

Polanyi and the Next Great Transformation.

The What and Why of a European Digital Society

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Abstract

This essay applies the lessons of Karl Polanyi's work on capitalism's great transformation in the 19th and 20th century to its contemporary digital transformation. It starts with sketching the new global context in which the debate on regulating digital capitalism is embedded and argues that the European Union is well advised to strengthen its normative identity by developing a specific European regulatory approach to digital capitalism. This approach should build on ethically and socially responsible norms and abstain from confrontational concepts of technological sovereignty. For making such an approach sustainable, the EU will have to build on pan-European discursive networks and take the lessons of European history seriously: in times of technological disruption, only ambitious social policies can make the liberal promise of an open society credible and democratically sustainable.

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1 Reinventing Capitalism – now and then

Capitalism is a disruptive force, challenging industrial structures and democracy alike. Ever since its invention in the 18th century, capitalism had a massive transformative impact on the way we live, produce and consume. Karl Polanyi described in his masterpiece ‘The Great Transformation’¹ how capitalism destroyed in the 19th century traditional local communities, disrupted established ways of producing and working, and forced societies into massive processes of adaptation. Capitalist disruption was not only destructive, however. The productivity of the new industrial structures was an important precondition for the mid to late 20th century rise of the welfare state, and for the political and economic integration of Europe. All of this, however, only materialized after the established political and economic order of a pre-industrial age had been destroyed in massive social confrontations and after two devastating world wars.

The Polanyian story underlines that the destructive and the constructive transformative forces of capitalism are hardly ever synchronized. Quite on the contrary, new legal and political orders only emerge after old orders have been destroyed. The time between two orders, the interregnum when an old order loses cohesive powers without being already replaced by the hegemony of a new order, is the time of the ‘monsters’.² In the interwar period governments had to choose between satisfying domestic social demands and stabilizing an international order

¹ K. Polanyi, *The Great Transformation: The political and economic origins of our time* (Beacon, 2001).

² Slavoj Žižek has referenced the notion of ‘monsters’ to Antonio Gramsci: ‘The old world is dying whilst the new world has not yet been born. It is the time of the monsters’. S. Žižek, ‘Zeit der Monster’ (2010) 12.11, *Le Monde diplomatique*, at https://www.monde-diplomatique.de/pm/2010/11/12.mondeText1.artikel_a0048.idx_14, retrieved 6/7/2019. The original version is slightly different, however: ‘The crisis originates in the fact that the Old is dying and the New cannot be born: in this interregnum different phenomena of diseases can happen’ (both citations are own translations; second quote is from A. Gramsci, *Gefängnishefte* 3, §34, Vol. 2).

of monetary discipline.³ The US and Britain opted for democracy and sacrificed their allegiance to the gold standard, to global monetary discipline and to the international liberal order. Germany, being focused on proving to the world that the burden of reparations was unsustainable, remained loyal to the international order as long as it could – and was sacrificing democracy in the end.

This essay applies the lessons of capitalism's great transformation in the 19th and 20th century to its contemporary digital transformation. It travels among a group of scholars interested in understanding the interconnection between transformations in the mode of commodification, transnational governance regimes and domestic democracy.⁴ The essay starts with sketching the new global context in which the debate on regulating digital capitalism is embedded. It argues that the European Union is well advised to strengthen its normative identity and to develop a specific European regulatory approach to digital capitalism. For making such an approach sustainable, the EU will have to build on pan-European discursive networks and take the lessons of European history seriously: only ambitious social policies can make the liberal promise of an open society credible and democratically sustainable.

2 Towards a European Digital Society

2.1 Rediscovering Territory

The global context of Europe has changed quite dramatically in the last ten years. The first decade of the 21st century was dominated by the paradigm of a 'space of places' being

³ The authoritative story of the world economic history of the interwar period has been told by B. Eichengreen, *Golden Fetters: The Gold Standard and the Great Depression, 1919-1939* (UC Berkeley, 1996).

⁴ C. Joerges and J. Falke (eds.), *Karl Polanyi, Globalisation and the Potential of Law in Transnational Markets* (Hart, 2011).

perforated by a ‘space of flows’.⁵ Territory seemed to have lost all of its relevance for a globalized economy.⁶ The scientific and political talk of the time centred around the concept of a ‘flat world’⁷ where business people in London chat with their peers in Singapore, Bangalore or wherever on the globe. Distances were believed to disappear between cultures and nations, and a new transnational elite, integrated by global communication flows, seemed to herald a new transnational world of unlimited opportunities. Theorists of international politics wrote about a ‘no-polar’ world in which power was diffused so widely that no state is any longer in control of policy outcomes.⁸ Digital libertarians challenged all forms of state interventions, submitted a ‘declaration of independence’ of the Internet⁹ and argued for a form of political organization based on the model of multi-stakeholder governance. Mueller even claimed that ‘the people of the internet’ (meaning all those who are ‘sufficiently mobilized around the issue of Internet governance to weigh in’) should form a transnational popular sovereignty independent from state authority.¹⁰ It should displace the nation-states in all matters related to the regulation of the Internet and develop an own political identity.

⁵ M. Castells, *The Network Society. The Information Age: Economy, Society and Culture, Vol. 1* (Blackwell, 1996). Castells described the emergence of a new world being organized ‘in networks pertaining to a space of flows that links them up around the world, while fragmenting subordinate functions, and people, in the multiple space of places, made of locales increasingly segregated and disconnected from each other’ (at 476).

⁶ K. Ohmae, *The End of the Nation State: The Rise of Regional Economies* (Simon and Schuster, 1995): ‘traditional nation states have become unnatural, even impossible, business units in a global economy’ (at 5).

⁷ T.L. Friedman, *The World is Flat: The Globalized World in the Twenty-first Century* (Penguin Books, 2007).

⁸ J.S. Nye, *The Future of Power* (Hachette UK, 2011), at 113.

⁹ <https://www.eff.org/cyberspace-independence>, retrieved 4/7/2019.

¹⁰ M. Mueller, *Will the Internet fragment? Sovereignty, globalization, and cyberspace* (Polity, 2017), at 134.

Much has changed since then. All over the Western world, we are witnessing today a reemphasising of territory and nation as important political categories.¹¹ The anonymity of the internet is made responsible for allowing hatemongers to propagate their rhetoric and strategies, recruit, organise and unify through websites, private message boards, listservs and email.¹² China, Russia, Iran and a number of other states impose or have already imposed central control of all internet traffic, and stark censorship of websites and online service providers. Demands for a realignment of national borders and political control over the internet is joined by critics of the technological supremacy of the US. It is feared that the cyberspace is de facto becoming a space of US surveillance and control which can only be countered by a new emphasis on ‘technological sovereignty’,¹³ i.e. the realignment of the network society with national borders.¹⁴ The re-territorialisation is not limited to the online world but also takes place offline. The electoral gains of right-wing parties in Europe, the Brexit and the growing anger about the

¹¹ A. Wimmer, ‘Why Nationalism Works. And Why It Isn’t Going Away’ (2019) 2 *Foreign Affairs* 27-35; J. Snyder, ‘The Broken Bargain. How Nationalism Came Back’ (2019) *Foreign Affairs*; J. Goldsmith and T. Wu, *Who Controls the Internet. Illusions of a Borderless World* (Oxford University Press: 2008).

¹² J. Banks, ‘Regulating hate speech online’, (2010) 3 *International Review of Law, Computers and Technology* 233-239; B. Perry and P. Olsson, ‘Cyberhate: the globalization of hate’ (2009) 2 *Information and Communications Technology and Law*, 185-199.

¹³ A critical discussion of the concept is in T. Maurer, R. Morgus, I. Skierka and M. Hohmann, *Technological Sovereignty: Missing the Point? An Analysis of European Proposals after June 5* (New America/ GPPi, 2013), https://www.gppi.net/media/Maurer-et-al_2014_Tech-Sovereignty-Europe.pdf, retrieved 6/7/2019. For a constructive understanding of digital sovereignty cf. V. Reading, *Digital sovereignty: Europe at a crossroads* (EIB Institute, 2015). According to Reading, digital sovereignty should be used ‘in order to share power with others, increasing your capacity to forge the future in a globalised world’ (at 2).

¹⁴ P. Keller, ‘Sovereignty and liberty in the Internet era’, in R. Rawlings, P. Leyland and A. Young, A. (eds.), *Sovereignty and the law: Domestic, European and international perspectives* (Oxford University Press, 2013), at 305.

social costs of austerity policies in many of the European Member States all speak the same language: politics will either refocus on serving its national clients or face electoral dissatisfaction and governmental loss of power. The digital revolution in finance and trade in services has drawn formerly national markets so close together that the costs of adaptation are felt throughout most world market integrated societies. Increasingly, people are tired of living up to the talk of ‘globalists’ and feel threatened and overwhelmed by the need of ever-more adaptation to forces beyond their control. Populism feeds this changing mood and exploits it for renationalising policy-making.¹⁵

The dispute over the Chinese technology group Huawei illustrates this new emphasis on territoriality.¹⁶ Tech companies are no longer only participants in a common market but have become important instruments for gaining access to strategic technologies relevant for national security concerns. The US administration treats Huawei as the Trojan horse of an opposing government that pursues policies incompatible with American interests. Far from accepting the US allegations, Beijing sees something different going on - a campaign to contain China's rise.¹⁷ The conflict over Huawei threatens to signal a fundamental break with the logic of a global

¹⁵ Not only economic but also global security relations have changed significantly. Only twenty years ago, governments could count airplanes and tanks and estimate the degree to which they are vulnerable. Today, no state knows in how far its critical infrastructure is already infected by foreign viruses waiting for a call to come to action. The new world of digital weapons ended of multilateral security policy and international disarmament as we know it and introduced a general perception of global insecurity. Cf. R.A. Clarke, A. and R.K. Knake, *Cyber War. The Next Threat to National Security and What to Do About it* (Harper Collins, 2010).

¹⁶ Documentations of the conflict can be found in K. Johnson and E. Groll, ‘The Improbable Rise of Huawei. How did a private Chinese firm come to dominate the world’s most important emerging technology?’, (2009) *Foreign Policy* at <https://foreignpolicy.com/2019/04/03/the-improbable-rise-of-huawei-5g-global-network-china/>, retrieved 7/7/2019; and T. Rühlig, J. Seaman and D. Voelsen, *5G and the US-China Tech Rivalry – a Test for Europe’s Future in the Digital Age* (SWP Comment 29, 2019).

¹⁷ <https://www.bbc.com/news/business-48397081>, retrieved 25/6/2019.

market economy. It might introduce a new phase of international mercantilism in which the gain of one party equals the loss of another.¹⁸ In this new perception of zero-sum exchanges, the convergence of markets no longer is an opportunity for prosperity only, but increasingly a threat to public security. New concepts such as technological sovereignty and economic vulnerability are beginning to replace the belief in a global economic order of the common market.¹⁹

The conflictual nature of digitalized politics is not limited to relations between the West and China. In transatlantic relations, normative conceptions differ and are difficult to reconcile, too.²⁰ The much-invoked transatlantic community of values collides with fundamentally different conceptions of how to deal with data. Whilst the US government emphasizes contractual freedom, Europeans are proud to protect personal data and strengthen informational self-determination. A clear example of the widening gap between the US and Europe is the reaction of the Trump government to the penalties that the European Commission has repeatedly imposed on Google for breaches of European competition law. In complete disregard of the constitutional and regulatory reasons for these decisions, US President Donald Trump assessed the decision as a pure act of revenge by a ‘tax lady who hates the US’. This is more than a tweet. It is evidence for the gap opening between incompatible regulatory philosophies on both sides of the Atlantic.

¹⁸ For a recent discussion of mercantilism in international trade policy cf. A.S. Blinder, ‘The Free-Trade Paradox. The Bad Politics of a Good Idea’ (2019) 1 *Foreign Affairs*.

¹⁹ For the debate on technological sovereignty cf. T Benner, *Technological Sovereignty: Blind Rage Against the US is Not Enough* (Global Public Policy Institute, 2010).

²⁰ For an illuminating analysis of the sources of the crisis of the liberal order cf. G. J. Ikenberry, ‘The End of Liberal International Order?’, (2018) 1 *International Affairs* 7-23.

The relevance of the current conflicts between the USA, China and the EU extends beyond trade and investment policy. Digital technologies are the communicative infrastructure of highly developed information societies. Whoever has control over hardware and software also determines who has access to which information, at what time and at what cost. Conflicts in the information society are always conflicts over fundamental questions of political rule and reach far beyond single policy areas. The merging of the markets for digital products and services is thus not only an economic issue but of high political salience.

2.2 Ethics in Digital Europe

International environments do have a significant impact on the political identity of states. Globalization has forced all market-integrated states to emphasize competitiveness and to adapt tax regimes, educational programs and financial policies in accordance with liberal principles. European integration has provided strong incentives to consolidate democratic transformations and turned European nation-states into legally-bound Member States. If Europe is to remain uninfected from the recent wave of nationalism and keep its multilateral approach to global trade as well as its insistence on ever-closer-union, it is well advised to re-emphasize its normative traditions.

The EU has all the necessary building blocks in place. It is cherished in Europe and beyond for its tradition of acting as a normative power and its emphasis on human rights, international law and multilateral politics.²¹ Its integration project is built on regulatory ideas that do neither follow the recipes of market-based libertarianism nor of state-centred authoritarianism. Ever since the renaissance, the European model of society-building has been based on the values of

²¹ The locus classicus of this argument is I. Manners, 'Normative Power Europe: A Contradiction in Terms?' (2002) 2, *Journal of Common Market Studies* 40, 235-58.

humanism and, later, the Enlightenment. It emphasizes equal respect for the individual's freedom and its responsibility to society. The *volonté generale* in the French tradition of political theory and the idea of the public use of reason in Germany and the UK symbolize a conception of society that can be traced from Rousseau to Voltaire, John Stuart Mill and Immanuel Kant to Jürgen Habermas; it is heir to a tradition of thought that both ascribes reasonability to the individual and emphasizes the role of society in activating this potential. Only in a discursively integrated and democratic society does the rationality of the individual translate into the reason of the many. And only in the legal procedures of constitutional democracy does the market participant become a responsible citizen.

The European Union is built on these traditions of thought. It resembles a close connection between ethical standards, abstract constitutional principles and concrete legal requirements. In Art. 3 and 10 TEU, the EU emphasises the individual self-determination of European citizens through its commitment to market freedoms and democracy. It integrates these citizens into a political order that takes a position on fundamental ethical questions without claiming to have universal truth. The very idea of compliance with European law as a 'voluntary act... renewed on each occasion of subordination'²² underlines this conception. Legal compliance is not a matter of coercive sanctions but of reasonable insight into the well-understood self-interest of being member of an ethical community. At the end of the day, we comply with the law because of its legitimacy.²³

²² J.H.H. Weiler, 'Federalism and Constitutionalism: Europe's Sonderweg', (2000) *Harvard Jean Monnet Working Paper*, 00(10), 13.

²³ Forcefully argued in: T.M. Franck, 'Power of Legitimacy and the Legitimacy of Power: International Law in an Age of Power Disequilibrium' (2006) 1 *The American Journal of International Law* 100, 88-106.

This balanced conception of society can also be found in current position papers of European institutions on the opportunities and challenges of the digital society. The Council of Europe,²⁴ the European Council,²⁵ and the European Commission²⁶ have adopted a series of declarations and position papers expressing the idea of a democratic digital society that is both socially and individually centred. In all of these papers, technological progress is seen as a human-made opportunity, fundamentally open to improving society. At the same time, however, Europe does not fall prey to naive technology affirmation. New technologies must not only be efficient but also contribute to democracy and human rights.

A clear example of this particular European approach can be found in the EU's take on Artificial Intelligence (AI). AI is understood by the Commission not as an end in itself, but as a tool operating in the service of humanity and the public good. In June 2018, the Commission set up an expert group with the task of developing ethical guidelines for a 'trustworthy AI'. The final report of the group, published in April 2019, stresses the need to preserve human autonomy, avoid harm to people and generally take the principles of fairness and comprehensibility into account.²⁷ Similarly, the European Council calls for the introduction of a 'human rights impact

²⁴ Declaration by the Committee of Ministers on the manipulative capabilities of algorithmic processes (adopted by the Committee of Ministers on 13 February 2019 at the 1337th meeting of the Ministers' Deputies). More can be found at <https://www.coe.int/en/web/artificial-intelligence>.

²⁵ European Council, '*Unboxing Artificial Intelligence: 10 steps to protect Human Rights*' (Council of Europe, 2019).

²⁶ European Commission, '*Artificial Intelligence for Europe, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions*' (Brussels, 2018), COM(2018) 237 final.

²⁷ European Commission, '*Ethics Guidelines for Trustworthy AI. High-Level Expert Group on Artificial Intelligence*. Brussels 2019.

assessment' for AI systems. AI systems should be understandable and easy to turn off.²⁸ The Council of Europe demands in addition that particular attention should be paid to technology-induced power shifts in society and to the relationship between state and society.²⁹

The European approach to regulating the digital society is also reflected in important recent EU legal acts on the digital society. The General Data Protection Regulation (GDPR)³⁰ sets new standards for the collection and use of data and an appropriate balance between the protection of personal data and the creation of free data traffic in the internal market. The Copyright Directive adopted by the Council in April 2019³¹ also expresses European values. It protects the interests of authors and artists from being exploited by the big social media platforms by obliging them to pay fair fees; it also provides for special exemptions from ambitious copyright concerns for public-interests such as online education and the preservation and dissemination of the cultural heritage.

2.3 Managing the Social Transformation

Ethical guidelines are of crucial importance for keeping the development of AI in accordance with the political and cultural traditions of Europe. They are necessary conditions for

²⁸ European Council: Unboxing Artificial Intelligence: 10 steps to protect Human Rights, Council of Europe 2019.

²⁹ '(P)articular attention should be paid to the significant power that technological advancement confers to those – be they public entities or private actors – who may use such algorithmic tools without adequate democratic oversight or control', Declaration by the Committee of Ministers on the Manipulative Capabilities of Algorithmic processes (*Adopted by the Committee of Ministers on 13 February 2019 at the 1337th meeting of the Ministers' Deputies*).

³⁰ Regulation on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (Data Protection Directive)

³¹ Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on Copyright and Related Rights in the Digital Single Market and Amending Directives 96/9/EC and 2001/29/EC.

safeguarding the legitimacy of a potentially disruptive technology. Ethical guidelines are not sufficient, however. Polanyi focused in his analysis on the different dynamics of capitalist and political development, and their implications on the social stability of society. The Great Transformation meant to him first of all a decoupling of economic and political spaces, leading to major frustrations with a democratic system that was openly incapable of providing social stability. Modern historians embed this picture in a larger historical perspective. According to Frey, major technological innovations have since antiquity led to massive accumulations of wealth in the hands of a few powerful people. It took until the 19th century that the beneficial impact of new technologies led to an improvement of the living standards of the population at large. In historical comparison, so his argument, it would be hard to argue that early 19th century workers and peasants were any better off than their peers hundreds of years earlier.³² Frey highlights in his book that technology is not a good in itself but that its use must be governed democratically if it is to have an overall positive effect on society.

This insight is of crucial importance for today. The rise of the digital revolution and of artificial intelligence (AI) signals a second major transformation of capitalism with significant social implications comparable only to industrialisation. It is true that no one can today forecast its future relevance with any certainty. It is also true, however, that AI is increasingly becoming ‘vital to everything’³³. AI is allowing for the development of self-optimizing machines. Already today it is performing ambitious intellectual tasks such as pattern recognition, and making decisions instead of humans in industrial settings, customer service roles and within financial institutions. AI is substituting humans in automated decision-making in areas such as approving

³² C. B. Frey, *The Technology Trap. Capital, Labor, and Power in the Age of Automation* (Princeton University Press, 2019).

³³ E. Franke, ‘Harnessing Artificial Intelligence’ in M. Leonard and J. Shapiro (eds.), *Strategic Sovereignty: How Europe Can Regain the Capacity to Act (ECFR Policy Brief, 2019)*, 49-60.

loans, deciding whether a customer should be onboarded or identifying corruption and financial crime. Not surprisingly, a number of contributions is reflecting about the long-term emergence of a general intelligence that can at least in principle solve problems of any kind on its own: authors such as Chace argues that the capability of AI is experiencing exponential growth and likely to bring about two ‘singularities’.³⁴ AI might lead to an *economic singularity* implying that machine skill has become so sophisticated that many of us are unemployable and that our current economic and social systems requires a major overhaul. It might also lead to a *technological singularity* in which machine intelligence becomes so developed that it surpasses the cognitive abilities of an adult human. AI makes a future possible in which not only human mechanical skills are being replaced by tools and machinery but in which human mental functions like our ability to make predictions and decisions are being taking over by machines. This is something which has never happened before in human history, and no one exactly knows what to expect. Some see a bright future with new opportunities for democratizing the workplace and a society that transforms for the better.³⁵ Repetitive, dangerous and boring work will be done by machines and no person in digitalised societies will need to work for sustaining a living. The new technologies will be accompanied by a strong demand for people with expertise in areas like neural networks, deep learning and machine learning. Many new jobs from app developers to cloud computing engineers, user experience designers and data visualization experts will appear that didn’t exist until this century. A recent study by the WEF estimates that by 2025, the amount of work done by machines will jump from 29% to more

³⁴ C. Chace, *Artificial Intelligence and the Two Singularities* (Chapman and Hall/CRC, 2018).

³⁵ N. Gershenfeld, A. Gershenfeld, Alan and J. Gershenfeld-Cutcher, *Designing Reality: How to Survive and Thrive in the Third Digital Revolution* (Basic Book, 2017), at 183: ‘the very real potential to democratize manufacturing, transforming how we make (unmake and remake) things and empower billions of people to make what they consume’.

than 50%.³⁶ Similarly, the McKinsey Global Institute estimates that about 1/3 of activities can be fully automated for some sixty percent of jobs.³⁷

It is far from certain, however, that these projections will cover the whole picture and that new technologies will lead to better living conditions for all of the people. Machines powered by AI already today replace a large number of people working in ‘automatable’ jobs like administrative assistants, customer service representatives, accountants, drivers, telemarketers, fast food cooks and paralegals and electrical/mechanical technicians. Driverless cars and fully automatized convenience stores without human checkout are a reality. Even people in more sophisticated jobs like radiologists, lawyers and journalists start to be replaced. AI is increasingly learning to perform ambitious intellectual tasks such as recognizing complex patterns, synthesizing information, drawing conclusions, and forecasting that not long ago were assumed to require human cognition.

The change in industrial relations and the labour force will not remain without impact on democracy. Facebook is developing its own currency and might become a major creditor of states, and thus a major political power, in the future. Technical innovations like the blockchain and ever more sophisticated virtual realities can allow corporations to escape governmental authority, deposit company profits in offshore havens, and bypass democratic regulation. Some already speculate about the emergence of a super-rich oligopoly of mega-corporations and data billionaires who reap the wealth created by robots and supporting a ‘dictatorship of AI oligarchs

³⁶ Centre for the New Economy and Society, ‘*The Future of Jobs Report*’ (World Economic Forum, 2018).

³⁷ J. Bughin, E. Hazan, S. Ramaswamy, M. Chui, T. Alla, P. Dahlström, N. Henke, M. Trench, *Artificial Intelligence. The Next Digital Frontier?* (McKinsey, 2017).

who gather rents because the intellectual property they own rules over the means of production'.³⁸

Even if the future will tell that some of these speculations belong to science fiction rather than the realm of empirical data, none of this is absurd today. Numerous studies by the World Economic Forum, European political institutions, the United Nations, and business think tanks describe its likeliness. Taking Polanyi and the lesson of the interwar period seriously, we are well advised to take pre-cautionary measures and to ask how to prevent the past turmoil from returning in new clothes. For smoothening the second great transformation, Europe will have to expand its social policies and support the economically weaker Member States with additional investment and training programs, as well as funds for those who are unable to catch up. It is more than likely that the social costs of the digital revolution will affect a large number of workers and replace millions of jobs before its overall beneficial impact will be realized. Politics is asked to ensure that the different dynamics of economic innovation and adaptation will not lead to democratic disruptions that endanger the liberal projects of democracy and European integration.

2.4 Caveats

2.4.1 Competitiveness First

The regulatory idea of an ethically and socially responsible Europe is far from uncontested. Some express the expectation that especially the EU's regulations on data protection will put the EU at a competitive disadvantage, leading to a widening of the technological gap with the

³⁸F. Xiang, AI will spell the end of capitalism, https://www.washingtonpost.com/news/theworldpost/wp/2018/05/03/end-of-capitalism/?noredirect=on&utm_term=.6d94e627b16e, retrieved 8/7/2019.

US and especially China.³⁹ Large volumes of data and thus limited privacy regulations are needed for feeding most AI applications. In addition, consumers might not be willing to pay for high standards if they do not improve the performance of the product. Emphasizing ambitious standards thus risks higher costs, a loss of competitiveness and limited consumer demand. A closer look at the argument reveals quickly, however, that it does not stand up to closer scrutiny: The GDPR sets out the ambitious principles of purpose limitation, data minimization, accuracy, the limitation of storage, and integrity and confidentiality. It is already today setting a standard that is widely practiced and applied by many corporations outside of Europe. The effects of the GDPR on the US market are already today stunning to many observers. ‘Ironically, many Americans are going to find themselves protected from a foreign law’, said Rohit Chopra, the Democratic commissioner at the Federal Trade Commission (FTC).⁴⁰ The EU has emerged as the most powerful regulator of Silicon Valley, ‘stepping in where Washington has failed or simply has been unwilling – to limit some of the United States’ most lucrative and politically influential companies’ (ibid.). For global companies like Google, Facebook or Amazon, it is neither an option to leave the European market nor to organize their business along two different sets of legal regulations. Data’s inherent mobility necessitate de facto transnational regulation, even if that is politically not welcome in some of the markets. It is by far more efficient to implement the rigid European regulations on a global scale than to try aligning digital markets with national borders, and thus to offer to the American consumer the level of protection intended for Europeans only. The outcome is straight forward: although legally only aiming to safeguard EU customers who rely on foreign based services, the EU de facto extends the territorial reach of its data protection law, forcing foreign market participants to obey EU law

³⁹ K.-F. Lee, *AI Superpowers: China, Silicon Valley, and the New World Order* (Houghton Mifflin Harcourt 2018).

⁴⁰ T. Romm, C. Timberg, C. and M. Birnbaum, ‘Europe, not the U.S., is now the most powerful regulator of Silicon Valley’ (2018) May 25, *The Washington Post*.

irrespective of whether they serve EU, US or any other customers. The example shows that in global product regulation the same logic applies as in the EU: the so-called California effect⁴¹ ensures that low standards are displaced by high standards when they are legally binding in relevant submarkets. The high quality of European standards, from machine safety to food purity, is an essential success story of European integration. There is little reason to believe that this logic cannot also be applied to products that contain components of artificial intelligence.

2.4.2 Identity and International Conflicts

A second caveat to be discussed is negative international repercussions of intensified European self-assurance. The stability of the liberal order after 1945 and the integration of Europe both relied on the general acceptance of a multilateral order in which all states agreed to a common set of basic rules, norms and procedures for conducting their affairs and coping with conflict.⁴² Some states were larger while others were smaller; all liberal states, however, shared the norms of the rule of law, of democracy, and of human rights.

It's not absurd, therefore, to be cautious towards all efforts of developing a European identity and – by implication – emphasising transatlantic differences. If combined with concepts such as strategic autonomy or technological sovereignty, it could indeed lead to a policy that revives old patterns of confrontation. Technological sovereignty can easily be misinterpreted as a mercantilistic concept that centres around the idea of providing incentives to domestic companies for replicating technological innovations made by companies legally residing in

⁴¹ D. Vogel, *Trading Up: Consumer and Environmental Regulation in a Global Economy* (Harvard University Press, 2009), at 250.

⁴² Cf. J. G. Ruggie, 'Multilateralism: the Anatomy of an Institution' (1992) 3 *International Organization* 46, 561-598; and C. Reus-Smit, 'The Constitutional Structure of International Society and the Nature of Fundamental Institutions' (1997) 4 *International Organization* 51, 555-589.

other states (so-called foreign companies). Technological sovereignty does not trust in making use of the products of foreign companies but treats them with a general attitude of mistrust. It does not properly distinguish between public authority and private corporations but assumes that governments use ,their' companies for political goals. The concept is closely connected to the goal of strategic autonomy, i.e. 'the ability to set priorities and make decisions in matters of foreign policy and security, together with the institutional, political and material wherewithal to carry these through – in cooperation with third parties, or if need be alone'.⁴³ Both concepts critically scrutinise trade and defence relations and reduce them if that promises to minimize vulnerability and to make Europe independent of the decisions adopted by others. Positively speaking, strategic autonomy and technological sovereignty lead to a world of mutually independent states where foreign interference is minimized.

Independence from other states does not come without costs, however. A most important lesson learned from European integration is that interdependence, not independence, is the proper way for maximizing wealth and security. Market-making and ever closer integration have been the strategies that guaranteed peace in Europe and which provided for decades of economic growth. It would be hard to justify if Europe were to forget these lessons.⁴⁴ Not isolation, but confidence- and security-building measures and policies aimed at mutual understanding must remain the means of choice. Against this background, an appropriate strategic goal is not strategic autonomy, but strategic interdependence.

⁴³ B. Lippert, N. von Ondarza and V. Perthes (eds.), *European Strategic Autonomy. Actors, Issues, Conflicts of Interests* (SWP Research Paper 4, 2019), at 5.

⁴⁴ Cf. S. Lucarelli 2018: *The EU and the Crisis of Liberal Order: At Home and Abroad*, GLOBUS Research Paper 12/2018.

Emphasizing interdependence is a strategy that recognizes the complexity of reality under the conditions of globalization and digitization.⁴⁵ Security is not achieved by minimizing interdependence but by fostering economic and political integration. European integration is the best example of how dialogue and integration can bring peace and stability to Europe. The greatest success story of the 20th century entails the opening of borders and the integration of formerly sovereign nation-states into an overarching political, legal and economic order. It is true that the road towards integrating the US, China and Europe is no easy way but full of challenges. The three blocs have different cultures, political systems and ideologies. More important than realizing full harmonization across all policy areas, however, is the political will to engage in cooperative interface management instead of emphasizing confrontational demarcations. There are no prima facie reasons to believe that the Franco-German experience cannot be applied to the creation of security and global market making in the digital context. And all the sceptics who think that in a world of carnivores there is only room for carnivores should be reminded that the largest, strongest and most long-lived of all living creatures have always been vegetarians.

Applying a policy of strategic interdependence means to refrain from blocking Huawei's access to the European market and to emphasize certification requirements for its technology. It entails to increase security measures such as data traffic control and transparent software deployment. The redundancy in mobile networks is to be strengthened and monocultures in network and system components to be avoided.⁴⁶ Resilience and not confrontation are the adequate

⁴⁵ R.O. Keohane and J.S. Nye, 'Power and Interdependence Revisited' (1987) 4 *International Organization* 41, 725–753. For a more recent application of the concept of strategic interdependence cf. A. Bendiek, *No New Cold War: Give Strategic Interdependence a Chance*, <https://blog.politics.ox.ac.uk/no-new-cold-war-give-strategic-interdependence-a-chance/>, retrieved 6/7/2019.

⁴⁶ T. Rühlig, J. Seaman and D. Voelsen, '5G and the US-China Tech Rivalry – a Test for Europe's Future in the Digital Age' (SWP Comment 29, 2019), at 4-5.

responses. The recently adopted European Directive on Security of Network and Information systems (NIS Directive)⁴⁷ does already follow this path. It explicitly mentions the goal of maximizing resilience and requires Member States to establish national Computer Security Incident Response Teams (CSIRT) and a competent national NIS authority. It fosters exchange of information among the Member States in order to promote swift and effective operational cooperation on specific cybersecurity incidents and sharing information about risks. Last but not least, it aims at establishing a culture of security across vital sectors such as energy, transport, water, banking, financial market infrastructures, healthcare and digital infrastructure. Strategic interdependence is thus well in line with the EU's believe in liberal values, market-making and international cooperation.

3 Communicating the European digital society

3.1 State and the Media in the Digital Society

Reflecting about the need for a European digital society is easier than making it. In the analog world of the 19th until the mid of the 20th century, the making of society was to a large extent driven by governmental activism and mediated by an oligopolistic set of newspapers and, later, the radio: it was a project that made use of the invention of tradition, of national culture and education policy and sometimes of xenophobic nationalism.⁴⁸ In much of the second half of the 20th century, TV became in many European states a powerful tool for disseminating and further stabilizing the idea of a national community. States were actors pushing for the integration of a normatively, politically and culturally integrated space. The state of the 21st century has

⁴⁷ Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union.

⁴⁸ B. Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso, 1983).

undergone significant changes, and it can well be questioned whether the idea of the state as unitary actor is more than a legal category today. It has transformed into a transgovernmental network consisting of a complex web of power relations and negotiations between governmental agencies, interest groups and the society at large.⁴⁹ It is integrated in a web of discursive national, European and international negotiations and tied into a multi-level structure in which parallel negotiations among all levels take place.⁵⁰ Imagining the state as a unitary actor is obviously difficult to reconcile with this new environment.

The media system did undergo similarly massive changes. It is no longer under control of the state or, as it was for most of the time and in most of the states in the 20th Century, of a limited set of oligopolistic media houses. What has been in the past a structure of communication following from the few to the many, has nowadays become a structure of the many-to-many.⁵¹ Social media allows for far more dispersed flows of information and communication in which everyone can reach out via Twitter, Instagram, YouTube or other platforms to hundreds, thousands or even millions of followers. The public space has become a strongly heterarchical structure in which old patterns of dominance are dissolving. Digitization and social media have empowered citizens to transform from passive consumers of news to becoming active ‘prosumers’⁵². The public space has become more lively, diverse and dynamic. We cooperate in building the best online dictionary that the world has ever seen, in establishing

⁴⁹ A. -M. Slaughter, ‘The Real New World Order’ (1997) 5 *Foreign Affairs* 76, 183-197.

⁵⁰ R. D. Putnam, ‘Diplomacy and Domestic Politics: The Logic of Two-Level Games’ (1988) 3 *International Organization* 42, 427-460.

⁵¹ D. Pfister, ‘Networked Expertise in the Era of Many-to-Many Communication: On Wikipedia and Invention’ (2019) 2 *Social Epistemology* 25, 217–231.

⁵² The term has been coined by Alvin Toffler, *The Third Wave* (1980), <https://archive.org/details/TheThirdWave-TOffler/page/n13>, at 282-305.

communicative market places with never-heard-of opportunities and form powerful transnational pressure groups.

The implications of this double structural change in statehood and the structure of the media system for the making of a European digital society are straight forward. If neither the state nor the traditional media can be relied upon for communicating the message and convincing the European people to support the idea of a European digital society, then it is the European society itself which will have to mobilize the necessary communicative resources. The making of a European digital society will remain a mere idea as long as it is not being taken up by self-organizing networks promoting the cause of an ethically and socially responsible technology.

3.2 Civil Society Networks in the Digital Society

There is much scepticism in the literature whether any such pan-European discourse is likely to emerge. Online communication is often suspected to be excellently equipped for dealing with technical issues but to lack the instruments for proper society-building. According to Reckwitz, the internet and new social media incentivise individuals to present themselves as performers in a competition for attention without taking proper account for traditional values such as solidarity or community.⁵³ Digitization is also sometimes assumed to foster discursive fragmentation. Sunstein claimed some 15 years ago that the once all-encompassing public space, which was so important for fostering broad inclusionary deliberative processes, is fragmenting into a multitude of parallel discourse universes.⁵⁴ It is, according to him, no longer society as such that deliberates and decides about norms and policies but only like-minded

⁵³ A. Reckwitz, *Die Gesellschaft der Singularitäten. Zum Strukturwandel der Moderne* (Suhrkamp, 2017).

⁵⁴ C. Sunstein, *Echo Chambers: Bush v. Gore, Impeachment and Beyond* (Princeton University Press, 2001). For acritical assessment of the argument cf. E. Dubois and G. Blank, 'The Echo Chamber is Overstated: the Moderating Effect of Political Interest and Diverse Media' (2018) 5 *Information, Communication & Society* 21, 729-745.

people who exchange similar opinions and who disregard all those who are outside of their echo chambers. The formerly inclusionary process of public reasoning degrades into a set of only loosely coupled echo chambers lacking the functional capacity to negotiate and agree upon collectively binding concepts of solidarity.⁵⁵ In addition, Participants who lack the capacity to phrase their positions eloquently are often assumed to be hardly heard and mostly ignored.

Not all of this is true anymore, however. E-democracy and social media have developed in a way that was impossible to anticipate only ten years ago. Innovative political tools such the eDemocracia programs in Brazil, and Parlement et Citoyens in France allow people to make proposals to their representatives and work with them to improve bills and policies. The Better Reykjavik program enables people to suggest and rank ideas for improving the city. New parties such as the Pirate party in Iceland and Germany are experimenting with grassroots decision-making in both digital and offline forums. Taiwan is currently experimenting with an innovative online-platform (vTaiwan) for organizing public discourses and intensifying communication between citizens and politics. In all of these cases, digital technologies are improving representative democracy rather than replacing it.⁵⁶ Civil society actors from all over Europe meet at #Europe, #EUElections, #GDPR, and hundreds of other communication nodes on Twitter. They can – and do – design individual portfolios of news, comment on them, discuss with others online and become active prosumers of news and debate.

⁵⁵ S.-J. Min, 'From the Digital Divide to the Democratic Divide: Internet Skills, Political Interest, and the Second-Level Digital Divide in Political Internet Use' (2010) 1, *Journal of Information Technology & Politics* 7, 22–35; P. Norris, *Digital Divide: Civic Engagement, Information Poverty, and the Internet Worldwide* (Cambridge University Press, 2001); N. Selwyn, 'Reconsidering Political and Popular Understandings of the Digital Divide' (2004) 3 *New Media Society* 6, 341–362.

⁵⁶ M. Hilbert, 'The Maturing Concept of E-democracy: From E-voting and Online Consultations to Democratic Value Out of Jumbled Online Chatter' (2009) 2 *Journal of Information Technology & Politics* 6, 87-110.

The new digital activism is the more relevant as it is not limited to the online world. Many offline activities are stimulated by online activities. The protests against the copyright directive have triggered more than 80 rallies in cities all over Europe in between a few days.⁵⁷ The campaign ‘Fridays for Future’ has brought in May 15, 2019 more than 2 mill. protestors on the streets globally.⁵⁸ A recent German YouTube clip featuring a young music producer who listed for three quarters of an hour thoroughly researched political arguments earned 15 mill. clicks in a few weeks. The Green Party of Germany, which was born in political activism and still has some credibility among those who mistrust organized politics, has recently surpassed the CDU as the party with the highest support by voters in Germany. Youtube, Twitter, Facebook and many online outlets of formerly offline newspapers are beginning to constitute what was missing in Europe for the last six decades: a truly European public space that is far more lively, diverse, vibrant and dynamic than anything that European democracy has seen so far.

Benkler explains this process of a merger between the old offline and the new online world succinctly. It is ‘the basic experience of treating others, including strangers, as potential partners in cooperation (which, JN) contributes to a thickening of the sense of possible social bonds beyond merely co-consumers of standardized products. Peer production can provide a new domain of reasonably thick connection with remote others.’⁵⁹ Many analog political practices such as the campaign Fridays for Future are stimulated by online activities. People who would have never fought for anything can find an appropriate online community and start to foster social change and solidarity offline. Dedicated platforms for local use like oceanhousing or tinder strengthen local ties. The suggestion that social media might have stimulated a culture of

⁵⁷ <https://netzpolitik.org/2019/upload-filter-alle-demos-auf-einen-blick/> retrieved 18/6/2019.

⁵⁸ Fridays for Future: Strike List Countries, <https://www.fridaysforfuture.org/events/list> retrieved 26/4/2019.

⁵⁹ Y. Benkler, *The Wealth of Networks. How Social Production Transforms Markets and Freedom* (Yale University Press, 2006), 466-467.

singularities (see above) is countered by empirical evidence pointing out that social media is primarily a tool for staying connected and getting informed, rather than for self-promotion⁶⁰. Online communication contributes to the offline establishment of trust, identity, and cooperation.⁶¹ The social media are thus increasingly the spaces where powerful transnational pressure groups organize political activities and reach out into the analog world for meeting people and making decisions.

4 The Challenges Ahead

4.1 Towards an Active State

Polanyian thinking is highly relevant for navigating through the second great transformation of capitalism. Just like in the 19th century and up until the mid of the 20th century, capitalism is facing a massive disruption. Caused by digital innovations, the rise of digital mega-corporations and the introduction of AI, all modern societies are faced with major disruptions of their labour markets and their structures of production and consumption. It is most likely that these changes will in the short- to medium term cause high social costs of adaption and might even threaten the very ethical cornerstones of modernity if replacing human work and questioning the autonomy of human decision-making on a large scale. The effects of these adaptations will not be limited to capitalism but will most likely have an effect on liberal democracy and on European integration. Liberal democracy is established on constitutional principles that carry the promise of a fair deal for all citizens. Its legitimacy is contingent on the condition that

⁶⁰ T. Alloway, R. Runac, M. Qureshi and G. Kemp, 'Is Facebook Linked to Selfishness? Investigating the Relationships among Social Media Use, Empathy, and Narcissism' (2014) 3 *Social Networking*, 150-158.

⁶¹ See L.E. Sherman, M. Michikyan and P.M. Greenfield, 'The Effects of Text, Audio, Video, and In-person Communication on Bonding Between Friends' (2013) 2 *Cyberpsychology: Journal of Psychosocial Research on Cyberspace* 7.

democracy delivers not only innovation but also a sound degree of social stability. If that promise becomes implausible, liberal democracy will lose much of its legitimacy. It is also rather likely that all losses of legitimacy of liberal democracy have a high potential of spilling over into a questioning of the very normative cornerstones of European integration. The rule of law, liberal democratic principles and human rights are already today contested in some Member States. It is not absurd to speculate that further social fragmentations will encourage the authoritarians' critique and feed the rise of emerging political monsters. We can thus learn from Polanyi not only how to analyse the contemporary crisis but also to hear the alarm before it is too late. Europe will need to pool its political resources in order to develop the concept of a European digital society further and to implement adequate measures for making it socially and ethically responsible. Its recent efforts at regulating AI are an important first step in the right direction, but by far not enough.

The European way into the digital society is neither the way of the libertarians nor the authoritarians or the Cold Warriors. Europe is well advised to stand by the best of its tradition and place the values of humanism and the Enlightenment at the centre of its policies. If Europe takes this path, it has a whole series of additional tasks ahead of it. Almost every major European newspaper today registers and analyses our reading behaviour and sells the data obtained to advertising brokers. European surveillance technology is delivered to inhuman regimes in the EU neighbourhood and undermines the democratisation process in North Africa and many other regions of the world. Germany is blocking efficient transnational taxation systems - and thus also the taxation of the US Internet giants - in order to protect its own internationally selling car industry. The privacy of fugitives is rigorously disregarded. Particularly vulnerable groups (e.g. welfare recipients*, fugitives) are increasingly exposed to incorrect and non-transparent decisions of automated systems, despite GDPR and AI ethics councils. The shift of the control of network content to private individuals, which is associated with the GDPR, is just as problematic as the implementation of the copyright directive through

the introduction of upload filters. Our university system is in urgent need of reform: almost 40 percent of all German graduates of linguistics, cultural studies and law do not consider themselves well prepared for the digital requirements of their future profession.⁶² The constantly growing hunger for energy in the digital society is another major problem that has not yet been addressed at all in regulatory terms. The digital market for crypto currencies alone currently consumes 45 terawatt hours of energy per year. This corresponds to almost 23 billion tonnes of carbon dioxide emissions worldwide, almost 1200 times as much as the entire traditional banking sector consumes and roughly as much as Switzerland's total energy consumption.⁶³ All of these examples show that it is not enough just to set values, but to neglect their implementation if proving inconvenient. The way towards a proper ethically and socially responsive European digital society will remain a long-term struggle, which is nevertheless important to follow.

⁶² <https://www.channelpartner.de/a/viele-uni-absolventen-fuehlen-sich-nicht-fit-fuers-digitale.3602228>, retrieved 4/7/2019.

⁶³ <https://digiconomist.net/bitcoin-energy-consumption>, retrieved 4/7/2019.