


NEW DIGITAL LEVIATHAN AND THE FUTURE OF THE REGULATORY SYSTEM OF SOCIETY: SCENARIOS AND TRENDS OF MODERN TRANSFORMATION OF LAW AND STATE*

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INTRODUCTION

The problem of digitalization of public relations in both private and public activities today acts not only as a driver of socio-economic, political, and legal development, but also a key ideological attitude that completely transforms our forms of mental activity, key interaction practices, changes value-normative orientations, attitudes, etc. A fundamentally new "digital worldview" and a "new model of the future" finally and irrevocably got control over the present and subdued the past (MAMYCHEV et al., 2020).

For example, Armen Avanesian notes that in modern complex social systems "on the contrary, time moves from the future. Complex social systems such as ours are characterized by technological infrastructures that are increasingly driven by automation, robotization, and algorithmization. The loss of his primacy by a person entails a weakening or loss of connection with the present" (AVANESIAN, 2019).

Needs for innovative development, machine learning, "saturation" of algorithms with new data and information, the security of these systems, etc. are replacing today traditional value-normative guidelines that used to ensure the connection of times (past, present, and future), substituting humanitarian foundations, the requirements of digital evolution and algorithmic scenarios (transhumanistic orientation).

The legal sphere of the life of society is not an exception. At present, legal thinking, legal regulation, legal technique, and law enforcement are undergoing fundamental and cardinal changes (Law and right in a programmed society).

Today, it is already obvious that the transformation of the once stable cultural dominants and foundations of various traditional social regulatory systems (customs, traditions, law, etc.) is taking place. These changes were initiated by the rapid development and implementation of new digital technologies that form a fundamentally new link between humans and all kinds of innovative products. These connections, couplings, mixtures of new technologies, and social practices form a new era, a new way of thinking and acting. The latter, as the most important and essential in the development of social systems, was especially emphasized by the famous modern philosophers Gilles Deleuze and Felix Guattari. They noted that "tools exist only in relation to the interminglings they make possible or that make them possible. The stirrup entails a new man-horse symbiosis that at the same time entails new weapons and new instruments. Tools are inseparable from symbioses or amalgamations defining a Nature-Society machinic assemblage" (DELEUZE & GUATTARI, 2010).

Expanding this idea, we can note that the development of end-to-end digital technologies leads to a new form of technological organization - a "link" of social self-organization processes and a "machinic phylum" (the term by J. Deleuze and F. Guattari, used to reflect the processes

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of self-organization and self-development of various systems, not only biological and social but also technological (DELEUZE & GUATTARI, 2010)). At the same time, convergence (or symbiosis) of human and artificial intelligence, biological and digital algorithms will occur. The main engine of evolution will not be the confrontation between the digital and the social but their convergence, which will ultimately create new subjects of world history (robots, digital personalities, artificial intelligence, etc.), a radically new world, and a system of relations. The key subjects of this new history will be, for example, Homo Deus as a new round of evolution, i.e. a new entity that emerged in the "convergent fusion" of various technologies (genetic engineering, biotechnology, digitalization and algorithmization of Homo Sapiens (HARARI, 2018).

This is the general modeling of the processes of the digital transformation of a public organization. Leaving aside disputes and assessments of these models and forecasts, we note the heuristic value of the concept of "nexus", which can act as a prism for considering the unfolding processes of social and legal changes in society.

A NEW DIGITAL LEVIATHAN

As noted above, the "nexus" also gives rise to new practices of mental activity, methods of communication, other guidelines, and priorities for the development of social relations. For example, Gregoire Chamayou in his book "A Theory of the Drone", dedicated to the practice of using autonomous unmanned aerial vehicles, quite reasonably substantiates that the current focus on the widespread use of autonomous vehicles and digital technologies radically changes the key "humanitarian attitudes of mankind" and "basic meta-legal principles", which soon will completely change the human organization, the foundations of its existence, forms of interaction and communication (SHAMAYOU, 2020).

No one perhaps refutes this; this is a new round of evolution and a change in the paradigmatic foundations of social order. The current order has been established thanks to the creation of abstract and autonomous institutional structures - state and law, which brought mass violence under control and minimized the "war of all against all" (HOBBS, 2016). These institutional foundations practically destroyed the ancient justice system based on *lex talionis* (GIRARD, 2020), replacing it with a system of "abstract legitimate violence" carried out by a third, specially authorized entity (state) (LIUBASHITS ET AL., 2019). Moreover, the abstract and "supra-social" nature of this institution (entity) broke the vicious circle of mutual revenge and violence, brought the latter under control, and prevented their spread, replacing physical violence with modern symbolic forms (GIRARD, 2019).

The classical theory of the contractual origin of the state and the natural-legal theory of the origin and evolution of law is largely based on this initial idea, or, as today, within the framework of digital discourse, it is customary to say that it was originally integrated into the source code of these theories. These theories, as the modern legal philosopher Raymond Wachs notes, "are based on the unspoken initial assumptions of natural law" (WAX, 2020). Accordingly, the price that had to be paid for the functioning of the state legal system was the abandonment of some of the so-called essential rights and freedoms in favor of this abstract institutional entity (JESSOP, 2019).

Tellingly, today a new "supersystem" is justified and legitimized in a similar way, which will be able in the XXI century to ensure control over the spreading violence and the safety of society, bring order into the chaos of existing information, interaction practices, etc. The new leviathan is the realm of high digital technologies, and the new regulatory system is an autonomous strict algorithmic system, i.e. ideal mathematical scenarios and formal logical algorithms, freed from flaws and human subjectivity.

This is a new round of evolution when humanity and its state-legal organization give way to a more advanced techno-digital civilization (BROCKMAN, 2017). And the main entity of world history, which has always appeared at various revolutionary stages and technological transformations of social systems, will be an artificial intelligence system that will function, if operating Marxist terms, not only in the format of reproduction but also in the mode of expanded reproduction at a higher level.

Many scientists and experts believe it to be an aspect following which digital technologies (various digital algorithms, blockchain systems, robotic devices, etc.) and meta-technologies that include artificial intelligence systems (the latter "are meta-technology, namely a technology that is capable of developing other technologies either jointly with people, or autonomously (which further complicates the analysis of probable consequences)) should be distinguished based on the level of impact on a person and the consequences on the transformation of social organization" (GREENFIELD, 2018).

Adam Greenfield writes that "The tacit bargain that automation offers us is that in exchange for some perceived enhancement of performance, we relinquish discretion and at least some degree of control over a situation. Sometimes this act of stepping away is trivial and sometimes it feels more like a vital surrender of judgment, as in the development of that class of systems the United Nations refers to as "autonomous unmanned air vehicles" (GREENFIELD, 2018). Gregoire Chamayou calls the latter the principle of "projected power", when autonomous digital systems allow you to influence various processes remotely, "projecting power without projecting vulnerability", as the second party (which is subjected to force) cannot respond or prevent the use of force (SHAMAYOU, 2020).

The situation with ensuring internal law and order is similar: "When applied to the maintenance of public order, this capability is called predictive policing. The idea is that, equipped with nothing more than a sufficiently rich set of data on past incidents, public safety departments can predict crime hotspots, and even individual criminals, with a high degree of accuracy, far enough ahead of time that they are able to circumvent any actual offense" (GREENFIELD, 2018).

Accordingly, new abstract meta-foundations of the order of social systems are being substantiated, which replace traditional social institutions and normative complexes with a digital-algorithmic "basis". It is fair to say that the modern projection of the development of public organizations provides also moderate versions of the future, namely convergent or co-evolutionary development. The latter implies convergence, adaptation, and subsequent integration of traditional and digital-algorithmic foundations.

In other words, modern technologies and innovative forms do not completely erase or destroy the socio-cultural forms of state-legal organization and socio-cultural integrity, sustainable traditions, spiritual and moral standards, and regulatory requirements. On the contrary, real changes here are associated with complex and contradictory processes of adaptation of socio-cultural, value-normative, and other foundations of society with digital forms of evolution of social systems (Sociocultural (archetypal and mental) foundations of the public-power organization of society: monograph). For example, socio-cultural forms are shown, on the one hand, to be in high demand in structuring and identifying online communities, the virtual world, and interaction in augmented reality, and on the other hand, "translating into digital" part of the traditional forms of social interaction, digital systems, and algorithms (in the process of machine learning), in addition to "*digital trajectories of development*", also get a *digitized socio-cultural specifics* of the evolution of specific social relations (MAMYCHEV et al., 2020).

In this case, it is substantiated that modern society undergoes a convergence of socio-cultural and digital forms, practices, and methods of interaction, while end-to-end technologies (the Internet of Things, virtual and augmented reality) do not "displace" or "replace" socio-cultural images, representations, symbols, sustainable forms, and practices but, on the contrary, are intertwined with them; as a result, both the former and the latter adapt and use each other's resources (BARANOV & MAMYCHEV, 2020).

DIGITAL TRENDS IN THE TRANSFORMATION OF LAW AND LEGAL ACTIVITY

It is a matter of fact that the traditional elements of the state, public, and private life, are somewhat moving into the digital virtual space. Noting the special functional role of information technologies, which significantly reformat the traditional forms of communication and interaction both between people and between society and the state, one cannot but pay attention to the emergence of elements of a "new reality" in the form of the digital economy, digital law, digital politics, etc (KARTSKHIIA, 2017).

Without denying the dominant role of law in the regulation of both traditional and fundamentally new spheres of public relations, we more often have to talk about law as an object of digitalization, which does not ultimately exclude the transformation of its very form (BEDOEVA, 2018). This happens both at the level of formal characteristics of law as a generally binding imperative, and at the level of deep processes that characterize legal ideology and legal psychology.

Modern jurisprudence affirms for reason the opinion that acting as one of the conditions for the transformation of the modern socio-economic model of development, digital technologies lead to a reformatting of the very method of legal regulation of social relations (KHABRIEVA, 2018, p.91). We can just partially agree with this view, however, the fact that a new digital worldview is being formed in the environment of the younger generation is no longer in doubt.

Distinguishing the main directions of scientific research in legal digitalization, two prevailing trends can be outlined. The first trend is due to the need to promptly respond with legal means to the widespread use of innovative digital technologies, which are rapidly spreading in all spheres of public life without exception: political, economic, social, etc.

The second trend involves the expansion and rethinking of the subject and object of jurisprudence in the context of the emergence of relatively self-sufficient and fundamentally new "entities" of legal relations generated by reasonable human activity. We are talking about the development of technologies for digital processing of legal information, in particular, digital mechanisms for recording offenses and making (with a certain degree of conditionality) law enforcement decisions, the digital procedure for concluding agreements and contracts, etc. The problem of artificial intelligence, considered as a full-fledged (if not now, then in the near future) entity of legal relations, seems to be relatively self-sufficient. The latter problem, even though it seems in a certain sense far-fetched, is based on serious socio-philosophical ideas, having been actively promoted, including in mass culture, for many decades. It must be admitted that today mankind has accumulated a significant array of socio-philosophical notions and ideas about the right of "robots" to "human" life and the absence of fundamental differences between human and artificial intelligence, the quintessence of which is the classic "Do Androids Dream of Electric Sheep?" by Philip K. Dick.

Thus, to date, two conceptual problems have been actualized in jurisprudence: the need to make in time, and in some cases to anticipate the "regulation" of all possible and impossible ways to use new digital technologies (often such regulation can be considered excessive). In this regard, lawyers are particularly concerned about the virtually uncontrolled market for private virtual property in computer games and simulations, as well as the emerging market for digital services and proposals for performing certain types of especially paid virtual work, which is emerging in a similar environment. Today the legislator can only partially solve this problem. Another part of the problems is to a greater extent socio-philosophical and looks into the near future, when jurisprudence, including law enforcement, will partially or completely move to impersonal digital information processing. Digital algorithms will have to be responsible for making legal decisions, and artificial intelligence will get the corresponding legal status.

Recognizing the fact that, ideally, jurisprudence should have a ready-made or at least a preliminary general theoretical set of possible solutions even for the least probable scenarios in the near future, one should nevertheless remain within the traditional methodological framework and avoid replacing legal science with fantasies about the global digital apocalypse. In this regard, correctly setting the appropriate priorities and accents is of paramount importance. The goal is to form at the level of legal awareness and legal thinking the theory and practice of legal regulation of public relations using digital technologies rather than legal regulation of digital technologies as things. As for the actively disseminated "rumors" about digital slavery, total digital surveillance, imperceptible "chipping" that will suddenly get out of the control of the human mind and become independent, self-sufficient, and essentially uncontrolled, we should focus more on improving the legal regulation of the sphere of carriers of natural intelligence (with the development of the institute of appropriate legal responsibility) in the design and development of artificial intelligence. It is also necessary to clearly distinguish between the relevant issues.

The first problem is the risk that the development of digital technologies will make citizens finally lose their minimum set of rights to inviolability in personal life, which will end with a dystopian society (a society of absolute and ubiquitous control over an individual), possibly even nationless and stateless. At the same time, it is important to share the goals of building such a society: an authoritarian society, a totalitarian society, a democratic society, a society of general prosperity, a consumer society, or, conversely, a society of a special highly spiritual and highly moral organization (we deliberately use different grounds for classification). The second problem is artificial intelligence, which was originally intended to optimize and refine, among other things, the legal sphere of public relations but at a certain point got out of the control of its conditional creators. Its possible consequences are widely represented in fiction, movies, and on television.

The task of law both in the first and in the second case is to set up appropriate barriers of an exclusively formal legal nature, as in the part of preventing the gradual degeneration of the idea of personal and inalienable rights and freedoms into fiction, which we can already observe today in individual examples of the reality around us (no matter what rights and freedoms are diminished in a way - digital or "traditional"). The lack of control over digital intelligence also has its solution at the level of an adequate and well-thought-out legal policy, which includes certain constraining elements both for digital technologies themselves and the degree of their intrusion into legal reality, and for their creators, developers, and designers.

We should remember that none of the most qualified programmers or creators of the virtual space can replace a lawyer with the necessary professional qualifications in creating an appropriate legal framework. The latter circumstance does not exclude active cooperation between representatives of various sciences in the creation and development of unified legal approaches to the digitalization of legal relations.

Modern science has been hotly debating the soon expected loss of the dominant position of law in the regulation of public relations, a decrease in the regulatory functions of law, a tangible narrowing of the very sphere of legal regulation. This is not only about the fact that digital technologies optimize the appeal to sources of legal information, but also about the fact that the law, which is not ideal, in the process of digital optimization will cease to be such in its classical understanding.

The superseding conventional "digital code", performing at the initial stage only an auxiliary function, will subsequently replace the law itself and the traditional procedures of legal formation. We should say that even now, reference and information systems similar to ConsultantPlus, thanks to a complex system of direct cross-interactive interactions, slightly differently shows the surrounding legal reality, rather than a "classical" reference to the text of a legal act. Legal reference and search systems make it possible to assess the legal reality in whole arrays in the inextricable connection of laws and regulations with law enforcement practice (KHABRIEVA & CHERNOGOR, 2018).

This provides a much more complete picture and allows for the identification of collision, gaps, and defectiveness of the current legislative regulation both at and beyond the level of carriers of special scientific knowledge. In this regard, the problem of perception both at the level of professional and ordinary legal consciousness of positive law (written law) seems to be quite relevant. If in the pre-digital era a regulatory act was associated exclusively with paper carriers of information, for example, "Collection of Legislation of the Russian Federation", then today a regulatory act appears as an abstract virtual set of prescriptions, which lives its own legal life quite out of touch with its paper "ancestor". Today, when several hundred changes have been made to many laws in force, the appeal to the original paper version of the regulatory act loses all meaning.

It is no coincidence that, since 2017, the official publication of a regulatory act has been considered, among other things, its first publication on the "Official Internet portal of legal information" (www.pravo.gov.ru). Similarly, the situation is addressed at the level of the legislation of the constituent entities of the Russian Federation. Thus, the need to place regulatory acts in paper periodicals, which for a long time acted as an obligatory "official source of publication", is nominal and has practically disappeared today. Such work will likely become extinct soon. At the same time, we note that the practice of a separate paper issue of

the current edition of a regulatory act (special code or federal law) is still preserved, and book publishers even offer special programs for exchanging outdated editions for updated ones.

Thus, the complete and final virtualization of the regulatory legal space is a process intended for a certain perspective. The latter remark applies to both regulatory acts and local acts of institutions and enterprises. At the same time, the problem of legal liability of officials guilty of intentional or unintentional distortion of the text of a regulatory act, which in modern conditions can be a source of a law enforcement error, is being actualized.

To date, the tasks of reference and information systems are reduced exclusively to functional and reference (in some cases, explanatory), however, soon digital algorithms themselves will likely be able to assess the gap and defectiveness of the current legislative regulation. The moment the digital algorithm will get the conditional right to make its original edits (albeit insignificant) to the regulatory system will become a transition to a different legal system. Until then, it should only be said that digitalization has seriously changed the face of written (positive) law, its accessibility, relevance, and ways of perception. However, the traditional law neither received, in this regard, any additional regulatory functions, nor lost the ability to influence the regulation of certain traditional spheres of public relations.

At the same time, we cannot ignore the opposite negative trend. Attempts to build a new digital-legal reality by analogy with "well-proven" virtual reality, i.e. the shift in emphasis in the design law from the achievements of jurisprudence to the achievements of information science can lead to a significant erosion of the so-called human factor, as well as partial or complete disregard of the ethical, axiological, and socio-cultural aspects of the law.

Mechanistic and devoid of the very spirit of the law, law formation can lead to a significant restriction of freedom of will and freedom of choice of subjects of legal relations (GAIVORONSKAIA & MIROSHNICHENKO, 2019). The construction of a system of legal relations according to a simplified model used in virtual reality significantly impoverishes the very idea of law in a close combination of its natural-legal and positivist aspects. Excessive enthusiasm for modern legal science specifically with positivist approaches to legal thinking (the exception is the sphere of constitutional justice, which in all cases exponentially declares adherence to natural legal approaches) has already led to the formation of a negative image of law in the public consciousness and understanding it as alienated from man and "enslaving him external force" (SHAPSUGOV, 2016). Ultimately, the new "free" digital world, deprived in its idealistic understanding of all the shortcomings of the modern world, in which law is turning into a constantly transforming digital model of optimal behavior, may turn out to be even more "not free" than the existing one.

We cannot but agree with the authors who argue that in the era of legal digitalization, sociological jurisprudence will become even more widespread. In turn, the sociological approach to cognition and analysis of legal consciousness activates scientific research in the coordinate system of legal anthropocentrism, which asserts that legal reality is constructed by the daily actions of the subject of law, and the law itself is understood not as a system of norms, but as the constant activity of its subjects to implement legal prescriptions, expressed in symbolic form and received a certain mental reflection. The subject of law and its sense of justice will determine the degree of effectiveness of the regulatory impact of the law on public relations (PASHENTSEV & ALIMOVA, 2019).

SUMMARY

Currently, an extremely contradictory and dangerous trend is developing, associated with the justification and legitimation of the new "supersystem foundations" of the social order. The belief that digital technologies and algorithmic solutions in the XXI century will be able to control the spreading violence and ensure the safety of society, bring order into the chaos of existing information, interaction practices, etc. are rather dangerous and not productive. This trend is leading to the construction of a new digital leviathan, the realm of high digital technologies, and the new regulatory system based primarily on strict algorithmic systems and regulatory requirements, i.e. ideal mathematical scenarios and formal logical algorithms, freed from flaws and human subjectivity.

The complete and final virtualization of the regulatory legal space is a process intended for a certain perspective. The latter remark applies to both regulatory acts and local acts of institutions and enterprises. At the same time, the problem of legal liability of officials guilty of intentional or unintentional distortion of the text of a regulatory act, which in modern conditions can be a source of a law enforcement error, is being actualized.

The emergence of new digital spheres of legal regulation, in a situation where traditional elements of the state, public, and private life move somewhat into a digital virtual space, places the law before new challenges to be addressed, however, based on traditional general legal approaches. Digitalization has seriously changed the face of written (positive) law, its accessibility, relevance, and ways of perception. However, the traditional law neither received, in this regard, any additional regulatory functions, nor lost the ability to influence the regulation of certain traditional spheres of public relations. To date, the legal functionality of digital electronic algorithms is limited by the extent of the auxiliary and organizational-support functions;

The shift in accents in legal regulation from the achievements of legal science to the achievements of information (technical) science can lead to a partial or complete disregard of the ethical, axiological, and socio-cultural aspects of law, which in turn may entail the idea of digitalization of law as an element of coercion and oppression.

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New digital leviathan and the future of the regulatory system of society: scenarios and trends of modern transformation of law and state

Novo leviatã digital e o futuro do sistema regulatório da sociedade: cenários e tendências da moderna transformação do direito e do estado

Nuevo leviatán digital y el futuro del sistema regulatorio de la sociedad: escenarios y tendencias de transformación moderna del derecho y el estado

Resumo

Este artigo examina o impacto dos processos de digitalização nas relações públicas, na cultura jurídica da sociedade, na transformação da ordem pública e nos reguladores normativos de valor estabelecidos. Os autores identificam e analisam as principais tendências e problemas da transformação moderna da sociedade, do estado e do direito, discutem os principais cenários de interação entre a organização jurídico-estatal da sociedade e os novos "meta fundamentos" da ordem social em rápido desenvolvimento. Eles avaliam criticamente a atitude segundo a qual as tecnologias digitais e as soluções algorítmicas do século XXI garantirão o controle sistêmico e a segurança da sociedade. O conteúdo do trabalho também argumenta que a virtualização completa e final do espaço jurídico regulatório é um processo bastante longo e altamente contraditório. A parte final da pesquisa comprova que o surgimento de novas esferas digitais de regulação jurídica, em uma situação em que elementos tradicionais do estado, da vida pública e privada se movem um pouco para um espaço digital virtual, coloca a lei diante de novos desafios a serem enfrentados com base em abordagens jurídicas gerais tradicionais.

Palavras-chave: Cenários algorítmicos. Poder. Estado. Direito. Jurisprudência.

Abstract

This article examines the impact of digitalization processes on public relations, the legal culture of society, the transformation of public order, and the established value-normative regulators. The authors identify and analyze the key trends and problems of the modern transformation of society, state and law, discuss the main scenarios of interaction between the state-legal organization of society and the rapidly developing new "meta foundations" of social order. They critically assess the attitude according to which digital technologies and algorithmic solutions in the XXI century will ensure systemic control and safety of society. The content of the work also argues that the complete and final virtualization of the regulatory legal space is a rather lengthy and highly contradictory process. The final part of the research substantiates that the emergence of new digital spheres of legal regulation, in a situation where traditional elements of the state, public, and private life move somewhat into a digital virtual space, places the law before new challenges to be addressed based on traditional general legal approaches.

Keywords: Algorithmic scenarios. Power. State. Law. Jurisprudence.

Resumen

Este artículo examina el impacto de los procesos de digitalización en las relaciones públicas, la cultura jurídica de la sociedad, la transformación del orden público y los reguladores normativos de valores establecidos. Los autores identifican y analizan las tendencias y problemas clave de la transformación moderna de la sociedad, el estado y el derecho, discuten los principales escenarios de interacción entre la organización estatal-legal de la sociedad y los nuevos "meta fundamentos" del orden social en rápido desarrollo. Evalúan críticamente la actitud según la cual las tecnologías digitales y las soluciones algorítmicas en el siglo XXI garantizarán el control sistêmico y la seguridad de la sociedad. El contenido del trabajo también sostiene que la virtualización completa y final del espacio legal regulatorio es un proceso bastante largo y altamente contradictorio. La parte final de la investigación sustenta que el surgimiento de nuevas esferas digitales de regulación legal, en una situación en la que elementos tradicionales de la vida estatal, pública y privada se trasladan un tanto a un espacio virtual digital, coloca al derecho ante nuevos desafíos a abordar. basado en enfoques legales generales tradicionales.

Palabras-clave: Escenarios algorítmicos. Poder. Estado. Derecho. Jurisprudencia.