

**INFORMATION'S 'UN'-CIVILIZATION: THE IMPERATIVE FOR A NEW APPROACH TO LAW
AND ECONOMICS?**

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ABSTRACT

This exploration of law and economics raises many related issues. First, we consider ways in which law and economics movement and theory may be said to have revolutionized legal thinking. Second, we illustrate the near-total commoditization of personal data by leading 'artificial intelligence' 'cyber firms and their coalitions, creating both digital warfare and modernized lawfare. Third, we dwell on Shoshanna Zuboff's central conception of surveillance capitalism, which constitutes the third modernity which stands for a future where "a genuine inversion and its social compact are institutionalized as principles of a new rational digital capitalism"; these present a scary picture of the "informational mapping of all of the territories on the planet", "the unremitting locating of individuals", and the "capture of body information and health and behavioural data". This continual data mining, fourth, introduces a "rogue mutation of capitalism marked by concentrations of wealth, knowledge and power unprecedented in human history, ostracizing "people from their individual self-direction". Fifth, explored are some ways of critiquing the very notion of 'information civilization". Sixth, in conclusion, we raise the question of the law and economics agenda about law as a soft technology trying to regulate hard technologies and how, if possible, to reverse the imageries of the 'end of law'.

Keywords: *data mining, information civilization, 'infoglut', future of law and economics, lawfare and warfare, 'surveillance' capitalism, 'platform power'.*

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1. INTRODUCTORY

I am delighted to be with you all to celebrate via this webinar at the conference on the Tenth year of the Law and Economics Studies Centre at GNLU in India. I salute Professor (Dr.) Ranita Nagar, Dr. Hiteshkumar Thakkar, and all the colleagues on this occasion for this magnificently sustained network which has indeed ushered in many an initiative in interdisciplinary studies. I regularly consult the Centre's journal and blog and have learnt a great deal from various entries and comments, which show a fine scientific and social sensibility.

I address many themes constituting difficult terrains and am fully aware of problems of strict time limits and temptation to evils of obfuscation and bouts of ostentatious learning that beset scholarly addresses. I will do my best to avoid a monologue and hope to learn from the discussion that follows.

As Cass Sunstein has recently observed: "the field of law and economics has revolutionized legal thinking. It may well be counted as the most influential intellectual development in law in the last one hundred years. It has also had a major impact on how regulators in the United States, Europe, and elsewhere deal with anti-trust, environmental protection, highway safety, health care, nuclear power, and workers' rights."² But as Kaushik Basu adds: "It is easy to go on and draw attention to the power of law and economics in many other areas, from shaping regulation relating to finance and banking, to fiscal policy and laws to regulate the fiscal deficit. It is clearly a subject that deserves attention". We must note also that this early law and economics movement, in contrast to the work in the 1960s, was much more concerned with inequality, and distanced itself from mainstream market economics. The disappearance of the ideas about equality appears to me as well counted to (what I call) the dread of 'J' word in high economic theory.³ One may justly talk about some wider issues such as, first what may be said to be the scope of law and economics⁴ second, its impacts on the itineraries of law in society – (typically excluding military impacts);⁵ third, if law and economics movement is well

² Sunstein, C. (2016, November 10). Listen, Economists!. *The New York Review*. <https://www.nybooks.com/articles/2016/11/10/listen-economists/>.

³ Basu, K (2018). *The Republic of Beliefs: A New Approach to Law and Economics*. Princeton University Press.

⁴ Kitch, E.W. (1983). The Intellectual Foundations of "Law and Economics" *Journal of Legal Education*, 33(2), 184-196.

⁵ He rightly says (at 194) "Traditional jurisprudence, although supposedly the field of the philosophy and science of law, has been in practice a separate field of little relevance to legal scholarship. Law and economics introduced a set of methods and concerns that cut across fields and highlighted some of the central unities of the law. This has enabled people in different substantive fields to talk to one another and to identify and share common

and truly dead, what may take its place?⁶ These are important arenas, but I here wish to confine only to the last question.

2. THE PIZZA STORY

It is well to begin with an apocryphal of a customer ordering his favourite Pizza but gradually denying his favourite pizza; it is not about the classical division of labour in society the advent of classical political economy, or the changing modes of production, but rather about new forms of economy, ownership, dispossession, and alienation. Here, in this well-circulated story on the net a caller who simply wishes to order a pizza is increasingly told bits and pieces of his conduct and states of being by a global corporation that holds all the disparate data about her personality, food habits, health, bank and credit card accounts, passport expiry, and tax and transaction details. In one sense, the customer has freedom and agency- after all, she has the power to terminate the conversation, shop for another pizza outlet, or change her food habits to less intrusive ways. But she has then fewer market options—to live in neoliberal times as a degrowth person, were it possible, but no more as a customer in the marketplace or a consumer in a global market economy. Put differently, human agency, freedom, and privacy have increasingly become illusory; being human is to be, and become, aggregate data-systems, already appropriated and commoditized by the global market forces. Or, as Zuboff puts it: “we are the sources of surveillance capitalism’s crucial surplus: the objects of a technologically advanced and increasingly inescapable raw material-extraction operation. Surveillance

concerns”. He also insists that:” Legal scholars have, of course, long realized the importance of historical and comparative studies. But these studies have been largely descriptive. Law and economics provide an analytic framework that can provide unifying direction to comparative and historical work” and instances fields such as:” For instance: (a) “Contractual relations have had varying scope within societies. What social variables account for the varying scope accorded to social ordering through contract? (b) What effects have different forms of economic ordering had on the productivity of societies? (c) Do legal institutions operate systematically to enhance human welfare; do they operate to protect and maintain the position of those in political power; do they have no effect; or should they be understood in some entirely different framework? If these questions should be answered differently in different societies, or at different times, what accounts for these differences? (at 191).

See, Baxi, U. (2012). Global Development and Impoverishment. In M. Tushnet, & P. Cane (Eds.), *The Oxford Handbook of Legal Studies*, (pp 455-482) Oxford Academic; Sheeran, S., & Sir Rodley, N. (Eds.). (2013). *Routledge Handbook of International Human Rights Law*. Taylor & Francis.

Baxi, U. (2016). *The Way Ahead: Towards a Social Economics?*. International Conference on Law and Economics, IIT Kanpur, India. <https://www.iitk.ac.in/ICLE2016/doc/ubaxi.pdf>.

See, also, White, M.D. (Ed.) (2015). *Law and Social Economics: Essays in Ethical Values, Theory, Practice, and Policy*. Palgrave Macmillan.

If someday a discipline called military/defense law and economics stream were to come into fully fledged existence, one would study, among other things, the human rights costs of prolonged and localized armed conflicts situation; the political economy military doctorships; the global armament markets; defense production corporate governance, and procurement models; the integration vs accommodation of international humanitarian law; and of course the military uses of artificial intelligence.

⁶ See, the last section of the paper.

capitalism's "actual customers are the enterprises that trade in its markets for future behaviour."⁷

There is something quaint about the truism that there are no human beings, agency, or privacy available to us anymore, even if we may cling to illusions (or hallucinations) of rational choice-making. Shoshana Zuboff details in *Surveillance Capitalism* treats precisely this feat achieved by digital economy but probably less deterministic narratives open up when we listen to dissenting voices offering different notions of 'informational capitalism'. Are the days of contemplating Karl Marx's oeuvre or Max Weber's work on critique of society, law, and economics gone forever?⁸ Or nearer our times, the monumental works of James Willard Hurst?⁹ And should I add further the lifetimes of law and economics movement which are now vanishing before our own eyes?

3. SURVEILLANCE CAPITALISM AND INFORMATIONAL CIVILIZATION

This essay focuses on Shoshanna Zuboff's central conception of surveillance capitalism which constitutes the third modernity and stands for a future, where "a genuine inversion and its social compact are institutionalised as principles of a new rational digital capitalism." The 'third modernity' would consist of "sincere progression and its unique strain of social contract of digitalized market economy, which is in alignment with the individual's society is comprised of and derive their legitimacy from its democratic institutions" [54]. Of course, in pages 4-41, she elaborates on "social forces that expand opportunities for good life" such as: (1) "Education and knowledge work increased mastery of language and thought, the tools with which we create personal meaning and form our own opinions; (2) "Communication, information, consumption, and travel stimulated individual self-consciousness and imaginative capabilities/attitudes - in ways that could "no longer be "contained by predefined roles or group identity; (3) improved "health and longer life spans provided the time for a self-life to deepen and mature"; and (4) "fortifying the legitimacy of personal identity over and against a priori social norms".

⁷ Zuboff, S. (2019). *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*. Public Affairs; this work hereafter will be referred to in the paper simply by the page number in the parentheses.

⁸ Rheinstein, M. (Ed.) (1954). *Max Weber On Law In Economy and Society*. Harvard University Press; Trubek, D.M. (1986). Max Weber's Tragic Modernism and the Study of Law in Society, *Law & Society Review*, 20(4), 573-603; Trubek, D.M. (1977). Complexity and Contradiction in the Legal Order: Balbus and the Challenge of Critical Social Thought About Law, *Law & Society Review*, 11(3), 529-569.

One does not know, for example, if Shoshana Zuboff quite endorses Weber's varied theses about law and capitalism but certainly, he is quoted to embellish some of arguments concerning the early development of cyber or surveillance capitalism.

⁹ Konefsky, A.S. (2000). The Voice of Willard Hurst, *Law & History Review*, 18(1), 147-166.

Let us get closer to all this by a sister concept of Zuboff's second concept, informational civilization (to which Professor Ranita Nagar has now rightfully added the prefix "un"). According to Zuboff, iPhones, iPads, and iTunes opened the door for the possibility of "democratized information in the context of individualized economic and social relations" [55], a new model for a third modernity; but it was Google, with its AdSense and content-targeted advertising, at first, and Gmail, in a second moment, that laid the groundwork for "a new economic order." [82].

Surveillance capitalisms "births a new species of power" that Zuboff names as 'instrumentarianism', which "knows and shapes human behavior toward others' ends. Instead of armaments and armies, it works its will through the automated medium of an increasing ubiquitous computational architecture of 'smart' networked devices, things, and spaces" [7].

It uses massive-data collection, which establishes "practices for extracting information and knowledge about individuals in order to foster prediction and sales practices based on the exploration of individuals' intimate spaces. This data mining is increasingly based on more information/data mining and is acquired through Big Data [By 2020 more than 44 zettabytes (44 trillion GB) will be generated and approximately 16 zettabytes may be used in the context of Big Data applications. It is believed that by 2025 the total amount of Data will be as high as 180 zettabytes. All this is overshadowed by the Dark Web [Internet of Things where PCs and sensors talk with each other] and leads to drones and lethal automatic weapons systems (LAWS, as the USA defence department abbreviates this in an unconscious irony). All this happens by a behavioural surplus that underlies the new business model¹⁰.

Put another way with Zuboff, "the increasing computerization of public and private spaces", the "informational mapping of all of the territories on the planet", 'the unremitting locating of individuals', and the "capture of body information and health and behaviour data" present a scary picture of how surveillance capitalism firmly defies 'boundaries all the time, seeking the most exhaustive collection of data possible'. For it any "kind of data is of interest" and "free" products are offered, as surveillance capitalism's ultimate goal is to capture personal information, where the real product is developed from the processing of this information' [417].

A "rogue mutation of capitalism marked by concentrations of wealth, knowledge and power unprecedented in human history", Zuboff maintains, "ostracizes people from their individual

¹⁰ How much data is generated each day? (2019, April 17). *World Economic Forum*. <https://www.weforum.org/agenda/2019/04/how-much-data-is-generated-each-day-cf4bddf29f/>.

self-direction”. ‘Simultaneously, it elicits a novel, cosmopolitan emporium of the domination and reorientation of human demeanour. Zuboff calls this “the commercial sphere of the compartment residue that rebrands upcoming human actions as sales articles for speculation” where “comprehension plays second fiddle to computation, when it comes to information”. Surveillance Capitalism, like mass production; is “an American invention... [That] became a global reality” [24]. The development of this invention would have occurred in the US, but the “consequences of these developments are on the world”[24].

Surveillance capitalists are corporations that act as the torchbearers or adopters of this new strain of commercial enterprise. Zuboff singles out Google [63] and Facebook [91] as the most peremptory “patron saints”? of surveillance capitalism but Microsoft and Amazon are also explicitly enumerated, while Apple is still straddling at the fence [9]. According to Zuboff, surveillance capitalism jeopardizes the colossus quest for “our elemental right to the future tense” [20]. SC dismantles humans’ “ultimate entitlement to aspire which bestows upon them the agency to conceive of such a thing as a hereafter (a worldly one) in the first place” [20].

The ceaseless quest for a more immutable “ever after” [65] leads to a “crusade” committed to devise a novel, all-encompassing global supremacy that “is founded on impeccable surety” of “surveillance capitalism’s incubation in lawless Space”, a striking way of the demise of state regulation and the capture of the cleansed space by opaque forms of corporate governance law and regulation that amount to a “law unto oneself”. Zuboff speaks of the very structures of “invasion and conquest” of “operating procedures to which billions of innocents are subjected each day”, and perennial ways of “information warfare” and even “rendition operations” that violate “all boundaries and ... claim dominion over all people and goals, both at Facebook and within other surveillance capitalist companies”[268], generating a “sense of boundarylessness”.

Moreover, “affective computing” [269] leads to situations where “personality and emotion are claimed as observable behaviour and coveted for their rich deposits of predictive surplus”. Now, “the personal boundaries that shelter inner life are officially designated as bad for business by a new breed of mercenaries of the self-determined to parse and package inner life for the sake of surveillance revenues”. Their “expertise disrupts the very notion of the autonomous individual by rewarding ‘boundarylessness’ with whatever means are available— offers of ‘elite status, bonuses, happiness points, discounts, “buy” buttons pushed to your

device at the precise moment predicted for maximum success—so “that we might strip and surrender to the pawing and prying of the machines that serve the new market cosmos” [278].

We live in a peculiar way, in what Walter Benjamin prophetically termed ‘now-time’.¹¹ It is now better known as ‘Hencity’: the science of what will be. The study of history is almost extinct – as it has been ousted by the “study of Hencity”; Hencity is more than just forecasting the future; it is the art of knowing what shall come to pass. When one inserts businesses trading in Evil itself.¹²

Zuboff’s book provides an excellent basis for understanding dispossession, universalization, and dehumanization, which treats humans as objects, or organisms, both materialized in informational data and subjected to technics of instrumentation. They are mechanisms for the extraction of value from behaviour monitoring and a logic that already leads to power asymmetries, which Zuboff identifies. In its latest incarnation, behavioural modification comes to life as a global digital market¹³ architecture, unfettered by geography, independent of constitutional constraints, and formally indifferent to the risks it poses to freedom, dignity, or the sustenance of the liberal order” [309]. She asks: “Where is the hammer of democracy now when the threat comes from your phone, your digital assistant, your Facebook login? Who will stand for freedom now, when Facebook threatens to retreat into the shadows [306] and if “we dare to be the friction that disrupts economies of action that have been carefully, elaborately, and expensively constructed to exploit our natural empathy, elude our awareness, and circumvent our prospects for self-determination? [307]. Surely, surveillance capitalism summons civil society to act in defence of democratic principles and the autonomy of individuals and collectives. This powerful analysis provides an arsenal of practices for the renaissance of freedom, dignity, and privacy.¹³

4. TOWARDS CRITIQUING INFORMATIONAL CIVILIZATION

Many aspects of this powerful presentation puzzle us. There is no gainsaying that what Zuboff is saying is in fact a global societal change but whether it is a shift from the notion of ‘network society to the paradigm of ‘information civilization’ is, indeed open to analysis. It is trite to

¹¹ Hamacher, W. (2001). ‘Now’: *Walter Benjamin on Historical Time*. In Friese, H., *The Moment: Time and Rupture in Modern Thought* (pp. 161-196) Liverpool University Press.

¹² Lem, S. (1985). *The Futurological Congress (from the Memoirs of Ijon Tichy)*. Houghton Mifflin Harcourt.

¹³ Laniuk, Y. (2021). Freedom in the: Lessons from Shoshana Zuboff, *Ethics & Bioethics*, 11(1-2), 67-81.

Laniuk observes (at p. 68) that: “If one dared to scale down this almost five-hundred-page book to a single sentence, that sentence most likely would be the following: “The essence of surveillance capitalism is the annihilation of freedom and its replacement by a machine-like certainty.”

say that social change may eventually contribute to civilizational' change and that the 'societal' many do not exhaust the 'civilizational'. The notion of civilization at least entails the idea of *lounge durée*, not of an instant civilization that speaks of Hencity, where we abolish altogether the concept of the past.

Out of an initial count of about 300 million, the world's digital population now, in 2023, is estimated to be 5.4 billion people with China, India (2.93 billion) and the United States (331 million) ranking higher worldwide (measured by the number of internet users). The world population is estimated at 9.8 billion in 2050, and 11.2 billion in 2100. It seems that dizzying speed of Silicon Valley talk has made us oblivious of the 'digital divide' that erects a division between information-poor and rich-societies. But may the non-digital other still be presented as a historically vanishing breed?

Further, the notion of 'informational civilization' trembles when we realize the facts of global production. According to Forbes, the companies "on the 2023 list account for \$50.8 trillion in sales, \$4.4 trillion in profits, \$231 trillion in assets and \$74 trillion in market value" and the "cumulative profits, assets and market value are all down slightly from last year, though this is the first time total revenue has surpassed \$50 trillion: unsurprisingly the U.S. leads the way with 611 companies on the ranking, and China comes in second with 346" out of 58 countries represented by the publicly traded companies on the list. All this should lead us to re-examine the assertion that company "nevertheless posted a record \$4.2 trillion in combined annual revenue over the last 12 months, up from about \$4 trillion the year before and \$3.3 trillion two years before." The latter is impressive but does not show that capitalism has gradated to 'information civilizations;' in comparison with big corporate business. The continuity with older forms of corporate capitalism seems to persist.

One must also note the Marxian critique, which is based on the original distinction in Karl Marx's *Das Capital* between the productive forces and relations of production. Zuboff is certainly aware of this distinction and uses the term "Information capitalism" in several places. She considers informational capitalism as a sinister "rogue mutation" of capitalism. The same phenomenon is described by many as "computerized society, digital society, information society, knowledge society, knowledge-based society, network society, ICT society, Internet

society, communication society, cyber-society, media society, post-industrial society, postmodern society, virtual society”.¹⁴

But all this ought not to conceal the fact that we are, after all, thinking capitalism. As Jonathan Friedmann explicitly emphasizes: “Capitalism has not changed in its general tendencies to the deepening of commodification, the increase in the rate of accumulation of fictitious capital relative to real accumulation, the increasing lumpenization of large portions of the world’s population”. While all “these processes are abetted by the new high technology” these are certainly not the “cause but are the symptoms of a capitalism in dire straits, a situation quite predictable from the logic of the system”. According to him, the “only new quality would be the ideological claim that we live in a new society, breathing “the strange air of radical identity or self-identity among those intellectuals who are both representatives of the privileged classes and translators of ordinary liberalism into the language of radicalism”.¹⁵ Fuchs is even more forceful in his conclusion that neither “an information society” should be “reduced to the level of the productive forces” nor to “the level of the relations of production”. This is because the “first reduction will result in the assumption that we live in a new society, the information society”, the second “that nothing has changed, and we still live in a capitalist society”. The “informational forces of production ... are mediated by class relations, which means that the establishment of information technologies ... and knowledge work ... are strategies to advance surplus value exploitation” whereby capital “hopes to achieve higher profit rates. The idea that the notion of society can today solely be constructed by reference to the informational forces of production is an ideological illusion”.¹⁶

5. LAW, ECONOMICS, AND THE PLATFORM POWER

What should law, adjudicative law, and jurisprudence do in an era of platform power that characterizes the pre-eminence of digital sovereignty? Regulation not by the industry but by the State seems to furnish one response through the development of “an analytically sound conception of platform power”, the power “to link facially separate markets and/or to constrain participation in markets by using technical protocols.”¹⁷ Julie E. Cohen expresses a second, and allied, concern by what she names “infoglut”—a kind of “information abundance”,

¹⁴ Fuchs, C. (2013). Capitalism or information society? The fundamental question of the present structure of society, *European Journal of Social Theory*, 16(4), 413-434.

¹⁵ *Id.* at 418; see for a fuller statement, Friedman, J. (2002). Modernity and Other Traditions. In Knauff B., *Critically Modern: Alternatives, Alterities, Anthropologies* (pp. 287-313). University of Indiana Press.

¹⁶ *Id.* at 431.

¹⁷ Cohen, J.E. (2017). Law for the Platform Economy, *UC Davis Law Review*, 51, 133-204.

“unmanageably voluminous, mediated information flows that create information overload”: how may the State, pitted against surveillance capitalism’s productive forces devise effective strategies for counteracting infoglut? Third, it how does it (as it ought to) develop “coherent and publicly accountable methods for identifying, describing, and responding to systemic threats - nascent, probabilistically defined harms to be realized at some point in the future” [341].

Julie Cohen basically draws our attention to interlinked concepts of ‘platform’ and ‘platform power’. Her starting premise is that “the platform is not simply a new business model, a new social technology, or a new infrastructural formation (although it is also all ... those things). Rather, it is the core organizational form of the emerging informational economy” whose main functions are: “the propertization of intangible resources, the concurrent dematerialization and datafication of the basic factors of industrial production.”¹⁸ However, the regulatory fields are both complementary and distinctive. Very often the platforms create their own law, adjudication, and enforcement. This is most visible in the industry development of self-regulation. As has been shown, “most general purpose platforms ban or limit pornography, representations of extreme violence, harassment, hate speech, representations of self-harm, and promotion of drug use very much like ‘coordinated law-making’, they” develop and share policy guidelines and construct regulatory institutions and practices to regularize the processes of content flagging and removal”.¹⁹ But the paradox is that “the space of networked digital communications” emerges as a “space devoid of protections for vital human freedoms, even as the activities conducted in that space become more and more fundamental to the exercise of those freedoms.”²⁰

When we look at the models of law and regulation, we come across three recent models of “digital empires” (as notably explored by Anu Bradford)²¹; these are furnished by the law and

¹⁸ *Id.* at 135.

¹⁹ *Id.* at 202, basing herself on the analysis made by Tarleton Gillespie.

²⁰ *Id.* at 199.

²¹ Bradford A. (2023). *Digital Empires: The Global Battle to Regulate Technology*. Oxford University Press; Baxi, U. (2024, January 5). How AI is changing what sovereignty means. *The Indian Express*. <https://indianexpress.com/article/opinion/columns/ai-is-changing-what-sovereignty-means-9095702/>; *Author Talks: Anu Bradford discusses the race to become the next technology superpower* (2023, November 6). McKinsey and Company. <https://www.mckinsey.com/featured-insights/mckinsey-on-books/author-talks-anu-bradford-discusses-the-race-to-become-the-next-technology-superpower>.

This accessible book is further rendered so by Bradford (in an *Author Talks*, blog-Raju Narisetti chats with Anu Bradford), where she emphasizes the ‘horizontal’ aspect of this confrontation: “To make clear that there is increasingly a consensus around the world that technology needs to be regulated. But there’s no consensus on what the regulation ought to look like. I argue that there are three primary ways to think about a digital economy and its regulation. We have the American market-driven model, the Chinese state-driven model, and the European

jurisprudence of the three ‘digital empires’ espoused by the USA, PRC and the EU, that articulate various global trade and culture wars.

The US model is moved by the avatars of markets fundamentalisms and marked by freedom of contract and property and the well-entrenched images and materialities venerating the ‘Nightwatchman state’, and ‘free and fair competition’. It is also increasingly based, as Bradford says, on techno-optimism that essentially signifies no regulation or regulation with a ‘light touch’ promoting high incomes and super-profits.

Bradford presents the model of the PRC as offering recipes of authoritarian legality, putting the nation first. This means the people and in turn means the Party, and the Supreme Leader, who is the embodiment of both. To use the favourite phrase of mine, from a title of the book by the Ghanaian thinker Claude Ake, the leader and the regime specialize in “democratization of disempowerment” (techniques of coercion and standardless use of force). It performs many a miracle; one that concerns us here is the paradox of a growing digital economy with patterns of redress-less interference of the State in the structures and functions of digital industry.

The third model presented by Bradford is the EU model which frontally privileges human rights and inclusivity in a normative framework that stresses a “Human centric development”. Human rights values as well as aspirations stand indispensable for inclusive and sustainable development and the prime function of law and policy is seen to lie in normative governance dedicated to the preservation of human dignity. Although Anu Bradford thinks that the PIC model is globally ascendant, I would think that the jury of future history is still out deliberating on which, if any of these models, is pertinent for human and social development in the next quarter century.

6. TOWARDS A CONCLUSION

The dying of law has often been proclaimed since the young Soviet martyr jurist E.B. Pashukhanis²².

rights-driven model. So, the horizontal battle, then, encapsulates this set of three different models that are competing for influence in the global digital economy”.

²² Zanetti, G., Sellers, M., & Kirste, S. (Eds.). (2023). *Handbook of the History of the Philosophy of Law and Social Philosophy: Volume 3: From Ross to Dworkin and Beyond*. Springer International Publishing; Melkevik, B. (2023). Pashukhanis, Evgeny Bronislavovich. In *Handbook of the History of the Philosophy of Law and Social Philosophy: Volume 3: From Ross to Dworkin and Beyond* (pp. 233-238). Springer International Publishing.; Baxi, U. (1993). *Marx, Law, and Justice*. NM Tripathi.

but the advent of information society, and certainly informational civilization and digital sovereignty and digital subjects that represent new forms of power and control in a world undergoing now a new industrial revolution (named the fourth IR) has sharply focussed attention to the end of law in digital society.

We take here only one poignant example which shows again but in more profound way the death of law (contra Mark Twain who famously said that the reports of my death are wildly exaggerated!) Ugo Mattei²³ speaks of a “corporate takeover” of the law from the State.²⁴ This relatively new “corporate assault”; everyone must learn that now “corporate accumulation learns its logic the hard way: the owner of the platform makes the rules. The user must accept the rules: take-it-or-leave-it! You do not consent to the rules? Then you must stay out.” Put another way: “On the Internet frontier (and this is the main difference from colonial expansion) there is really no need for law in order to accumulate capital.

Algorithms, smart contracts, and firewalls are more than sufficient. For the first time in the history of capitalism, accumulation lawyers are unnecessary”.²⁵ Furthermore, it “is so much cheaper to use QR Codes rather than law as controlling processes that there is scant hope that, in the wake of neoliberal values, law will survive much longer”.²⁶

Ought not, before it is too late, the law and economics agenda, both of theory and movement, raise the question about law as a soft technology trying to regulate hard technologies and how, if at all possible, reverse the imagery of the end of law?

²³ Mattei, U. (2023). The Death of Law, *Global Jurist*, 23(1), 1-5.

²⁴ *Id.* at 2. Reminiscent of, he says, “the corporate takeover of Western institutions, a silent takeover morphing over two decades between Noreena Hertz’s *The Silent Takeover* (2001) and Camila Vergara’s *Systemic Corruption* (2020)” referring “not only to legislative capture but also to seizure of every apparatus or power with a political impact”; adding also Ugo Mattei & Laura Nader, *Plunder: When the Rule of Law is Illegal* (Blackwell 2008).

²⁵ Mattei, *supra* note 23, at 4.

²⁶ *Id.* at 5.

“Courts of law, law schools, attorneys, notaries, casebooks, legal codes and texts, dissenting opinions, and doctrinal discussions are increasingly perceived as wastes of time and money, useless transaction costs for capital accumulation.”