Cyber Challenges to International Human Rights

Title: Algorithmic challenges to autonomous choice

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Abstract:

Human choice is a foundational part of our social, economic and political institutions. This focus is about to be significantly challenged. Technological advances in data collection, data science, artificial intelligence, and communications systems are ushering in a new era in which digital agents, operated through algorithms, replace human choice with regard to many transactions and actions. While algorithms will be given assignments, they will autonomously determine how to carry them out. This game-changing technological development goes to the heart of autonomous human choice. It is therefore time to determine whether and, if so, under which conditions, are we willing to give up our autonomous choice. I explore the rationales that stand at the basis of human choice, and how they are affected by autonomous algorithms; it conscientiously contends with the "choice paradox" which arises from the fact that the decision to turn over one's choices to an algorithm is, itself, an act of choice. As shown, while some rationales are not harmed – and might even be strengthened – by the use of autonomous algorithmic assistants, others require us to think hard about the meaning and the role that choice plays in our lives. The article then examines whether the existing legal framework is sufficiently potent to deal with this brave new world, or whether we need new regulatory tools. In particular, it identifies and analyzes three main areas which are based on choice: consent, intent and laws protecting negative freedom.