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BOOK REVIEW

Anna Beckers & Gunther Teubner, *Three Liability Regimes for Artificial Intelligence Algorithmic Actants, Hybrids, Crowds* reviewed by Tomàs Gabriel García-Micó

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With the increasing importance of algorithms in our daily lives, legal researchers have tried to answer if current legal systems are able to tackle damages caused by algorithms. Most of the doctrine has answered negatively to this question, but there has been a lack of in-depth research considering the valuable inputs that may be taken from other sciences (e.g., sociology, computer science) to provide a comprehensive proposal on how to address the legal uncertainties raised by this not-so-new technology. That is precisely the gap filled by the book written by Dr Beckers and Prof Dr Teubner.

Algorithms may impact differently in our day-to-day lives, as we might be using Google Autocomplete, we may be operated on with a surgical robot, or a doctor might be taking their output into account to make a diagnosis, also they might be members of a board of directors with voting rights or have an active role in the stocks market (Robo-Advisors). And the relationship between the human using or profiting from them and the algorithms is completely different. In some cases, the algorithm is an aiding tool for the human (Robo-Advisors); in others, humans and algorithms work altogether to reach a common aim (board of directors of a company); and in others, the unpredictable and unexplainable decisions taken by a set of interconnected algorithms may impact humans without us having a say on what they do (Google Autocomplete). All three realities are examples of the three socio-digital institutions that Dr Beckers and Prof Dr Teubner use as the leitmotif of their book: digital assistants or actants, hybrids, and interconnectivity; respectively.

In Chapters 1 and 2, the authors set the grounds for the concepts of socio-digital institutions and their sociological implications. Chapters 3 to 5 provide solutions to tackle the responsibility gaps that current legal systems present when facing the reality of algorithms. A conclusion may be drawn up after reading this book: a profound change in our legal systems is necessary, but we need neither to invent new legal institutions, nor apply a one-size-fits-all approach (such as providing full legal personhood to algorithms), but a sectorial approach (using as a reference the three socio-digital institutions that the authors present).

In digital assistance, the algorithm is no more than a way to comply with the human's expected aims. For this reason, the most relevant risk is the autonomy risk, i.e., what happens when the algorithm takes a decision that goes beyond the

principal's (the human) instructions. In this case, the authors consider that the best solution in contract law will be a combination of agency law (for the formation of contracts) and vicarious liability (for their execution). In torts caused by loose algorithms, compensation could be ensured by applying the rules of vicarious liability. But in both agency law and vicarious liability it is necessary that the party who caused the damage is a person, and algorithms are «nothing but streams of information» (page 30). So, how can the principal be liable for the acts of an algorithm? To that end, the authors state that «limited legal personhood» (page 44) or «capacity» (page 56) should be granted to digital actants.

Hybridity presents the association risk, raising from the cooperative way of working of algorithms and humans, which could result in damage to third parties. The individual decisions of the parties might be lawful, but the overall result of the process is harmful. Agency law or vicarious liability are useless, as it is impossible to identify the harmful actor in the equation, so something else is required. The authors bring into application an *ad-hoc* form of enterprise liability, the «network liability», a *tertium genus* between the market-share liability (originated in the US back in the 80s to ensure compensation to the victims of diethylstilbestrol) and the organization-based liability. For this purpose, it would be necessary to grant limited capacity, not to the algorithms, but to the actor-network. Then, the victim of harm might have to attribute the wrongful action to the hybrid, and then liability will be attributed, by the court, to the economic operator within the network who has control and gets the highest benefit, who will usually be the manufacturer.

The biggest challenge to liability law is presented by interconnectivity, arising from algorithms working together to bring an opaque, untraceable, and unpredictable result. Such socio-digital institution poses three risks: (1) it has an indirect, but «enormous influence», on society (page 112), (2) that «[i]dentifiable humans behind complex systems are replaced by controlling software that in itself acts autonomously» (page 114) and (3) the combination of global interconnectivity and that damages will occur at a national level. Here, «the law is forced to give up the identification of liable actors and will need to determine new forms of social responsibility» (page 21). Hence, personhood is irrelevant, and the risk needs to be socialized, completely (i.e., insurance) or partially (i.e., identification of risk pools and compensation through compensation funds). The authors consider that a fund financed *ex-ante* (with taxes paid by the members of the risk pool, e.g., producers, programmers) and *ex-post* (with compensation paid to the agency managing the fund when the liability-triggering event occurs) is the best solution to deal with the interconnectivity risk, as it has been proven with other funds already working, such as the Superfund for environmental disasters in the US (page 132), as it ensures compensation to the victims and maintains the steering function of liability law. Such a fund should be enacted into a worldwide legal instrument coupled with national administration, but this will require a hardly-to-reach level of international cooperation. So, the authors provide a more feasible and realistic proposition: the «European solution», exploiting the

«Brussels effect» to ensure that an «EU standard subsequently spreads over the world and sets a de facto global standard» (page 136).

To sum up, in its less than 200 pages, this book provides a clear set of solutions for highly beneficial technologies that are real and being used in an exponentially increasing trend. The question no longer is *if* these technologies will harm us, but *when* they will do so and *what* can we do then? Industry sees liability and regulation with mistrust and as innovation-hindering, but both mechanisms are necessary to ensure that society trusts these new technologies. And the rules proposed by the authors in their book clearly strike a good balance between compensation, innovation, and prevention.

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Aims and Scope

The *European Review of Private Law* aims to stress the considerable practical, as well as academic, importance of national private laws in integrating Europe in the face of the current overwhelming emphasis placed on European Union Law. Cross-border research will become increasingly important as transnational legal work develops. There is a need for a law review that focuses on legal developments within a broad European perspective and provides a platform for debate on the desirability of a unified private law in Europe as a complement to economic, monetary, and political union.

The European Review of Private Law will have an appeal across the academic/ practitioner divide. By providing accessible and comparative surveys of legal developments in a number of countries, with summaries of articles and case notes in French, German and English, the Review will provide a valuable source of information for lawyers wishing to look for new ideas with which they hope to induce their courts into various innovations in the private law. The impact of European Union Law has made national courts more receptive to importing new conceptual devices and legal techniques directly from the foreign case law, without necessarily waiting for the legislature to act.

But et Portée

La Revue Européenne de Droit Prive vise à souligner l'importance pratique et academique des droits privés nationaux dans une Europe de plus en plus intégrée face à l'importance écrasante donnée au droit communautaire. Le développement de l'activité juridique transfrontalière rend la recherche en ce domaine de plus en plus importante.

Le besoin est né d'une revue de droit qui se concentre sur les développements juridiques dans une perspective européenne large, et qui fournit une plateforme de discussion sur la désirabilité d'un droit privé unifié en Europe, comme complément d'une Union Économique, Moné-taire et politique.

La Revue Européenne de Droit Privé est particulièrement interessante pour combler le fossé existant entre le monde académique et les praticiens du droit. En fournissant des études accessibles et comparatives sur les développements juridiques dans un certain nombre de pays, avec des résumés d'articles et des commentaires d'arrêts en Français, Allemand et Anglais, la revue offre une source précieuse d'informations pour les juristes cherchant de nouvelles idées à soumettre à leurs tribunaux pour innover dans le cadre du droit privé. L'impact du droit communautaire a conduit les tribunaux nationaux à être plus réceptifs à l'importation directe de la jurisprudence étrangaère, de nouveaux concepts et de techniques juridiques sans attendre toujours l'action du législateur.

Ziel und Umfang

Die *European Review of Private Law* beabsichtigt, sowohl die praktische als auch die akademische Bedeutung der nationalen Zivilrechtssysteme im europäischen Integrationsprozess, im Hinblick auf die derzeitige überwältigende Bedeutung des Europäischen Unionsrechts zu unter- streichen. Grenzüberschreitende wissenschaftliche Untersuchungen werden mit dem Fortschreiten des grenzüberschreitenden Rechtsverkehrs und den damit zusammenhängenden Rechtsfragen stets bedeutsamer. Aus diesem Grund besteht ein Bedarf für eine rechtswissenschaftliche Zeitschrift, die sich auf die rechtliche Entwicklung innerhalb einer weiten europäischen Perspektive richtet und die ein Forum für eine Auseinandersetzung über die Notwendig-keit eines einheitlichen Privatrechts in Europa, als Ergänzung zur Wirtschafts-, Währungs-und Politikunion, entwickelt. Die *European Review of Private Law* beabsichtigt, einen Anreiz zu bieten, um die Kluft zwischen Rechtswissenschaft und rechtliche Praxis zu schließen. Durch die Bereitstellung zugänglicher und rechtsvergleichender Darstellungen der rechtlichen Entwicklung in einer bestimmten Anzahl von Staaten, mit Zusammenfassungen der Beiträge sowie der Urteilsanmerkungen in französischer, deutscher und englischer Sprache, ist die *European Review of Private Law* eine sehr wertvolle Informationsquelle für diejenigen Juristen, die nach neuen Ideen Ausschau halten, mit denen sie ihre nationalen Gerichte überzeugen können, das Zivilrecht zu erneuern. Der Einfluss des Europäischen Unionsrechts hat

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Style Guide
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Index
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Where errors have been found in the printed copy, they are corrected in the electronic version which is available online.

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Directives pour les auteurs
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Errata
Lorsque des erreurs ont été relevées dans la version imprimée de la Revue, les corrections correspondantes sont apportées à la version électronique.

die nationalen Gerichte mehr für die Einführung neuer konzeptioneller Konzepte sowie juristischer Techniken unmittelbar aus ausländischen Rechtsquellen empfänglich gemacht, ohne dabei auf konkrete gesetzgeberische Maßnahmen zu warten.
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Inhaltsverzeichnis
Das Inhaltsverzeichnis wird ein- mal jährlich im Heft 6 des jeweiligen Jahres veröffentlicht.

Errata
Sollten sich in der gedruckten Ausgabe Fehler befinden, so werden diese in der elektronischen Online-Fassung korrigiert.

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