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Space, Literacy and Citizenship in the Digitalization of Law

In this talk, I would like to mobilize three notions that can help clarify today’s digitalization of law, that of Spatiality, Literacy and Citizenship since the three of them are deeply modified by digitalization.

Firstly, justice and law have strong connections with the notion of spatial situatedness of actors. It is particularly patent in trials: at the foundation of any legal resolution of conflicts the goal of which is to organise human coexistence and avoid unrestricted private vendettas lies the capacity to gather people but at the same time keeping them at bay in a common space cut off from outside and within which they can address each other thanks to regulated forms of speech. This is put at risk today by the use of data bases and computer software that are not grounded in any spatial situatedness: it deeply affects the processes of mutual recognition of actors within the courtroom as well as the general idea of what justice is about.

Secondly, justice and law involves a degree of literacy both among professionals and the general public: traditionally in Western societies since the Renaissance, legal corpora used to be written in a technical but natural language (the Napoleonic ‘Code civil’ for example) and could be read and understood by populations that had become more and more literate due to a tremendous collective effort lasting over several centuries. Ideally at least, the aim was to generate a virtuous circulation of legality from parliamentarians writing the law to people reading it and, hopefully, abiding by it. But today, literacy is at a loss because computer code is not readable in the usual sense and all of us have unwillingly become illiterate and dependent on a specific social group to help us read: that of computer and data scientists. Thus, the delegation of legal judgement to pieces of software entails its partial delegation to social groups that are not particularly concerned by law and are subject to a completely different type of normativity, that of computation.

Thirdly, one important feature of democratic citizenship consists in starting any collective action by clarifying which means will be used and by refraining from changing them in the course of the action but it also consists in leaving the political results of this process entirely undetermined. It is for example the case in a democratic voting process which, although fully specified and unmodifiable in its technical means, is not determined in its political result. In the case of digital technology applied to law and justice, what we are entitled to expect from digital means obscures this democratic process: although digital processes are claimed to be fully specified as they are deterministic, they are ambivalent in that they can be modified without notice and unexpectedly bring emancipation or surveillance (most of the time both). This also has far-reaching consequences in the way legal processes participate in democratic citizenship, precisely because without securing the means, the political ends become blurred and the aim of justice unclear.

There are nevertheless reasons for hope: the misguided ways of rashly jumping in technical implementation show how crucial the political dimension still is and how it starts at a very concrete level by restoring a sense of space and argumentation.