

The Grand Game. Social Networks and ‘Contract-Based’ Good Morals

Manolita Francesca*

Abstract

The paper analyzes the place and role of ‘contract-based’ good morals (*boni mores*, *bonnes moeurs*, *buon costume* ‘*stipulativo*’) in the context of sharing platforms built on a network of contracts with end-users. As a matter of fact, virtual communities have outgrown reality. Virtual and real systems contaminate each other, just like contract-based rules of conduct governing the life of virtual communities contaminate those outside of them. Most standards of conduct in force in the social networks are drafted in such a way as to reflect the well-known doctrines of public policy (*ordre public*) and good morals (*boni mores*, *bonnes moeurs*, *buon costume*) with regard to any line of conduct generally qualifying as ‘objectionable’. What remains to be assessed are the terms and requisites necessary to define ‘objectionable’ – a task by and large entrusted to the control of an algorithm and/or a moderator – and the effects thereof on extant contracts.

I. Preliminary Remarks on Good Morals (*Boni Mores*, *Bonnes Moeurs*, *Buon Costume*), Social Communities and the Conformism of Algorithms: The Grand Game

The doctrine of good morals (*bonnes moeurs*) has had mixed fortunes.¹ Its permeability to societal changes has made its border line with the neighboring

* Full Professor of Private Law, University of Foggia.

¹ On the good morals doctrine, see G. Giorgi, *Teoria delle obbligazioni nel diritto moderno italiano* (Firenze: Cammelli Editori, 1876), II, 519; F. Ferrara, *Teoria del negozio illecito nel diritto civile italiano* (Milano: Società Editrice Libreria, 1914); A. Trabucchi, ‘Buon costume’ *Enciclopedia del diritto* (Milano: Giuffrè, 1959), V, 700; E. Betti, *Teoria generale del negozio giuridico*, (Torino: UTET, 2nd ed, 1960), 106; G.B. Ferri, *Ordine pubblico, buon costume e la teoria del contratto* (Milano: Giuffrè, 1970), 184; S. Rodotà, ‘Ordine pubblico o buon costume?’ *Giurisprudenza di merito*, 106 (1970); G. Panza, *Buon costume e buona fede* (Napoli: Jovene, 1973); Id, ‘L’antinomia tra gli artt. 2033 e 2035 c.c. nel concorso tra illegalità e immoralità del negozio’ *Rivista trimestrale di diritto e procedura civile*, 1174 (1971); L. Lonardo, *Ordine pubblico e illiceità del contratto* (Napoli: Edizioni Scientifiche Italiane, 1993); R. Sacco, ‘Il contratto’, in F. Vassalli ed, *Trattato di diritto civile* (Torino: UTET, 1975), 516. On the relationship with the over-arching doctrine of *ordre public*: M. Barcellona, ‘Ordine pubblico e diritto privato’ *Europa diritto privato*, 925 (2020); G. Perlingieri, ‘In tema di ordine pubblico’ *Rassegna di diritto civile*, 1382 (2021), Id, ‘La via alternativa alle teorie del «diritto naturale» e del «positivismo giuridico inclusivo» ed «esclusivo». Leggendo Wil J. Waluchow’ *Annali SISDiC*, 69 (2020); S. Pagliantini, ‘*Lex perfecta*, trionfo dell’ordine pubblico e morte presunta del buon costume: appunti per una ristampa della Teoria del negozio illecito nel diritto civile italiano’ *Persona e mercato*, 670 (2021).

doctrine of public policy (*ordre public*) quite uncertain. In France, for example, the recent reform of the *Code civil* has led to a complete hybridization of the *bonnes moeurs* into the *ordre public* principle.²

While courts in Italy redefine the boundaries of Art 2035 of the Civil Code³ and the Constitutional Court reopens the debate on the Merlin law,⁴ in the parallel world of the Internet, the doctrine of good morals is being revitalized in the shaping and implementation of 'community' standards,⁵ and its effectiveness is entrusted to algorithms, user feedbacks and moderation guidelines.

The cases are growing in number, the best known being the images of nudes contained in works of art, such as 'The Descent from the Cross' by Pieter Paul Rubens, the female nudity by photographer Gerhard Richter, '*L'origine du monde*' by Gustave Courbet and Canova's 'The Three Graces'.⁶ These works, recast on digital platforms, were considered contrary to the 'community' policy forbidding the display of reproductive organs.

This same reasoning is also behind the censorship and removal of photos of babies being breast fed. In 2021, the Facebook account of the International Exhibition of Contemporary Art and Design, which included the exhibition of

² In recent literature, see G. Passagnoli, 'Note sull'*ordre public* dopo la riforma del *code civil*' *Persona e mercato*, 37 (2018); N. Rizzo, 'La positivizzazione del diritto naturale ed il superamento dei «buoni costumi»' *Persona e mercato*, 116 (2018); G. Terlizzi, 'Erosione e scomparsa della clausola dei «buoni costumi» come limite all'autonomia contrattuale' *Persona e mercato*, 135 (2018); C. Crea, 'La «resilienza» del buon costume: l'itinerario francese e italiano, tra «*fraternité et diversité*»' *Rassegna di diritto civile*, 872 (2019).

³ Among the latest contributions, see A. Palmieri, 'In tema di irripetibilità per contrasto al buon costume. Nota a ord. Cass. sez. VI civ. 3 aprile 2018, n. 8169' *Foro italiano*, 3240 (2018); A. Barale, 'Il problema della «soluti retentio» in caso di contemporanea violazione dell'ordine pubblico e del buon costume' *Foro napoletano*, 674 (2020); F.P. Patti, 'Buon costume e scopo della norma violata: sull'ambito di applicazione dell'art. 2035 c.c.' *Rivista di diritto civile*, 517 (2021).

⁴ The Constitutional Court, with judgments no 141 and no 278 of 2019, re-examined the so-called Merlin Law (legge 20 February 1958 no 75, repealing the former regulation on prostitution) adapting it to new forms of voluntary prostitution. See R. Bin 'La libertà sessuale e prostituzione (in margine alla sent. 141/2019)' *forumcostituzionale.it*, 26 November 2019; L. Del Corona, 'La Corte costituzionale torna a pronunciarsi sulla legge Merlin, ma alcuni problemi interpretativi permangono' *Rivista italiana di diritto e procedura penale*, 315 (2020); L. Violini 'La dignità umana al centro: oggettività e soggettività di un principio in una sentenza della Corte Costituzionale (sent. 141 del 2019). Nota a sent. C. Cost. 7 giugno 2019 n. 141' *dirittifondamentali.it*, 444 (2021).

⁵ See P. Femia, 'Tre livelli di (in)distinzione tra principi e clausole generali', in G. Perlingieri and M. D'Ambrosio eds, *Fonti, metodo e interpretazione, Primo incontro di studi dell'ADP* (Napoli: Edizioni Scientifiche Italiane, 2017), 209, 224.

⁶ R. Borrello, 'Arte e rete digitale: i *social networks* e le *policies* sulla «nudità»' *Nomos*, 28 (2020); M. Ferraioli, 'Ennesimo pasticcio di Facebook: censura come "pornografiche" alcune opere di Rubens' *Artribune.com*, 30 July 2018. On Gerhard Richter's artwork, see 'Gerhard Richter Painting Pulled From Pompidou Center Facebook Page' *artlyst.com*, 1 August 2012, at <https://tinyurl.com/7se8d27x> (last visited 31 December 2022). On the *Origine du monde*, see *finestresullarte.info.it*, 19 March 2018, at <https://tinyurl.com/y4w7292a> (last visited 31 December 2022). Moreover, see 'Canova censurato, Sgarbi fa causa a Facebook e Instagram' *vvox.it*, 23 September 2019.

the works of Italian artist, Teresa Letizia Bontà and Spanish artist, Gloria Marco Munuera, was suspended for alleged violation of the social network's standards, although they simply represented scenes of maternity.⁷ The story went viral, so much so that some bloggers from 'Theories of the Deep Understanding of Things' tested Facebook's algorithm by posting on their page the image of a pretty girl, completely wrapped in foam, in a bathtub, and with an innocent elbow as the only naked point of her body. Within a few weeks, the innocent photograph was removed due to an alleged violation of the social network's policy.⁸

The recent corporate shift – from Facebook to Meta – has led to an amendment to the community standards. The famous Internet Social Provider (hereinafter ISP) was advised to publish an accompanying statement for each of the 'objectionable contents' put forward in the platform's new community standards: hate speech, violent and graphic content, adult nudity and sexual activity/solicitation.

Under section 3 of the Terms of Use (referring to the user's commitments to Facebook and its community) is a paragraph relating to individual conduct ('2. What you can share and do on Meta Products'). With specific regard to nudity and adult sexual activities, the Facebook Community Standards specify:

'Our nudity policies have become more nuanced over time. We understand that nudity can be shared for a variety of reasons, including as a form of protest, to raise awareness about a cause, or for educational or medical reasons. Where such intent is clear, we make allowances for the content. (...) We also allow photographs of paintings, sculptures, and other art that depicts nude figures'.⁹

What makes the whole system rather peculiar is that the detection of (contractual) breaches is entrusted to the judgment by other users, or left with algorithmic decision-making. Thus, the users' subjective ethical standards and/or the parameters behind an algorithm become central in sanctioning the infringer, temporarily or permanently disconnecting him or her from the community.¹⁰

⁷ See 'Biennale di Firenze, Facebook oscura la pagina della manifestazione per aver esposto opere che ritraggono seni nudi' *artemagazine*, 13 September 2021 (available at <https://tinyurl.com/y36k4mw8> (last visited 31 December 2022)).

⁸ See SkyTg 24 Tecnologia, 'Statue, quadri, fotografie: le discutibili censure di Facebook', 3 January 2017, at <https://tinyurl.com/2fws5b5j> (last visited 31 December 2022).

⁹ Access to the regulations is free at <https://tinyurl.com/yf5n3k3v> (last visited 31 December 2022).

¹⁰ In part 3 ('Your commitments to Facebook and our community') of the Terms of Use, Facebook (Meta), at point 2 ('What you can share and do on Meta Products') we find: 'We can remove or block content that is in breach of these provisions. If we remove content that you have shared for violation of our Community Standards we'll let you know and explain any options you have to request another review, unless you seriously or repeatedly violate these Terms or if doing so may expose us or others to legal liability; harm our community of users; compromise or interfere with the integrity or operation of any of our services, systems or Products; where we are

The goal pursued by the social network is clear; to guarantee the safety of virtual exchanges/relationships through the construction of a self-standing concept of 'social etiquette' barely inclined to measure up to multiculturalism and the incessant modifications of common morality. Although necessary for the evaluation of social behavior, such contents can hardly be translated into pre-defined norms.

Since the relationship between the users and the platform provider is essentially of a contractual nature, the whole issue deserves to be studied according to the tenets of contract law. The act of private autonomy, whereby a user accepts the requirement to share a set of personal data in order to get access to the service,¹¹ is the source of several rules of conduct, including a binding notion of etiquette. Such a notion does not reflect a conventionally accepted code of morality based on

'a process of repetition of a certain way of acting, authoritatively promoted by one or more persons, and sometimes by anonymous initiatives, which meets with public approval and acceptance, and to which the public submits itself in such a universal way that it seems inappropriate and unusual to turn away from it'.¹²

Rather, it is a kind of 'regulated' etiquette, embodied in the rules of conduct laid down in the platform's general conditions.

Here, at first sight, what the contracting parties seem to be agreeing upon is the provision of a general clause, namely, a 'good morals' clause. However, unlike the doctrine which we, as civil lawyers, are accustomed to – characterized by

restricted due to technical limitations; or where we are prohibited from doing so for legal reasons.

To help support our community, we encourage you to report content or conduct that you believe breaches your rights (including intellectual property rights) or our terms and policies.

We also can remove or restrict access to your content, services or information if we determine that doing so is reasonably necessary to avoid or mitigate adverse legal or regulatory impacts to Facebook.

In part 4 ('Additional provisions'), at point 2 ('Account suspension or termination'), is specified: 'We want Facebook to be a place where people feel welcome and safe to express themselves and share their thoughts and ideas.

If we determine that you have clearly, seriously or repeatedly breached our Terms or Policies, including in particular our Community Standards, we may suspend or permanently disable access to your account. We may also suspend or disable your account if you repeatedly infringe other people's intellectual property rights or where we are required to do so for legal reasons.

Where we take such action we'll let you know and explain any options you have to request a review, unless doing so may expose us or others to legal liability; harm our community of users; compromise or interfere with the integrity or operation of any of our services, systems or Products; where we are restricted due to technical limitations; or where we are prohibited from doing so for legal reasons'.

¹¹ In this regard, among the most effective reconstructions, see C. Perlingieri, *Profili civilistici deisocial networks* (Napoli: Edizioni Scientifiche Italiane, 2014), 88.

¹² F. Ferrara, *Trattato di diritto civile italiano* (Roma: Athenaeum Edizioni Universitarie, 1921), I, 29.

an unavoidable degree of vagueness –, in this context the good morals clause loses its typical vagueness, ending up turning into a provision dominated by the service provider's terms of use and driven by an inflexible algorithm. Failure to comply with the said standards triggers a sanction, temporary or indefinite exclusion from the platform (*rectius*: termination for breach).¹³

As is known, a social network crashing down for some hours may have an enormous social and economic impact, as it causes the disconnection of an indefinite number of users. Hence, the forced exclusion of one or more users from a social platform constitutes a truly punitive measure, as it limits personal or economic communication. This is what former President Trump complained about in the Capitol Hill affair and regarding the containment measures adopted against him by the major social networks.

The Capitol Hill case is well known. On 6 January 2021, hundreds of supporters of former President Trump stormed the US Congress, incited by messages about Trump's allegations of election fraud, following Joe Biden's victory in the November 4 election. The major social networks (Facebook, YouTube and Twitter) suspended the former president from their sites (for an indefinite period).

The allegations of 'censorship', by the press and by many institutions, were also reported into an Interrogation by the EU Parliament to the Commission,¹⁴ which led to Facebook referring the findings to the Oversight Board, an independent panel of 'wise persons' set up to evaluate/review the platform's decisions.¹⁵ The Board essentially upheld the original decision, although it considered it procedurally incorrect and too hasty, and referred the ISP to the definition of a proportionate penalty, similar to that applied to other users in similar cases.

Finally, the sanction was confirmed, and given the seriousness of the former President's behavior, he will not be allowed access to the social platform until January 2023. However, access remains conditional. This is based on a prior assessment by experts on the potential risks which Donald Trump's return to

¹³ See n 10 above.

¹⁴ Question for written answer E-000406/2021 to the Commission, 'Censorship by Facebook and Twitter and blocking of Trump's and the Libero newspaper's accounts', available at <https://tinyurl.com/96m2sbw> (last visited 31 December 2022). The Commission's response refers to the Digital Service Act, which represents the most recent strategy prepared by the European Commission to combat illegal content disseminated online. The 2020 proposal for a regulation by the EU Commission has the ambitious aim, the first legislative experiment in the world, to establish common rules on a continental basis for digital platforms. The proposal has been definitively approved: European Parliament legislative resolution of 5 July 2022 on the proposal for a regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC (COM(2020)0825 – C9-0418/2020 – 2020/0361(COD)).

¹⁵ Oversight Board, case decision 2021-001-FB-FBR of 5 May 2021, available at <https://tinyurl.com/yc4c6rjs> (last visited 31 December 2022). See A. Gerosa, 'La tutela della libertà di manifestazione del pensiero nella rete tra *Independent Oversight Board* e ruolo dei pubblici poteri. Commenti a margine della decisione n. 2021-001-FB-FBR' *Forum di Quaderni costituzionali*, 427 (2021).

the platforms might pose to public safety.

II. Algorithms of the First Millennium: The Great Deception. Two Examples from History

Social platforms handle an uncontrollable amount of information. Recent studies have shown that the algorithmic logic of preferences reproduces, in terms of general information, the same results as those sought after on a commercial level. Algorithms are designed to record a user's preferences and to customize subsequent commercial communication.¹⁶ Such an inductive method, when applied to a subject's informational inclinations, produces a multiplier effect of the information and its variables. Its major effect can be described as a bubble in which individuals withdraw into themselves, together with information that is a repetition of the initial content, thus, feeding the monothematic information on the subject in question.¹⁷ The ability of a multiplicity of contracts of exchange to produce a similar effect on a global scale misleads these very political decision-makers. Yet, the pervasiveness of instruments of communication and the power of algorithms to influence individual choices is certainly not new. A few examples can be quite revealing.

For the first example, it is enough to look to one of the first anecdotes on the science of media deception and the first driving force behind communication studies on the social impact of media.¹⁸ At 8.30 pm on 30 October 1938, the evening before Halloween, at the dawn of radio communication, a very young Orson Welles opened a radio broadcast on CBS with a false news report, announcing an alien invasion of America. The program was 'War of the Worlds', inspired by the science fiction novel of the same name, written by H.G. Wells.

It was said the style was so realistic, that, despite the warnings before and after the program, many listeners did not realize that it was fiction and fell into a state of panic that soon turned into mass hysteria. Some of the listeners abandoned their homes, believing that this would save them from the alien

¹⁶ On micro-targeting, see D. Bennato, 'L'emergere della disinformazione come processo socio-computazionale. Il caso Blue Whale' *Problemi dell'informazione*, 393 (2018).

¹⁷ On confirmation bias, see R.S. Nickerson, 'Confirmation Bias: a ubiquitous phenomenon in many guises' 2 *Review of General Psychology*, 175 (1998); on the same issue already J.T. Klapper, 'Mass Communication Research: An Old Road Resurveyed' 27 *Public Opinion Quarterly*, 515 (1963). More recently, G. Marchetti, 'Le fake news e il ruolo degli algoritmi' *Rivista diritto dei media*, 29, 31 (2020)

¹⁸ S. Natale, 'E se l'inganno è banale? Per una nuova teoria dei media nell'epoca della disinformazione' *Studi culturali*, 437, 439 (2021); Id, 'Unveiling the Biographies of Media: On the Role of Narratives, Anecdotes and Storytelling in the Construction of New Media's Histories' 26 *Communication Theory*, 431 (2016). It is also necessary to refer to J. Pooley and M. Socolow, 'Checking up on the Invasion from Mars: Hadley Cantril, Paul Lazarsfeld, and the Making of a Misremembered Classic' 7 *International Journal of Communication*, 1920 (2013).

invasion which was now at the gates of New York.¹⁹

As for the algorithms, in the 1980s the music broadcaster, MTV, used a statistical model to identify the music videos to broadcast. The target of the analysis was composed of young white people with a clear preference for rock music.²⁰ This led producers systematically to exclude 'black music' from their broadcasts, with the effect of fueling the expansion of a single musical model and leading to commercial discrimination against African American artists. It took artists of the caliber of David Bowie and a large-scale musical operation to bring about change.

In short, explosive reactions of the masses are not new, nor is the guide to the creation of preferences based on algorithms.²¹ However, the impact of current social networks is exacerbated by both the numerosity and transnationality of users and by the private nature of the relationships between users and ISPs.

III. The European Union and the Role of ISPs in Combatting Hate Speech

ISPs have gained institutional momentum, in particular with regard to the phenomenon of 'hate speech'.²² The history of the twentieth century has provided remedial antibodies, at least in the ability to read the signs of terminological decline and the effects of hate propaganda.²³ This will occur even more frequently if the latter is subject to the multiplier effect that is typical of social media and is facilitated by the obscurity of the relationships among people who are only

¹⁹ At the end of the 1930s, Welles collaborated with CBS radio, creating the program named 'The War of the Worlds', an adaptation of the 1897 novel by the British writer H.G. Wells. On this point, see the admirable analysis by D. Bennato, n 16 above, 397-398. The newspapers of the time reported that some citizens of New York claimed to have seen the Martians or the Nazis, both in Europe and in Latin America. The effects of the radio program on the population were the subject of the study by H. Cantril, *The Invasion from Mars: A study in the psychology of panic* (Princeton: Princeton University Press, 1940), 55.

²⁰ The use of targets is a known phenomenon. In Italian literature, see P. Aroldi and F. Colombo eds, *Le età della tv. Indagine su quattro generazioni di spettatori italiani* (Milano: Vita e Pensiero, 2003). On MTV's ability to influence consumer tastes, see G. Bertoli and N. Ghezzi 'Globalizzazione dei mercati e comunicazione televisiva: il caso Mtv' 7 *MICRO & MACRO Marketing*, 449 (1998); P. Russo, 'Sentieri della globalizzazione' *Il Mulino*, 60 (1999); C. Johnson, *Branding television* (London: Routledge Chapman & Hall, 2011).

²¹ P. Femia, 'Essere norma. Tesi sulla giuridicità del pensiero macchinico', in P. Perlingieri et al eds, *Il trattamento algoritmico dei dati tra etica, diritto ed economia* (Napoli: Edizioni Scientifiche Italiane, 2020), 65.

²² See G. Alpa, 'Autonomia privata, diritti fondamentali e «linguaggio dell'odio»' *Contratto e impresa*, 45 (2018); F. Abbondante, 'Il ruolo dei social network nella lotta all'hate speech: un'analisi comparata fra l'esperienza statunitense e quella europea' *Informatica e diritto*, 65 (2017); A. Spatuzzi, 'Hate speech e tutela della persona. tra incertezza del paradigma e declinabilità dei rimedi' *Diritto della famiglia e delle persone*, 888 (2021); P. Falletta, 'Controlli e responsabilità dei social network sui discorsi d'odio online' *Rivista diritto dei media*, 146 (2020).

²³ M. Francesca, 'Razza e diritto, Note introduttive sugli epigoni della discriminazione razziale', in S. Donadei et al eds, *Razza, Identità, Culture. Un approccio interdisciplinare* (Napoli: Edizioni Scientifiche Italiane, 2019), 3.

virtually in contact.

In 2016, the European Union adopted the European Parliament Resolution on EU strategic communication 'to counter propaganda against it by third parties'.²⁴ This followed a long line of previous acts, starting with the 2009 Resolution 'On European Conscience and Totalitarianism'.²⁵ Para 21 refers to 'the importance for the EU and Member States to cooperate with social media service providers to counter ISIS/Daesh propaganda spread through social media', and para 47, which expresses 'concern about the use of social media and online platforms for criminal hate speech'. It calls on Member States to adopt and update their legislation to deal with ongoing developments, or fully to implement and enforce existing legislation on hate speech, both online and offline, affirming the need for increased co-operation in this regard, with online platforms and leading internet and media companies.

The subsequent agreement between the EU Commission and the largest Internet Providers, reached in 2016, facilitated the implementation of coordinated measures to combat hate speech.²⁶ The parties committed to 'strengthen ongoing partnerships with civil society organizations' and pursue the adoption of a code of conduct aimed at countering hate speech. In 2017, the European Commission also approved a Communication on

'the implementation of good practices to prevent, detect, remove and disable access to illegal content in order to ensure the effective removal of illegal content, greater transparency and the protection of fundamental rights online'.²⁷

The same Communication provided clarification regarding the responsibility of ISPs 'in taking proactive measures to detect, remove or disable access to illegal content (the so-called "good Samaritan" actions)'. The Commission looked at the improvements achieved through direct intervention to control and remove illegal content and concluded in favor of a non-regulatory approach, accompanied by measures to facilitate cooperation among all interested parties.

The Communication goes much further, and after an additional call for platforms to work more closely with the competent authorities, asks for the necessary resources to understand the legal frameworks for local and transnational operations and for the activation of the so-called 'trustworthy flaggers'; it concludes

²⁴ European Parliament resolution of 23 November 2016 on EU strategic communication to counteract propaganda against it by third parties (2016/2030(INI)).

²⁵ European Parliament resolution of 2 April 2009 on European conscience and totalitarianism (P6_TA(2009)0213).

²⁶ The Code of Conduct can be found at <https://tinyurl.com/ykee9vjz> (last visited 31 December 2022). See P. Falletta, n 22 above, 154.

²⁷ European Commission, 28 September 2017, 'Tackling Illegal Content Online. Towards an enhanced responsibility of online platforms' COM(2017) 555.

by offering a reinterpretation of Art 14 of the Directive on E-Commerce.²⁸ On this last matter, on the basis of the interpretation given by the Court of Justice in the case of *L'Oréal v eBay*,²⁹ with regard to the liability of platforms, the Commission noted:

‘Proactive measures taken by online platforms falling within the scope of Article 14 of the E-Commerce Directive in order to detect and remove any illegal content on their platform – including the use of automatic removal tools and other tools to ensure that previously removed content is not reloaded – do not in themselves result in a loss of the liability waiver.

The adoption of such measures does not necessarily imply that the online platform concerned plays an active role which would no longer allow it to benefit from the waiver. Where the adoption of such measures results in the online platform being informed or becoming aware of unlawful activities or information, the online platform should take immediate action to either remove or disable access to the unlawful content in order to continue to benefit from the waiver.

Online platforms should do their best to proactively identify, detect and remove illegal content online. The Commission strongly encourages online platforms to take these proactive voluntary measures and to step up cooperation and investment in automatic detection technologies along with their application’.

Because of such requirements, social networks may be induced to adopt a rather cautionary approach; ISPs may lean towards the early removal of the doubtful content.³⁰

Nevertheless, such indications have influenced national and European courts in re-interpreting the Directive on E-Commerce, in particular Art 14.³¹ This led to a shift in the liability regime for ISPs, from a merely ‘passive’ role

²⁸ Directive 2000/31/CE of 8 June 2000 on electronic commerce [2000] OJ L178/1.

²⁹ Case C-324/09 *L'Oréal SA. v eBay International AG*, Judgment of 12 July 2011, available at www.eur-lex.europa.eu. See M.L. Montagnani, *Internet, contenuti illeciti e responsabilità degli intermediari* (Milano: Egea, 2018), 102.

³⁰ See A. Fachechi, *Net neutrality e discriminazioni arbitrarie* (Napoli: Edizioni Scientifiche Italiane, 2017), 27.

³¹ The notion of an ‘active host provider’ has been embraced by Corte di Cassazione 21 February 2019 no 7708, *Rivista di diritto industriale*, 201 (2019). *Contra* M. Bassini, ‘La Cassazione e il simulacro del provider attivo: mala tempora currunt’ *Rivista diritto dei media*, 248 (2019). See also Tribunale di Roma 12 July 2019 no 14757, *Guida al diritto*, 49 (2019); R. Bocchini, ‘La responsabilità civile plurisoggettiva, successiva ed eventuale dell’ISP’ *Giurisprudenza italiana*, 2607 (2019); S. Braschi, ‘Social media e responsabilità penale dell’Internet Service Provider’ *Rivista diritto dei media*, 157 (2020). The European Court of Justice applied stricter measures on the ISPs (Case C-18/18 *Eva Glawischnig-Piesczek v Facebook Ireland Limited*, Judgment of 3 October 2019, available at www.eur-lex.europa.eu). See, *ex multis*, P. Falletta, n 22 above, 153.

(entailing no liability) to an actual obligation to monitor specific cases.

IV. Guidelines for Content Moderation on Social Media: *The Guardian v Facebook*. System Security Requirements Between Formalistic Algorithms, Stressed Moderators, and the Oversight Board

Hence, the ISPs were induced to change their approach, although such a change was not driven by the so-called 'EU soft law' nor by the stricter positions taken on by national and European courts.

It is well known that the greatest results are achieved when the game between the parties is played by the same rules and on a neutral playing field. Eventually, even the European Union started to reconsider the effectiveness of its soft law recommendations. This capitulation is witnessed by the European Parliament's adoption of the Digital Service Act,³² the first legislative experiment on a global scale to establish common rules for digital platforms, witnessing a clear transition to hard law.

However, the greatest pressure has probably come from The Guardian's investigations in 2017, which raised several reputational (let alone financial) issues. The well-known British newspaper, well before unveiling the Cambridge-Analytica³³ scandal, published the contents of a hundred internal Facebook documents detailing the rules and policies for moderating contents on social networks.³⁴ The method followed two paths: 1) the detection, through algorithms or user reports, of content that breaches the social network's policies, and 2) the intervention by moderators to resolve the most controversial issues, usually subsequent to a request for re-evaluation. The Guardian explained that the instructions given to moderators were often contradictory and did very little to help the thousands of staff in charge of reviewing reported contents every day. The most controversial posts were those with blurred sexual content, which required a subjective assessment prior to the issuance of a final decision (biased by the moderator's training and/or speculative attitudes).

As is known, moderators work under the pressure of very tight deadlines; a Facebook employee has about ten seconds to decide on a report before moving

³² See n14 above. See F.G. Murone, 'Il Digital Service Act e il contrasto ai contenuti illeciti online' *iusinittinere.it* (2021); S. Orlando, 'Regole di immissione sul mercato e «pratiche di intelligenza artificiale» vietate nella proposta di Artificial Intelligence Act' *Persona e mercato*, 365 (2022). A warning about the ineffectiveness of soft law is already found in G. Alpa, n 22 above, 45.

³³ See D. Bennato, n 16 above, 395.

³⁴ See <https://tinyurl.com/5edmvx6s>, 21 May 2017 (last visited 31 December 2022), revealing Facebook's secret rules and guidelines. The Guardian reviewed more than 100 internal training manuals, spreadsheets and flowcharts revealing how Facebook used to moderate issues such as violence, hate speech, terrorism, pornography, racism, and self-harm. The Facebook files give a first glimpse of the codes and rules formulated by the site, which is subjected to enormous political pressure both in Europe and in the United States.

on to the next one.³⁵ All these variables often lead to inconsistency and different solutions for similar cases.

In an ‘assembly line’, mistakes are just around the corner. This was evident in the case of the famous photograph by Út, depicting a naked Vietnamese girl running away from a village that had just been bombed during the Vietnam War.³⁶

Bans on nudity are frequent, regardless of function and context. So much so that, as the information has been revealed in internal policy documents, moderators are not required to remove videos showing an abortion, provided there are no scenes of nudity.³⁷ This line of conduct stems from a formalistic attitude toward nudity, instead of basing the assessment on the concrete effect which certain images evoke among highly sensitive people, ISPs prefer to de-contextualize their decisions.

The world of moderation seems to operate according to clauses of ‘good morals’ which are utilized also in the drafting of algorithms. These operate with the same rigidity as in the work instructions provided to human moderators.

The ISPs’ decision-making processes have been criticized because of a dysfunctional use of corrective methods, often unapt to recognize forms of expression of personal identity or of native customs. Such criticism led Facebook in 2020 (and then Twitter) to set up an ‘Oversight Board’.³⁸ The ‘Supreme Court of Digital Freedom of Speech’ – already mentioned in relation to the Capitol Hill affair – is composed of forty members chosen among experts (academics, judges) or public leaders (former politicians, human rights activists), through an articulated mechanism aimed at guaranteeing geographical, cultural and political pluralism, and full independence from the platform. The Board has the task of selecting a few cases with high symbolic value and of particular complexity, destined to become ‘law’ within the social network, also by confirming (or revoking) previous decisions taken automatically.

The Supervisory Committee, as intended by the creator of Facebook, has the function of striking a balance between the protection of fundamental rights and ‘Terms of Use’ – social standards –, through the inclusion of additional

³⁵ *ibid*

³⁶ The image of Phúc running naked is one of the most famous images of the Vietnam War. Photographer Nick Út won the Pulitzer Prize for that photograph, which was later also chosen as the 1972 World Press Photo of the Year. Again, Facebook was accused of ‘discriminatory and racist’ behavior after deleting photos of Papua New Guinean men and women (<https://tinyurl.com/b35m787b>, (last visited 31 December 2022)).

³⁷ In the cited article from *The Guardian*, the guidelines given to moderators are reported; among these, we read that all ‘handmade’ art showing nudity and sexual activity is allowed, but not digitally realized art showing sexual activity. Videos of abortions are allowed, as long as there is no display of nudity. The question is even more relevant if compared with the decision by the Corte di Cassazione 15 February 2022 no 4927, *Dejure online*, which found the excessiveness of the fine (500 euros) put forward by the Municipality of Brescia to punish someone who stops their car to allow a prostitute on board, justified by the alleged obstruction of traffic.

³⁸ At <https://oversightboard.com>.

contextual factors in the decision process, such as the political, social and cultural context of the country in which the content being evaluated is published. In short, it is a kind of supranational law,³⁹ which should protect social networks from political, legal and social responsibilities triggered by the dynamics of mass communication.

V. Average Contextual Etiquette v Good Morals in the Social Networks

Individual users, when they first sign up to a social network, adhere to the community's general terms, which entail a highly standardized 'social etiquette'. The aim is clear and falls in line with the fundamental need for security in the functioning of the virtual community.⁴⁰ However, that push towards security seems to be developed on two levels, which are not at all antithetical: behavioral/contextual standardization and expression of personal identity.

Much has changed since Orson Welles's radio test and the consumer model produced by MTV's statistical algorithm.

The so-called 'community standards' preside over specific contractual positions of both parties, economic and otherwise. Since the dawn of the first social networks, the perception of the average user has been that of having a free service, that is, without committing to give anything in return (the Facebook homepage once stated reassuringly, 'It's free and always will be'). However, this perception is contradicted by the legal reality. It is true that by declaring their adherence to the General Terms of Use, the users grant the other party a non-exclusive, transferable and subsequently negotiable intellectual property license for the use of any content (data, comments, images, etc.) published on or in connection with the platform. Also, in exchange for the right to access the platform, the user authorizes the social network to use his/her name, profile image and all information related to their activities on the social networks, for the purpose of commercial profiling. The pioneers of this market were certainly aware of this, otherwise they would not have been able to explain how Facebook could distribute dividends to its shareholders at such an 'agreeable' rate. This has now also been noticed by legislators, who seem to have definitively recognized the contractual and onerous nature of these 'authorizations',⁴¹ as

³⁹ In short, the evaluation is entrusted to a group of experts. See the significant contribution by D. Caselli, *Esperti. Come studiarli e perché?* (Bologna: il Mulino, 2020).

⁴⁰ M. Francesca, '«Uno studio in rosso». Sicurezza, sistemi e alterità artificiali' *Actualidad Jurídica Iberoamericana*, 54 (2021).

⁴¹ On this point, see the decision by the Italian Competition Authority 29 November 2018 no 27432, available at www.agcm.it, sanctioning Facebook for unfair commercial practices with reference to the famous banner 'it's free and always will be'. In particular, the Authority found that the reported announcement 'integrates a case of unfair commercial practice in violation of Arts 21 and 22 of the Consumer Code'. The finding was challenged several times, before the Tribunale Amministrativo Regionale Lazio-Roma (decision 10 January 2020 no 260)

part of a wider process of capitalization involving personal data, images and ultimately the digital identity of the ‘people on the net’.⁴²

It is in such a highly contractualized framework that the dream of a supposedly all-encompassing freedom of expression seems to be ultimately fading away.

The platform owner has an interest in keeping a firm grip on the permissible behavior, not simply in order to adapt to a given set of liability rules, but above all, because this serves to produce a double security effect: a) the configuration of a transversally livable virtual place, even at the cost of cutting out ‘extreme’ social interactions, b) the configuration of a place in which everyone can freely, so it may seem, develop and express their own identity, without having to deal with the normalizing forces embedded in the various societal institutions and clichés; a comfortable place for everyone, a place that rejects no-one, and as such, is able to attract new subscribers and increase the quantity of interactions onto the platform.⁴³ The number of ‘thoughts’ posted,⁴⁴ images shared, reactions (likes, dislikes) given to facts, news, places, and people are, in short, ‘fresh’ data from ‘active’ users to be used as goods to be monetized by the platform owner.

What has been described up to now is part of the behavioral/contextual standardization level. It is the first level of security that covers the major area of a contractually conformed notion of ‘good morals’, or, if not ‘good’, in any case ‘universally’ accepted.

This part is predictable and generally associated with the external representation on oneself. After all, the culture of sobriety in clothing recurs in many working and social settings, without constituting a restriction of personal freedom. A well-known example of this is the nudist, who is free to be naked

and the Consiglio di Stato on appeal (decision 29 March 2021 no 2631). The administrative courts exhaustively addressed the issue of ‘commodification’ of personal data. See M. D’Ambrosio, ‘Confidentiality and the (Un)Sustainable Development of the Internet’ *The Italian Law Journal*, 253 (2016); G. Resta e V. Zeno Zencovich, ‘Volontà e consenso nella fruizione dei servizi in rete’ *Rivista trimestrale di diritto e procedura civile*, 411 (2018); V. Ricciuto, ‘La patrimonializzazione dei dati personali. Contratto e mercato nella ricostruzione del fenomeno’ *Diritto dell’informazione e dell’informatica*, 689-726 (2018); A. De Franceschi, ‘Il “pagamento” mediante dati personali’, in V. Cuffaro et al eds, *I dati personali nel diritto europeo* (Torino: Giappichelli Editore, 2019), 1381; G. Finocchiaro, ‘Intelligenza Artificiale e protezione dei dati personali’ *Giurisprudenza italiana*, 1670 (2019); G. Scorza, ‘Facebook non è gratis?’ *Nuova giurisprudenza civile e commerciale*, 1079 (2021); C. Solinas, ‘Trattamento dei dati personali e pratiche commerciali scorrette’ *Giurisprudenza italiana*, 320 (2021); D.M. Matera, ‘Patrimonializzazione dei dati personali e pratiche commerciali scorrette’ *Tecnologie e diritto*, 155 (2022). Anticipatory is the work of C. Perlingieri, n 11 above, 80.

⁴² See G. Resta, ‘Identità personale e identità digitale’ *Diritto dell’informazione e dell’informatica*, 516-517 (2007); C. Mignone, *Identità della persona e potere di disposizione* (Napoli: Edizioni Scientifiche Italiane, 2014), 227. On the treatment of personal data as ‘price’ see F. Viterbo, *Protezione dei dati personali e autonomia negoziale* (Napoli: Edizioni Scientifiche Italiane, 2008) 223.

⁴³ See C. Perlingieri, n 11 above, 92.

⁴⁴ F. Astone, ‘Il rapporto tra gestore e utente: questioni generali’ *AIDA*, 113 (2011).

within the limits of the locations where nudism is permitted but agrees to reduce his/her freedom of aesthetic expression when in social or work environments.

The second of the two levels is more complex. The values in question, in this case, belong to the macro-category of cultural conflicts,⁴⁵ and are related to one's ethical, religious or artistic identity.⁴⁶

VI. Case Studies from the Oversight Board. Scope of Good Morals: In Search of the Right Remedy

On the first level, a pre-established 'netiquette' is ancillary to the proper functioning of the virtual organization. The next level represents, instead, a non-disposable/hard-to-objectivize dimension, reflecting the dynamics of oneself in relation with other individuals. Such a concept of good morals goes far beyond what is generally viewed as 'dominant morality' and opens up to personal identities, to 'what is common [...] to the plurality of ethical concepts which co-exist in contemporary society, to be interpreted as respect for all human beings',⁴⁷ always required in the execution of a contractual relationship.

This notion of good morals cannot be constrained within the boundaries of the community standards; rather, it recalls the wording of Art 21 of the Italian Constitution regarding freedom of speech.⁴⁸

The two different regulatory levels herein described – regarding behavioral/contextual standardization, on the one hand, and expression of personal identity on the other – entail different remedies; in the former case, the mere prohibition of a singular content; in the latter, if an objectionable action is reiterated, the final sanction may amount to the removal of the account.

The complexity of the clause in question is witnessed by the relationship between the need to protect personal identity and the absence of spatial delimitations. In the absence of territorial boundaries, new frontiers are erected; the protection of religious or ethnic beliefs, in a phenomenon ontologically

⁴⁵ Considerations on multiculturalism and the balance between individual equality and autonomy of groups can be found in R. Di Raimo, *Le associazioni non riconosciute. Funzione, disciplina, attività* (Napoli: Edizioni Scientifiche Italiane, 1995), 35.

⁴⁶ See G. Boggero, 'Satira, disabilità e dignità umana: una significativa sentenza della Corte suprema canadese' *Quaderni costituzionali*, 162 (2022), analyzing the Canadian Supreme Court's decision of 29 October 2021, *Ward v Commission des droits de la personne et des droits de la jeunesse*, 2021 SCC 43.

⁴⁷ Corte costituzionale 17 July 2000 no 293, *DeJure online*.

⁴⁸ R. Perrone, 'Buon costume (diritto costituzionale)' *Digesto discipline pubblicistiche online*, Agg 2021; Id, 'Public Morals and the European Convention on Human Rights' 47 *Israel Law Review*, 361 (2014), and M. Cuniberti, 'Il limite del buon costume', in M. Cuniberti et al eds, *Percorsi del diritto dell'informazione* (Torino: Giappichelli, 3rd ed, 2011), 33, 36. See, also, M. Imbrenda, 'Buoni costumi. Diritti positivi odierni' *Enciclopedia bioetica e scienza giuridica* (Napoli: Edizioni Scientifiche Italiane, 2009), II, 453.

devoid of outer limits, is enriched by new multicultural perspectives.⁴⁹ There is no longer a single context of reference for the doctrine of good morals, intended as a means by which to protect individual identities, but a plurality of contexts, in which individual choices hardly follow pre-established paths, hence enlarging the scope of application of the good morals doctrine.⁵⁰

Two examples from the Oversight board may be useful.

The first one⁵¹ is the case regarding the publication of a video on Facebook that portrayed a folkloristic character from the Netherlands, Zwarte Piet, who appeared on the night between 5 and 6 December in the role of a Moorish servant, an assistant to St Nicholas. The video featured a child and three adults, one dressed as *Sinterklaas* (St Nicholas) and two dressed as Zwarte Piet, also known as ‘Peter the Moor’. The latter two had their faces painted black and wore afro wigs under Renaissance hats and clothes. All the characters in the video were obviously white actors. The Board decided to remove the post permanently, believing that the representation, although expressing a tradition, contributed to the creation of a discriminatory and offensive environment for people of color.

In another case,⁵² the Board revoked the removal of a post that contained an image of a Turkish TV series depicting a fighter, with the caption, ‘If the Kafir’s tongue starts moving against the prophet, then the sword should be taken out of the sheath’, accompanied by depictions of French President Emmanuel Macron as the Devil.

This was posted during the boycott of French products, following some measures aimed at controlling the financing of mosques. This time, the Board believed that, although the character of the TV series wields a sword, the post was merely a criticism of Macron’s actions against religiously motivated violence. This was not, therefore, a form of incitement to violence.

While tradition is considered offensive because it contains characteristics which belong to a particular community, freedom of speech, even if its content is intrinsically violent, is protected as a form of expression associated with a particular culture.

These are two significant examples of the evolution of the principles underlying decision-making in the virtual world, carried out by *ad hoc* delegated bodies, to express themselves in a context which is devoid of space and, by its

⁴⁹ See C. Mignone, n 42 above, 135. See however G. Passagnoli, ‘Dignità, buon costume, ordine pubblico non economico’ *Persona e mercato*, 392 (2022).

⁵⁰ A. Sen, *Identity and Violence: The Illusion of Destiny* (London: Penguin Books, 2007), 9; C. Mignone, n 42 above, 140; C. Crea, ‘Argomento morale, pluralismo ‘culturale’ e semantica dei marchi’ *Persona e mercato*, 350 (2020).

⁵¹ Oversight Board, case decision April 2021 no 2021-002-FB-UA, available at <https://tinyurl.com/2en25tt6> (last visited 31 December 2022).

⁵² Oversight Board, case decision February 2021 no 2020-007-FB-FBR, available at <https://tinyurl.com/mrxxk83p> (last visited 31 December 2022).

nature, is culturally complex. Once the controls by algorithms and moderators are completed, the subsequent checks and balances are delegated to common courts of justice or entrusted to independent bodies, as is the case with Alternative Dispute Resolution (ADR) in the consumer field.⁵³

In this infra-spatial context, the strictly territorial perspective adopted by the Tribunal of Rome⁵⁴ in the case of the shutdown of the Facebook and Instagram profiles of the neo-fascist association, Casa Pound, is also significant. The court qualified the social provider as a public service provider and thus, guarantor of the plurality of political opinions safeguarded by the Constitution. In justification of its action, the ISP referred to the repeated representation of the Celtic cross on the pages of Casa Pound, against which, however, the Court believed that the mere removal of the post was sufficient, rather than the complete removal of the user from the platform. It is clear that algorithms seek to detect hate speech by tracking historically defined symbols for their precautionary removal,⁵⁵ given the provider's priority to escape direct liability. However, the matter remains controversial, given the peculiar sentiments of that political association and, therefore, the atmosphere of intolerance in which that symbolism was commonly used.

Although the language found on those pages could only indirectly be tracked back to one of the cases identified in the list of prohibited expressions,⁵⁶ the ISP found it to be offensive to the religious, ethnic and cultural identity of the human person and, as such, justified the termination of the contract for non-compliance with community standards, as integrated by the principles of EU soft law on hate speech.⁵⁷

⁵³ See M. Francesca, 'Dalle ADR *offline* alle procedure di *Online Dispute Resolution*: statuti normativi e suggestioni di sistema' *Corti Salernitane*, 7 (2015).

⁵⁴ Tribunale di Roma 12 December 2019, *Dejure online*. *Contra*, Tribunale di Siena 19 January 2020, *Dejure online*; Tribunale di Trieste 27 November 2020, *Giurisprudenza italiana*, 2089 (2021), with a comment by S. Martinelli, 'Facebook – Associazione – La chiusura dell'account Facebook di un'associazione: quale tutela?'. Also, see R. Bin 'Casa Pound vs. Facebook: un'ordinanza che farà discutere' *lacostituzione.info* (2019); G. Cassano, 'Gira la ruota per CasaPound, a Siena prevale il regime privatistico del rapporto, ed il profilo rimane disattivato (Tribunale di Siena 19 gennaio 2020)' *Diritto di internet* (2020); R. de Caria, 'Ritorno al futuro: le ragioni del costituzionalismo 1.0 nella regolamentazione della società algoritmica e della nuova economia a trazione tecnologica' *Rivista diritto dei media*, 84 (2020); G. Grasso, 'Social network, partiti politici e lotta per il potere' *Rivista diritto dei media*, 211 (2020); P. Falletta, n 22 above, 149; F. Zorzi Giustiniani, 'I limiti alla libertà di espressione nell'agorà politica virtuale e la cyberviolenza come nuova forma di violenza domestica' *Nomos*, 1 (2020); G. Passarelli, 'La metamorfosi dei social media. La rilevanza sociale nell'attuale agorà digitale di un servizio «privatistico»' *Nuova giurisprudenza civile commentata*, 1195 (2021).

⁵⁵ Corte d'Appello L'Aquila 9 November 2021 no 1659, *Dejure online*.

⁵⁶ P. Femia, *Interessi e conflitti culturali nell'autonomia privata e nella responsabilità civile* (Napoli: Edizioni Scientifiche Italiane, 1996), 530, 544. Also, see G. Chiodi, 'Clausole generali e abuso della libertà contrattuale: esperienze del primo Novecento' *Diritto & Questioni pubbliche*, 87 (2018).

⁵⁷ G. Perlingieri, *La via alternativa* n 1 above, 5.

On virtual social networks, grounded in the exchange of messages with third parties, the doctrine of good morals is always governed by the free speech clause (Art 21 of the Italian Constitution) just like any other manifestation of thought. Here, what is under scrutiny through the lenses of good morals is not the source (ie, the contract), but the ensuing relationship (ie, the execution of that contract).⁵⁸

This also includes the unsaid. The abuse of (freedom of) speech, information or images, is usually connected to disrespect for customs, traditions or identity. The conflict (*rectius*: competition) between values is first and foremost a conflict (*rectius*: comparison) between cultures and their respective customs, which form the basis of individual personality.

Even the sanction, when applied in cases of non-compliance with the social network's rules of conduct, is affected by this renewed concept of good morals, no longer applying to the contract, but to the relationship.

The open-ended clause of good morals, thus re-interpreted so as to absorb multi-culturalism and the regulatory landscape against hate speech, becomes a rule by which to measure the fullness of the parties' performance.⁵⁹ In this perspective, the pathology related to non-observance of good morals shifts from the nullity/voidness of the contract to liability for non-performance (eg Art 1453 of the Italian Civil Code on termination/avoidance).⁶⁰

The winds of war are blowing both on the social media and the real worlds. Wars are not only fought for the mere protection of territories, but also to gain respect for individual and mass identities. When anonymous media organizations stand up for the rights of people are trumped by the real economy, they voice a sense of community justice far from what is decided in courtrooms. Simply consider the Anonymous legion, a group of hackers who interact with political and economic choices in the real world. Among the most famous actions are boycotts of institutional and commercial websites, which, in the opinion of this group of hackers, were found guilty of discriminatory actions.

Conclusively, advocating the elimination of the good morals doctrine (or its watering down into *ordre public*) appears to be an anachronistic choice,⁶¹ defeated by recent history.⁶² The principles guiding the 'liquidity' of a constantly interconnected world prevail over normativism, even more so when customs, understood as co-essential in the formation of individual personality, stand out

⁵⁸ C. Mignone, n 42 above, 101. Cf Tribunale di Trieste 27 November 2020, n 54 above.

⁵⁹ See S. Polidori, 'Situazioni esistenziali, beni e diritti: dal negozio a contenuto non patrimoniale al mercato dei segni distintivi della personalità' *Annali SISDiC*, 227, 246 (2020).

⁶⁰ P. Perlingieri, *Forma dei negozi e formalismo degli interpreti* (Napoli: Edizioni Scientifiche Italiane, 1987), 84; R. Lener, *Forma contrattuale e tutela del contraente "non qualificato" nel mercato finanziario* (Milano: Giuffrè, 1996), 32. See also A. Tartaglia Polcini, 'Termini e funzioni degli atti di autonomia negoziale' *Rassegna di diritto civile*, 473, 490 (2019).

⁶¹ G. Perlingieri, *In tema di ordine pubblico* n 1 above, 1428.

⁶² M. Grondona, 'Il diritto privato oggi e il ruolo del giurista' *Revista Ibérica do Direito*, 29, 33 (2020).

on a daily basis as the reasons for territorial and virtual conflicts. Like it or not, the great virtual game has pervaded reality and is now the fifth dimension with which the law must deal, by establishing a truly bi-directional dialogue.