ATHENA

CRITICAL INQUIRIES IN LAW, PHILOSOPHY AND GLOBALIZATION

Law and Surveillance in the Digital Age: The Role of Orientation

MARTA TARONI

Doctor of Philosophy, "Gabriele d'Annunzio" University of Chieti-Pescara (Italy)

✉ **marta.taroni2@unibo.it**

https://orcid.org/0009-0005-6456-5937

ABSTRACT

Behavioural science-based regulatory techniques are increasingly pervasive across both public and private sectors. The influence strategies employed by digital platforms exemplify a shift toward behavioural governance - one that legitimizes techno-regulation in the name of collective well-being. This paper argues that nudging may serve as a tentative response to online manipulation: policymakers can deploy counter-nudges to resist the behavioural tactics of digital giants and promote more autonomous decision-making. At the same time, this paper explores how the philosophy of orientation can offer individuals tools to cultivate awareness, recognise influence, and preserve autonomy in algorithmically mediated environments. Taken together, these two approaches - institutional nudging and individual orientation - may work in tandem to support agency and in-formed decision-making. The paper concludes by suggesting that everyday practices of attention and routine can serve as subtle forms of resistance in an age increasingly defined by digital disorientation.

Keywords: behavioural sciences, nudging, philosophy of orientation, disorientation, practises of self, pre-commitment

ATHENA
Volume 5.2/2025, pp. 107-141
Articles
ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

"The real problem of humanity is the following: we have palaeolithic emotions, medieval institutions, and god-like technologies."
E.O. Wilson

"[…] the art of living is first of all a clever art of orientation."
W. Stegmaier

1. Introduction

Today, regulatory techniques grounded in behavioural sciences are increasingly pervasive across both public and private sectors. The behavioural influence strategies deployed by digital giants are emblematic of this trend. They embody a behavioural-governance turn within liberal democracies, providing moral cover for techno-regulations steering individual choices while promising collective well-being.

In this paper, I will argue that nudging can be used as a tentative solution to the problem of online manipulation, both individually and collectively: policy makers and institutions could use nudging techniques, as a counternuge, that is to contrast the behavioural influence strategies put in place by digital giants and to channel behaviour toward greater autonomy; individuals, through the *philosophy of orientation* **(**Stegmaier, 2023; Stegmaier, 2019), should cultivate self-awareness and decision-making capacities that help people recognize manipulation and preserve agency. Taken together, these approaches suggest a way to reorient regulation in an age of disinformation and crisis for traditional legal frameworks.

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

2. The Evolution of the Decision-making Agent Model and New Forms of Normativity

Firstly, I would turn to the evolution of the decision-making agent model, beginning with the conception offered by classical liberal theory. Here, the subject is imagined as one who has emancipated himself from the "state of minority", standing free among others and equal. Within this *Weltanschauung*, citizens are understood – borrowing Rawlsian terms – as both rational and reasonable, capable of articulating and pursuing their own comprehensive life-plans. The role of state institutions is thus circumscribed: they are charged with demarcating the boundary between legitimate public action and the private domain beyond which intervention is impermissible. The liberal legislator bears the determinate task of safeguarding this sphere of autonomy, the very condition of possibility through which subjects realise their chosen ends. Institutional action proceeds under the presumption of individuals as fully capable agents – able to discern what is best for themselves, to cooperate with others, and to negotiate with the State to secure their place within the social order. The proclaimed neutrality of law and politics vis-à-vis the plurality of life-plans chosen by rational and autonomous individuals is what guarantees the sovereignty of the liberal subject as *homo oeconomicus*. This assumption has been increasingly criticised and challenged by the post-liberal legal theories (Minda, 1994), which have emerged since the late twentieth century and seek to interrogate the very ontological assumptions on which classical liberalism is founded. Theorists of caring, for instance, argue that the capacity for self-determination – the ability to design a free life plan – is in fact merely a formal faculty of the decision-maker. In a coeval and parallel intellectual trend, investigations into cognitive bias and bounded rationality have proliferated, giving rise to the heuristics analyzed by the behavioural sciences (Simon, 1955, 99-188; Simon, 1982; Kahneman, 2003, 1449-1475; Kahneman, 2011; Kahneman and Tversky, 2011, 453-458; Kahneman and Tversky, 2000). These studies

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

underscore the necessity of rethinking the relation between subject and norm no longer as an idealized abstraction, but in a more phenomenologically grounded and realistic manner. What is at issue is not only the production of obedience to rules, but rather the spontaneous internalization of norms and the normalization of conduct. The critical thrust of post-liberal jurisprudence lies precisely here: liberal individualism is predicated upon idealized conditions of agency, abstracted from the finitude and vulnerability of concrete human subjects. In the liberal imaginary, the legislator presupposes a normative addressee who is free, reasonable, rational, prudent, skillful, even quasi-omniscient – perfectly capable of discerning and actualizing the dictates of the law.

More recently, within the post-liberal context, behavioural economic theorists (Kahneman, Thaler) have challenged the model of the rational "Econ", replacing it with the more realistic "Human". Humans are not free and equal decision-makers but individuals shaped by necessity, gender, birthplace, economic constraints, and education. They are formally free to choose among options, yet their rationality is context-bound, partial, and often flawed. Once rationality is recognized as biased or limited, individuals can no longer be seen as fully autonomous in the liberal sense; rather, they are agents of bounded rationality whose errors can have significant personal and societal costs.

This recognition has prompted a rethinking of regulation. If individuals are prone to systematic mistakes – whether in health, finance, or everyday choices – public institutions may need to account for these vulnerabilities. Here lies the delicate boundary between regulating conduct and merely influencing it, between predicting behaviour and normatively evaluating it.
Sunstein and Thaler's theory of nudges offers a thoughtful response to this question (Sunstein and Thaler 2003, 1159–1202; Sunstein and Thaler 2008; Sunstein 2013; Sunstein 2014). Through "choice architectures", regulators can steer individuals toward better outcomes without eliminating freedom of choice. Nudges rely on small, targeted interventions, empirically grounded in

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

behavioural economics, to produce substantial effects in both public policy and private domains. This approach embodies "libertarian paternalism": a light, non-intrusive paternalism that seeks to reconcile individual freedom with protective guidance (Sunstein and Thaler, 2008).

Presupposing a decision-maker affected by biases and reasoning flaws – and thus moving away, at least partially, from the traditional liberal model in which the addressee of the norm is a rational agent always capable of choosing what is best – opens the way to significant benefits for both individuals and society. Sunstein and Thaler argue that humans often need to be "nudged" when facing complex decisions, especially in situations where feedback is inadequate or information is scarce, making it difficult to correctly process environmental stimuli. In such cases, nudges provide a subtle form of assistance.

It is crucial, however, that nudges remain non-coercive. A genuine nudge must leave individuals free to ignore it and make a different choice if they wish. Its purpose is not to impose, but to act as a light prod, a gentle push. The ambition of Sunstein and Thaler is to equip both public and private actors with effective tools that can, on one side, address collective challenges that burden society as a whole, and, on the other, improve the lives of individuals by helping them navigate the maze of cognitive traps. In this view, nudging techniques are not an alternative to policy but a way to reinvigorate it, offering new strategies after decades of repeated failures in markets and social policies.[1] For Sunstein and Thaler, one of the main obstacles to effective governance lies in bureaucratic inertia and the lack of scientific literacy within public administrations. In particular, the insufficient understanding of how the human mind actually works undermines the efficiency and effectiveness of state action itself (Sunstein, 2013a).

[1] In recent decades, several governments have institutionalized nudging through dedicated *Nudge Units*. The most prominent examples are the U.S. Office of Information and Regulatory Affairs (OIRA), directed by Sunstein from 2009 to 2012 under President Obama, and the U.K. Behavioural Insights Team, established by Prime Minister Cameron. Both have applied behavioural economics to public policy — from health campaigns to energy saving and consumer protection — seeking more effective and cost-efficient regulation.

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

In their work, Sunstein and Thaler draw on cognitive psychology and behavioural economics to show that individuals often make suboptimal decisions due to limits of attention, information, cognitive capacity, and self-control. This insight underpins the theory of nudging: when faced with complex choices, decision-makers are vulnerable to systematic biases, errors of judgment, and weaknesses of will. Sunstein and Thaler argue that rational choice theory rests on a false assumption: that people always act optimally. In reality, sound decisions are possible only when individuals possess sufficient knowledge and experience in context. Moreover, they dismantle the idea that paternalism necessarily implies coercion. With the notion of "libertarian paternalism", they propose a soft form of guidance that seeks to improve people's choices while preserving freedom. Unlike coercive paternalism, which restricts autonomy, this approach respects individual liberty by leaving room to opt out of interventions. Although the term may appear paradoxical, Sunstein uses it to challenge the negative connotations of paternalism and to show that paternal guidance and individual freedom can coexist. Within behavioural economics, nudging thus occupies a space between coercion and complete state inaction. It illustrates a middle ground in which institutions can encourage choices that promote individual well-being without undermining the autonomy central to the liberal tradition (Sunstein and Thaler, 2008, 5).

According to Sunstein, nudging techniques operate within this intermediate space, where influences on individual choices are in many respects unavoidable. Endorsing a libertarian framework does not mean rejecting all forms of paternalism: in certain cases, restrictions on choice may be necessary, particularly when constitutional rights are at stake. Yet Sunstein insists that such interventions must always be evidence-based, grounded in empirical studies that observe how people actually behave in daily life. This knowledge allows policymakers and private actors alike to anticipate responses and design more effective solutions. For this reason, supporters of nudges argue that a strictly anti-paternalistic stance is neither coherent nor

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

workable. Since individuals are prone to systematic cognitive errors, merely providing information is insufficient; what matters is how information is presented, and presentation itself can never be neutral.

As already emphasized**,** traditional economic theory, by contrast, rests on the image of *homo oeconomicus*: a rational, calculating agent endowed with stable preferences, strong willpower, and flawless computational ability. Such a being – the "Econ" in Sunstein's terminology – is an ideal type, immune to mistakes in judgment or self-control. Econs belong to an abstract "Econworld", where choices are processed exclusively through slow, deliberate "System 2"[2] thinking and where cognitive biases simply do not arise. Humans, however, do not inhabit Econworld. Unlike Econs, they are prone to predictable and recurrent errors, and nudges can therefore exert a powerful influence on their behaviour. In a society composed only of Econs, nudges and libertarian paternalism would be redundant. But behavioural economics shows convincingly that our world is not populated by idealized rational actors; it is populated by fallible human beings, prone to mistakes in prediction and planning, and often struggling with problems of self-control.

In fact, Thaler and Sunstein explicitly challenge the neoclassical model of rational behaviour. Behavioural economics, supported by empirical research such as prospect theory, has shown that human choices reflect bounded rationality, limited self-interest, and limited willpower. Building on these findings, they develop tools for law and public policy. If cognitive biases are systematic and predictable, a well-designed nudge can be used to counteract them for the benefit of both individuals and society. To illustrate this, Sunstein and Thaler look at the free market as a setting where nudges may work effectively. In some cases, competition and consumer protection laws sanction companies that exploit cognitive biases or disseminate misleading information, thereby discouraging overtly unfair practices and fostering a minimum standard of transparency in market interactions. However, such

[2] For Kahneman, we have two modes of thought: "System 1" is fast, instinctive and emotional; "System 2" is slower, more deliberative, and more logical.

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

legal safeguards are often reactive rather than preventive, addressing individual violations rather than systemic patterns of manipulation. Moreover, market incentives alone are not always sufficient to ensure ethical conduct. Firms that refrain from exploiting human cognitive limitations may find themselves at a competitive disadvantage, gradually displaced by those that deliberately deploy behavioural influence techniques to capture attention, manipulate choices, and maximize profit. This dynamic produces a paradox: the same competitive mechanisms, that should reward efficiency and innovation, instead end up reinforcing manipulative strategies, eroding both consumer autonomy and market integrity. In this scenario, it is crucial for all economic actors to understand the lessons of behavioural economics – not only to guard against exploitation but also to turn insights about human behaviour toward positive ends (Sunstein, 2008, 7; Sunstein, 2013b, 1832). Within this framework, System 1 thinking is associated with Humans, while Econs rely on the more deliberate System 2. Sunstein likens Humans to Homer Simpson – fallible, impulsive, and error-prone – whereas Econs resemble the hyper-rational Mr. Spock. If System 1 generates biases and System 2 has the potential to correct them, nudges can support the reflective system by subtly steering the automatic one, without coercion. Nudge theory is built on this dual-system model: the automatic system introduces distortions, while the reflective system seeks to correct them. At the heart of this approach lies *choice architecture*. A nudge functions through the design of an environment that guides decisions in beneficial directions. Policymakers, doctors, marketers, and even parents act as choice architects whenever they shape the context in which others decide. Thaler offers a simple example: students leaving a classroom faced doors with large wooden handles. The handles implicitly suggested pulling, while the situation called for pushing. Here, the Automatic System dominated, swayed by the physical cue, even against rational reflection. For Thaler, the lesson is clear: environments must be designed to align signals with intended actions. Good

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

choice architecture avoids conflicting cues and instead provides clear, consistent prompts that make desirable behaviour easier and more intuitive.

Because our world is populated by Humans rather than flawless Econs, social environments must be designed with real cognitive limitations in mind. Daily life confronts individuals with countless decisions and stimuli, and even small details in design can make a decisive difference. Nudges, therefore, exploit the fact that in the human world – unlike Econworld – minor changes in context can profoundly shape behaviour.

Decades of behavioural research have demonstrated that we inhabit a world already structured by predefined frameworks of orientation – frameworks that subtly yet powerfully shape our decisions. At times, these frameworks guide us toward beneficial outcomes, but they can equally be deployed for harmful purposes, with significant repercussions at both the individual and collective levels.

In the present age of surveillance capitalism,[3] the task of maintaining orientation in a world saturated with hidden architectures of influence has become a compelling and extraordinarily challenging one. Every day, individuals are confronted with increasingly sophisticated techniques designed not only to capture attention but also to disorient and to reorient choices in accordance with the objectives of powerful digital platforms and those who command their infrastructures. In this sense, the effort to "find one's bearings" is continually destabilized and reconfigured by invisible architectures of influence.

It is in this context that legal regulation faces one of its most profound crises. Traditional frameworks of law and regulation, built on the assumption of autonomous and rational subjects, are increasingly inadequate when

[3] I will elaborate on the notion of "surveillance capitalism" in the following section; however, it is already important to underline that it refers to an economic order based on the extraction, prediction, and commercialization of behavioural data. Since Zuboff coined the term "surveillance capitalism" in 2014, it has been taken up by legal scholars such as Cohen, media theorists like Couldry and Mejias, and philosophers including Han, becoming a key category in debates on the digital economy (Zuboff, 2014; Zuboff, 2019a; Zuboff, 2019b; Cohen, 2019; Couldry and Mejias, 2019; Han, 2017).

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

confronted with the pervasive and opaque use of behavioural influence techniques by private actors. In the following sections, I will examine in greater detail the structural shortcomings of classical legal theory – and of policy-making – in the digital age and the urgent need for new normative approaches. For the moment, however, it is sufficient to emphasize that in an era of continuous digital surveillance, we run the risk of losing orientation without even being aware of it – a disorientation that is all the more dangerous because it operates silently, beneath the threshold of conscious awareness.

3. The Loss of Individual Orientation in the Behavioural Influence Society

Methods aimed at influencing behaviour are widespread in the private sector. They are becoming increasingly pervasive in everyday life through digital spaces and algorithmic technologies. A concrete application of behavioural science research can be seen in techniques of behavioural influence, which constitute the very foundation of what Zuboff defines as "surveillance capitalism" (Zuboff, 2019a, Zuboff, 2019b).[4] A decisive factor in the functioning of this industry is the systematic use of methods derived from cognitive and behavioural sciences to induce users to: 1) devote as much time and attention as possible to the content offered by platforms; 2) disclose personal data; 3) purchase goods or services promoted by advertisers; 4) sustain online and offline behaviours – whether by commission or omission – that conform to the interests of advertisers or of the platform itself. It can be said that the digital market is largely structured around the production and sale of this very power of influence.

[4] It is important to note that Zuboff's *Surveillance Capitalism* has generated a copious body of critical responses. For example, both Morozov and Doctorow dispute her central claims: Morozov criticises the work for its overblown and weakly substantiated narrative, while Doctorow reframes the problem as one of monopolistic market power rather than the irresistible force of behavioural surveillance (Morozov, 2019; Doctorow, 2021).

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

But this exercise of power over individuals can generate a wide range of negative consequences, both at the personal and at the collective level. In some cases, these negative effects are not collateral but intrinsic to the business model itself: profit extraction would be impossible without them. Two main categories of damage can be identified: individual harm, in the form of detrimental effects on users' physical and mental health; and social harm, in the form of the erosion and compromise of democratic institutions. Yet both categories of harm currently appear, at least in broad terms, to be largely ignored by the law. To a reasonable degree of approximation, it can be said that the digital market fundamentally revolves around the creation and commercialization of a specific commodity: the "power of influence". When economic actors in this sector harness behavioural data to shape and predict user conduct, their profits grow exponentially. Without the capacity to generate behavioural predictions, a company such as Google would have no product to sell. The actual commodities Google offers to its paying customers are "predictive products": probabilistic models of individual behaviour, sold to advertisers eager to optimize the effectiveness of their campaigns.

And this distinctive market is sustained by the traces users leave while navigating digital environments. These traces – search queries, reading patterns, purchase histories, geolocation data, and more – are meticulously harvested and stored as data. Such data function as repositories of individual activity, which are then analyzed, processed, and converted into predictive insights. These insights are sold to advertisers, who use them to tailor marketing strategies, deliver highly targeted content, and maximize returns on investment. Behavioural data have thus become the cornerstone of a new business model: an economy structured on surveillance capitalism. Vast volumes of personal information are systematically processed by advanced AI systems with a single overriding aim: the maximization of advertising profits. Every online interaction, often unbeknownst to the user, engages them in a hidden economic transaction. The ostensibly "free" services provided by digital platforms are financed by advertisers, who pay for privileged access

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

to user attention and behavioural forecasts. To maximize the value of this investment, platforms strive to align user behaviour with the commercial objectives of advertisers.

This alignment is achieved through algorithmic techniques designed both to extract data and to predict future conduct. The collected data become the raw material for predictive algorithms, which are engineered to anticipate user behaviour and subtly steer it toward outcomes favourable to economic operators, and the entire system works thanks to cutting-edge algorithmic technologies capable of large-scale monitoring, fine-grained control, and the systematic exploitation of personal data. In this sense, the ambitions of the digital giants are expansive: they aspire to build exhaustive profiles of each individual, and user cooperation – willing or unwitting – is indispensable in generating the torrents of data that enable algorithms to know us, to predict our actions, and, when deemed profitable, to influence them. Algorithms, drawing on colossal datasets organized hierarchically, perform increasingly precise calculations to anticipate interests, preferences, and purchasing intentions.

This distinctive business model, briefly outlined here, has been aptly labelled "surveillance capitalism", an economic order that capitalizes on human experiences as raw material for practices centred around data extraction, prediction, and commercialization. The success of this new capitalism hinges on several key factors: 1) the rapid integration of the internet into our daily lives; 2) the discovery of the internet as a reservoir for collecting valuable user actions; 3) the transformation of these actions into behavioural data; 4) the utilization of this data for commercial, often manipulative, purposes. In this economic system, the production of goods and services is subordinate to a global architecture of behaviour change. Surveillance capitalists transform human experiences into behavioural data, with some used to enhance products and services, while the remainder becomes the private behavioural surplus. This surplus is instrumental for the creation of predictive products through the application of artificial

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

intelligence technologies, capable of forecasting our actions, preferences, and purchases. These predictive products are then traded in a burgeoning market for behavioural predictions. In this evolving economic structure, the market for future behaviour yields substantial profits for capitalists. It is a market that extends beyond the virtual realm, with online behavioural data mining translating into tangible offline consequences. The instrumentalizing power that emerges from this economic system is a pervasive force that understands and directs human behaviour toward specific objectives, insinuating itself into every facet of daily life.

To sustain the relentless growth of surveillance capitalism, its operators are compelled to continually augment their instrumentalizing power and means of behaviour modification. Just as industrial capitalists had to perpetually enhance the means of production, surveillance capitalists must evolve their methods to extract and modify human experience. The digital connection is not the ultimate objective of this new capitalism; rather, it serves as the conduit for a cyclical process that commences with the extraction of human experience and culminates in the modification of behaviour.

The power I have termed "influence" lies at the core of the Internet economy. It represents a unique form of non-normative, non-violent, and non-coercive power. However, it diverges from mere "persuasion". According to standard definitions, "persuasion" involves convincing or inducing a person to acknowledge the reality of a fact or the validity of a particular state of affairs, typically through the presentation of good reasons or effective communication. In particular, according to the *Cambridge English Dictionary*, persuasion means "to make someone do or believe something by giving them a good reason to do it or by talking to that person and making them believe it". Persuasion usually operates through language, whether verbal or non-verbal, and relies on the provision of epistemic or prudential reasons for believing in the truth of specific propositions or engaging in certain behaviours. It presupposes the subject's awareness of being

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

persuaded. In contrast, the conditioning power underpinning the internet market is generally effective because it remains concealed from the conditioned subject. Influence operates through causal processes that bypass explicit communication of reasons for believing or acting and are, in fact, incompatible with it. As Zuboff discusses (Zuboff, 2019b, 199-233), its effects extend unknowingly to our offline lives.[5]

In the early stages of surveillance capitalism, data extraction was primarily concerned with individuals' virtual conduct. In recent years, however, the focus of major technology corporations has shifted toward what is often described as the "business of reality". This encompasses a wide range of developments – including "environmental computing", "ubiquitous computing", and the "Internet of Things" (IoT) – all of which enable increasingly accurate forecasts and, consequently, more effective strategies of personalized advertising. Smart devices such as Amazon's Echo and Google Home act as sensors embedded in the physical world, processing hours of informal dialogue in order to generate advanced predictions that anticipate user needs.

Because data serves as the lifeblood of this emerging market, technology companies have devised increasingly sophisticated tools to obtain a deep and detailed understanding of users. Through the relentless capture of attention and pervasive forms of surveillance, they have succeeded in constructing

[5] A still compelling, though somewhat dated, example of this business model's intrusion into everyday reality is the mobile game *Pokémon Go*, developed by Niantic Labs (a subsidiary of Google). Pokémon Go is a free-to-play video game, available on iOS and Android, which leverages geolocalized augmented reality with GPS. To progress in the game, players must physically move around, using their smartphones to capture Pokémon. These creatures are often strategically placed in locations established by advertisers, such as McDonald's restaurants and Starbucks coffee shops. The game's true objective is not solely to provide entertainment but to incentivize players to consume in those establishments. The game itself is free for players, and Niantic Labs derives its revenue from advertisers who pay to have PokéStops and Pokémon strategically placed in their desired locations. The effectiveness of this *business model hinges on its covert nature.* Moreover, smart devices that act as sensors within the material world – such as Amazon's Echo or Google Home – process hours of informal dialogue to generate advanced predictions that anticipate our needs (Middleton, 2016; Revesz, 2016).

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

highly precise predictive models of human behaviour. Importantly, surveillance and behavioural manipulation are no longer confined to computers, tablets, and smartphones; they extend across a growing ecosystem of "smart" products. Wearables and voice assistants, equipped with advanced sensors, not only assist users but also analyze their actions, thereby producing predictive insights.

Profit generation in surveillance capitalism depends on the active steering of behaviour. The same methods that influence consumer decisions regarding products and services can be redeployed to shape other domains of choice. This adaptability has already been demonstrated in politics, particularly in twenty-first-century electoral campaigns. The involvement of Google founder Eric Schmidt in President Obama's 2008 campaign exemplifies the extent to which technology companies possess the capacity to shape decision-making processes across a variety of contexts.

4. The Power of Influence

This *power of influence* denotes the deliberate shaping of real-world behaviour through techniques grounded in behaviourist psychology. To sum up, these methods encompass: 1) conditioning (shaping behaviour through reinforcement); 2) exploitation of immediate gratification (capitalizing on humans' inclination toward instant rewards); 3) creation of specific choice architectures (structuring environments to guide actions); 4) social influence (harnessing the power of social connections); 5) subliminal empathic messages (triggering subtle emotional responses); 6) gamification (using game-like elements to encourage habituation).

The functioning of surveillance capitalism aligns with the vision of B.F. Skinner, who, in *Beyond Freedom and Dignity* (1971), described a future centred on behavioural control while challenging principles of self-determination and individual freedom. Web giants compete for users' attention within a business model that thrives on fostering dependency,

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

encouraging individuals to spend hours each day on their screens. This is achieved through behavioural techniques that stimulate dopamine release, rewarding engagement and ensuring a continuous cycle: users provide personal data, and their behaviours – both online and offline – are increasingly shaped by the platform's suggestions.

At the heart of this system lies the activation of the reward circuitry, reinforced above all by gamification techniques designed to encourage habituation. By tapping into humans' innate propensity for play, platforms create environments where users exchange personal information for rewards such as rankings, points, or social recognition: data that algorithms catalog to optimize targeted advertising. This dynamic resembles the logic of nudge theory, which also uses subtle suggestions and indirect assistance to guide choices. Gamification exploits the lure of immediate gratification: the pursuit of recognition, acceptance, and admiration sustains platforms such as Facebook and Instagram, where likes serve as rewards (Zuboff, 2019b, 309). Conversely, the absence of likes can prompt users to adjust strategies to gain approval and followers, thereby increasing time online. Platforms also exploit the "Fear of Missing Out" (FOMO), a form of social anxiety rooted in the fear of being excluded from rewarding experiences, which drives obsessive monitoring of social networks. Subliminal empathic messages, designed to induce targeted emotional states, further shape user behaviour. Many of these persuasion techniques (Fogg, 2003) are taught in B.J. Fogg's "Persuasive Tech" course at Stanford, attended by designers later employed by Silicon Valley firms (including Tristan Harris, formerly an ethical designer at Google).

An emblematic example is the design of the "News Feed" on social networks, carefully engineered to foster habituation through constant refreshing. This mechanism mirrors the logic of slot machines, where intermittent reinforcement sustains engagement: just as gamblers anticipate the jackpot, users expect the dopamine rush from new posts or likes. Algorithms are optimized to maintain high engagement and guide individuals

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

toward behaviours aligned with the platform's commercial interests (Kramener and Guillory and Hancoc, 2014; Harris, 2016; Schull, 2019).

At this point, the inadequacy of current legislative instruments in curbing the power of Web giants and addressing manipulative practices becomes evident. Traditional legal frameworks increasingly struggle to orient citizen-users within the complex cognitive traps created by surveillance capitalists. The gap between the capacities of digital corporations and the regulatory tools available to safeguard autonomy continues to widen.[6] Cases of mass manipulation, such as those revealed in the Cambridge Analytica scandal, highlight this inadequacy: legal analysis often reduces the issue to whether the user has given formal consent through a click, without addressing whether such consent is genuinely informed or whether data are intentionally used for manipulative or harmful purposes. The laws in force focus almost exclusively on consent, presuming a rational and independent user. Two critical aspects emerge: 1) legislation treats the absence of consent as the problem, regardless of the harms caused by manipulation; 2) current law presumptively equates the expression of will with informed consent, even when such consent cannot be considered genuinely informed. Behavioural sciences demonstrate that this presumption is a *fictio iuris*, one that indirectly produces harmful consequences for individuals and society. Overcoming this impasse requires further exploration and the development of new regulatory approaches.

5. The Traditional Law Under the Test of Behavioural Techniques of the Web Giants

Surveillance capitalism exploits human cognitive vulnerabilities for profit, deploying sophisticated influence strategies grounded in the behavioural sciences. It operates on the assumption that users, in their actual condition,

[6] In this context, it is worth underlining the work of Marijn Sax, who develops a nuanced ethical-legal critique of data-driven digital environments. His research shows how practices that present themselves as empowering – such as health apps – often conceal manipulative dynamics, and how the "finders-keepers" logic of big data entrepreneurship rests on ethically unjustifiable assumptions about the appropriation of personal data (Sax, 2021).

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

are biased, irrational, and predominantly guided by System 1 thinking in their everyday decisions and interactions with digital platforms.

Within this framework, one proposed approach to addressing large-scale manipulation is to consider strategies analogous to those adopted by surveillance capitalists themselves. Unlike traditional legal frameworks, which rely on rational deliberation, these strategies target System 1 directly, acknowledging the structural limitations of decision-making agents in an online environment that is neither neutral nor transparent. It is unrealistic to expect individuals to scrutinize the privacy policies of every website they visit or to maintain constant vigilance in the face of continuous streams of manipulative messages on social networks. What becomes necessary, therefore, is the introduction of cognitive shortcuts that can guide individuals toward more beneficial choices within a socio-economic context organized around attention capture and behavioural influence.

Accordingly, the search for alternatives to traditional legal frameworks becomes crucial in order to regulate and sustain *orientation* (Stegmaier, 2019) under the pervasive influence of digital platforms. Conventional legal instruments have shown limited capacity to address the strategies employed by major technological actors, which makes it necessary to explore approaches better adapted to the dynamics of the digital environment while simultaneously protecting individual autonomy. One possible direction is the development of innovative legal mechanisms specifically designed for the digital era.

Within this discussion, the framework of libertarian paternalism and the techniques of nudging should be considered as potential instruments for counteracting manipulation. In such a counter-process, public intervention would not only address cognitive biases that lead to suboptimal decision-making but would also respond to the private interests that rely on such biases for economic gain.

In this perspective, public authorities may draw upon insights from behavioural sciences to support individuals in correcting errors of

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

deliberation and in adjusting their behaviour online. Nudging represents a governmental technique that avoids coercion: it relies on the automatic and reflexive mechanisms of cognition, while leaving individuals formally free to choose, with the aim of directing them toward outcomes that are expected to enhance their well-being. Nudges are particularly relevant in situations where individuals confront complex decisions, lack sufficient feedback, or cannot adequately process information – as is often the case in digital environments characterized by manipulation and information overload. According to Sunstein and Thaler, nudging is intended to provide public actors with practical instruments capable of improving the quality of individual decision-making and addressing recurring challenges of everyday life through carefully designed incentives and gentle prompts.

But also, the dark side of nudging needs to be explored. One of the most debated aspects of nudge theory concerns the suspicion that it conceals a manipulative intent. Across Sunstein's various definitions of nudges, a recurring emphasis is placed on freedom, specifically, the individual's ability to resist or escape the influence of subtle interventions. Yet such freedom may not always be guaranteed in every form of libertarian paternalism. Concerns are particularly acute where nudges explicitly exploit cognitive biases such as inertia or framing. Alongside these potentially manipulative nudges, Sunstein and Thaler also describe other interventions of a different nature: for example, self-control strategies that individuals can voluntarily adopt, or "cognitive boosts" that help counteract distortions. These gentle educational pushes aim at informing and empowering individuals rather than exploiting their weaknesses. In this sense, nudges can be distinguished into those that target System 1 (pure nudges) and those that engage System 2 (boosting) (Sunstein 2014). Because boosting techniques enhance cognitive capacity, they are less readily categorized as manipulative. By contrast, accusations of manipulation primarily concern nudges directed at System 1, which exploit cognitive biases without the goal of strengthening individual agency.

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

To advance the analysis, it is necessary to clarify what is meant by "manipulation". In ordinary usage, manipulation carries strongly negative and morally charged connotations. It is often seen as a position between persuasion and coercion: the manipulator does not use force but relies on subtle means to pursue their own ends. The concealed nature of these methods renders them morally questionable, though not all acts of manipulation need be inherently condemnable. A widely accepted view (Noggle, 2006, 43-55; Noggle, 2018) defines manipulation as occurring when one person influences another by interfering with their rational faculties. In other words, A manipulates B when A elicits behaviour from B while preventing B from fully reflecting on the reasons for their actions.

This definition aptly describes certain nudges directed at System 1, particularly those that inhibit the activation of System 2, where rational capacities reside. Sunstein acknowledges these concerns and proposes a "gradualist" approach, distinguishing interventions at higher risk of manipulation (to be rejected) from those at lower risk (potentially acceptable). Yet the issue cannot be addressed by a gradualist perspective alone. A deeper concern arises when nudges promote an idealized notion of well-being that does not necessarily correspond to the individual's own conception. In such cases, the risk of being subjected to subtle pressures that redirect desires without awareness becomes clear. Conversely, if nudges genuinely aim to promote individuals' self-perceived well-being, suspicions of manipulation may diminish. The difficulty lies in identifying which conception of well-being guides a given intervention. Sunstein and Thaler propose a statistical conception based on majority preferences, but such preferences do not always align with those of the individual being nudged. This complicates the use of alignment between nudger and nudgee desires as a reliable criterion for judging manipulation case by case.

Manipulation is also closely tied to deception. Often manipulators disregard how the subject perceives the situation. Thus, nudges that use their influence in ways that instill false beliefs or distort preferences could rightly

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

be categorized as manipulative. The central concern is not influence itself, but whether it undermines deliberative and cognitive faculties. Whenever a nudge diminishes an individual's capacity for reflection and choice, it assumes a manipulative character. Nudges of this nature are clearly unsuitable for deployment by the State, whose role should be to protect, and ideally to enhance, the autonomy and self-determination of its citizens. A nudge becomes manipulative when it guides individuals – often without their awareness – toward actions shaped by deception, flawed beliefs, or reasons they do not recognize as their own. Several factors must therefore be weighed in determining whether a nudge should be rejected for its manipulative effects. Because individual autonomy is the value most threatened by manipulation, nudgers must demonstrate specific respect for the subject in order to preserve that autonomy. According to Sunstein, this is best achieved through "educational nudges", which not only provide information but also strengthen cognitive capacities, thereby bolstering autonomy and attentional resources (Sunstein, 2014, 14-55; Sunstein, 2026, 121-168).

Not all nudges operate as educational nudges. Some gentle pushes do not respect individual autonomy to the same degree and are therefore manipulative. This occurs when nudges: 1) fail to allow individuals to independently form reasons for following the suggested direction; 2) exploit cognitive imperfections or distortions to draw attention to misleading information; 3) elicit emotions solely to make individuals vulnerable and predisposed to a particular choice. One way to mitigate the manipulative character of nudges is to eliminate their secrecy. As Sunstein suggests, transparency and publicity can reduce or even neutralize manipulative effects by making individuals more aware of the influence they are subjected to and the rationale behind it. Yet while lack of awareness often increases the effectiveness of nudges in a libertarian paternalist framework, it is also the feature that attracts the strongest criticisms regarding manipulation.

In summary, nudging carries an inherent risk of opacity and manipulation. For this reason, it should be employed only when "direct legislation"

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

(Bentham, 1996 [1789]; Bentham, 2010, [1802]) proves ineffective and, even then, it must be accompanied by educational policies that emancipate decision-makers from their cognitive limitations as much as possible. Nudges should thus be viewed as tools operating alongside legal instruments, complementing traditional legal mechanisms in contexts where classical methods reveal inefficiencies. The digital realm exemplifies such a context: platforms are designed to engage System 1 and make it extremely difficult for users to activate System 2. In this environment, only a tool that directly addresses System 1 can counteract manipulation and shield individuals from the strategies of surveillance capitalists.

The question, then, is not whether nudging is manipulative, but whether its manipulative capacity can serve a beneficial purpose: namely, to equitably counter the influence exerted by private actors who use behavioural techniques without regard for collateral consequences. Specific nudging interventions, combined with egalitarian education and citizen instruction on behavioural influence, could serve as genuine *awakening strategies* to protect users in their interaction with digital platforms. Bentham himself supported coupling indirect legislation with policies to educate citizens about behavioural influence techniques.

But the principal risk of nudging lies in infantilizing the nudgee. To prevent this, its application should be limited: first, to situations where there is no reasonable alternative; second, it should always be accompanied by policies aimed at educating and emancipating those subjected to nudges. Where individuals cannot realistically access the information necessary to make fully informed decisions, intervention becomes legitimate. Mill's well-known example of the bridge illustrates this point: if passers-by are unaware that the bridge is unsafe and there is no time to warn them, public officials are justified in stopping them. The same logic could be applied in digital contexts. Each time users are confronted with cookie banners, "Accept all cookies" or "Accept only necessary cookies", they lack the time and information to

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

evaluate the implications.[7] A tool that speaks to System 1 could prompt the user to choose the more protective option. Yet website design overwhelmingly nudges users toward disadvantageous options: "Accept all cookies", "Allow microphone use when the app is closed", or "Allow camera access". Rossi criticizes these practices as unethical, arguing that they drive individuals toward choices harmful to privacy and digital well-being (Rossi, Ducato, Hapio and Passera, 2019, 79-121). Rossi advocates for interventions in platform design to construct choice architectures that are neutral and ethical, thereby counteracting manipulative designs and orienting users toward decisions more advantageous to themselves and society:[8] decisions they would make if given adequate time and information.

Alongside direct interventions in design, institutions must also implement educational campaigns, particularly within compulsory schooling, to inform students about human cognitive limitations and the ways in which private actors exploit them for economic gain. Yet beyond such public initiatives, it is evident that the work of orientation itself cannot be outsourced: individual commitment to sustaining orientation within this vast sea of digital manipulations is both fundamental and necessary, requiring a continuous exercise of attentiveness and responsibility.

[7] Also Cofone argues that the contractual model based on individual consent fails within the information economy. Genuine consent is largely unattainable because the relationship between corporations and users is marked by profound asymmetries of knowledge, structural inequalities, and a lack of meaningful alternatives (Cofone, 2023).

[8] It is relevant to underline that the literature is clear in making the point that, while design choices can indeed influence user behaviour, they are not normative in the strict legal sense, since they cannot be disobeyed in the same way as law can. In particular, Brownsword has examined how technology reshapes the regulatory environment, showing how "code" may function as a mode of governance alongside or even beyond law. Moreover, Hildebrandt combines law, philosophy, and computer science to analyse how AI and machine learning transform fundamental legal concepts such as personhood and responsibility. Finally, Lucy reflects on the fate of modern law, arguing that its abstract mode of judgment is increasingly challenged by technological modes of control (Brownsword and Yeung, 2008; Brownsword, 2019; Hildebrandt, 2015; Hildebrandt, 2020; Lucy, 2017; Lucy, 2020).

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

6. The "Art of Orienting Ourselves"[9]

To advance further, these issues must be placed within a broader conceptual horizon: that of *the philosophy of orientation* (Stegmaier, 2019, 155-175). According to Stegmaier, *orientation* is the ability to find one's way and identify possible courses of action in complex or uncertain situations. It is a fundamental condition of life, comparable to breathing or nourishment, and not limited to human beings alone. Since every act of orientation occurs within a concrete context, it expresses the human capacity to keep pace with change – to make decisions that work for a time until new circumstances demand re-orientation. Orientation is always individual and fallible: one can never be completely certain of it. A philosophical account of orientation must therefore remain open, flexible, and attentive to the unforeseen. In this perspective, orientation is a continuous effort to find one's way in always new situations: human life is a constant process of adjustment within a changing world. The philosophy of orientation connects with the sciences and with real fields such as business, politics, media, law, and art, to see how people and institutions actually deal with disorientation. It offers a descriptive approach that focuses on how attention, adaptability, and good judgment help us act meaningfully when things are uncertain[10] (Stegmaier, 2019, XI-XIV, 1-3, 5-6, 15-23). Both individuals and institutions are engaged in this task of orientation, navigating uncertainty, seeking stability, and confronting pressures that shape, and often distort, their choices.

Stegmaier takes Kant's *What Does It Mean to Orient Oneself in Thinking?* (1786) as a starting point for his philosophy of orientation. Kant had described orientation as the lived act of reason that enables us to find direction when knowledge is uncertain. Stegmaier extends this insight phenomenologically, transforming orientation from an activity of individual thought activated in specific situations of uncertainty into the basic structure of life itself. The

[9] Stegmaier, 2023.
[10] Stegmaier, 2019, XI-XIV, 1-3, 5-6, 15-23.

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

mind, in this view, is not a static entity but an ongoing process of orientation that connects the living being with its environment. Thinking, perceiving, and deciding are all ways of maintaining direction amid change. What distinguishes human consciousness is its ability to reflect on its own orientations – to orient itself within its orientation – thus making philosophy a practice of attentiveness to how we find our way in the world. In Stegmaier's framework, a subtle but crucial distinction emerges between *Bewusstsein* (consciousness) and *Bewusstheit* (awareness). *Bewusstsein* refers to the general capacity of living beings to orient themselves in the world: the ongoing, pre-reflective process through which perception, action, and judgment are coordinated. *Bewusstheit*, by contrast, designates the variable intensity or clarity with which orientation becomes fully aware (Stegmaier, 2019, 80-81). One might cautiously compare this distinction to Kahneman's dual-system model: *Bewusstsein* roughly corresponds to the fast, intuitive "System 1", while *Bewusstheit* resembles the slower, reflective "System 2", which is activated when uncertainty or surprise increases and re-orientation is required. For Stegmaier, routines are not mere repetitions but forms of practices of the self that sustain orientation in everyday life (Stegmaier, 2019, 77-82). They provide temporary stability, allowing individuals to remain attentive and to renew their sense of direction when circumstances change. In this way, routines cultivate a background that supports *Bewusstheit*, the reflective awareness that emerges when one becomes conscious of one's own orientation. This idea recalls Foucault's notion of "practices of the self" (Foucault, 1984; Foucault, 1988), understood as intentional exercises – such as writing, meditation, or self-examination – through which individuals work upon themselves to shape their existence. Both perspectives emphasize self-formation as an ongoing, situated activity: while Foucault highlights the historical and ethical dimensions of these practices within power relations,

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

Stegmaier approaches them phenomenologically, as everyday forms of maintaining awareness and self-direction amid uncertainty.[11]

Such an individual and reflective approach may constitute a crucial dimension of resistance to the contemporary forms of behavioural manipulation enacted by the "surveillance capitalists". The deliberate cultivation of awareness and the disciplined maintenance of routine – conceived also, for example, in analogy to mechanisms of "pre-commitment"[12] – can function as a personal and ethical countermeasure to external architectures of influence. These practices may complement collective and institutional interventions by fostering an inner capacity to remain oriented and attentive amid the continuous and often insidious cognitive traps that characterize today's informational environments.

This art of orientation can play a crucial role in enabling citizen-users to awaken their attention and become more self-aware of their cognitive vulnerabilities in the digital age, which has become an era of disorientation, marked by phenomena such as:

> the collection and storage of vast amounts of data regarding every internet user that he or she discloses in some way or that can be

[11] "The evolution of orientation proceeds via the succession of self-stabilization, destabilization, and re-stabilization: routines and routine patterns develop, fail, and develop in new ways. If the re-stabilization of routines or of whole orientation worlds (like politics, sports, or family) fails, they can be dismissed. Not only footholds and routines, but also orientation worlds are selected at the cost of some and the benefit of others (preferring one's family life over sports, sports over politics, or politics over one's family life)" (Stegmaier, 2019, 91). "Self-bindings may also be of a non-moral kind; habits or routines are also permanent self-bindings that exclude other options" (Stegmaier, 2019, 208).

[12] The concept of pre-commitment refers to a strategy by which an individual voluntarily restricts their future freedom of choice to avoid acting against their long-term interests — for instance, yielding to temptation, procrastination, or cognitive bias. First theorized by Thomas Schelling (1960), it describes how people or institutions can bind themselves in advance to make their future behaviour more consistent or credible, like Ulysses tying himself to the mast to resist the Sirens. In behavioural economics, pre-commitment devices (such as savings plans or digital self-control tools) help counter *time inconsistency*. In law and political theory, constitutions or regulations can be seen as collective pre-commitments, limiting future decisions to preserve rationality or stability (Schelling, 1960; Elster, 1979).

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

> gathered from his or her online behaviour and then used to influence his or her buying or voting behaviour (2019, 256).

According to Stegmaier,

> Big data can reorient our interindividual, doubly contingent orientation to other orientations to a unified macrosocial orientation that is governed by specific organizations (ibidem).

Altogether, the digitization of human *Orientierung*[13] creates a fundamentally new situation of orientation, one in which the very conditions of finding and maintaining direction are being reshaped. Digital technologies expand the potentials of orientation by granting access to vast amounts of information, instantaneous communication and algorithmically tailored and personalized guidance systems. At the same time, they exponentially increase the needs for orientation, since the sheer abundance of data, the acceleration of communication and the opacity of algorithmic structures overwhelm traditional cognitive and social capacities for making sense of the world. Never before have the opportunities for orientation and the risks of disorientation been so closely intertwined. This situation places unprecedented demands on our abilities of orientation, requiring not only technical skills and digital literacy but also new forms of ethical reflection, critical judgment, and philosophical guidance. Digital technologies externalize the rationalization of unconscious drives to third parties, so that we end up acting not on impulses we have individually processed, but on impulses that are scientifically directed toward the fulfillment of others' interests. This displacement of self-regulation transforms the very structure of agency: awareness and decision-making are no longer grounded in individual reflection but mediated through algorithmic architectures that anticipate, predict, and channel behaviour. In this context, regaining our capacity for orientation means developing everyday *practices of the self* that

[13] German original word for "Orientation" (Stegmaier, 2008; Stegmaier, 2019).

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

help us keep a reflective distance and act with greater awareness. In short, digitization magnifies both our capacity and our vulnerability, making the task of orientation more complex, more urgent, and more indispensable than ever (Stegmaier, 2019, 258; Stegmaier, 2023; Mueller, 2023):

> The so-called internet of things, where machines autonomously communicate with each other in order to optimize all kinds of processes, will, as we can already predict, go far beyond this and influence human life on a much deeper level. In the long run, the evolution of humanity then may turn into an independent evolution of machines. The fears are not unjustified; in them, an old fear of humankind returns on a grander scale: that a situation will be created that humankind can no longer master and at whose mercy it will then be entirely powerless. It is the fear of the end of one's own orientation.

To survive in this era, everyone must discover an individual way to orient themselves – an art of living and navigating in a complicated world filled with compelling traps for our weak and paleolithic brains. Institutional action is necessary, yet it is not sufficient. In a world where every certainty collapses and the law appears outdated, such measures alone cannot protect people from the vast and massive manipulation of minds. Each individual must cultivate his or her own way to remain focused and to resist being disoriented by the manifold tools of influence. This art of orientation should be an art of living, cultivated as a daily habit. It also requires knowing how our brains function – where they are strong and where they are weak – and learning how to rely on System 2 rather than System 1. Through small and precise practices, we can resist the pervasive power of influence and maintain our capacity for self-determination.

According to Stegmaier, power becomes most visible in those moments when we are unable to master a situation on our own, when circumstances overwhelm us and reveal the limits of our control. While individuals can only

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

partially overcome entrenched social and cultural power relations, they are not entirely without resources. Even within such constraints, it is often possible to carve out new spaces of freedom, to open leeways in which alternative courses of action can be pursued. In doing so, individuals may gradually weaken or destabilize existing structures of power, subverting them from within and preparing the ground for more deliberate forms of resistance or even collective revolts.

In this sense, the art of living does not consist in the illusion of total mastery but in the subtle practice of orientation: learning how to navigate pressures and asymmetries, how to discern possibilities in restrictive environments, and how to transform limitations into openings for action. Orientation thus becomes a strategic art, one that allows individuals to endure, adapt, and, when possible, redirect the very forces that seek to dominate them.[14]

In conclusion, only a symbiotic relationship between institutional intervention and individual awareness can serve the task of awakening minds and safeguarding them against disorientation and the pervasive influence exerted by surveillance capitalists. This relationship can be descripted and summed in these points: 1) nudging as a technical tool: when used judiciously, nudging can complement traditional legal systems. It is designed to speak directly to the fast, intuitive processes of System 1, especially in situations where individuals lack the time or information to make fully informed decisions. Nudges can counteract the influence of powerful digital actors and guide users toward choices better aligned with their preferences, privacy, and well-being; 2) educational policies: educational measures are pivotal in raising awareness of cognitive limitations and vulnerabilities. By exposing the psychological traps set by digital platforms, such policies

[14] "Hence, you must ultimately orient yourself on your own. Orientation – as the achievement of finding your way in a new situation in order to find possibilities for actions through which you can master the situation – is the achievement of an individual ability; and with your individual ability, you may cope with one situation but not with another. Every orientation may face unforeseen and surprising circumstances, where its abilities might fail. Therefore, one can never be entirely sure of one's orientation" (Stegmaier, 2019, 6-7).

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

empower users to make more informed decisions. Compulsory schooling, in particular, offers an ideal venue to equip students with the knowledge and critical thinking skills required to navigate the digital world; 3) philosophical reflection: philosophy – especially the philosophy of orientation – can provide individuals with a deeper understanding of the ethical and moral dimensions of digital interactions. Encouraging critical thinking enables individuals to reflect on the values that underlie their choices and to assess their broader implications. Such reflection can guide users in making decisions consistent with their ethical principles; 4) self-awareness of cognitive vulnerabilities: self-awareness is essential for cultivating a keen sense of one's cognitive weaknesses. Recognizing these vulnerabilities, and understanding how they are exploited by digital platforms, allows users to become more resilient and resistant to manipulation; 5) navigating the digital landscape: through this holistic approach, individuals are better equipped to discern the subtle techniques employed by digital corporations and to make choices that safeguard their well-being and autonomy.

To sum up, on the collective and institutional level, nudging could operate as a form of *counter-nudge*: public authorities might deploy behavioural insights not to encourage consumption or maximize engagement, but rather to support autonomy, well-being, and informed decision-making. And on the other hand, on the individual level, the philosophy of orientation offers a framework for cultivating self-awareness and decision-making skills, enabling people to recognize manipulative techniques and maintain control over their choices.

While the philosophy of orientation offers a normative-ethical guide for judgment, nudging provides a repertoire of practical interventions that support reflective decision-making without undermining freedom. Taken together, these elements promote a conception of agency that is both context-sensitive and resilient – particularly vital in the digital domain, where individuals face growing exposure to algorithmic influences and epistemic asymmetries. In this context it is worth emphasizing that nudging is a social

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

technique that can be used both to orient and to disorient. Some nudges act directly on "System 1" to steer behaviour automatically, while others are designed to awaken "System 2" and foster reflective awareness. Developing appropriate and ethically sound forms of nudging therefore requires clarifying what it means for individuals to regain awareness of their own decision-making processes – and for this purpose, the philosophy of orientation provides a valuable conceptual framework.

The aim of this paper has been to bring these questions into philosophical focus and to sketch possible trajectories for addressing them. Although preliminary in scope and leaving several lines of inquiry open, it is conceived as a conceptual starting point for a broader and more sustained research agenda. Future work could further develop the phenomenological implications of Stegmaier's philosophy of orientation in relation to the challenges of digital environments, behavioural governance, and surveillance capitalism. It might also investigate how individual practices of awareness and routine – understood as contemporary forms of "practices of the self" – can interact with collective and institutional frameworks to counteract cognitive manipulation and sustain autonomy. In this sense, the present contribution aspires not merely to describe a theoretical constellation but to outline a path for continued interdisciplinary reflection on how to remain oriented within increasingly complex architectures of influence.

References

Bentham J. 1996 [1789]. *An Introduction to the Principles of Morals and Legislation.* Edited by J. H. Burns and H. L. A. Hart (Clarendon Press).

Bentham J. 2010 [1802]. *Traités de législation civile et pénale* (Dalloz).

Brownsword R. (2019). *Law, Technology and Society: Re-Imagining the Regulatory Environment* (Routledge).

Brownsword R. and Yeung K. (eds.) (2008). *Regulating Technologies: Legal Futures, Regulatory Frames and Technological Fixes* (Hart Publishing).

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

Byung-Chul H. (2017). *Psychopolitics: Neoliberalism and New Technologies of Power* (Verso).

Cofone I. (2023). *The Privacy Fallacy: Harm and Power in the Information Economy* (Cambridge University Press).

Cohen J. E. (2019). *Between Truth and Power: The Legal Constructions of Informational Capitalism* (Oxford University Press).

Couldry N. and Mejias U. A. (2019). *The Costs of Connection: How Data Is Colonizing Human Life and Appropriating It for Capitalism* (Stanford University Press).

Doctorow C. (2021). *How to Destroy Surveillance Capitalism* (Verso).

Elster J. (1979). *Ulysses and the Sirens: Studies in Rationality and Irrationality* (Cambridge University Press).

Fogg B. J. (2003). *Persuasive Technology: Using Computers to Change What We Think and Do* (Morgan Kaufmann).

Foucault M. (1988). *Technologies of the Self* (University of Massachusetts Press).

Foucault M. (1984). *The Care of the Self* (Gallimard).

Gödde G., Zirfas J., Mueller R. G. and Stegmaier W. (eds.) (2023). *Nietzsche on the Art of Living: New Studies from the German-Speaking Nietzsche Research* (Orientations Press).

Harris T. (2016). How Technology Is Hijacking Your Mind – from a Magician and Google Design Ethicist, in *Medium.*

Hildebrandt M. (2020). *Law for Computer Scientists and Other Folk* (Oxford University Press).

Hildebrandt M. (2015). *Smart Technologies and the End(s) of Law: Novel Entanglements of Law and Technology* (Edward Elgar).

Kahneman D. (2011). *Thinking, Fast and Slow* (Farrar, Straus and Giroux).

Kahneman D. (2003). Maps of Bounded Rationality: Psychology for Behavioral Economics, in *The American Economic Review*, vol. 93(5), 1449–1475.

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

Kahneman D. and Tversky A. (eds.) (2000). *Choices, Values, and Frames* (Cambridge University Press).

Kahneman D. and Tversky A. (1981). The Framing of Decisions and the Psychology of Choice, in *Science*, vol. 211(4481), 453–458.

Kramener A. D. I., Guillory J. E. and Hancock J. T. (2014). *Experimental Evidence of Massive-Scale Emotional Contagion through Social Networks* (Princeton University Press).

Lucy W. (2022). The Death of Law, Another Obituary, in *Cambridge Law Journal*, vol. 81, 350.

Lucy W. (2017). *Law's Judgement* (Hart Publishing).

Middleton R. (2016). Pokemon Go: Dutch Rail Operator Tells Nintendo to Change Game after Players Wander onto Tracks, in *International Business Times UK*, 12 July.

Minda G. (1994). *Postmodern Legal Movements: Law and Jurisprudence at Century's End* (New York University Press).

Morozov E. (2019). Capitalism's New Clothes: Shoshana Zuboff's Surveillance Capitalism, *The Baffler*, 4 February.

Mueller R. G. (2023). Nietzsche Art of Living in the United States Today, in G. Gödde, J. Zirfas, R. G. Mueller and W. Stegmaier (eds.), *Nietzsche on the Art of Living: New Studies from the German-Speaking Nietzsche Research* (Orientations Press).

Noggle R. (2018). The Ethics of Manipulation, in E. N. Zalta (ed.), *The Stanford Encyclopedia of Philosophy*.

Noggle R. (2006). Manipulative Actions: A Conceptual and Moral Analysis, in *American Philosophical Quarterly*, vol. 33(1), 43–55.

Revesz R. (2016). Pokémon Go: Gamers Warned to Pay Attention to the Law When Searching for 'Pokéstops', *The Independent*, 12 July.

Rossi A., Ducato R., Hapio H. and Passera S. (2019). When Design Met Law: Design Patterns for Information Transparency, in *Droit de la Consommation*, vol. 1, 79–121.

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

Sax M. (2021). *Between Empowerment and Manipulation: The Ethics and Regulation of For-Profit Health Apps* (Wolters Kluwer).

Schelling T. C. (1960). *The Strategy of Conflict* (Harvard University Press).

Schüll N. D. (2019). Your Undivided Attention, *Podcast Episode 1: What Happened in Vegas*, Center for Humane Technology.

Simon H. A. (1982). *Models of Bounded Rationality* (MIT Press).

Simon H. A. (1955). A Behavioral Model of Rational Choice, in *Quarterly Journal of Economics*, vol. 69, 99–188.

Stegmaier W. (2023). The Art of Living as an Art of Orientation, in G. Gödde, J. Zirfas, R. G. Mueller and W. Stegmaier (eds.), *Nietzsche on the Art of Living: New Studies from the German-Speaking Nietzsche Research* (Orientations Press).

Stegmaier W. (2019). *What Is Orientation? A Philosophical Investigation* (de Gruyter).

Stegmaier W. (2008). *Philosophie der Orientierung* (de Gruyter).

Sunstein C. R. (2016). People Prefer System 2 Nudges (Kind of), in *Duke Law Journal*, vol. 66(1), 121–168.

Sunstein C. R. (2014). *Why Nudge? The Politics of Libertarian Paternalism* (Yale University Press).

Sunstein C. R. (2014). *The Ethics of Nudging*, Harvard Public Law Working Paper No. 14-55.

Sunstein C. R. (2013). *Simpler: The Future of Government* (Simon & Schuster).

Sunstein C. R. (2013). The Storrs Lectures: Behavioural Economics and Paternalism, in *The Yale Law Journal*, vol. 122(7), 1826–1879.

Sunstein C. R. and Thaler R. H. (2008). *Nudge: Improving Decisions About Health, Wealth, and Happiness* (Yale University Press).

Sunstein C. R. and Thaler R. H. (2003). Libertarian Paternalism Is Not an Oxymoron, in *University of Chicago Law Review*, vol. 70(4), 1159–1202.

Wilson E. O. (2009). Debate at the Harvard Museum of Natural History, 9 September 2009.

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490

Zuboff S. (2019a). *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power* (PublicAffairs).

Zuboff S. (2019b). *The Age of Surveillance Capitalism* (Profile Books).

Zuboff S. (2014). A Digital Declaration, in *Frankfurter Allgemeine Zeitung*, 5 March 2014.

ISSN 2724-6299 (Online)
https://doi.org/10.60923/issn.2724-6299/22490