



SHOULD DATA SHAPE PRIVATE LAW? BETWEEN STEREOTYPES AND PERSONALIZATION

A joint online conference by Tilburg University, Maastricht University and the University of Osnabrück

4-5 June 2020

Organizers

Christoph Busch, Catalina Goanta, Kasia Kryla-Cudna, Monika Leszczynska, Vanessa Mak

People differ with respect to their preferences, personalities, cognitive abilities, or attitudes. Yet the way in which private law has evolved in the past centuries sacrifices heterogeneity for the sake of the legal certainty that flows out of generalizations and typifications. Law distinguishes between different groups of individuals such as consumers and professionals, or even between average and vulnerable consumers. These groups are however based on conspicuous features that would justify differential treatment. For instance, determining a profile of the average consumer requires a context, such as a given industry or age group, and reflects specific considerations such as the consumer's skills in retrieving information about a transaction.

Decades of research in psychology and behavioral economics generated tremendous amount of knowledge about people's behavior, creating typologies with regard to their personality traits, intertemporal or social preferences as well as cognitive skills. Later use of Big Data analysis showed that these types can be predictive of people's behavior, as well as informational needs or other specific characteristics. Recently, legal scholars proposed that insights generated by this research on granular legal rules could be embedded in private law by, for instance, introducing different default rules or privacy disclosures depending on people's personality traits or preferences.

This idea, although very promising, raises a number of challenging questions ranging from philosophical and normative to empirical and technical. The goal of this two-day conference is to facilitate an interdisciplinary, transatlantic dialogue between legal scholars dealing with theoretical and normative aspects of law, empirical researchers looking at the impact of law on human behavior as well as data scientists providing tools for predictive analysis.

To facilitate this dialogue, this online event is structured as follows. The first day starts with the theoretical foundations of rule personalization in contract law, and further explores questions regarding how existing legal stereotypes such as the average consumer may fare in relation to future degrees of personalization which may be adopted by law-makers due to technological innovations. The second day addresses the interdisciplinary potential of this topic, by adding perspectives from behavioral as well as computer science research and discussing emerging topics in the context of the digital enforcement of consumer protection.

PROGRAMME

4 JUNE 2020 - DOCTRINAL FOUNDATIONS IN CONTRACT AND CONSUMER LAW

12:30-12:45 Waiting room registration for participants

12:45-13:00 Introduction: A word from the organizers (Catalina Goanta)

13:00-14:30 **Foundations of personalization in private law**

Hosts	Catalina Goanta (Maastricht University) Bogdan Covrig (Maastricht University)
Speakers	Christoph Busch (University of Osnabrück) Hans Micklitz (University of Helsinki) Vanessa Mak (Tilburg University)
Discussant	Eric Tjong Tjin Tai (Tilburg University)

14:30-15:00 Break/online networking

15:00-16:30 **Normative considerations: the case of the digital average consumer**

Hosts	Monika Leszczynska (Maastricht University) Kasia Kryla-Cudna (Tilburg University)
Speakers	Christine Riefa (Brunel University London) Hanna Schebesta (Wageningen University) Alan Littler (Kalff Katz & Franssen) Joasia Luzak (University of Exeter)
Discussant	Vanessa Mak

16:30-16:45 Conclusions (Vanessa Mak & Christoph Busch)

5 JUNE 2020 – BEHAVIORAL ECONOMICS & DIGITAL ENFORCEMENT

12:30-12:45 Waiting room registration for participants

12:45-13:00 Introduction – Summing up the earlier day’s discussions (Monika Leszczynska)

13:00-14:30 **Behavioral economics research on heterogeneous reactions to legal rules**

Hosts Christoph Busch
Kasia Kryla-Cudna
Speakers Elena Kantorowicz-Reznichenko (Erasmus University
Rotterdam)
Christoph Engel (Max Plank Institute for Research on
Collective Goods)
Peiran Jiao (Maastricht University)
Discussant Monika Leszczynska

14:30-15:00 Break/online networking

15:00-16:30 **Personalizing the digital enforcement of consumer law**

Hosts Vanessa Mak
Catalina Goanta
Speakers Jens Prüfer (Tilburg University)
Caroline Cauffman & Jerry Spanakis (Maastricht
University)
Gunes Acar (KU Leuven) & Constanta Rosca (Maastricht
University)
Discussant Sara Wahlberg (Swedish Consumer Authority)

16:30-16:45 Conclusions and call for collaboration/follow-up plans (Kasia Kryla-Cudna &
Catalina Goanta)