

‘Digital Vulnerability in European Private Law’ – Towards Digital Fairness

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Vulnerability has emerged in legal discourse, in dialogue with other disciplines, as a useful concept to capture the fluid and multilayered nature of the human condition and to question the adequacy of some foundational legal and policy norms.

Yet, despite the potential of the notion of vulnerability as a key tool to overcome the limits of legal formalism and paternalism and to foster substantive equality, the legal status and effects of the notion under domestic and European laws are still quite unclear. Moreover, the notion of vulnerability has only seldom been applied to the specific forms of exposure to harm that might arise from interaction with digital technologies. In our current and pervasively digitalized world, it is however necessary to analyze how digital technologies impact preexisting forms of vulnerability or create new ones, and to understand how the law can prevent or address unequal experiences of technology. The current situation calls for legal perspectives and responses actively implementing humanist values and vulnerability-driven solutions.

This is what the Research Project on ‘Digital Vulnerability in European Private law’ (DiVE), funded by the Italian Ministry of University and Research as a ‘Research Project of National Interest’,¹ aims to do. In particular, the Project seeks to investigate the notion of digital vulnerability, by exploring how it stands vis-à-vis traditional paradigms of protection of weaker parties (such as rules on incapacity, consumer protection, data protection, anti-discrimination and equality before the law) and to what extent it might properly capture harms stemming from digital technologies.

Furthermore, the Project aims to test to what extent current rules adequately deal with personal conditions in which digital technology might prove particularly disruptive and challenging for the persons involved, and to assess how national and European legal principles, rules and policies could be aligned, reimagined and shaped in order to properly translate the

1 Progetto di Ricerca di Interesse Nazionale (PRIN) - Project 2020XBFME2.

notion of digital vulnerability into justiciable issues, that is, into claims for special legal protection. The European legal framework is notably seeking to act as a standard setter in the digital economy, trying to address a great number of Private Law aspects affected by technology (e.g., Privacy, Contract and Tort Law).

Therefore, this volume represents the first step within an ongoing research project that seeks: to give a more concrete meaning to the necessarily fluid concept of digital vulnerability and to clarify how the notion might be applied both on a descriptive and prescriptive level; to identify personal and situational factors that are most often linked to a condition of digital vulnerability and to provide assessment tools for diagnosing, preventing and addressing situations of digital vulnerability; to identify effective measures/remedies to ensure the utmost protection of those who may be digitally vulnerable against emerging technological threats; to help transformatively reconsider traditional private law micro- and macro-categories revolving around the notion of digital vulnerability, challenging traditional legal taxonomies.

This volume collects the papers presented and discussed at the opening conference of the project, which took place at the University of Ferrara on 15 and 16 June 2023, where the authors of the contributions exchanged their thoughts.

We would like to express our warm thanks to Frank Pasquale and Oreste Pollicino for their inspirational and detailed prefaces, as well as to Reiner Schulze for his brilliant conclusions.

Our gratitude also goes to all the distinguished Authors for their enthusiastic and valuable contributions to this volume, and to the members of the ‘Digital Vulnerability in European Private law’ (DiVE) project, including, further to the two editors of this volume, Marta Infantino (Principal investigator, University of Trieste), Claudia Amodio (University of Ferrara), Amalia Diurni (University of Rome Tor Vergata), Luca Ettore Perriello (Polytechnic University of Marche) and Loredana Tullio (University of Molise) for the inspiring cooperation.

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