the one hand, as we have said, every claim to neutrality (through law, technology, economics) turns out to be a partisan artifice for the promotion of one's point of view. On the other hand, the risk of neutralization is that it absorbs everything and shapes the world in the image and likeness of nothingness.

Here we can advance all our reasoning and our prognosis on the issue of artificial intelligence. First of all, we must consider how it, like any product of technology, is culturally and politically determined by its creators. Considering the disciplinary roles towards society that it will certainly find itself fulfilling in the courts, it will be important to consider the scale of values according to which it can operate. On the other hand, if the fundamental question of the algorithm is that it develops its calculation and analysis capabilities, it is also true that it is informed by culturally determined systems of knowledge.

Furthermore, the use of artificial intelligence is also hypothesized for reading the large amounts of computer

<sup>207</sup> Cfr. Carl Schmitt, *Le categorie del 'politico'*. Saggi di teoria politica, Il Mulino, Bologna 1972.

data stored by security agencies. The political value (in the polemical sense) of artificial intelligence is undoubted. The implementation of its use in military operations as in police operations will probably enjoy the justification of the neutrality of the algorithm, reaching new levels of intensification of violence through the excuse of neutralization, as clearly foreseen by Carl Schmitt with respect to any analogous phenomenon<sup>208</sup>.

Many proposals already advance the thesis of replacing various high-level professionals with artificial intelligence, such as the CEOs of large companies<sup>209</sup>. If artificial intelligence were to somehow take the place of policy makers and legislators, the question of normativism already raised in the diatribe between Schmitt and Kelsen would be proposed again on a further level and with greater intensity. The transfer of fundamental “decisions” into the hands of artificial intelligence would prove to be a retreat from the field of action of human freedom in its expressive forms of freedom and sovereignty.

However, it is in its use in reinforcement of the capabilities of mass surveillance that artificial intelligence shows its riskiest possibilities. In some pages of *Discipline and Punish* Foucault outlines the essential characteristics of the Benthamian Panopticon, a project that has often been compared to that of mass surveillance:

«An important device, because it automates and deindividualizes power. This finds its principle less in a person than in a certain programmed distribution of bodies, surfaces, lights, gazes; in an apparatus in which the internal mechanisms produce the relationship in which individuals are taken. The ceremonies, the rituals, the marks by which the most-of-power is manifested by the sovereign, are useless.

<sup>208</sup> Cfr. *Ibidem*.

<sup>209</sup> Will Dunn, CEOs are hugely expensive — why not automate them?, on *NewStatesman*: <https://www.newstatesman.com/business/companies/2021/04/ceos-are-hugely-expensive-why-not-automate-them>

There is a mechanism that ensures the asymmetry, the imbalance, the difference. Consequently, it matters little who exercises power. Any individual, chosen almost at random, can operate the machine: in the absence of the director, his family, friends, visitors, even the servants. Just as the motive that moves it is indifferent: the curiosity of an indiscreet, the malice of a child, the appetite for knowledge of a philosopher who wants to visit this museum of human nature, or the wickedness of those who take pleasure in spying and to punish. The more numerous these anonymous and transient observers are, the greater the risk of being surprised and the restless consciousness of being observed increase for the detainee. The *Panopticon* is a marvelous machine which, starting from the most diverse desires, produces homogeneous effects of power.

A real subjugation mechanically arises from a fictitious relationship. So that it is not necessary to resort to means of force to force the condemned to good conduct, the madman to calm, the worker to work, the pupil to apply, the sick to observe the prescriptions.

Bentham marvels that panoptic institutions could be so light: no more bars, chains, heavy locks; it is enough that the separations are clear and the openings well arranged. The power of the old “security houses”, with their fortress architecture, can be replaced by the simple and economic geometry of a “house of certainty”. The efficacy of power, its constricting force, has somehow passed over to the other side — to the side of the surface of application. He who is subjected to a field of vision, and who knows it, takes the constraints of power into account; he makes them play spontaneously on himself; he inscribes in himself the power relationship in which he plays the two roles simultaneously, it becomes the principle of his own subjugation. In fact, even the external power can lighten its physical burdens, tend towards the incorporeal; and the closer he gets to this limit, the more his effects are constant, profound, acquired

once and for all, incessantly brought back: perpetual victory that avoids any physical confrontation and that is always played in advance»<sup>210</sup>.

The most important feature of this control device is depersonalization, a fundamental attribute of the neutralization process that liberalism has carried out in history, according to Schmitt. The conclusion of the era of discipline imparted in the name of a personal authority within a system of royal sovereignty is the topic investigated in *Discipline and Punish*. It is replaced by a completely different method, fed by another conception of the world, which is opposed to human arbitrariness. The *deus ex machina* is the most direct result.

Artificial intelligence, in its many possibilities, cannot be distinguished from any other technological means. Of course, it represents one of the most important developments in human technology, but like any other product of technology, it should be evaluated for pros and cons on the basis of clear ethical principles and with an eye to future possibilities. Attention to the possibility of transformation of the fundamental attributes of the human being by technology is never enough, and special attention should be paid to the ideologies that move and that take advantage of technological development.

The impact of artificial intelligence must thus also be measured with respect to the sphere of jurisprudence, where it must be considered as a pure product of the world of human culture, and as such closely connected to all those nuances of human life that have characterized its existence until now. The actual risk is that of the possibility of an overriding of the law by an artificial intelligence which, through its estimates, can influence the decision-making processes of policy makers or judges.

Yet another problem arising from the question of artificial intelligence, and closely linked with the decisionist

<sup>210</sup> Michel Foucault, *Sorvegliare e punire. Nascita della prigione*, Einaudi, Torino, 2014, pp. 220–221 [translated from Italian].



theses, is the possibility that it crystallizes, through the self-multiplication of the code lines of its algorithms, the stage of thought we have reached this historical phase, or to which the political or economic power that will build it has reached. This would ultimately annihilate that imaginative possibility that resides in human intuition, thanks to which the sciences as we know them were also formed. It would close the possibility of the exceptionality and what derives from it, from every point of view.

The two problems arising from the question of technology in general, and from that of artificial intelligence in particular, therefore seem to converge: if on the one hand the technique is a tool of any ideology, but ultimately allows itself to be employed by the theses of neutralization, these same theses that presuppose its necessary dominion to escape from the field of human arbitrariness. The danger lies in that concept that Carl Schmitt already attributed to Karl Marx: «a society built exclusively on progressive technology [...] would soon destroy itself and its technology<sup>211</sup>».

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