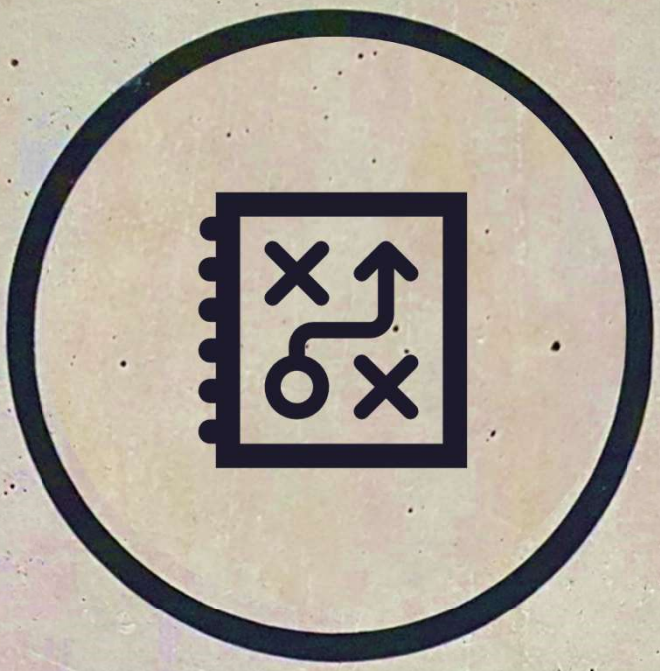

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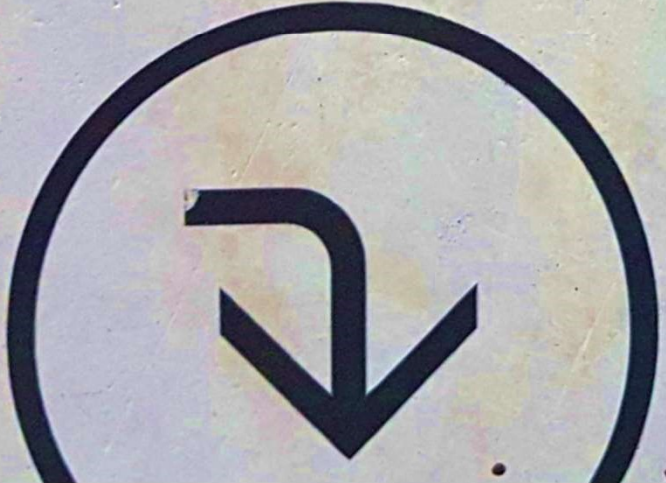

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(Data) Altruism and the Law

Isolde Burr-Haase / Ruben Dillmann

A. Introduction

Order and coercion, rigour and precision, justice and fairness, perhaps even violence and despotism come to mind when one thinks of "law". Altruism seems far away, not typically

associated with the workings and machinations of the legal system. Instead, law is conceived of as a means to regulate groups of egoistic individuals, as a meticulous plan or last-ditch effort to keep societal chaos at bay.[1] Accordingly, altruism is rarely mentioned in legal texts[2] nor is it part of typical academic discussions within the profession. A notable exception is the term "data altruism" in Art. 2 No. 16 of the recent Data Governance Act (DGA, Regulation (EU) 2022/868)[3], which provided the starting point for the present paper.

Based on a rich body of research on altruism in philosophy, social psychology and economics, the present paper serves to provide a (necessarily cursory) overview of the current conceptions of and discussions on altruism in philosophy (B.) and in law (C.). Subsequently, the linguistic history of the term will be explored (D). A fourth section will bring together these insights to analyse the novel term "data altruism" as it appears in the new Data Governance Act (E.)

B. Altruism as a philosophical concept

The philosophical debates about altruism revolve around descriptive and normative issues. The former concern mostly questions of coherent definition and factual existence of certain forms of altruism. The latter deal with the question whether a certain kind of altruism is morally *good*, i. e. to be fostered, supported, and praised. For our purposes, these normative issues are significantly more relevant and appealing. Conceptual debates always entail the risk of becoming either circular or overly arm-chairy, whereas an empirical approach or even the analysis of existing empirical approaches[4] goes far beyond what can be achieved in this short note. Therefore, descriptive issues will be of interest only insofar as one can ask what kind of altruism the law is referring to when speaking of, for example, "data altruism". The argument that such a kind would be conceptually inconsistent or even irrational might appear powerful at first glance, but can be subverted by interpreting the term in a way that fits a feasible concept of altruism. Thus, unless one were to hold that no kind of altruism exists at all, using altruism as a legal term is not *prima facie* untenable.

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1 Cf. *Kant's* famous notion that "Establishing a state, as difficult as it may sound, is a problem that can be solved even for a nation of devils (if only they possess understanding)", *Kant*, Toward Perpetual Peace and Other Writings on Politics, Peace, and History, p. 90 (AA 8, 366); see also *Kant*, The Metaphysics of Morals, p. 55 et seq. and *Pawlik*, Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics, 14 (2006), 269–93; *Hobbes'* Leviathan, of course, constitutes another seminal work in which law is seen as a means to prevent violence and chaos in a society of egoistic individuals.

2 See „All teams' results on the term "altruism" in this volume; *Galligan*, U. Mich. J.L. Reform 27 (1993), 439 (443).

3 Many more Articles of the DGA contain the term "data altruism", the cited article is most noteworthy as it states the definition.

4 *Doris/Stich/Walmsley*, in: The Stanford Encyclopedia of Philosophy, Empirical Approaches to Altruism.

I. Descriptive Issues: What is altruism?

1. A Working Definition

Preliminarily, altruism can be understood in *Kraut's* words as "behavior undertaken deliberately to help someone other than the agent for that other individual's sake."[5] *Landes* and *Posner* offer a more economic definition: "the making of any transfer that is not compensated".[6] This perspective may have the advantage of not relying on internal states (of mind), i. e., doing something for someone's sake. However, it clearly lends itself towards an economic, rather than a philosophical or linguistic view on altruism. Therefore, *Landes'* and *Posner's* definition does not comport with the following analysis in section B. Nevertheless, a lack of compensation can be an indicator of altruism, especially in the legal sense that is to be explored below in section C and E, where *Landes'* and *Posner's* definition will be referred to.

Kraut's working definition suffers from a blind spot since it is limited to the case of interaction between two persons, worded in the singular ("the agent"; "that other individual"). This limitation is not self-evident. A typical altruistic occurrence of an individual donating to a large organisation (say, Oxfam) cannot easily be reduced to the simplified interaction imagined by the definition. Namely, this would require computation or estimation of the specific share of help done to one individual by the donation and would also create a fictional motivation the donator likely did not have in mind (such as supporting the livelihood of, for instance, Bangladeshi citizen B by dispensing one thousandth of the donation made to that person specifically). It may be prudent to commence analysing altruism by considering the simplest case first (A helps B). However, this should not be understood in the sense that actions where the beneficiary is a collective or an institution *cannot* be altruist. The opposite is true. Nevertheless, many definitions omit this aspect, at least initially.[7] Notably, *Singer's* and *Nagel's* definitions are stated in the plural: "behaviour which benefits others at some initial cost to oneself, and is motivated by the desire to benefit others"[8] and "a willingness to act in consideration of the interests of other persons, without the need of ulterior motives."[9]

Further complexity arises if the beneficiary is *neither* a collective *nor* an individual, but a much more complicated (institutional) object. A salient example is the object of study of this

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5 *Kraut*, in: The Stanford Encyclopedia of Philosophy, Altruism; cf. also *Greiner*, AcP 219 (2019), 211 (232): Handeln "unter Zurückstellung eigener Interessen", "uneigennützige Hilfeleistung" and *Wilson*, Does altruism exist?, p. 3. See *Dahlstrom*, Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics 6 (1998), 73 for a critical conceptual discussion.

6 *Landes/Posner*, The American Economic Review 68 (1978), 417 (417).

7 See *Rudall*, Altruism in International Law, p. 17-29 for some examples; cf. also *Bierhoff*, Psychologie hilfreichen Verhaltens, p. 9 and „Zwecke des anderen als die eigenen Zwecke verfolgt"; *Mittelstraß*, in: Enzyklopädie Philosophie und Wissenschaftstheorie, Altruismus.

8 *Singer*, The Expanding Circle, p. 43.

9 *Nagel*, The Possibility of Altruism, p. 79.

paper itself, as "data altruism" (that this paper will deal with in much more detail in section E below) has – roughly –defined as "voluntary sharing of data for objectives of general interest".[10] As *Rousseau* has argued forcefully, this general interest may differ substantially from the sum of individual interests (i. e. a simple, additional version of collective interest).[11] For purposes of analysis of altruism, this difference is perhaps less relevant than it may initially seem. Even though the *effect* of the act is substantially different depending on who the beneficiary is, the *intention* is still a social one and ultimately affects human beings, whether through an intermediary or directly. Put succinctly, the "other" in almost all definitions of altruism should not be imagined as only another, singular human being, but also as a complex, collective or institutional entity.

Another remarkable feature of the working definition and the other definitions mentioned above is the intentional aspect. This aspect is not a necessity. In fact, many sociobiologists analyse altruism solely in terms of the consequences.[12] Yet, even for a consequentialist like *Singer*, altruistic acts are defined in terms of the intention of the actor, not the consequences (cf. the second part of his definition, which expressly states "and is motivated by the desire to benefit others"). In spite of countervailing sociobiological approaches, *Singer* argues that this definition is advantageous because it is "faithful to the generally accepted meaning of the term"[13] and because it is socio-biology itself that proves the existence of genuine altruistic intentions.[14]

But if we agree with these two arguments and accept *Kraut's* definition (with a plural "other") as a tenable, one problem remains: The consequences of altruism (more specifically: of the good intentions) might turn out to be so negative that any morally positive intentions are all but moot.[15] Due to the complex interrelated nature of modern society, this might even constitute a likely case.[16] Two solutions become apparent: Either the definition is already modified to include some sort of consequentialist calculus (as *Singer*'s does), or the existence of "pathological altruism" is not a descriptive difficulty but a *moral* argument cautioning against the exercise of altruism. A decisive resolution is not necessary, as this dichotomy is not a dilemma, but just a question of labels (of debates). For the sake of clarity, this paper

10 Cf. Art. 2 No. 16 of the final Data Governance Act, Regulation (EU) 2022/868.

11 *Rousseau*, Du contrat social, p. 151: "Il y a souvent bien de la différence entre la volonté de tous et la volonté générale; celle-ci ne regarde qu'à l'intérêt commun; l'autre regarde à l'intérêt privé, et n'est qu'une somme de volontés particulières; mais ôtez de ces mêmes volontés les plus et les moins qui s'entre-détruisent, reste pour somme des différences la volonté générale."

12 *Singer*, The Expanding Circle, p. 129.

13 *Singer*, The Expanding Circle, p. 43.

14 *Singer*, The Expanding Circle, p. 45.

15 Oakley (ed.), Pathological altruism, *passim*.

16 Cf. *Luhmann*, in: Protest, p. 46 (47): „Wenn früher von destruktiven Tendenzen die Rede war, dachte man an Streit, oder man analysierte mit Hilfe des Schemas von Altruismus und Egoismus. Heute sind die Probleme auf diese Weise nicht mehr zu fassen. Man braucht nicht unsozial zu sein, um die Gesellschaft zu ruinieren, ja vielleicht führt man das Unglück gerade dadurch herbei, daß man zu sozial ist."

will recognize altruism mainly by the intentions of the actor and conceive of morally questionable consequences as the basis of arguments against the act in question, not its label. However, this paper will not use the term "altruism" to refer to a general moral theory (such as "utilitarianism")[17], but rather as a name for a type of intentional behaviour, as has been elucidated in the preceding section.

2. Definitional Debates summarized

The discussion of intentional aspects of altruistic actions leads directly to the key problem in any descriptive debates about altruism, which may be sketched as such: Clearly, actions can be externally beneficial for another person (or being). It is also obvious that someone may claim that the (internal) motivation of the beneficial action was the sake of the beneficiary. But can that truly have been the case? One could argue that any action taken is ultimately motivated only by egoism in the sense that the action satisfies a desire, evokes positive feelings or has any other self-oriented psychological characteristics that make (or enable) the actor (to) choose the action.[18] For our purposes (or the purposes of a practically minded legal theory), one may rebut this line of argumentation by saying that there is some kind of internal motivation to help others for their sake that we can make intersubjectively plausible, i. e. that we can talk about, recognize in other people and identify as the most likely reason for action. This functional perspective exhibits some similarities to the typical stance taken by the law on the freedom of will debate: There is something that resembles free will and it is enough to make the law work (in a non-arbitrary, justifiable way), be it reality or attribution.[19] Another pragmatic counter-argument is to define altruism externally in terms of action (or consequences) and point out that such altruistic actions do exist, regardless what the actor's state of mind may be.[20] Finally, one can turn the tables and ask: why should it be more plausible that any act is motivated purely by egoism? Why should we believe that there can be no action *truly for the sake of others*?[21] This seems unlikely, given that we are

17 Contrary to, for example, *Kennedy*, Harvard Law Review 89 (1976), 1685 (1771 et seq.) who stipulates in his socio-legal analysis that „[a]ltruism offers its own definitions of legal certainty, efficiency, and freedom".

18 This has been referred to as the doctrine of psychological egoism, cf. *Kraut*, in: The Stanford Encyclopedia of Philosophy, Altruism; see also *Mahlmann*, in: Mind and Rights, p. 80 (127); *Gröschner*, Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics 6 (1998), 181 (182); AcP 219 (2019), 211 (247): „Es ist nichts anderes als das egoistische Interesse, das mit jeder im engsten Sinne altruistischen Handlungsweise verbunden ist." See also *Galligan*, U. Mich. J.L. Reform 27 (1993), 439 (465) on Camus' La Chute, in which the main character recognizes his seemingly altruistic lifestyle to have been motivated by egoism instead.

19 *Beck*, in: Handbuch Rechtsphilosophie, p. 394 (394 et seq.); *Bigenwald/Chambon*, Front. Psychol. 10 (2019), 1406; cf. also *Mahlmann*, Rechtsphilosophie und Rechtstheorie, § 29, mn. 34 et seq. for an indeterminist argument.

20 *Foster/Herring*, Altruism, Welfare and the Law, p. 7 et seq.; *Wilson*, Does altruism exist?, p. 29.

21 *Kraut*, in: The Stanford Encyclopedia of Philosophy, Altruism Chap. 2.7. See also *Nagel*, The Possibility of Altruism, p. 84–87 with reference to some other arguments against egoism.

undeniably social beings.[22] Indeed, powerful empirical arguments for the plausible existence of altruism can be made.[23] Yet in spite of all these counterarguments, the argument for psychological egoism has some practical merits. It shows that a conception of altruism in the sense that the intention of the actor must be directed *only* towards another individual (strong or pure altruism) is implausible.[24]

Consequently, the descriptive model of altruism that currently prevails in academic philosophy recognizes the complexities of human psychology and calls for a careful, empirically guided analysis of motives and internal states.[25] Apart from empirical psychology and perhaps more compatibly with the hermeneutic approaches in legal methodology, additional insights can be gleaned from the literary canon (for example, *Galligan* discusses "Camus, Nick Nolte, St. Luke, Zorba, Boddhisattvas, Schopenhauer and the Mystics"[26]). Even though such insights represent a much "softer" form of knowledge than empirical (psychological) evidence, the hermeneutic approach of literary analysis and the narrative structure of literature bear significant similarities to legal interpretation and the law itself.[27] Although this is beyond the scope of this paper, such approaches may well be capable of informing the creation and interpretation of law and therefore merit continued future research.

The main takeaway from psychology and literature is that while the clear-cut dichotomy of altruism and egoism is useful for the creation and discussion of thought experiments, it is an inaccurate simplification of reality. It is challenging to even portray a single act as purely altruistic or egoistic. To say that an individual is *either* an altruist *or* an egoist might make sense as label in social interaction, but not as basis for solid analysis.[28]

In conclusion, the existence of behaviour that can plausibly be called altruistic is very likely. Nevertheless, careful examination of the intentions, the context and the consequences of such actions is necessary to accurately evaluate them, be it from a philosophical or a legal perspective.

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22 Cf. *Slote*, in: Between Psychology and Philosophy, p. 115.

23 *Doris*/*Stich*/*Walmsley*, in: The Stanford Encyclopedia of Philosophy, Empirical Approaches to Altruism; *Wilson*, Does altruism exist?, *passim*; *Singer*, The Expanding Circle, p. 45.

24 *Kraut*, in: The Stanford Encyclopedia of Philosophy, Altruism Chap. 2.7; *Thole*, NJW 2010, 1243 (1247): „Die Vorstellung eines wahrhaft altruistischen Handelnden [...] ist in einer komplexen Welt eine Fiktion."

25 *Weiss*/*Peres*, in: The Palgrave Handbook of Altruism, Morality, and Social Solidarity, p. 71 (72 et seq); *Doris*/*Stich*/*Walmsley*, in: The Stanford Encyclopedia of Philosophy, Empirical Approaches to Altruism; cf. also *Nagel*, The Possibility of Altruism, p. 3: „I conceive of ethics as a branch of psychology". See furthermore *Effer-Uhe*/*Mohnert*, Psychologie für Juristen, § 7.

26 *Galligan*, U. Mich. J.L. Reform 27 (1993), 439 (465 et seq.).

27 See *Gaakeer*, in: Law and Literature In-Between, p. 71; *Schramm*, JA 2007, 518.

28 Cf. *Menkel-Meadow*, Ga. St. U. L. Rev. 8 (1992), 385 (393).

II. Normative issues: Why altruism?

1. Overview of arguments in favour of altruism

The normative questions are as difficult to settle as the descriptive ones, but perhaps less dependent on (necessarily) arbitrary terminological preferences and the ever-challenging problem of what empirical findings mean to and for the humanities. The core question boils down to: why act in a way that can be described as "altruistic"? The question can be posed from an individual and from a collective point of view. Socially, the question would be: Is it good that people (in a given collective) carry out altruistic acts?

To answer this question (in the positive), *Kraut* proposes a classification of arguments[29]: The first category is that of arguments stating it is in our (rational) self-interest to be moved by altruism and act accordingly. Such arguments were typically employed by Greek and Roman philosophers in antiquity, to varying degrees. The second category is more modern and fundamentally based on the claim that an ethical (universal) point of view rationally justifies altruism. Arguments of this category were advanced by *Kant* as well as many utilitarian thinkers. They are nowadays typically employed by the most prominent proponents of altruism, i. e. members of the effective-altruism movement.[30] The third category encompasses arguments that centre on naturally occurring emotions (such as empathy). Philosophers in this category typically claim that such emotions entail and justify altruism and that we should, therefore, heed them.[31] A fourth, much broader category contains arguments based on specific conceptions of complex emotions (such as love), religious belief systems or individual characteristics (such as virtue).[32]

From a legal perspective, it seems difficult to accurately capture, assess and employ the arguments of the third and fourth category due to their psychological depth and subjectivity. At this point, it is sufficient to say that there is much in our emotions, religious beliefs and conceptions of good lives and virtuous actions that speaks in favour of altruism. But legal reasoning implies (or at least has the air of) rationalism and logical thinking.

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29 See *Kraut*, in: The Stanford Encyclopedia of Philosophy, Altruism § 4. Such "standard arguments" can be thought of as similar to chess openings or lines, teachable by the book. Well-versed players (or academics) know the standard ones, but ever so often, publications come along (or debates – games – are played out) that find one further move or a novel line. Alas, societal reality is not like chess: The rules and pieces change, the board is steadily moving.

30 See *Greaves*/*Pummer*, Effective altruism, *passim*; *Singer*, The most good you can do and also the course „Legal Topics in Effective Altruism" by the Centre for Effective Altruism, online: https://www.effectivealtruism.org/virtual-programs/legal-topics-in-effective-altruism.

31 For example, *Slote*, Moral Sentimentalism, *passim*; see also *Galligan*, U. Mich. J.L. Reform 27 (1993), 439 (473 et seq.) for further references.

32 For instance, *Galligan*, U. Mich. J.L. Reform 27 (1993), 439 (469) analyses the Biblical parable of the Good Samaritan to mean that the key to altruism is compassion, i. e. an action is truly altruist in the way demanded by God if it occurs out of compassion for the other.

2. Thomas Nagel's argument for altruism as an exemplary case

Thus, there is ample motivation to consider the famous and much-discussed argument in favour of altruism made by *Thomas Nagel* in his seminal work "The Possibility of Altruism" as an example from the wealth of arguments in academic discussion. The argument can be seen as part of the second category, as it tries to prove that altruism is a "rational requirement for action".[33] *Nagel* defines altruism as "a willingness to act in consideration of the interests of other persons, without the need of ulterior motives."[34] He denies that altruism can be justified by reference to self-interest and holds that a reference to other interests (such as benevolence and sympathy) is superfluous.[35] Nevertheless, Nagel maintains that "pure altruism" exists, i. e. a willingness to act in the sense that it is only the interests of the other that provide the motivation to act.[36]

Building on his elaboration of rational reasons for prudence and careful analysis of motivational issues, Nagel argues that the recognition of the classic Golden-Rule-situation entails altruism: If I understand that I (A) am doing something (X) to B that I would not want someone, be it C, to do to me, I implicitly accept two claims (1) I have an interest that X is not done to me, (2) C would in that interest have a reason not to do X to me (2) the hypothetical situation can be analysed in the abstract, i. e. "the characters can be exchanged"[37]. But if that is possible, the reason C has not to do X to me is not dependent specifically on *me*, A, having the interest that X is not done to me but on the interests of *any person* X is done to that X not be done to them. In other words, in accepting that I want not done to me what I am doing to others, I have recognized that it does not matter whether the interest is mine, but that it is the interest of *someone*.[38] Nagel calls such reasons "objective reasons".[39]

From this argument, one may derive two conclusions: (1) Most of us typically understand the Golden Rule and make the judgements it entails: Others matter because they are persons, their interests (for example not to be physically hurt) matter solely because they are the interest of a person. We could say that the principle underlying our action is: If X is done to a person against that person's interests, we have in that alone a reason to try and prevent or cease X. But (2) the egoist can make matters difficult again. They could respond 'I do not want X to be done to me just because I do not like X. What others want is of no concern to me.' The egoist's principle would be: If X is done to a person against that person's interests,

33 *Nagel*, The Possibility of Altruism, p. 3
34 *Nagel*, The Possibility of Altruism, p. 79.
35 *Nagel*, The Possibility of Altruism, p. 79.
36 *Nagel*, The Possibility of Altruism, p. 80.
37 *Nagel*, The Possibility of Altruism, p. 83.
38 Nagel, The Possibility of Altruism, p. 88 writes: "the conception underlying altruism is that of oneself as merely one person among others, and of others as persons in just as full a sense.", cf. also p. 102.
39 *Nagel*, The Possibility of Altruism, p. 90.

that person has a reason to try and prevent or cease X. So the egoist only has a reason to stop X, if they are the victim. How can we show that this response is *wrong* (in the sense of irrational)? To that end, *Nagel* develops a complex theory of objective reasons (roughly: reasons that recommend the same action regardless of who the actor is, i. e. the principle stated above in the first case) and advance highly intricate arguments seeking to show that only objective reasons are rational reasons.[40] Instead of a longer summary and analysis of these arguments, it seems more sensible and feasible to just state the underlying intuition, which is, unsurprisingly, that of equality of persons in time and space. On this intuition *Nagel* builds two arguments: An argument for prudence, as the present state of me is no more reason-giving than the future state of me (equality of persons throughout time), and an argument for altruism, as I am not more reason-giving (equality of persons throughout space) than any other human being.[41]

The gist of Nagel's complex argument for altruism is this: It is implausible that a situation is judged differently from a personal or an impersonal point of view, i. e. it would not make sense that an egoist, dying of thirst, would, by virtue of having just subjective reasons, only have reason to promote that they drink if they know that they are themselves. The egoist, in other words, would obviously only save themselves from dying if they had knowledge that it is them they are saving. In other words, the egoist would have to admit that even if someone were standing on the egoist's own foot and thus inflicting pain on the egoist, this person would not have reason to remove their foot because it is not them, but the egoist that feels pain.[42] *Nagel* holds that this difference in situational assessment can only be premised on a kind of solipsism that he judges is shared by almost no one and thus implausible.[43]

The quality and correctness of this argument has been subject to much debate.[44] It would be mistaken to attempt an evaluation of either the argument or the debate at this point. Instead, the presentation of the argument and the existence of intense criticism show that a rational justification of something that seems as morally obvious as altruism can be fiercely difficult. Parts of these problems stem from *Nagel's* attempt to defend a pure form of altruism, which implies that there is no philosophically relevant difference between, for example, my pain and the pain of anyone else.[45] Nevertheless, *Nagel's* argument is still one of the most-discussed and is often referred to a basis for further legal and philosophical analysis.[46]

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40 Cf. *Miller*, Canadian Journal of Philosophy 2 (1973), 391 (397).

41 Cf. *Kraut*, in: The Stanford Encyclopedia of Philosophy, Altruism § 4.3.

42 *Nagel*, The Possibility of Altruism, p. 90, 112.

43 *Nagel*, The Possibility of Altruism, p. 90–125.

44 *Miller*, Canadian Journal of Philosophy 2 (1973), 391; *Darwall*, Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition 25 (1974), 125; *Audi*, Metaphilosophy 5 (1974), 242; *Dahlstrom*, Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics 6 (1998), 73 (87 et seq.); *Liu*, Asian Philosophy 22 (2012), 93.

45 *Kraut*, in: The Stanford Encyclopedia of Philosophy, Altruism § 4.3.

46 Cf. *von Hirsch/Schorscher*, in: Solidarität im Strafrecht, p. 77 (86–87).

3. Arguments against altruism

Despite the issues brought forth with any argument in favour of altruism, it has a high intuitive plausibility and is consequently recommended by most moral theories or religions. *Ayer* argues that this is due to "fear, both conscious and unconscious, of a god's displeasure, and fear of the enmity of society" being the main force driving moral behaviour and motivating moral beliefs.[47] Consequently, *Ayer* says, it is logical that a given society's moral rules generally advance the "contentment of a society as a whole".[48] In the same vein, more biological perspectives argue that altruism as an individual trait and as a social occurrence follows an evolutionary rationality and can be predicted empirically, although the similarities between humans and other animals in this regard are subject to intense debate.[49]

As expected (and as is desirable in a functioning discourse), counter-arguments to the moral desirability of altruism do exist. Two lines of argument are particularly prevalent: Firstly, one could try to show that altruistic behaviour is not beneficial for the collective in total (or unacceptably harmful for individuals in said collective), for instance because it is not economically efficient[50] or because (too much) altruism would endanger the stability and functionality of society[51]. A second line goes beyond that and tries to demonstrate that society is worse off because there is *some* altruism due to informed and free choices of individuals, either because altruism is wrong in itself or because society is deemed to be somehow tainted by the existence of altruism. To successfully mount such an attack on theories of altruism is a very difficult challenge that has rarely been attempted. If one nevertheless tried that, it is strategically sensible to also employ the second possible line of argument, seeking to show that it is wrong *for each single individual* to carry out altruistic acts, and consequently the collective should not enable or support such acts, perhaps even prevent them. *Ayn Rand* may be seen as a representative of this second, more total approach. She argued that altruism would be fatal for societal wealth and well-being (claiming her novel 'Atlas Shrugged' to be a practical illustration) and that it would be incompatible with basic tenets of morality (autonomy, self-respect and mutual respect, individual rights).[52] *Nietzsche* is often described as an intellectual predecessor in that regard[53], arguing (in

47 *Ayer*, Language, Truth and Logic, p. 117.

48 *Ayer*, Language, Truth and Logic, p. 117; cf. also *Menkel-Meadow*, Ga. St. U. L. Rev. 8 (1992), 385 (395).

49 Cf. *Okasha*, in: The Stanford Encyclopedia of Philosophy, Biological Altruism; *Wilson*, Does altruism exist?, *passim*; and *Singer*, The Expanding Circle, p. 8 et seq.

50 For a detailed critical analysis of this argument, see *Kolm*, Ethics 94 (1983), 18. On economic functions and inner rationality of altruism, see also *Landes/Posner*, The American Economic Review 68 (1978), 417; *Becker*, Economica 48 (1981), 1; and *Kolm*, in: Handbook of the Economics of Giving, Altruism and Reciprocity, p. 1 (1).

51 On such arguments *Singer*, The Hastings Center Report 8 (1978), 37.

52 *Rand*, The Virtue of Selfishness; on *Rand*, see *Suganya/Shanthi*, Journal of Language and Linguistic Studies 17 (2022).

53 Cf. *Hicks*, The Journal of Ayn Rand Studies 10 (2009), 249.

somewhat convoluted and polemic terms) that altruism is really just thinly veiled egoism and unfit for the self-loving, life-affirming individual[54].

Such arguments typically fail to prove every conceivable act of altruism wrong. This is because they construct altruism as their "opponent" to imply total self-depreciation and the rejection of any superior relevance of one's own interests and desires.[55] Of course, living an "altruistic life" in that regard, namely by not prioritizing one's own interests in any meaningful way, can be extraordinarily demanding.[56] Some of the criticisms raised (for example by *Rand*) against altruism work quite well in that regard: The realization of individual interests suddenly becomes morally questionable, as altruism so construed would require one to ceaselessly work for all those currently worse-off than oneself. Individual happiness and goal-fulfilment count very little in such a world. In the end, there is a (theoretical) risk of a race to the bottom in the sense that if everyone were an altruist, nobody's interests would count much anymore.[57] In such a world, every single act of altruism could plausibly be called wrong. However, this is not the case in the real world. It is not credible that any proponent of altruism aspires to reduce autonomous human beings with dignity to servile cogwheels in a work-for-others machine. Ironically, this nightmare seems to be a more accurate description of unchecked authoritarian political or economic governance structures than of a society full of altruists.[58] Hence, arguments as advanced by *Rand* or *Nietzsche* merely demonstrate the necessity of balancing altruism and egoism individually and societally.[59]

III. An interim conclusion

Arguably, this necessity of balancing is already perceived as the status quo. The ratio between altruism and egoism is constantly subject to debate on the individual and societal

54 *Nietzsche*, Zur Genealogie der Moral, p. III et seq.; on *Nietzsche*, see *Nantz*, Nietzsche on Naturalism, Egoism and Altruism, *passim*. For different constructions of *Nietzsche*, see *Elgat*, Inquiry 58 (2015), 308 and *Brose*, ARSP: Archiv für Rechts- und Sozialphilosophie / Archives for Philosophy of Law and Social Philosophy 63 (1977), 239; cf. also *Nagel*, The Possibility of Altruism, p. 127.

55 Cf. *Rand*, The Virtue of Selfishness, p. 6 defining altruism as having the core tenet that "any action taken for the benefit of others is good, and any action taken for one's own benefit is evil"; cf. also for such an argument *Locke/Kenner*, in: Handbook of Managerial Behavior and Occupational Health, p. 179.

56 On the demandingness of Nagel's theory *Nagel*, The Possibility of Altruism, p. 127–133; and *Kraut*, in: The Stanford Encyclopedia of Philosophy, Altruism § 4.3; for a positive (consequentialist) view of such demandingness *Singer*, Famine, Affluence, and Morality, p. 21–27; *Singer*, The most good you can do, p. 97 et seq.; for an extremely nuanced criticism, see *Scheffler*, The Rejection of Consequentialism, *passim*; cf. also *Menkel-Meadow*, Ga. St. U. L. Rev. 8 (1992), 385 (414).

57 *Rand*, The Virtue of Selfishness, *passim*.

58 Nevertheless, there is substantial opposition to altruism among US-libertarians and followers of Ayn Rand, see *Iyer et al.*, PLoS ONE 7 (2012), e42366.

59 Cf. *Rachels/Rachels*, The Elements of Moral Philosophy, p. 77.

level. Ancient philosophy (Greek or Chinese teachings come to mind) has already elucidated that ethics is often a question of compromise and mediation.[60]

In the same vein, it is not for this article to definitively resolve the descriptive or normative issues outlined above. The overview has (merely) shown that there is a social phenomenon that can plausibly be called "altruism" and that powerful arguments speak in favour of such behaviour, even though those arguments (in essence) do not go beyond an appeal to emotions or reason and even though no argument for altruism is perfectly convincing.[61] The latter observation is unsurprising, as arguments can, in the realm of theory, not rely on anything but Habermas' famous "unforced force" of argumentative *betterness*.[62] The overview has also revealed that there is reason to be sceptical of "too much" altruism and that, as so often, moderation may be recommended.

However, this does not settle the question of what the law is to do with these philosophical observations.

IV. On the relationship between philosophical arguments and the law

Indeed, the immense complexity and duration of the moral debate give rise to the question of how the law in the abstract or the laws of different jurisdictions may react. An answer to this question depends on the extraordinarily difficult, abstract issue of the relation of law to morality. Furthermore, as altruism is, according to the prevailing definition, behaviour undertaken with a certain *intention* or *mindset*, a second immensely complicated issue comes to the fore: the relation of law to mental states. This paper can offer but a sketch of how these two interconnected sets of issues may be resolved and what the consequences for altruism in law can be. It will then also become clearer how the moral arguments for altruism relate to legal provisions.

Regarding the first issue, a claim which has by now fallen mostly out of favour would be that law is not separated from morality, and indeed the validity of a *legal* provision can (at least sometimes) be confirmed or rejected with regard to its moral content.[63] According to this position, arguments can be made to the end that certain legal provisions have to be rejected

60 On the so-called Greek mesotes doctrine, see *Clark*, Aristotle's Man, p. 84-97; on Chinese doctrines to the same end, see *Jiyuan*, Procedia - Social and Behavioral Sciences 2 (2010), 6796.

61 *Singer*, Practical Ethics, p. 355 opines that a purely hedonistic or inwardly self-centred life is ultimately devoid of the meaning that a life lived with others in mind can attain. Nevertheless, *Nagel*, The Possibility of Altruism, p. 5 suggests that although a final justification for basic ethical principles may not be possible, at least an explanation is within reach.

62 *Habermas*, Theorie des kommunikativen Handelns Bd. 1, p. 47.

63 Cf. *Murphy*, Natural Law Theory, in: The Blackwell Guide to the Philosophy of Law and Legal Theory, p. 22; for a defense of the modern natural law tradition in that regard, see *Bix*, Natural Law: The Modern Tradition, in: The Oxford Handbook of Jurisprudence and Philosophy of Law, p. 72 et seq.

because they are insufficiently altruistic or to the end that, even though there is no written law requiring someone to help a stranger in need, a natural, unwritten law with this content exists. The obvious difficulty with this view is that it would require a decision in favour of a certain moral theory or approach. It is questionable whether this would be appropriate given the complexities of both the moral debate and modern, pluralist, global(ized) society.[64] However, it is plausible that there may at least be a "minimal content of natural law" (that may be equated to basic human rights).[65] Remarkably, the opposite position to natural law, positivism, does not entail that moral arguments are necessarily irrelevant. Instead, it is often acknowledged that they play an important *factual* role in making and interpreting the law by informing lawmakers and judges.[66] Although just transforming the content of one moral theory into law has substantial disadvantages given the different functions of law and morality[67], it is unconvincing to deny that moral arguments can (or should) at least have *some* influence at least on law-making. In light of that, the overview above supports one conclusion which may lead us out of the thick of moral philosophy: Given that there are such plausible arguments, it is not untenable to demand that the law should incorporate altruism, either because the law is thought to have an inherent (minimal) moral content or through law-making.

C. Altruism as a Legal Concept

I. General considerations

1. Law

a) The possibility of regulating altruism

In this regard, what can such an incorporation look like? It is here that the second issue mentioned above comes into play: How may the law deal with mental states?[68] Indeed, this issue must be split into two sub-issues for the sake of clarity, this split being (again) a division between the descriptive and the normative: How *can* the law deal with mental states and how *should* the law deal with mental states?

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64 Cf. instead of many, *Weisbrod*, in: The Oxford Handbook of Global Legal Pluralism, p. 228: "Natural law does not seem to provide answers here first because of its indefiniteness, and second because of its links to the traditions of Western Christianity"; it should be noted that there are (sophisticated) attempts to uphold natural law in light of the challenges of pluralism, for example *Marco*, JoVSA 3 (2018), 52; *Haldane*, Natural Law and Ethical Pluralism, in: The Many and the One, p. 89 et seq; see also *Finnis*, Natural Law and Natural Rights, p. 365.

65 Cf. *Hart*, The Concept of Law, p. 193 et seq.; on *Hart's* theory, see *Drury*, Political Theory 9 (1981), 533 and *Starr*, Marq. L. Rev 67 (1984), 673. See also *Radbruch*, Oxford Journal of Legal Studies 26 (2006), 13.

66 *Hart*, Harvard Law Review 71 (1958), 593 (598 et seq.).

67 *Habermas*, Between Facts and Norms, p. 104 et seq; on the complex relations between law and morality, see also *Volkmann*, Rechtsphilosophie, p. 183-187.

68 Cf. just *Bigenwald/Chambon*, Front. Psychol. 10 (2019), 1406; *Rudolph*, Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics 27 (2019), 649; *Simons*, B.U. L. Rev. 72 (1992), 463; *Stuckenberg*, in: FS Kindhäuser (70.), p. 533 et seq.

An obvious response to the descriptive question is this: not at all. Law cannot access the mind, it can only interpret the signs or products of its action. Regarding altruism, this perspective leads to an argument structurally similar to the descriptive one denying the existence of altruism: One can never know whether action in accordance with a law requiring altruistic action (for example, to save the life of a stranger in need) occurred intending to benefit the interests of the other, or whether the sole purpose of the act was to avoid the consequences of violating the law. This argument becomes even more forceful when considering that laws intended to be effective typically need some kind of consequence capable of motivating or incentivizing the addressee. Yet, the more severe the consequence, the more likely it becomes that this very consequence is the main motivating factor, not the proscribed altruism. Thus, the law may *at best* "make people behave 'as if' they had really experienced altruistic motives"[69].

A simple response could be to maintain that this argument is beside the point, for as long as the proscribed act is undertaken, the intentions of the agent are generally *legally irrelevant*.[70] This approach is reminiscent of a *Kantian* perspective on the law, as *Kant* constructed (or claimed) the law to generally require external allegiance only, whereas the question of the appropriate intention is reserved for morality.[71] Another, more complicated counter-argument mirrors (or rather: repeats) the argument made above (B. I.): Legal systems can typically identify and process *something* that resembles mental states, be it real mental states or a fictional version of them. Without delving into the question of whether this is fair, just or rather simply sensible, the social regulation law seeks to achieve cannot be deemed a total failure in spite of the incorporation of (possibly fictional) mental states.

The typical situation (although this is a rough generalization) is that legal provisions do not regulate mental states directly, but actions carried out with or *in* a certain mental state. Provisions of criminal law are the most salient example that comes to mind.[72] An even more striking example is the German case of criminal liability for impossible attempts. As sec. 23 para. 3 German Criminal Code stipulates: "If the offender fails to realise, due to gross ignorance, that the attempt could under no circumstances have led to the completion of the offence on account of the nature of its object or the means by which it was to be committed, the court may dispense with imposing a penalty or may mitigate the penalty at its discretion (section 49 (2))". A consequence of this section in combination with section 22 is that not only

69 *Kennedy*, Harvard Law Review 89 (1976), 1685 (1722).

70 Cf. again *Kennedy*, Harvard Law Review 89 (1976), 1685 (1722 et seq.).

71 *Kant*, The Metaphysics of Morals, p. 46 [219].

72 For a comparative study, see *Blomsma*, Mens Rea and Defences in European Criminal Law; on German law *Bung*, Wissen und Wollen im Strafrecht; on German and English law *Safferling*, Vorsatz und Schuld; on English law *Lacey*, In Search of Criminal Responsibility; on some aspects of French law *Ballot Squirawski*, Les éléments constitutifs, essai sur les composantes de l'infraction; *Ceccaldi*, Revue de science criminelle et de droit pénal comparé N° 3 (2010), 587 a.

is there criminal liability for such attempts, it is also possible to impose criminal punishments even if no harm has come to the protected person/right. Thus, such punishment is based on a very weakly manifested mental state (the intention of causing harm) only.[73]

Another pertinent example is that of consent, for example consent to data processing as regulated by Art. 7 GDPR. Art. 7 para. 4, Art. 4 no. 11 and recital (42) further elucidate the GDPR's concept of freely given consent.[74] Of course, it is impossible for the data controller to *truly* know whether the data subject made a free choice to have their data processed. However, this does not stop the GDPR from requiring such a choice and from mentioning *empirically observable circumstances* such as whether the data subject is "unable to refuse or withdraw consent without detriment" (recital 42) as factors for assessing the required inner freedom.

The most striking case of a direct reference to the mental state relevant to this paper, namely that of benefiting another, is Book V DCFR (a non-offical proposal for a European Civil Code), which expressly states that "This Book applies where a person, the intervener, acts with the pre- dominant intention of benefiting another, the principal" (V – 1:101 para. 1).

This shows that it is possible for the law to base important legal consequences (even criminal punishments) on mental state. As the legal practice in the entirety of criminal law or cases from data protection law[75] illustrate, it is possible to prove such states to the legally required degree of certainty. Yet, this does not mean that the mental state in question necessarily exists (or can exist at all), but that the law has found practically working methods of dealing with the (fictional) mental state in question.

In evaluating acts, morality is oftentimes quite similar in structure to the law. The prevailing definition of altruism is evidence of that, as it conceives of altruism as an act (behaviour undertaken) with a certain intention (deliberately to help someone other than the agent for that other individual's sake). For many moral theorists, it seems possible to discuss such acts in spite of doubts about the existence and provability of mental states. There is, as this section has shown, nothing that inherently precents the legal system from doing so as well.

Regarding this regulation itself, there is a multitude of options. Without delving into the issue of deontic logic[76] or the even broader question of what the law can do to the regulated legal object[77], six types of regulation appear possible: The law can enforce, enable or

73 *Freund/Rostalski*, Strafrecht Allgemeiner Teil, p. 325 et seq.
74 Cf. *Bunnenberg*, Privates Datenschutzrecht, p. 21 et seq.
75 For example ECJ C-61/19 – Orange Romania.
76 For an accessible overview, see *McNamara/Van De Putte*, in: The Stanford Encyclopedia of Philosophy, Deontic Logic.
77 *Raz*, The Concept of a Legal System, p. 44 ff.; *Müller*, Handbuch der Gesetzgebungstechnik.

incentivize altruistic action which is not sufficiently occurring and can disincentivize, limit or ban non-altruistic action which is overly occurring.

In light of this, there appear to be broadly three regulatory strategies, ordered by "hardness" of regulation:

(1) Require or ban actions with proven altruistic intention:
This strategy would not be practically impossible, yet– as criminal procedures show – it would be expensive and challenging. It could also occur in different forms, depending on the legal consequences for the action/inaction. For example, a legal provision requiring one to help a stranger in need with altruistic intentions on pain of punishment is much different from a provision saying that a tax break for donations is only given to those who really donate out of altruism (instead of, for example, forcibly taking money from those who refused to donate). Apart from the severity of the consequence, the underlying regulatory message is crucially different here: While in the first case the regulator is communicating that altruism is necessary in the given situation and the inexistence of it is so abhorrent as to warrant criminal punishment, in the second case the message is more that altruism is generally good and therefore justifies that the regulator attach positive consequences (a tax break) to it. Altruism is, strictly speaking, *required* in both cases, however in the first case unconditionally (or categorically), in the second case only on the condition that the donator in question *wants* the tax break (i. e., hypothetically).

This second case is not much different from the second regulatory strategy, namely to

(2) (dis-)incentivize actions with, but not require or ban altruistic intention.
Depending on the understanding of the term "require", this strategy could also refer to regulations such as tax breaks for donations, given that they do not strictly require one to donate, but merely set an incentive (the tax break) in case of donation. More generally, such strategies imply a focus on institution-building and education as well as perhaps intricate techniques of moral or educational nudging[78]. This is reminiscent of the debate about mindsets, motivations and worldviews underpinning the functioning of a legal system which this system itself cannot bring about.[79]

78 See for example *Capraro et al.*, Sci Rep 9 (2019), 11880.

79 Cf. the famous *Böckenförde*-dilemma: „So the question of bonding forces is posed afresh and reduced to its actual core: the liberal secularised sate is nourished by presuppositions that it cannot itself guarantee. That is the great gamble it has made for liberty's sake. On the one hand, it can only survive as a liberal state if the liberty it allows its citizens regulates itself from within on the basis of the moral substance of the individual and the homogeneity of society. On the other hand, it cannot attempt to guarantee those inner regulatory forces by its own efforts - that is to say, with the instruments of legal coercion and authoritative command-without abandoning its liberalness and, at a secularised level, lapsing into that pretension to totality out of which it led the way into the denominational civil wars.", *Böckenförde*, in: State, Society, and Liberty, p. 45; see also *Habermas*, Between Facts and Norms, .p. 437: "The political system can succeed at this insofar as it

Given the mentioned difficulties of dealing with mental states and the necessity of deriving them from observable empirical data anyway, a third strategy could be to

(3) disregard altruistic intention and focus only on the action and its consequences.

This third strategy is perhaps easiest to implement, as it would enable legal provisions to require only certain kinds of action and disregard the debate about mental states and intentionality entirely. For example, a legal system could instate provisions that force someone to act in the interest of another person (say, by saving that person from unwanted bodily harm) or make uncompensated transfers (donations). Whether this is then done with an altruistic intention or not would be irrelevant to the legal consequences. This approach would be a potential consequence of the *Kantian* perspective outlined above[80] Nevertheless, there are (debatable) effects of such strategies on and relationships of such strategies to altruistic intentions, given that a duty to rescue another person in need or a duty to donate would require behaviour that is *typically* evidenced only by those with altruistic intentions.[81] In consequence, the difference between the second and the third strategy is mostly theoretical and depends on whether one construes the legal provisions in question to be intended to (dis-)incentivize altruism or not, as the regulations on paper might themselves look quite similar.

b) The desirability of regulating altruism

Even though the regulation of altruism by law appears to be generally possible, this does not answer the question whether it is something desirable. While the philosophical analysis has shown that there are good arguments in favour of altruism as a form of *individual behaviour*, such arguments do not necessarily justify the *(institutional) incorporation* of altruism into the law. At this point, arguments about the role of the law and the state come into play. Another highly challenging debate looms and it does not lend itself to quick simplification. This is also because most arguments given in this debate relate to specific cases of the regulation of altruism and will therefore be referred to in the following sections on those cases. However, two general considerations stand out. Those in favour of legal action on altruism typically point to its moral or economic (non-)desirability and then posit a duty of the state to heed such considerations.[82] Those against legal action on altruism typically try to show that the legal action in question would be ineffective and/or incompatible with a certain (liberal)

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is embedded, through a public sphere based in civil society, in a lifeworld context shaped by a liberal political culture and corresponding socialization patterns." However, as *Häberle/Kotzur*, Europäische Verfassungslehre, . p. 71 et seq. point out, (constitutional) law can practically foster mindsets in many ways, for instance through education.

80 *Kant*, The Metaphysics of Morals, p. 46 [219].

81 Cf. *Scordato*, Tul. L. Rev. 82 (2007), 1447 (1473 et seq.).

82 For example, *Galligan*, U. Mich. J.L. Reform 27 (1993), 439.

conception of the state and its law.[83] Although the debate mostly revolves around law-making and the (in)existence of laws, the question of altruism in law also affects legal practice.

2. Legal practice

Namely each of the three powers may incorporate altruism into the law according to its typical function: The legislature may, as has been discussed above, create laws that regulate altruism (as has been the case with data altruism in the Data Governance Act), the executive may apply laws altruistically or on the basis of an altruistic interpretation and the judiciary may give rise to such altruistic interpretations of legal provisions. Some examples of this practical implementation will be given in the following section. However, altruism as regards legal practice can also be a much more general consideration.

In that regard, *Menkel-Meadow* asks provocatively: "Is Altruism Possible in Lawyering?"[84] This seems questionable, given that "[t]he very structure of law, as it is created, practiced, and enforced, assumes a duality, an otherness-the defendant, the opposing side, the client, those inside the law, and those outside."[85] In spite of that, *Menkel-Meadow* recommends – in part based on feminist concepts of care ethics – civil treatment of the opposing side, not just as a means to an end but as ends in themselves[86], an earnest search for the motives of this other side (which may also facilitate dispute resolution[87] and information sharing among the parties in search for truth.[88] On a macro level, *Menkel-Meadow* also discusses that altruism is relevant in choosing "what cases will be helpful to individual clients and to the larger social issues and causes implicated in particular legal cases."[89] One example of such a (seemingly or possibly) altruistic choice is the pro-bono work many lawyers do[90], namely representing needy or disenfranchised clients or social causes at their own expense[91]. Nevertheless, there

83 For example, *Scordato*, Tul. L. Rev. 82 (2007), 1447; See also *Isensee*, Das Grundrecht auf Sicherheit, p. 20: "Dem freiheitlichen Staat widerstrebt es, Rechtszwang zum staatsbürgerlichen Altruismus auszuüben, obwohl er darauf angewiesen ist, daß seine Bürger Leistungen für das Gemeinwesen erbringen." [roughly: The liberal state is reluctant to exercise legal compulsion towards civic altruism, although it is dependent on its citizens performing services for the community.]; see *Kortmann*, Altruism in Private Law, p. 10 et seq. for a critical discussion of such arguments.

84 *Menkel-Meadow*, Ga. St. U. L. Rev. 8 (1992), 385.

85 *Menkel-Meadow*, Ga. St. U. L. Rev. 8 (1992), 385 (386).

86 *Menkel-Meadow*, Ga. St. U. L. Rev. 8 (1992), 385 (408).

87 *Menkel-Meadow*, Ga. St. U. L. Rev. 8 (1992), 385 (409).

88 *Menkel-Meadow*, Ga. St. U. L. Rev. 8 (1992), 385 (409–410).

89 *Menkel-Meadow*, Ga. St. U. L. Rev. 8 (1992), 385 (414).

90 *Menkel-Meadow*, Ga. St. U. L. Rev. 8 (1992), 385 (418); *Kay/Granfield*, Law & Society Review 56 (2022), 78.

91 *Rhode*, Pro bono in principle and in practice, p. 1 et seq.; *Loder*, Geo. J. Legal Ethics 14 (2000), 459; See also *James/Cantore*, Lawyers as Heroes: Promoting Altruism in Law Students through Pro Bono Teaching Clinics; of course, such work may also have positive career implications and thereby be inviting also to the egoistically minded lawyer or law student *Dinovitzer/Garth*, SSRN Journal 2008,

is an inherent tension (as described by *Menkel-Meadow*) between the expectation that the lawyer will fight for their client only (and thereby advance their own career and financial success) and the idea that the legal system as a whole may do something to increase justice.

The situation is much different with judges. They are expected to administer the law impartially and not to work for their own (or their client's) gain. Therefore, regardless of their factual personal motivation, "judges often act as if they care not just about costs and benefits to themselves but also about costs and benefits to others, including perhaps such abstract "others" as the rule of law, or ideals of proper judicial conduct."[92] Hence, egoistic (perhaps, career-oriented) behaviour of judges is viewed as a problem or perhaps as a necessary evil, but not as a social expectation, because "if we really expected judges to behave purely selfishly, they would not play nearly so great a role in our economic and political system, nor would we grant individual judges so much power."[93] To that end, *Stout* recommends "obvious" institutional measures such as rules preserving impartiality, but also aspects like an adequate, competitive salary, the role-model function of higher courts, a "common sense of social identity with the litigants", which may be hindered by formal rules of procedure.[94]

In this legal practice, the philosophical discourse can (and should) play an important role. Actors dealing with altruism as a legal term or as a concept in interpreting the law should keep the definitional complexities and normative struggles outlined above in mind: What kind of altruism does the legal term refer to or aim at? Is this kind of altruism supported by good reasons? On which reasons could opposition to it be based? Does it clash or comport with the reasons that buttress other parts of the law or legal system it is embedded in? In what ways can the law regulate the respective kind of altruism? But even if philosophical arguments are important in these ways, "law is not philosophy"[95] and the interpretation of legal terms even of obvious, powerful philosophical pedigrees is not a philosophical endeavour[96]. Nevertheless, legal regulations might in turn affect philosophical arguments, as the laws can be interpreted to constitute a confirmation or rejection of certain ethical theories.[97] Furthermore, for consequentialists, the factual experience with certain laws that regulate altruism may in turn inform the ethical calculus. Mutual influences can neither be avoided. Nor should they, as the following practical examples show.

1291998.

92 *Stout*, Wm. & Mary L. Rev 43 (2002), 1605 (1610).

93 *Stout*, Wm. & Mary L. Rev 43 (2002), 1605 (1611).

94 *Stout*, Wm. & Mary L. Rev 43 (2002), 1605 (1622–1625).

95 *Fish*, Doing what comes naturally, p. 396, the quote continues strikingly „and it will not fade away because a few guys in Cambridge and Palo Alto are now able to deconstruct it".

96 *Starck*, in: Grundgesetz, Art. 1 GG mn. 163.

97 Cf. *Galligan*, U. Mich. J.L. Reform 27 (1993), 439 (475).

II. Review of practical examples

This article is far from the first analysis on the role of altruism in law or of altruism as a legal concept, although the issue has not received immense scholarly attention[98]. It can also by no means be all-encompassing. Instead, the purpose of this section is to present some interesting examples gleaned from the literature[99], analyse them using the philosophical considerations introduced above and use them to contextualise the concept of "data altruism" as stipulated in the new Data Governance Act.

Sanders, in a lecture given in 2012, finds that the role of altruism in law has been insufficiently researched, and mentions the areas of criminal law (specifically a duty to rescue), tax law and private law (specifically, distinctions between social reciprocity and contractual relationships).[100] Apart from these areas, this section will also consider family law (including the regulation of reproduction) and constitutional law.

For reasons of brevity, this review is limited to German law and EU law. Interesting studies on other areas of law have been done[101], still the role of altruism in law certainly requires and merits further study.

1. National

a) (German) Constitutional Law

Regarding the constitutional law, *Gröschner* has conducted research on "altruism in the system of obligations under the German Grundgesetz [basic law]".[102] An action is, following *Kutschera*, understood as altruistic if it is guided only by the intention to serve the interests of others.[103] He analyses that fundamental rights are commonly thought of as rights against the state, so they cannot give rise to altruistic duties.[104] However, the German basic law also stipulates obligations, such as that of the parents to foster and raise their children and that of proprietors to use their property to serve the public good as well (Art. 6 para. 2, Art. 14 para.

98 According to our knowledge, there is no conclusive, comparative analysis of the role of altruism in one or several legal orders, so far. Cf. also *Rudall*, Altruism in International Law, p. 36: „The literature on altruism in legal systems is sparse [...]".

99 Limited to German and US/UK Common Law and some examples of French law.

100 *Sanders,* Altruismus und Recht. Unfortunately, this lecture was never published and there are no available transcripts.

101 See, for example *Leverbe*, Essai sur l'altruisme en droit civil; *Kortmann*, Altruism in Private Law; *Rudall*, Altruism in International Law; *Kennedy*, Harvard Law Review 89 (1976), 1685 (171 ff.).

102 *Gröschner*, Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics 6 (1998), 181 (189).

103 This is quite a narrow definition, as it excludes action guided *partially* by the intention to serve the interests of others (cf. also B. I. above). However, this exclusion does not change the force of *Gröschner's* arguments much.

104 *Gröschner*, Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics 6 (1998), 181 (182–183).

2). One might argue that such obligations are altruistic in nature, but *Gröschner* holds that altruism is, at least regarding the German basic law, rendered otiose through republicanism: the addressee of such duties is not another individual but the state, the interests of which are not simply that of another (legal) person or institution, but already an amalgam of individual and collective interests. That is to say, the legitimate interests of the acting individual are *already part* of the state interests that the behaviour in question would benefit.[105] Apart from this argument, *Gröschner* observes more generally that there can be no *legal* duty to have a certain intention, for law can only require external, enforceable behaviour. As altruism is defined by the intention to serve others, there can be no legal duty to behave altruistically. Consequently, *Gröschner* draws the perhaps somewhat drastic conclusion that altruist action is irrelevant regarding the obligations stipulated by the German constitution.[106] This is somewhat mitigated by the subsequent argument that supererogatory actions (roughly: actions that go beyond what is required by law/morality), such as altruist ones can be hoped for, fostered, supported or incentivized by the basic law, for example altruistic parental behaviour (under Art. 6 para. 2 Basic Law) or going to the polls (under Art. 38 Basic Law).[107]

This analysis follows the second and third strategy outlined above: The law only requires external, outward obedience. Thus, it can merely hope for, support and depend on (supererogatory) action and (unenforceable) mindsets. One critical remark on *Gröschner's* use of the first strategy might be in order: It is not the case that the law cannot have any bearing on intentions. Instead, as has been stated above, *mens rea* in criminal law may also be thought of as an obligation *not* to have a certain intention, for example not to have the intention to kill somebody. Nevertheless, directly *requiring* an altruistic mindset might be at odds with basic tenets of a liberal state[108], as it does significantly intrude on the (inner) freedom from state influence.[109] Furthermore, *Gröschners* republican analysis may have a blind spot: It is not plausible to assume that the Basic Law presupposes totally egoistic, atomistic and isolated individuals cooperating solely for their own gain. Instead, the Basic Law already takes a certain social inclusion of the individual for granted and is supportive of a culture of mutual respect.[110] Due to the indirect horizontal effects of the fundamental rights, private individuals may even be legally required to heed the fundamental rights of others in their action.[111]

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105 *Gröschner*, Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics 6 (1998), 181 (183–184).

106 *Gröschner*, Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics 6 (1998), 181 (184–185).

107 *Gröschner*, Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics 6 (1998), 181 (185–189).

108 Cf. *Isensee*, Das Grundrecht auf Sicherheit, p. 20: "Dem freiheitlichen Staat widerstrebt es, Rechtszwang zum staatsbürgerlichen Altruismus auszuüben, obwohl er darauf angewiesen ist, daß seine Bürger Leistungen für das Gemeinwesen erbringen."

109 Cf. *Isensee*, Das Grundrecht auf Sicherheit, p. 20; *Kortmann*, Altruism in Private Law, p. 10 et seq.

110 *Gallwas*, in: Menschenbilder in der modernen Gesellschaft, p. 55.

111 Cf. for a recent prominent case BVerfG, Order of the First Senate of 11 April 2018 - 1 BvR 3080/09 -, para. 1-58.

b) (German) Criminal Law

The most salient example from (German) criminal law is section 323c of the German criminal Code (StGB).[112] This section, titled "Failure to render assistance; obstruction of persons rendering assistance" reads: "Whoever does not render assistance in the case of an accident or a common danger or emergency although it is necessary and can reasonably be expected under the circumstances, in particular if it is possible without substantial danger to that person and without breaching other important duties, incurs a penalty of imprisonment for a term not exceeding one year or a fine." (para 1) and "whoever obstructs a person who is rendering or wishes to render assistance to another person in such a situation incurs the same penalty." (para 2). Obviously, this makes a legal duty what would otherwise (merely) be an act of altruism. Prima facie, sec. 323c seems like an example of the state requiring action with proven altruistic intentions. However, this is not the case, as sec. 323c does not penalize a lack of (altruistic) intention but instead an *intentional (= dolus eventualis) lack of action*.[113] Whether the individual in question acts to avoid criminal sanctions or out of true altruism is irrelevant for sec. 323c. Regarding the elements of the crime itself, sec. 323c StGB therefore fits the third category outlined above, meaning that the altruistic intention is disregarded. Yet, the regarding the object and purpose of sec. 323c StGB, the situation is more complicated. *Freund* and *Koch* rightly emphasize in their commentary that a person who does not render reasonable assistance in case of an emergency does not exhibit altruistic intentions.[114] Thus, according to their construction, sec. 323c *typically* penalizes that the lack of altruistic intention manifests itself as inaction.[115] Hence, sec. 323c StGB expresses at least a *wish* of the lawmaker that those subjected to it have and act according to altruistic intentions.

Consequently, there is significant debate whether sec. 323c StGB (or more generally, any legal duties to rescue) can be justified philosophically and politically. *Gaede* mentions *Kant* and *Mill* as (historical) spearheads of liberal opposition to legal duties to help/rescue, but argues that their positions cannot convincingly be put forward against sec. 323c StGB, as this norm does not stipulate a general duty to behave altruistically.[116] Instead, it pertains to the specific situation of finding someone else in dire need and already takes the interests and

112 Of course, this is far from the only role that altruism may play in German criminal law. Altruism may also play a role in sentencing *Streng*, in: Strafgesetzbuch, StGB § 46 Grundsätze der Strafzumessung mn. 52; constitute a potential difference between murder and homicide *Schauf*, NStZ 2021, 647; or be an argument in the debate on the criminalization of assisted suicide BVerfG, 2 BvR 2347/15 ua mn. 259; interestingly, the topics have not much changed in the past 100 years, as the role ascribed to altruistic motives in criminal law at the time was broadly similar, see *Rosenberg*, Zeitschrift für die gesamte Strafrechtswissenschaft 42 (1921), 453.

113 *Gaede*, in: NomosKommentar Strafgesetzbuch, StGB § 323c Unterlassene Hilfeleistung mn. 4–15.

114 *Freund/Koch*, in: Münchener Kommentar zum StGB, StGB § 323c Unterlassene Hilfeleistung; Behinderung von hilfeleistenden Personen mn. 3.

115 *Freund/Koch*, in: Münchener Kommentar zum StGB, StGB § 323c Unterlassene Hilfeleistung; Behinderung von hilfeleistenden Personen mn. 3.

116 *Gaede*, in: NomosKommentar Strafgesetzbuch, StGB § 323c Unterlassene Hilfeleistung mn. 1.

abilities of the helper into account.[117] *Von Hirsch* and *Schorscher* have further defended the sec. 323c StGB (and more generally the criminalization of failures to rescue) with reference to *Nagel's* theory of altruism.[118] Nevertheless, there is powerful opposition to even such limited duties, especially in common law jurisdictions which typically do not have general duties to rescue or render assistance.[119] Many arguments against such duties (be they in civil or in criminal law) are based on practical considerations such as "the expected performance of reluctant rescuers, replacement of higher quality rescue efforts with lower quality efforts, discount of altruism, increased risk of harm to rescuers, and deterrence to provide delayed aid"[120], alleged incompatibility with key conceptual structures of common law[121] or infringements on individual liberty by limiting the legal course of action in the situation of emergency to precisely one: rendering help[122]. Yet, it should be noted that significant exceptions to the lack of a general duty to rescue in common law do exist.[123]

The justification of duties to rescue has been intensely attacked by *Scordato*. His argument is interesting especially in relation to *Freund's* and *Koch's* analysis, as it somewhat reflects their construction of the object and purpose of a duty to rescue. *Scordato* argues that while assistance given to someone in need is likely motivated by altruism if there is no legal duty to do so, the existence of the legal duty is said to transform such acts "from the manifestly honourable to the merely compliant" and thereby "taint the moral and social quality of socially desirable behaviour that would have been engaged in by the vast majority of persons anyway".[124] The quality of this argument seems questionable, especially since it is offered without any empirical support. Even without such evidence, the argument made seems implausible. If it is – as *Scordato* supposes –common knowledge that "the vast majority of persons" would have engaged in altruistic acts anyway, we cannot safely assume that, given a new legal duty to do, the majority is *now* acting merely out of compliance.[125] Nevertheless, the argument shows that worries over the effect of laws referring to or requiring altruism on individual liberties are profound and motivate many scholars and jurisdictions to reject such laws, especially in the field of criminal law.

117 *Gaede*, in: NomosKommentar Strafgesetzbuch, StGB § 323c Unterlassene Hilfeleistung mn. 1.

118 *von Hirsch/Schorscher*, in: Solidarität im Strafrecht, p. 77.

119 *Herring*, Great Debates in Criminal Law, p. 27–37; *Scordato*, Tul. L. Rev. 82 (2007), 1447 (1447 et seq.); for somewhat dated calls for reform, see *Woozley*, Virginia Law Review 69 (1983), 1273; and *Galligan*, U. Mich. J.L. Reform 27 (1993), 439; for a biomedical perspective, see *Rulli/Millum*, J Med Ethics 42 (2016), 260.

120 *Scordato*, Tul. L. Rev. 82 (2007), 1447 (1496–1497).

121 *Denton*, Can. J. L. & Jurisprudence 4 (1991), 101.

122 *Herring*, Great Debates in Criminal Law, p. 32–37.

123 *Galligan*, U. Mich. J.L. Reform 27 (1993), 439 (446–462).

124 *Scordato*, Tul. L. Rev. 82 (2007), 1447 (1473 et seq., 1485 et seq.).

125 *Kortmann*, Altruism in Private Law, p. 23 offers a different counter-argument.

c) (German) Private Law

As the last two sections, this section can also only serve to highlight some of the issues that are discussed regarding altruism and private law, in order to provide a better contextual background according to which "data altruism" may be understood.

Altruism in private law is most relevant regarding the discussion of civil liability in the "rescue cases" analysed above from a criminal law perspective. Specifically, the questions most debated are whether somebody may be liable for not saving someone else from harm, whether someone may be liable for *wrongly* or *incorrectly* saving someone else from harm and whether a person who saved someone else from harm be reimbursed for their expenses. On these issues, *Kortmann* has written a conclusive monography comparing English, French and German Law.[126] He convincingly concludes that "in English law there is no general duty to intervene for the benefit of another where a reasonable person would do so. In this respect, it turned out, English law is different from both French and German law. French law not only imposes penal sanctions for failure to intervene in certain circumstances, but when it comes to claims in negligence it treats misfeasance and nonfeasance, broadly speaking, alike. The German criminal code also includes a provision that penalizes failure to intervene in an emergency, but there the courts have been more reluctant than their French counterparts to recognize corresponding duties in private law."[127] Furthermore, *Kortmann* has found that "where English law in principle denies the good Samaritan a claim – and then proceeds to formulate exceptions to this principle – French and German law contain a general rule that does grant the intervener a right to be reimbursed for expenses incurred and to be compensated for loss suffered"[128] Given the scope of *Kortmann's* work and his focus on dogmatic comparison, he does not go far beyond precise analysis of questions of law.[129] The author does not consider philosophical debates on the meaning of altruism in detail[130], nor does he make frequent reference to the (socio-)biological or psychological literature. This is not to say that the work is deficient, it just shows that philosophical insights may not strictly be necessary in order to interpret the law correctly.

Be this as it may, the relation of the regulations analysed and compared by *Kortmann* to altruism can be assessed using the classification proposed above. Rarely, altruistic intentions are required directly (category 1) One exception (though only in the form of a non-official proposal) is V-1:101 para. 1 DCFR ("This Book applies where a person, the intervener, acts

126 *Kortmann*, Altruism in Private Law, p. 1 et seq.; on the economic implications of such duties to rescue, see *Landes*/*Posner*, The American Economic Review 68 (1978), 417; on French law, see *Pellet*, L'Essentiel – Droit des contrats 4 (2015), 4.

127 *Kortmann*, Altruism in Private Law, p. 189.

128 *Kortmann*, Altruism in Private Law, p. 189.

129 In contrast, see *Galligan*, U. Mich. J.L. Reform 27 (1993), 439; and *Rudall*, Altruism in International Law, p. 1 et seq.

130 See *Kortmann*, Altruism in Private Law, p. 11, 84 for some philosophical considerations.

with the pre-dominant intention of benefiting another, the principal"). However, the legal consequences depending specifically on the altruist intentions are mainly that the intervener has certain rights (to compensation etc.), see V – 3:101-103 DCFR. and is subject to only a reduced form of liability.[131] For German Law, the situation is less clear. Book 2, division 8, title 13 of the German Civil Code (BGB) regulates Agency without Specific Authorisation. Clearly, the respective sections are influenced by the dichotomy altruism-egoism. [132] However, in contrast to the DCFR-proposal (or to Dutch law), *Greiner* finds that, if at all, the approach chosen by the German Civil Code is to privilege those who (typically) act altruistically, but not to require such intentions.[133] This would imply a regulatory strategy that falls into the second or third category. However, the prevailing opinion, at least according to *Greiner*, perceives title 13 to be a value-neutral system for the distribution of certain wealth gains and losses that occur due to the actions of an agent without specific authorisation.[134] If this were the case, there would be no relation to altruism at all.

In that regard, *Greiner* makes use of a (philosophical descriptive) argument presented above, namely that pure altruism likely does not exist (or is extremely rare), so such altruism cannot be a necessary condition for the regulations in title 13 to apply.[135] However, he argues such behaviour can be a sufficient condition for the application of some regulation, in order to privilege and thereby incentivize altruistic behaviour.[136] On the basis of this results, he criticizes court cases (namely BGH NJW 1963, 390) that instead incentivize egoistic behaviour by making the intervention for another's benefit more costly than avoiding said intervention.[137]

This re-illustrates the marked difference between Civil and Common Law jurisdictions in the debate whether altruism is something that can or should be incentivized by the law. While, for example, in the USA, significant conceptual scepticism against altruism exists, the German literature mostly focusses on whether and how altruism can be the object of legal regulation and how a total lack or an excess of altruism can be prevented.

Apart from that altruism has also been discussed in contract law. The most relevant questions are whether contracts can be conceived as cases of mutual altruism[138] and whether there can be extra-contractual liability for services provided on a goodwill basis[139]. The final

131 *Greiner*, AcP 219 (2019), 211 (218, 249).
132 See *Greiner*, AcP 219 (2019), 211 (212) for a highly instructive analysis; Cf. also *Kortmann*, Altruism in Private Law, p. 106.
133 *Greiner*, AcP 219 (2019), 211 (218, 232).
134 *Greiner*, AcP 219 (2019), 211 (232).
135 *Greiner*, AcP 219 (2019), 211 (233).
136 *Greiner*, AcP 219 (2019), 211 (243).
137 *Greiner*, AcP 219 (2019), 211 (247).
138 *Fruehwald*, U. Louisville L. Rev. 47 (2008), 489; cf. also *Kennedy*, Harvard Law Review 89 (1976), 1685 (1771 et seq.).
139 *Holzmann*, Bestrafter Altruismus?, p. 1 et seq.

sub-field of private law in which altruism is a typical subject of discussions is succession and family law.[140] To give just two examples, there is an ongoing debate (in Germany) on the legalization of so-called altruistic surrogacy;[141] further, of course, the necessity and degree of altruistic action of parents towards their children is subject to constant discourse.[142] Even though the connection between parental care and altruism seems obvious[143], it should be noted that, to our knowledge, there has been little scholarly treatment of the issue so far, at least regarding German law.

In general, altruism in private law concerns the regulation of the near, i. e. of issues whether the affected individuals are in physical proximity or a legal relationship of some sorts. However, the moral demands of altruism may go far beyond that. If *Nagel's* claim that there is no substantial difference between my interests and the interests of any human being on earth is taken seriously, this would require altruistic intentions to be focussed on those far away, as well. The movement and philosophical theory of effective altruism advocates for such a kind of altruism.[144] In applying what is commonly called the equivalence principle, effective altruists state that saving a drowning child in a pond nearby (a situation which would be, if it were to occur in Germany, regulated by the sections on Agency without Specific Authorisation) is of equal importance as saving starving children in far-away countries.[145]

d) (German) Tax Law

A typical way to engage in altruism is to donate money to people in need or to organizations that benefit objectives of general interest. In this regard, states often make donations tax-deductible, i. e. the donator has to pay less taxes, more or less proportional to their donation. In German tax law, sec. 10b Income Tax Act stipulates that financial contributions to certain organisations can (to some degree) be deduced from one's taxable income. This section is a clear example of the second regulatory strategy mentioned above, i. e. the incentivization of altruism.[146]

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140 On family law *Foster/Herring*, Altruism, Welfare and the Law; On aspects of succession law *Grundmann et al.* (eds.), Altruistische Rechtsgeschäfte sowie Methoden- und Rezeptionsdiskussionen im deutsch-lusitanischen und internationalen Rechtsverkehr, and *Inkmann*, Sittenwidrigkeit von Pflichtteilsverzichten, chap. E.

141 *Hoven/Rostalski*, JZ 77 (2022), 482.

142 Cf. just *Foster/Herring*, Altruism, Welfare and the Law, P. 33–80; and *Veit*, in: BeckOK BGB, BGB § 1626 Elterliche Sorge, Grundsätze mn. 16.

143 *McGarry*, Testing Parental Altruism: Implications of a Dynamic Model.

144 *Singer*, The most good you can do, *Greaves/Pummer*, Effective Altruism. See also https://www.effectivealtruism.org (last visited 30.09.22).

145 For a critical discussion, see *Mogensen*, in: Effective Altruism: Philosophical Issues, p. 227 (227 et seq.).

146 *Hey*, in: Tipke/Lang, Steuerrecht, B. Spendenrecht § 20.15.

2. EU Law

Remarkably, altruism has not been a topic of major relevance in EU law. As all teams found in their preparatory research, references to altruism in EU law are rare. The conclusion of the participants was that[147]:

> ""altruism" is mostly used in the medical field, but it is not new to the world of data: "access to and preservation of scientific information in the digital age" dates from 2012 (document SWD(2012)0222 and is perhaps the oldest example in that field, even if document SEC(2007)0181 already discussed the concept of free access to data, although without using the word "altruism".
> The EUR-Lex data bank research for "altruism" with the four language versions DE, EN, FR, ES has not shown many results. Therefore, we have come to the conclusion that it has not been a legal key word in either language before the Data Governance Act.
> The terms altruism and data altruism are also used in the fields of smart citizenship and artificial intelligence."

Another issue for further research would be to investigate altruism as an EU value, on the one hand regarding altruism among the citizens (i. e., mostly regarding the Charter) and other hand regarding altruism among the *Member States*, as the TEU (especially Art. 2 sentence 2) can plausibly be construed to require altruistic solidarity among EU members[148].

D. Linguistic history of the term

The term "altruism", which is generally seen as the opposite of "egoism", is a deliberate neologism of French origin, which made it into a common internationalism. The target languages calqued (adopted) the internal structure of the two French derivations *altruisme* and *égoïsme*: The roots are the Old French pronoun *altrui* 'of/to the other' (from Latin *alter* 'the other', Modern French *autrui*) and Latin pronoun *ego* 'I', which are derived with the nominalising suffix *-isme* (from Latin *-ismus*).
The earliest evidence of French *égoïsme* dates back to the middle of the 18th century.[149] In his *Tiers état*, Sieyès (1789:54) lists "égoïsme" with the following explanation, which relates it to "autrui":

147 For details, see All teams' results on the term "altruism" in this volume.
148 Cf. *Kanalan/Wilhelm/Schwander*, Der Staat 56 (2017), 193 (220).
149 Already the Encyclopédie Française 1755, Vol 5, cites the pejorative use of "égoïsme" in the Port Royal School: "MM. de Port-Royal ont généralement banni de leurs écrits l'usage de parler d'eux-mêmes à la première personne […]. Pour en marquer leur éloignement, ils l'ont tourné en ridicule sous le nom d'égoïsme, adopté depuis dans notre langue.", TLFi: http://stella.atilf.fr/Dendien/scripts/tlfiv5/affart.exe?19;s=1470671445;?b=0 (Retrieved 18 December 2022).

> "attachement excessif à soi-même qui fait que l'on subordonne l'intérêt d'autrui à son propre intérêt"

Hence the neologism *altruisme*, coined by François Andrieux (1759-1833), lay at hand. Andrieux's lectures at the École polytechnique and the Collège de France in Paris gave rise to heated discussions that also found their way into a series of correspondences. Among them, the *Lettres champenoises, ou Correspondance politique, morale et littéraire, addressée à Mme de ..., à Arcis-sur-Aube*, January 1, 1820 edition[150] explicitly refer to his new word creation: In the context of a controversial commentary on Jacques Bénigne Bossuet (1627-1704) concerning the question of whether animals possess a soul,[151] "l'altruisme, par opposition à l'égoïsme" is reported as a new coinage by Andrieux. Most certainly, it originated in his discussion on the Christian concept of *caritas*, coined by Saint Vincent de Paul.

One of Andrieux's students at the École polytechnique in Paris was Auguste Comte (1798-1857), who in his *Catéchisme positiviste* (1852:60) takes up the term altruism and paraphrases it as "ensemble des penchants bienveillants de l'individu". He adds the comment:

> "La prépondérance habituelle de l'altruisme sur l'égoïsme, où réside le grand problème humain, y résulte directement d'un concours continu de tous nos travaux, théoriques et pratiques, avec nos meilleures inclinations."[152]

Meanwhile, the concept of altruism has entered sociological, moral-philosophical, ethical and even economical and -- as mentioned above – legal contexts.[153] However, as also relevant encyclopedic works show, the understanding of the term depends on political and ideological stances.[154]

From the linguistic point of view, "altruism" forms a novel compound with "data" in several language versions of the DGA, e.g. English *data-altruism*, German *Datenaltruismus*, Finnish *data-altruismi*.

However, two earlier uses of the term "data-altruism" are made in the context of health. According to a blog by Jane Jarasohn-Kahn (13 December 2013) from the other side of the

150 https://gallica.bnf.fr/ark:/12148/bpt6k96691714/f76.item.r=%22altruisme%22, p. 70f. (Retrieved 18 December 2022).

151 "Il serait absurde de refuser une âme aux animaux, depuis qu'il reste démontré que beaucoup d'hommes n'en ont pas. Je passerai aussi très-légèrement sur un mot dont M. Andrieux vient sans doute d'enrichir la langue: l'altruisme, par opposition à l'égoïsme, est peut-être reservé à une haute fortune" https://gallica.bnf.fr/ark:/12148/bpt6k96691714/f76.item.r=%22altruisme%22, p. 70 (Retrieved 18 December 2022).

152 Cf. the article "Altruisme" in TLFi: http://stella.atilf.fr/Dendien/scripts/tlfiv5/affart.exe?68;s=1972021590;b=3;r=2;i=1 (Retrieved 18 December 2022).

153 Cf. Mahieu, François-Régis/Rapoport, Hilel (eds.) 1998: *Altruisme.* Paris. p. 6f.

154 An extreme, historical example of such an ideological reading is the entry "Altruismus" in *Meyers Neues Lexikon* of the Nationally-Owned Enterprise Bibliographical Institute Leipzig of 1972, 2nd edition: „Der A. ist als gesellschaftlich wirksame moralische Grundhaltung in den vorsozialistischen Ordnungen praktisch nicht realisierbar. Im Sozialismus wird der überlieferte Widerspruch von Egoismus und A. praktisch und theoretisch überwunden."

Atlantic, the term was coined by the enterprise "intel" with relation to the sharing of health data.[155] Also within medical literature, Kibbe (2016:41) writes:

> "The ability for individuals to contribute their data (data altruism) and participate in research measuring side effects (including standardized adverse events and toxicity classification) offer opportunities for access and analysis of the data."

Where the DGA is concerned, already the Commission proposal 2020/0767 of 25 November 2020 employs the term "data altruism", cf. the definition in Article 2, point 10. According to the European Commission, the term stems from the European strategy for data (COM(2020) 66) or is even older, as it is based on services that were already available at the time. The term has only been further developed and proposed a legal set-up by the DGA.[156]
The European Commission made "data-altruism" enter the legal act, without the term being discussed in depth in the European Parliament during the legislative procedure. Obviously, neither the meaning, suitability and impact of the term nor its possible reception by the general public played a role.[157]

E. Data Altruism

In this section, we will demonstrate the practical use of the theoretical considerations undertaken above, also in an effort to motivate further research. Specifically, the approach of this paper enables us to evaluate legal provisions and their interpretation in light of results from other disciplines, namely philosophy and linguistics.[158] This evaluation may not only lead to a more differentiated understanding of the law itself, but also furthers transdisciplinary understanding in the sense that all involved disciplines are presented with the perspectives that the respective other disciplines have on them.

I. Data Altruism in the Data Governance Act and its proposal

1. Proposal for a Data Governance Act

The proposal for a new Data Governance Act (COM(2020) 767 final, procedure 2020/0340(COD), abbreviated: DGA-P) contains a striking term: "data altruism" (first mentioned in Art. 1 para. 2). Specifically, consider the definition in Art. 2 no. 10: "'data

155 "Data altruism: people more likely to share personal health data for the sake of others and to save money": https://www.healthpopuli.com/2013/12/10/data-altruism-people-more-likely-to-share-personal-health-data-for-the-sake-of-others-and-to-save-money/ (Retrieved 18 December 2022).

156 E-Mail to Isolde Burr-Haase on 30 September 2021.

157 Cf. link to press release: https://www.consilium.europa.eu/en/press/press-releases/2021/10/01/eu-looks-to-make-data-sharing-easier-council-agrees-position-on-data-governance-act/.

158 For similar approaches, see *Rzadkowski*, RphZ 8 (2022), 220 (221) on „normative legal dogmatics" through philosophical evaluation of the law; and *Stark*, Interdisziplinarität der Rechtsdogmatik, p. 265 et seq.

altruism' means the consent by data subjects to process personal data pertaining to them, or permissions of other data holders to allow the use of their non-personal data without seeking a reward, for purposes of general interest, such as scientific research purposes or improving public services".

As has been described and analysed in this volume, the DGA-P was intended to improve data-sharing in the common market (and thereby foster the data economy), generally by increasing the availability of public-sector data and by incentivising businesses and private individuals to share (personal) data.[159] Regarding the latter, the Commission specifically envisioned a framework that greatly facilitates voluntary data sharing for the common good. It is worth quoting the explanatory memorandum in full here:

> "Chapter IV facilitates data altruism (data voluntarily made available by individuals or companies for the common good). It establishes the possibility for organisations engaging in data altruism to register as a 'Data Altruism Organisation recognised in the EU' in order to increase trust in their operations. In addition, a common European data altruism consent form will be developed to lower the costs of collecting consent and to facilitate portability of the data (where the data to be made available is not held by the individual)."[160]

On the background of this regulatory strategy, the Commission states:

> "In the case of data altruism, the low intensity regulatory intervention consisted in a voluntary certification framework for organisations seeking to offer such services, while the high intensity regulatory intervention envisaged a compulsory authorisation framework. As the latter would ensure a higher level of trust in making data available, which could contribute to more data being made available by data subjects and companies and result in a higher level of development and research, while generating a similar amount of costs, it was flagged in the Impact Assessment as the preferred option for this intervention area. However, the further discussions within the Commission revealed additional concerns around the potential administrative burden on organisations engaging in data altruism, and the relation of the obligations with future sectoral initiatives on data altruism. For this reason an alternative solution was retained, giving organisations engaging in data altruism the possibility to register as a 'Data Altruism Organisation recognised in the EU'. This voluntary mechanism will contribute to increase trust, while presenting a lower administrative burden than both a compulsory authorisation framework and a voluntary certification framework."[161]

Recitals (35)-(42) of the DGA-P further explain and justify the concept of data altruism and the regulatory choices. Specifically, Recital (35) holds that:

159 For a detailed explanation by the Commission itself, see the explanatory memorandum to the proposal, in this volume.

160 Explanatory Memorandum to the DGA-P (COM(2020) 767 final), Section 5.

161 Explanatory Memorandum to the DGA-P (COM(2020) 767 final), Section 3, point "impact assessment".

> "There is a strong potential in the use of data made available voluntarily by data subjects based on their consent or, where it concerns non-personal data, made available by legal persons, for purposes of general interest. Such purposes would include healthcare, combating climate change, improving mobility, facilitating the establishment of official statistics or improving the provision of public services. Support to scientific research, including for example technological development and demonstration, fundamental research, applied research and privately funded research, should be considered as well [as] purposes of general interest. This Regulation aims at contributing to the emergence of pools of data made available on the basis of data altruism that have a sufficient size in order to enable data analytics and machine learning, including across borders in the Union."

Art. 2 No. 10 DGA-P defines data altruism as "the consent by data subjects to process personal data pertaining to them, or permissions of other data holders to allow the use of their non-personal data without seeking a reward, for purposes of general interest, such as scientific research purposes or improving public services". This definition is crucial. Data altruism, at least in the context of the DGA-P is consent to data use with certain intentions (not to obtain a reward and that the data be used for purposes of general interest only). Although a deeper philosophical analysis will be undertaken in subsection (III.), it is worth highlighting two points here: Firstly, the definition resembles the classic structure of an altruistic act as stated above (B. I. 1.): An action (the giving of consent) with the intention of benefiting another (here: the public). Secondly, the specifics of this consent and its relation to the purposes of data processing are far from clear.[162] There was rough agreement regarding the DGA-P that the GDPR will prevail where personal data is donated, i. e. Art. 2 No. 10 DGA-P refers to consent as specified by Art. 7 GDPR.[163] Recitals (28) and (38) also indicate this. However, it was not obvious from the DGA-P and its recitals what would happen if the donated data were used for other purposes than those of general interest or if the donation of data itself already occurs with such other purposes in mind. In the latter case, such a donation would of course be possible under Art. 6 para 1 a) GDPR, but not count as "data altruism". The former case is more problematic and hinges on the "broadness" of the consent given.[164]

In any case, the regulation of data altruism in the DGA-P follows the second strategy outlined above: altruism is required (at least in the sense of unremunerated consent to certain kinds of data-processing that are assumed to be societally beneficial) and incentivized by proving a specific set of institutions and protections for the altruistic act in question.

162 Cf. *Baloup et al.*, SSRN Journal 2021, 3872703 (38 f.); *Schildbach*, ZD 2022, 148 (148 ff.).
163 Cf. *Baloup et al.*, SSRN Journal 2021, 3872703 (38 f.); *Schildbach*, ZD 2022, 148 (148 ff.).
164 Cf. *Baloup et al.*, SSRN Journal 2021, 3872703 (38 f.); *von Hagen/Völzmann*, MMR 2022, 176 (178 f.).

2. Data Governance Act

In comparison to the proposal, the finalized Data Governance Act defines data altruism in Art. 2 No. 16 as:

> "[…] the voluntary sharing of data on the basis of the consent of data subjects to process personal data pertaining to them, or permissions of data holders to allow the use of their non-personal data without seeking or receiving a reward that goes beyond compensation related to the costs that they incur where they make their data available for objectives of general interest as provided for in national law, where applicable, such as healthcare, combating climate change, improving mobility, facilitating the development, production and dissemination of official statistics, improving the provision of public services, public policy making or scientific research purposes in the general interest;"

The definition in the proposal that we have discussed above is much shorter and markedly different:

> "'data altruism' means the consent by data subjects to process personal data pertaining to them, or permissions of other data holders to allow the use of their non-personal data without seeking a reward, for purposes of general interest, such as scientific research purposes or improving public services".

Firstly, the definition shifted from an understanding of data altruism as consent to have one's data processed towards an understanding as an act, i. e. voluntary sharing of data with a certain intention. This is more in line with the philosophical (and ordinary) meaning of the term.[165] The definition has also become much more nuanced and includes two aspects not present in the proposal: The possibility to be compensated merely for the costs of data sharing and the ability for member states to further specify "objectives of general interest" and "establish national policies for data altruism" (Recital 45, Art. 16 subpara. 1 sentence 2).

The first aspect is interesting, as it relates to motivational issues discussed above (B. I.): Pure altruism is rare. Therefore, it might incentivize data donations further if they did not cause an immediate financial loss due to costs the of data sharing itself. In a sense, this is as if the recipient of a donation paid for the bank transfer. Nevertheless, if we chose to define altruism with *Landes* and *Posner* as "the making of any transfer that is not compensated"[166], then data altruism is not altruism in their sense if the costs of data sharing are compensated. Such compensations, however, are in line with what the DGA intends to achieve. Remarkably, the definitional addition occurred very late in the procedure. It can be traced

165 It appears that this change was first proposed by the Council in its first compromise proposal (22.02.2021, document 6297/21) and justified as a clarification of the definition, see p. 2 of said document.

166 *Landes/Posner*, The American Economic Review 68 (1978), 417 (417).

back to the second Trilogue on 30/11/2021, where it was drafted as a compromise between the EP mandate, which excluded the reception of any reward and the Council mandate, that still read, as the Commission proposal did, "without seeking a reward".[167] The comparison makes the issue at hand clear (a point that is not made in the research published, as far as we are aware): The English version of the proposal could have been constructed such that while the data subject/holder must not *seek* a reward actively, they may *receive* a (substantial) compensation. This would indeed invalidate the entire concept of "data altruism" and transform it to an ordinary, albeit somewhat complicated "data sale". The German version of the proposal was somewhat different[168], as "zur unentgeltlichen Nutzung" could have been interpreted as excluding the existence of any kind of reward or compensation. The agreed compromise text solves this unclarity and finds a middle ground between the data subject/holder having to forgo any kind of compensation (thus maximizing the necessary sacrifice and lowering incentives to donate) and the data subject/holder being compensated beyond the immediate costs of data sharing (thus jeopardizing the altruism).

The second aspect was already somewhat indicated by recital (37) of the DGA-P.[169] It is nevertheless sensible to allow for a broad range of such objectives, especially as members states might have substantially different conceptions of general interest.[170] Of course, non-exhaustive lists imply the danger of unfitting choices made by member states. This problem can be mitigated by the (implicit) requirement that the objectives provided for in national law have some similarity to those listed in the regulation, by the necessity of data subjects/holders to provide consent or allow the use of their data and by the applicability of the Charter.

As regards the regulatory specifics, which are not the core issue of this paper, the basic approach is unchanged. The gist of the DGA is still to enable the creation of recognised data altruism organisations which have to fulfil requirements of transparency, security and operability (Art. 17-24) and to establish (by way of implementing acts) a European data altruism consent form (Art. 25). Art. 16 and 22 were added as an outcome of the Trilogue negotiations, both proposed by the Council (then as Art. 14a and Art. 19a)[171].

167 Proposal for a Data Governance Act, Version for Trilogue on 30.11.2021, https://fragdenstaat.de/dokumente/143562-20200340cod-30_11_2021-versionfortrilogueon30november2021, p. 111.

168 The Dutch, French Italian and Spanish versions are broadly similar to the English version in that they describe the intention of the donating actor.

169 The first sentence reads: "This Regulation is without prejudice to the establishment, organisation and functioning of entities that seek to engage in data altruism pursuant to national law."

170 *Dillmann/Heinemann*, in: LegislEUlab der Europäischen Rechtslinguistik 2020, p. 272 et seq.

171 Proposal for a Data Governance Act, Version for Trilogue on 30.11.2021, https://fragdenstaat.de/dokumente/143562-20200340cod-30_11_2021-versionfortrilogueon30november2021; cf. also *Tolks*, MMR 2022, 444 (447 et seq.)

II. Short review of scholarly articles on data altruism

How has the proposal (and finalized) version of "Data altruism" been received in the literature? As (somewhat) expected, many voices have been critical, albeit more of the regulatory technique than of the general aim.

An early and vocal critic of the Data Governance Act and its proposal has been *Winfried Veil* who wrote in December 2020 on the proposal that "the Commission is screwing up a good idea"[172] and concluded scathingly in December 2021 on the finalized version: "With the Data Governance Act (DGA) the EU has reached a new level of legislative hubris. It invents obligations with an excessiveness that actually only allows the conclusion that this is a satirical exaggeration. One could also say: Dada meets Kafka. The result is a bureaucratic collection of nonsense for which Aline Blankertz suggests the term „dataism". Should the EU really be serious about all this?"[173] *Veils* main point of contention is that the regulation is likely to be ineffective, as it creates a host of new obligations for potential data altruism organisations without corresponding incentives for potential organisations to meet such obligations, since data altruism organisations have to operate on a non-profit basis both under Art. 16 point c) DGA-P and Art. 18 point c) DGA.[174] This is especially the case against the backdrop of the GDPR, which, as *Veil* rightfully analyses, already allows data subjects to share their data freely and enables users to carefully control the extent of their consent to said sharing. In light of this, *Veil* argues that additional incentives for potential data altruists need not be set, because the GDPR can already be regarded as a "gold standard" in that regard and almost of those who would be willing to donate their data under the DGA are already willing to do so under the GDPR. Structurally, this argument is similar to the ones made against a legal duty to rescue: the act in question is already carried out, perhaps due to a perceived moral or social obligation. Thus, a legal regulation would at best be superfluous.[175] Of course, the likely effect of a legal rule or the lack thereof is ultimately an empirical question. To that end, the Commission's impact assessment provides some indication as to the expectations of the Commission, mostly based on survey data.[176] However, a comprehensive motivational assessment has not been carried out. As a more effective alternative to the DGA-P, *Veil* proposed numerous changes to the GDPR.[177]

172 *Veil*, Datenaltruismus: Wie die EU-Kommission eine gute Idee versemmelt, CR-online.de Blog 01.12.2020, https://www.cr-online.de/blog/2020/12/01/datenaltruismus-wie-die-eu-kommission-eine-gute-idee-versemmelt/.

173 *Veil*, DGA is Dada, CR-online.de Blog 07.12.2021, https://www.cr-online.de/blog/2021/12/07/dga-is-dada/.

174 *Veil*, DGA is Dada, CR-online.de Blog 07.12.2021, https://www.cr-online.de/blog/2021/12/07/dga-is-dada/.

175 *Veil*, DGA is Dada, CR-online.de Blog 07.12.2021, https://www.cr-online.de/blog/2021/12/07/dga-is-dada/.

176 Impact Assessment Report on the Data Governance Act, SWD(2020) 295 final.

177 *Veil*, Datenaltruismus: Wie die EU-Kommission eine gute Idee versemmelt, CR-online.de Blog 01.12.2020, https://www.cr-online.de/blog/2020/12/01/datenaltruismus-wie-die-eu-kommission-

Regarding the DGA-P, *Steinrötter* criticised both aspects. Firstly, he argued that while the idea of data donations was not new and the German covid app a pertinent example[178], the term "altruism" may be viewed with philosophical and economic scepticism. More rhetorically than analytically, *Steinrötter* surmises the (data) altruist might be an egoist in hiding.[179] The economic argument is more serious: data have a value. Therefore, altruism disturbs the interplay of data supply and demand that would come about were the data sold.[180] This argument, although not lead to an impactful conclusion by *Steinrötter*, is reminiscent of the normative arguments against altruism on the basis of economic efficiency discussed above (B. II. 3.). Furthermore, *Steinrötter*, in agreement with *Veil*, criticises the overly bureaucratic regulatory approach and questions whether the DGA-P will really incentivize altruism.

In the same Vein, *Spindler* has argued that the DGA-P's provisions on data altruism, while innovative, are not strictly necessary.[181] Nevertheless, he opines that a lack of legal certainty might hinder donations of data and that in this regard, the DGA-P might not contain sufficient legal duties for data altruist organizations.[182] In a detailed analysis mostly on the relation to the GDPR, *von Hagen* and *Völzmann* found that data altruism may be in societal and economic interest and in that case it would be the role of the law to incentivize and enable altruism without harm to GDPR and fundamental rights.[183] In this regard, additional requirements of information (for data subjects/holders) might not necessarily further transparency, due to the risk of information overload.[184]

Shabani (for, or from the perspective of the science community) points out that "[a]lthough the concept of data altruism was just recently introduced in a legislation, broader ethical and sociological discussions around it have been around for some time. […] To date, such use of data altruism as a framework for data sharing has been limited to a very few examples, including in the context of Personal Genome Project(s), which pursue a citizen science approach in which individuals directly make their genomic and health-related data available for research (10). This is mainly because a higher threshold was set in terms of the familiarity of the participants with the relevant privacy concerns and their willingness to (partly) forfeit their privacy rights, through required entrance tests and signing open consent, respectively

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eine-gute-idee-versemmelt/.

178 For results, see https://corona-datenspende.de/science/en/, on this see *Spajic,* The German corona-data-donation-app as an example of the concept of data donation, KU Leuven CITIP Blog, https://www.law.kuleuven.be/citip/blog/the-german-corona-data-donation-app-as-an-example-of-the-concept-of-data-donation/.

179 *Steinrötter*, ZD 2021, 61 (62).

180 *Steinrötter*, ZD 2021, 61 (62).

181 *Spindler*, CR 2021, 98 (mn. 31, 41).

182 *Spindler*, CR 2021, 98 (mn. 41).

183 *von Hagen/Völzmann*, MMR 2022, 176 (181).

184 *von Hagen/Völzmann*, MMR 2022, 176 (179 f.).

(11). These measures cannot be easily achieved at a population level (11). Although the proposal for the DGA aims to codify data altruism, there is little evidence as to whether the concept as proposed partly or fully aligns with how data altruism or similar concepts such as data donation have been previously conceptualized in the literature. Looking at the proposal for the DGA, it seems that the concept of general interest or common good plays a pivotal role in how the proposal defines data use on altruistic grounds."[185]

Finally, *Schildbach* and *Tolks*, writing on the DGA-P and the DGA, respectively, both question the efficacy of the provisions on data altruism. *Schildbach* argues that that they are mostly symbolic in nature regarding personal data, since, due to the lack of changes to the GDPR, the DGA-P boils down to the creation of potentially more trustworthy organizations.[186] Furthermore, he raises the interesting point that (monetary) donations typically cannot be rescinded and consequently, the legality of data processing should not primarily be based on consent.[187] *Tolks*, after careful dogmatic analysis of the finalized DGA, points out that the criticisms of the proposal have not fully been alleviated and that it is still unclear whether any meaningful incentivization will occur.[188]

In light of such difficulties, *Kruesz* and *Zopf* have proposed a "regulatory sandbox model" to alleviate the problem that the DGA-P did not provide sufficient incentives for data altruist organizations (and, arguably, the DGA also does not achieve this goal). They argue that the Commission, in its analysis of obstacles to data altruism, has wrongly focused only on the motivation of the data holder/subject.[189] To solve this, *Kruesz* and *Zopf* conceptualize an experimental phase during which there is close communication between the data protection authority and the data altruist organization and during which fines due to breaches of the GDPR will only be imposed for intentional violations.[190]

In spite of the criticism, not all published research is negative in tone. Indeed, some expect the DGA to be a "landmark for reuse of data".[191] *Salobir*, for instance, believes "qu'il est possible de construire un système facilitant grandement la mise à disposition de données pour aider des initiatives œuvrant en faveur de l'intérêt général à se construire."[192]

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185 *Shabani*, Science 375 (2022), 1357 (1538 et seq.).
186 *Schildbach*, ZD 2022, 148 (152 f.)
187 *Schildbach*, ZD 2022, 148 (152).
188 *Tolks*, MMR 2022, 444 (448 f.).
189 *Kruesz/Zopf*, Eur. Data Prot. L. Rev. 7 (2021), 569.
190 *Kruesz/Zopf*, Eur. Data Prot. L. Rev. 7 (2021), 569.
191 *van de Hoven et al.*, Opinio Juris In Comparatione 2021, 131 (152).
192 *Salobir*, Annales des Mines - Réalités industrielles Août 2023 (2022), 79 (preprint). For an extremely detailed report with numerous policy recommendations for data altruists and data altruism organisations alike, see *Salobir et al.*, le data altruisme: une initiative européenne les données au service de l'intérêt général, Human Technology Foundation 2021, https://uploads-ssl.webflow.com/5f1c22c0db81f12f7b91ff40/6218ad37fc989daa980f3eae_Rapport%20HTF%20-%20Sopra%20Steria%20Next_vf%20(1).pdf.

To end this short review on a positive note, significant interest has been expressed towards the DGA in the science community.[193] Perhaps, this justifies the hope that at least some of the positive impacts the Commission and the lawmakers have been aiming for can be achieved in the near future, even though the DGA is far from regulatory perfection.

III. Concluding analysis of (data) altruism

This short analysis of the DGA(-P) and the reception in the literature show that the theoretical considerations on altruism as a (moral) concept and on the possible relations between altruism and the law are highly relevant, especially for the law-making process. In this process, descriptive as well as normative issues need to be considered.

Lawmakers need to clearly define what type of behaviour they refer to with the term "altruism" and analyse the motivational structure underpinning the behaviour in question. Under what conditions is it (un)likely that the individuals would engage in altruistic behaviour? Specifically, how does the intended measure influence this motivational structure? Here, the labelling of a behaviour as altruistic and the argumentation the lawmakers communicate as to the desirability of this behaviour may also have (un)intended effects.

Normatively, the main question is whom the behaviour in question benefits in what ways and to what extent. Here, difficult conflicts between competing individuals and their (legal and moral) rights as well as and between individuals and society may arise. While, for example, it would be extraordinarily beneficial for (global) society if all individuals engaged in a certain kind of behaviour (like, for example, maintaining a healthy body or donating 10 % of their income), enforcing such behaviour may be at odds with individual rights. Similarly, *Nagel's* approach that starts from the reasonable observation that all humans have profound, shared interests in not being harmed, the quality of everyone in the importance of their interests makes prioritizing oneself and one's own aims and desires over others, while legal and socially accepted, morally problematic. Also, careful considerations of economic aspects might indeed reveal that while altruism may benefit the recipient of the altruistic act and arise from perfectly voluntary transactions, the total societal effect is harmful (for example, due to a destruction of market mechanisms that allocate resources effectively).

In light of this, lawmakers need to assess what type of regulatory strategy is beneficial in order to not jeopardize the desired outcome and not be either ineffective or overly demanding. The regulatory strategy chosen in the DGA, namely the second of the three strategies above, appears sensible in that regard. While it is true that data protection can be an obstacle to beneficial economic and societal effects of big data, taking data from

193 *Shabani*, Molecular Systems Biology 17 (2021), e10229; *Tombal*, Imposing data sharing among private actors; *Piachaud-Moustakis*, Pharmaceutical Technology 34 (2022), 8.

individuals forcibly or at least forcing them on pain of fines to share their data (strategy 1) would have been incompatible with fundamental rights. However, merely incentivizing a certain kind of behaviour (the sharing of a certain kind of data) without reference to the mental state (consent/permission to the processing/use of the data for the specified objectives) would have been in conflict with the consent-based model of the GDPR and would have put less emphasis on the fact that the desired motivation of the data subjects/holders is one where they share away their data for the greater good.

Nevertheless, the underlying conflict between data protection and privacy by design and the data economy is not easy to solve. While individuals, as societal practice shows, are willing to share significant amounts of data in order to benefit from certain services, the lack of such benefit may mean that counting on (incentivized) altruism might not be enough regarding economic goals. In the end, there are good reasons to be a data altruist, as, for example one's health data may improve medical treatments and thereby alleviate individual suffering and as generally, powerful data driven companies may help the EU to compete with the US and China economically while safeguarding its approach to data protection and individual rights. Still, "data egoism" may, apart from comporting with the rights of the individual keeping their data secret, also have positive societal consequences: data that is not shared cannot be misused and keeping one's data private can imply taking action against the continued commercialization, quantification and commodification of human endeavours that is behind what we commonly praise as the "data economy".

F. Conclusions

As this paper has shown, altruism and law are not polar opposites. Indeed, there is complex and multifaceted interplay between altruism and legal regulations in many different fields of law. Rather than keeping warring egoists at bay, the law seeks to establish structures, incentives and institutions to foster desirable behaviour. Still, acts expressly referring to altruism have been rare, perhaps also due to a fear of overly moralizing the law. While it is true that, as the critics have shown, data sharing for objectives in the general interest was easily possible before the DGA (or even the DGPR) and "data altruism" is, in that regard, a mere label, pointing out that the morally justified is legally possible may indeed set the tone for the coming decades of the (shared) data economy and foster wider availability of data.

Yet, the underlying conflicts and issues remain. They cannot be solved by egoistic thinkers trying to enlarge their own knowledge for private gain, but only by altruistic researchers openly sharing their thoughts and results so that our collective, intersubjective and transdisciplinary understanding of the problems that will accompany us through the (digital) century ahead may grow.

G. Bibliography

Audi, Robert, Review of The Possibility of Altruism, Metaphilosophy 5 (1974), p. 242–258 [cit.: ***Audi*, Metaphilosophy 5 (1974)**]

Ayer, Alfred J., Language, Truth and Logic, Harmondsworth 1983 [cit.: ***Ayer*, Language, Truth and Logic**]

Ballot Squirawski, Claire. 'Les Éléments Constitutifs, Essai Sur Les Composantes de l'infraction'. Diss., Paris-Sud 2017 [cit.: ***Ballot Squirawski*, Les Éléments Constitutifs**].

Baloup, Julie et al., White Paper on the Data Governance Act, SSRN Electronic Journal 2021, 3872703 [cit.: ***Baloup et al.*, SSRN Journal 2021, 3872703**]

Beck, Susanne, Schuld und Verantwortung, in: Eric Hilgendorf/Jan C. Joerden (eds.), Handbuch Rechtsphilosophie, Stuttgart 2017, p. 394–400 [cit.: ***Beck*, in: Handbuch Rechtsphilosophie**]

Becker, Gary S., Altruism in the Family and Selfishness in the Market Place, Economica 48 (1981), p. 1–15 [cit.: ***Becker*, Economica 48 (1981)**]

Bierhoff, Hans Werner, Psychologie hilfreichen Verhaltens, Stuttgart 1990 [cit.: ***Bierhoff*, Psychologie hilfreichen Verhaltens**]

Bigenwald, Ariane/Chambon, Valerian, Criminal Responsibility and Neuroscience: No Revolution Yet, Frontiers in Psychology 10 (2019), p. 1406 [cit.: ***Bigenwald/Chambon*, Front. Psychol. 10 (2019)**]

Bix, Brian H., Natural Law: The Modern Tradition, in: Jules L. Coleman/Kenneth Einar Himma/Scott J. Shapiro (eds.), The Oxford Handbook of Jurisprudence and Philosophy of Law, 2004 [cit.: ***Bix*, Natural Law: The Modern Tradition, in: The Oxford Handbook of Jurisprudence and Philosophy of Law**]

Blomsma, Jeroen, Mens Rea and Defences in European Criminal Law, Cambridge, United Kingdom 2012 [cit.: ***Blomsma*, Mens Rea and Defences in European Criminal Law**]

Böckenförde, Ernst-Wolfgang, The Rise of the State as a Process of Secularization, in: Ernst-Wolfgang Böckenförde (ed.), State, Society, and Liberty: Studies in Political Theory and Constitutional Law, New York 1991 [cit.: ***Böckenförde*, in: State, Society, and Liberty**]

Brose, Karl, Nietzsche und Comte: Zum Verhältnis von Philosophie und Soziologie bei Nietzsche, ARSP: Archiv für Rechts- und Sozialphilosophie / Archives for Philosophy of Law and Social Philosophy 63 (1977), p. 239–254 [cit.: ***Brose*, ARSP: Archiv für Rechts- und Sozialphilosophie / Archives for Philosophy of Law and Social Philosophy 63 (1977)**]

Bung, Jochen, Wissen und Wollen im Strafrecht: zur Theorie und Dogmatik des subjektiven Tatbestands, Frankfurt am Main 2009 [cit.: ***Bung*, Wissen und Wollen im Strafrecht**]

Bunnenberg, Jan Niklas, Privates Datenschutzrecht: über Privatautonomie im Datenschutzrecht - unter besonderer Berücksichtigung der Einwilligung und ihrer vertraglichen Kopplung nach Art. 7 Abs. 4 DS-GVO, 1st edition, Baden-Baden 2020 [cit.: ***Bunnenberg*, Privates Datenschutzrecht**]

Capraro, Valerio et al., Increasing altruistic and cooperative behaviour with simple moral nudges, Scientific Reports 9 (2019), p. 11880 [cit.: ***Capraro et al.*, Sci Rep 9 (2019)**]

Ceccaldi, Stéphane, Sur la nature conjecturale de l'élément moral : l'exemple de la dénonciation calomnieuse, Revue de science criminelle et de droit pénal comparé N° 3 (2010), p. 587 [cit.: ***Ceccaldi*, Revue de science criminelle et de droit pénal comparé N° 3 (2010)**]

Clark, Stephen R.L., Aristotle's Man, 1975 [cit.: ***Clark*, Aristotle's Man**]

Dahlstrom, Daniel O., Die altruistische Einstellung, Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics 6 (1998), p. 73–92 [cit.: ***Dahlstrom*, Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics 6 (1998)**]

Darwall, Stephen L., Nagel's Argument for Altruism, Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition 25 (1974), p. 125–130 [cit.: ***Darwall*,**

Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition 25 (1974)]

Denton, Frank E., The Case against a Duty to Rescue, Canadian Journal of Law and Jurisprudence 4 (1991), p. 101–132 [cit.: ***Denton*, Can. J. L. & Jurisprudence 4 (1991)**]

Dillmann, Ruben/Heinemann, Ellen, The concepts of "public order" and "public policy" in the Directive 2008/115/EC and in the legislative procedure 2018/0329(COD), in: Isolde Burr-Haase/Ruben Dillmann/Ellen Heinemann/Johanna Mattissen (eds.), LegislEUlab der Europäischen Rechtslinguistik 2020 : kommentiertes Ergebnis-Dossier der Cologne Summer School der Europäischen Rechtslinguistik (CSS-ERL), Köln 2021, p. 272–297 [cit.: ***Dillmann/Heinemann*, in: LegislEUlab der Europäischen Rechtslinguistik 2020**]

Dinovitzer, Ronit/Garth, Bryant, Pro Bono as an Elite Strategy in Early Lawyer Careers, SSRN Electronic Journal 2008, 1291998 [cit.: ***Dinovitzer/Garth*, SSRN Journal 2008, 1291998**]

Doris, John/Stephen Stich/Lachlan, Walmsley, Empirical Approaches to Altruism, in: Edward N. Zalta (ed.), The Stanford Encyclopedia of Philosophy, Spring 2020 edition, https://plato.stanford.edu/archives/spr2020/entries/altruism-empirical/. [cit.: ***Doris/Stich/Walmsley*, in: The Stanford Encyclopedia of Philosophy, Empirical Approaches to Altruism**]

Drury, S. B., H.L.A. Hart's Minimum Content Theory of Natural Law, Political Theory 9 (1981), p. 533–546 [cit.: ***Drury*, Political Theory 9 (1981)**]

Effer-Uhe, Daniel/Mohnert, Alica, Psychologie für Juristen, Baden-Baden 2019 [cit.: ***Effer-Uhe/Mohnert*, Psychologie für Juristen**]

Elgat, Guy, Nietzsche's Critique of Pure Altruism—Developing an Argument from *Human, All Too Human*, Inquiry 58 (2015), p. 308–326 [cit.: ***Elgat*, Inquiry 58 (2015)**]

Finnis, John, Natural Law and Natural Rights, 2nd edition, Oxford/New York 2011 [cit.: ***Finnis*, Natural Law and Natural Rights**]

Fish, Stanley Eugene, Doing what comes naturally: change, rhetoric, and the practice of theory in literary and legal studies, 5th edition, Durham 2007 [cit.: ***Fish*, Doing what comes naturally**]

Foster, Charles/Herring, Jonathan, Altruism, Welfare and the Law, Cham 2015 [cit.: ***Foster/Herring*, Altruism, Welfare and the Law**]

Freund, Georg/Koch, Alexander, StGB § 323c Unterlassene Hilfeleistung; Behinderung von hilfeleistenden Personen, in: Volker Erb/Jürgen Schäfer (eds.), Olaf Hiebaum (vol. ed.), Münchener Kommentar zum Strafgesetzbuch, Bd. 6 §§ 298-358 StGB, 4th edition, Munich 2022 [cit.: ***Freund/Koch*, in: Münchener Kommentar zum StGB, StGB § 323c Unterlassene Hilfeleistung; Behinderung von hilfeleistenden Personen**]

Freund, Georg/Rostalski, Frauke, Strafrecht Allgemeiner Teil: personale Straftatlehre, 3rd edition, Berlin [Heidelberg] 2019 [cit.: ***Freund/Rostalski*, Strafrecht Allgemeiner Teil**]

Fruehwald, Scott, Reciprocal Altruism as the Basis for Contract, University of Louisville Law Review 47 (2008), p. 489–530 [cit.: ***Fruehwald*, U. Louisville L. Rev. 47 (2008)**]

Gaakeer, Jeanne, Futures of Law and Literature: A Jurist's Perspective, in: Christian Hiebaum/Susanne Knaller/Doris Pichler (eds.), Recht und Literatur im Zwischenraum: aktuelle inter- und transdisziplinäre Zugänge: contemporary inter- and transdisciplinary approaches = Law and literature in-between, Bielefeld 2015, p. 71–103 [cit.: ***Gaakeer*, in: Law and Literature In-Between**]

Gaede, Karsten, StGB § 323c Unterlassene Hilfeleistung, in: Urs Kindhäuser/Ulfrid Neumann/Hans-Ullrich Paeffgen (eds.), NomosKommentar Strafgesetzbuch, 5th edition, Baden-Baden 2017 [cit.: ***Gaede*, in: NomosKommentar Strafgesetzbuch, StGB § 323c Unterlassene Hilfeleistung**]

Galligan, Thomas C. Jr., Aiding and Altruism: A Mythopsycholegal Analysis, University of Michigan Journal of Law Reform 27 (1993), p. 439–520 [cit.: ***Galligan*, U. Mich. J.L. Reform 27 (1993)**]

Gallwas, Hans-Ullrich, Das Menschenbild in Entscheidungen des Bundesverfassungsgerichts, in: Rolf Oerter (ed.), Menschenbilder in der modernen Gesellschaft, 1999, p. 55–64 [cit.: ***Gallwas*, in: Menschenbilder in der modernen Gesellschaft**]

Greaves, Hilary/Pummer, Theron (eds.), Effective Altruism: Philosophical Issues, Oxford/New York 2019 [cit.: ***Greaves/Pummer*, Effective Altruism**]

Greiner, Wille und Interesse, Altruismus und Egoismus im Recht der Geschäftsführung ohne Auftrag, Archiv für die civilistische Praxis 219 (2019), p. 211 [cit.: ***Greiner*, AcP 219 (2019)**]

Gröschner, Rolf, Optimieren statt obligieren: Altruismus und Supererogation im Verfassungsstaat des Grundgesetzes, Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics 6 (1998), p. 181–190 [cit.: ***Gröschner*, Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics 6 (1998)**]

Grundmann et al. (eds.), Altruistische Rechtsgeschäfte sowie Methoden- und Rezeptionsdiskussionen im deutsch-lusitanischen und internationalen Rechtsverkehr: 20. und 21. Jahrestagung der Deutsch-Lusitanischen Juristenvereinigung in Osnabrück und Köln = Negócios jurídicos altruístas e discussões de método e de receção nas relações jurídicas luso-alemãs e internacionais, 1st edition, Baden-Baden 2014 [cit.: *Grundmann et al.* (eds.)**, Altruistische Rechtsgeschäfte sowie Methoden- und Rezeptionsdiskussionen im deutsch-lusitanischen und internationalen Rechtsverkehr**]

Häberle, Peter/Kotzur, Markus, Europäische Verfassungslehre, 8th edition , Baden-Baden 2016 [cit.: ***Häberle/Kotzur*, Europäische Verfassungslehre**]

Habermas, Jürgen, Theorie des kommunikativen Handelns – Handlungsrationalität und gesellschaftliche Rationalisierung, Vol. 1, 1988 [cit.: ***Habermas*, Theorie des kommunikativen Handelns Vol. 1**]

Habermas, Jürgen, Between Facts and Norms: contributions to a discourse theory of law and democracy, 1 MIT Press paperback, 4th edition, Cambridge, Mass. 2001 [cit.: ***Habermas*, Between Facts and Norms**]

Haldane, John H., Natural Law and Ethical Pluralism, in: Richard Madsen/Tracy B. Strong (eds.), The Many and the One, 2009, p. 89–114 [cit.: ***Haldane*, in: Natural Law and Ethical Pluralism**]

Hart, H. L. A., Positivism and the Separation of Law and Morals, Harvard Law Review 71 (1958), p. 593–629 [cit.: ***Hart*, Harvard Law Review 71 (1958)**]

Hart, H. L. A., The Concept of Law, 2nd edition, Oxford/New York 1994 [cit.: ***Hart*, The Concept of Law**]

Herring, Jonathan, Great Debates in Criminal Law, 4th edition, London 2020 [cit.: ***Herring*, Great Debates in Criminal Law**]

Hey, Johanna, Spendenrecht, in: Klaus Tipke/Joachim Lang (eds.), 24th edition, Köln 2021 **[**cit.: ***Hey*, in: Tipke/Lang, Steuerrecht, B. Spendenrecht**]

Hicks, Stephen R. C., Egoism in Nietzsche and Rand, The Journal of Ayn Rand Studies 10 (2009), p. 249–291 [cit.: ***Hicks*, The Journal of Ayn Rand Studies 10 (2009)**]

Holzmann, Daniel, Bestrafter Altruismus? - Haftung aus Gefälligkeitsverhältnissen, Frankfurt am Main 2015 [cit.: ***Holzmann*, Bestrafter Altruismus?**]

Hoven, Elisa/Rostalski, Frauke, Zur Legalisierung der Leihmutterschaft in Deutschland, JuristenZeitung 77 (2022), p. 482-491 [cit.: ***Hoven/Rostalski*, JZ 77 (2022)**]

Inkmann, Kilian, Die Sittenwidrigkeit von Pflichtteilsverzichten, 1st edition, Baden-Baden 2019 [cit.: *Inkmann*, Sittenwidrigkeit von Pflichtteilsverzichten]

Isensee, Josef, Das Grundrecht auf Sicherheit, Berlin 1983 [cit.: ***Isensee*, Das Grundrecht auf Sicherheit**]

Iyer, Ravi et al., Understanding Libertarian Morality: The Psychological Dispositions of Self-Identified Libertarians, PLoS ONE 7 (2012), p. e42366 [cit.: ***Iyer et al.*, PLoS ONE 7 (2012)**]

James, Nick/Franci, Cantatore. 2016. 'Lawyers as Heroes: Promoting Altruism in Law Students through Pro Bono Teaching Clinics', Conference Paper, "The Rise and Future of Heroism Science", Perth 2016 [cit.: ***James/Cantore*, Lawyers as Heroes: Promoting Altruism in Law Students through Pro Bono Teaching Clinics]**

Jeffries, Vincent (ed.), The Palgrave Handbook of Altruism, Morality, and Social Solidarity, Houndmills, Basingstoke, Hampshire ; New York, NY 2014 [cit.: ***Jeffries (ed.)*, The Palgrave Handbook of Altruism, Morality, and Social Solidarity**]

Jiyuan, Yu, The Mean, the Right and Archery, Procedia -- Social and Behavioral Sciences 2 (2010), p. 6796–6804 [cit.: ***Jiyuan*, Procedia -- Social and Behavioral Sciences 2 (2010)**]

Kanalan, Ibrahim/Wilhelm, Maria/Schwander, Timo, Die Unverzichtbarkeit der Werte? Zur Suspendierung der drei Säulen der europäischen Rechtsordnung, Der Staat 56 (2017), p. 193–226 [cit.: ***Kanalan/Wilhelm/Schwander*, Der Staat 56 (2017)**]

Kant, Immanuel, The Metaphysics of Morals, Cambridge/New York 1991 [cit.: ***Kant*, The Metaphysics of Morals**]

Kay, Fiona/Granfield, Robert, When altruism is remunerated: Understanding the bases of voluntary public service among lawyers, Law & Society Review 56 (2022), p. 78–100 [cit.: ***Kay/Granfield*, Law & Society Review 56 (2022)**]

Kennedy, Duncan, Form and Substance in Private Law Adjudication, Harvard Law Review 89 (1976), p. 1685–1778 [cit.: ***Kennedy*, Harvard Law Review 89 (1976)**]

Kolm, Serge-Christophe, Altruism and Efficiency, Ethics 94 (1983), p. 18–65 [cit.: ***Kolm*, Ethics 94 (1983)**]

Kolm, Serge-Christophe, Chapter 1 Introduction to the Economics of Giving, Altruism and Reciprocity, in: Serge-Christophe Kolm/Jean Mercier-Ythier (eds.), Handbook of the Economics of Giving, Altruism and Reciprocity, 2006, p. 1–122 [cit.: ***Kolm*, in: Handbook of the Economics of Giving, Altruism and Reciprocity**]

Kortmann, Jeroen, Altruism in Private Law: Liability for Nonfeasance and Negotiorum Gestio, Oxford/New York 2005 [cit.: ***Kortmann*, Altruism in Private Law**]

Kraut, Richard, Altruism, in: Edward N. Zalta (ed.), The Stanford Encyclopedia of Philosophy, Fall 2020 edition, Stanford 2020 [cit.*: **Kraut*, in: The Stanford Encyclopedia of Philosophy, Altruism**]

Kruesz, Corina/Zopf, Felix, The Concept of Data Altruism of the Draft DGA and the GDPR: Inconsistencies and Why a Regulatory Sandbox Model May Facilitate Data Sharing in the EU Reports: European Union, European Data Protection Law Review (EDPL) 7 (2021), p. 569–579 [cit.: ***Kruesz/Zopf*, Eur. Data Prot. L. Rev. 7 (2021)**]

Lacey, Nicola, In Search of Criminal Responsibility: Ideas, Interest and Institutions, First edition, Oxford, United Kingdom 2016 [cit.: ***Lacey*, In Search of Criminal Responsibility**]

Landes, William M./Posner, Richard A., Altruism in Law and Economics, The American Economic Review 68 (1978), p. 417–421 [cit.: ***Landes/Posner*, The American Economic Review 68 (1978)**]

Leverbe, Emmanuelle, Essai sur l'altruisme en droit civil: Thèse pour l'obtention du grade de docteur en droit, arrêté du 30 mars 1992, université de Pau et des pays de l'Adour, faculté de droit, d'économie et de gestion, présentée et soutenue publiquement le 17 décembre 2003, Lille 2005 [cit.: ***Leverbe*, Essai sur l'altruisme en droit civil**]

Liu, JeeLoo, Moral Reason, Moral Sentiments and the Realization of Altruism: A Motivational Theory of Altruism, Asian Philosophy 22 (2012), p. 93–119 [cit.: ***Liu*, Asian Philosophy 22 (2012)**]

Locke, Edwin A./Kenner, Ellen, How Altruism Undermines Mental Health and Happiness, Handbook of Managerial Behavior and Occupational Health, 2009, p. 179–192 [cit.: ***Locke/Kenner*, in: Handbook of Managerial Behavior and Occupational Health**]

Loder, Reed Elizabeth, Tending the Generous Heart: Mandatory Pro Bono and Moral Development Kutak Foundation Symposium Issue, Georgetown Journal of Legal Ethics 14 (2000), p. 459–508 [cit.: ***Loder*, Geo. J. Legal Ethics 14 (2000)**]

Luhmann, Niklas, Kann die moderne Gesellschaft sich auf ökologische Gefährdungen einstellen?, in: Kai-Uwe Hellmann (eds.), Protest: Systemtheorie und soziale Bewegungen, Frankfurt am Main 2016, p. 46–63 [cit.: ***Luhmann*, in: Protest**]

Luhmann, Niklas, Protest: Systemtheorie und soziale Bewegungen, 5th edition, Frankfurt am Main 2016 [cit.: ***Luhmann*, Protest**]

Mahlmann, Matthias, Rechtsphilosophie und Rechtstheorie, 5th edition, 2019 [cit.: ***Mahlmann*, Rechtsphilosophie und Rechtstheorie**]

Marco, Gines, The Impact of the Concepts of „Common Good", „Justice" and „Diversity" in the Natural Law of our Time, Journal of Vincentian Social Action 3 (2018), p. 52–64 [cit.: ***Marco*, JoVSA 3 (2018)**]

McGarry, Kathleen. 2000. Testing Parental Altruism: Implications of a Dynamic Model. Report of the National Bureau of Economic Research, 2000 (online: http://www.nber.org/papers/w7593.pdf) [cit.: ***McGarry*, Testing Parental Altruism: Implications of a Dynamic Model**]

McNamara, Paul/Van de Putte, Frederik, Deontic Logic, in: Edward N. Zalta (ed.), The Stanford Encyclopedia of Philosophy, Fall 2022 edition, Stanford 2022 [cit.: ***McNamara/Van De Putte*, in: The Stanford Encyclopedia of Philosophy, Deontic Logic**]

Menkel-Meadow, Carrie, Is Altruism Possible in Lawyering? The Henry J. Miller Distinguished Lecture, Georgia State University Law Review 8 (1992), p. 385–420 [cit.: ***Menkel-Meadow*, Ga. St. U. L. Rev. 8 (1992)**]

Miller, Leonard G., Review of The Possibility of Altruism, Canadian Journal of Philosophy 2 (1973), p. 391–402 [cit.: ***Miller*, Canadian Journal of Philosophy 2 (1973)**]

Mittelstraß, Jürgen, Altruismus, in: Gabriel Gottfried/Martin Carrier/Jürgen Mittelstraß, Enzyklopädie Philosophie und Wissenschaftstheorie, 2nd edition, Stuttgart 2005 [cit.: ***Mittelstraß*, in: Enzyklopädie Philosophie und Wissenschaftstheorie, Altruismus**]

Mogensen, Andreas, The Callousness Objection, in: Hilary Greaves/Theron Pummer (eds.), Effective Altruism: Philosophical Issues, 2019, p. 227–243 [cit.: ***Mogensen*, in: Effective Altruism: Philosophical Issues**]

Müller, Hanswerner, Handbuch der Gesetzgebungstechnik, 2nd edition, Köln 1968 [cit.: ***Müller*, Handbuch der Gesetzgebungstechnik**]

Murphy, Mark C., Natural Law Theory, in: Martin P. Golding/William A. Edmundson (eds.), The Blackwell Guide to the Philosophy of Law and Legal Theory, Malden, MA 2005 [cit.: ***Murphy*, in: Natural Law Theory**]

Nagel, Thomas, The Possibility of Altruism, Princeton (N.J.) 1978 [cit.: ***Nagel*, The Possibility of Altruism**]

Nantz, Derrick Nietzsche on Naturalism, Egoism and Altruism, Thesis, Georgia State University 2007 [cit.: ***Nantz*, Nietzsche on Naturalism, Egoism and Altruism**]

Nietzsche, Friedrich, Zur Genealogie der Moral, Leipzig 1892 [cit.: ***Nietzsche*, Zur Genealogie der Moral**]

Okasha, Samir, Biological Altruism, in: Edward N. Zalta (ed.), The Stanford Encyclopedia of Philosophy, Summer 2020 edition, Stanford 2020 [cit.: ***Okasha*, in: The Stanford Encyclopedia of Philosophy, Biological Altruism]**
Pawlik, Michael, Kants Volk von Teufeln und sein Staat, Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics 14 (2006), p. 269–293 [cit.: ***Pawlik*, Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics 14 (2006)**]
Pellet, Sophie, L'altruisme est encore une condition de la gestion d'affaires !, L'Essentiel – Droit des contrats 4 (2015), p. 4 [cit.: ***Pellet*, L'Essentiel – Droit des contrats 4 (2015)**]
Piachaud-Moustakis, Bianca, Updated Guidance to the European Data Governance Act, Pharmaceutical Technology 34 (2022), p. 8–9 [cit.: ***Piachaud-Moustakis*, Pharmaceutical Technology 34 (2022)**]
Rachels, Stuart/Rachels, James, The Elements of Moral Philosophy, 9th edition, New York, NY 2019 [cit.: ***Rachels/Rachels*, The Elements of Moral Philosophy**]
Radbruch, Gustav, Five Minutes of Legal Philosophy (1945), Oxford Journal of Legal Studies 26 (2006), p. 13–15 [cit.: ***Radbruch*, Oxford Journal of Legal Studies 26 (2006)**]
Raz, Joseph, The Concept of a Legal System: An Introduction to the Theory of a Legal System, 1980 [cit.: ***Raz*, The Concept of a Legal System**]
Rhode, Deborah L., Pro bono in principle and in practice: public service and the professions, Stanford, Calif 2005 [cit.: ***Rhode*, Pro bono in principle and in practice**]
Rosenberg, Richard, Das altruistische Motiv im Strafrecht, Zeitschrift für die gesamte Strafrechtswissenschaft 42 (1921), p. 453–474 [cit.: ***Rosenberg*, Zeitschrift für die gesamte Strafrechtswissenschaft 42 (1921)**]
Rousseau, Jean-Jacques, Du contrat social, 1903 [cit.: ***Rousseau*, Du contrat social**]
Rudall, Jason, Altruism in International Law, New York 2021 [cit.: ***Rudall*, Altruism in International Law**]
Rudolph, Tobias, Wenn Täter und Richter dasselbe wissen, aber unterschiedlicher Meinung sind – Weshalb Irrtümer über Wertungen den Vorsatz nicht berühren, Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics 27 (2019), p. 649–666 [cit.: ***Rudolph*, Jahrbuch für Recht und Ethik / Annual Review of Law and Ethics 27 (2019)**]
Rulli, Tina/Millum, Joseph, Rescuing the duty to rescue, Journal of Medical Ethics 42 (2016), p. 260–264 [cit.: ***Rulli/Millum*, J Med Ethics 42 (2016)**]
Safferling, Christoph, Vorsatz und Schuld: subjektive Täterelemente im deutschen und englischen Strafrecht, Tübingen 2008 [cit.: ***Safferling*, Vorsatz und Schuld**]
Salobir, Éric, Le Data altruisme : comment les données peuvent-elles être mises à contribution pour servir l'intérêt général ?, Annales des Mines - Réalités industrielles Août 2023 (2022), p. 79–83 [cit.: ***Salobir*, Annales des Mines - Réalités industrielles Août 2023 (2022)**]
Sanders, Anne, Altruismus und Recht, Lecture at Forschungstag des Jungen Kollegs der Akademie der Wissenschaften und Künste NRW, 23.10.2012 [cit.: ***Sanders*, Altruismus und Recht**]
Schauf, Julius, Die „feindliche Willensrichtung" bei der Heimtücke, Neue Zeitschrift für Strafrecht 2021, p. 647–656 [cit.: ***Schauf*, NStZ 2021**]
Scheffler, Samuel, The Rejection of Consequentialism: A Philosophical Investigation of the Considerations Underlying Rival Moral Conceptions, 1st edition, 1994 [cit.: ***Scheffler*, The Rejection of Consequentialism**]
Schildbach, Roman, Zugang zu Daten der öffentlichen Hand und Datenaltruismus nach dem Entwurf des Daten-Governance-Gesetzes, Zeitschrift für Datenschutz 2022, p. 148–153 [cit.: ***Schildbach*, ZD 2022**]
Schramm, Edward, Law and Literature, Juristische Arbeitsblätter 2007, p. 518–585 [cit.: ***Schramm*, JA 2007**]

Scordato, Marin Roger, Understanding the Absence of a Duty to Reasonably Rescue in American Tort Law, Tulane Law Review 82 (2007), p. 1447–1504 [cit.: ***Scordato*, Tul. L. Rev. 82 (2007)**]
Shabani, Mahsa, The Data Governance Act and the EU's move towards facilitating data sharing, Molecular Systems Biology 17 (2021), p. e10229 [cit.: ***Shabani*, Molecular Systems Biology 17 (2021)**]
Shabani, Mahsa, Will the European Health Data Space change data sharing rules?, Science 375 (2022), p. 1357–1359 [cit.: ***Shabani*, Science 375 (2022)**]
Simons, Kenneth W., Rethinking Mental States, Boston University Law Review 72 (1992), p. 463–554 [cit.: ***Simons*, B.U. L. Rev. 72 (1992)**]
Singer, Peter, Practical Ethics, 3rd edition, New York 2011 [cit.: ***Singer*, Practical Ethics**]
Singer, Peter, The Expanding Circle: Ethics, Evolution, and Moral Progress, 1st pbk. edition, Princeton, NJ 2011 [cit.: ***Singer*, The Expanding Circle**]
Singer, Peter, The most good you can do: how effective altruism is changing ideas about living ethically, New Haven/London 2015 [cit.: ***Singer*, The most good you can do**]
Singer, Peter, Famine, Affluence, and Morality, Oxford/New York 2016 [cit.: ***Singer*, Famine, Affluence, and Morality**]
Slote, Michael, Moral Sentimentalism, 1st edition, 2009 [cit.: ***Slote*, Moral Sentimentalism**]
Slote, Michael, The Impossibility of Egoism, Between Psychology and Philosophy, Cham 2020, p. 115–134 [cit.: ***Slote*, in: Between Psychology and Philosophy**]
Spajic, The German corona-data-donation-app as an example of the concept of data donation, KU Leuven CITIP Blog, 20.04.2021, https://www.law.kuleuven.be/citip/blog/the-german-corona-data-donation-app-as-an-example-of-the-concept-of-data-donation/ (last visited 10.12.2022) [cit.: ***Spajic*, The German corona-data-donation-app as an example of the concept of data donation, KU Leuven CITIP Blog**]
Spindler, Gerald, Schritte zur europaweiten Datenwirtschaft – der Vorschlag einer Verordnung zur europäischen Data Governance, Computer und Recht 37 (2021), p. 98–108 [cit.: ***Spindler*, CR 37 (2021)**]
Starck, Christian, Art. 1 GG, in: Hermann von Mangold/Friedrich Klein/Christian Starck/Peter M. Huber/Andreas Voßkuhle (eds.), Grundgesetz – Kommentar, 7th edition, Munich 2018 [cit.: ***Starck*, in: Grundgesetz, Art. 1 GG**]
Steinrötter, Björn, Datenaltruismus, Zeitschrift für Datenschutz 2021, p. 61–62 [cit.: ***Steinrötter*, ZD 2021**]
Stout, Lynn A., Judges as Altruistic Hierarchs, William & Mary Law Review 43 (2002), p. 1605-1627 [cit.: ***Stout*, Wm. & Mary L. Rev 43 (2002)**]
Streng, Franz, StGB § 46 Grundsätze der Strafzumessung, in: Urs Kindhäuser/Ulfrid Neumann/Hans-Ullrich Paeffgen (eds.), NomosKommentar Strafgesetzbuch, 5th edition, Baden-Baden 2017 [cit.: ***Streng*, in: Strafgesetzbuch, StGB § 46 Grundsätze der Strafzumessung**]
Stuckenberg, Carl-Friedrich, Zum ontologischen Status mentaler Zustände, in: Martin Böse/Kay H. Schumann/Friedrich Toepel (eds.), Festschrift zum 70. Geburtstag von Professor Dr. Dr. h.c. mult. Urs Kindhäuser, 2019, p. 533–548 [cit.: ***Stuckenberg*, in: FS Kindhäuser (70.)**]
Suganya, S./Shanthi, R., Between Rational Egoism and an Irrational Altruism: Deconstructive Interpretation in Ayn Rand's Atlas Shrugged, Journal of Language and Linguistic Studies 17 (2022) [cit.: ***Suganya/Shanthi*, Journal of Language and Linguistic Studies 17 (2022)**]
Thole, Christoph, Die Geschäftsführung ohne Auftrag auf dem Rückzug – Das Ende des „auch fremden" Geschäfts?, Neue Juristische Wochenschrift 2010, p. 1243–1248 [cit.: ***Thole*, NJW 2010**]
Tolks, Daniel, Die finale Fassung des Data Governance Act, Multimedia und Recht 2022, p. 444–449 [cit.: ***Tolks*, MMR 2022**]

Tombal, Thomas, Imposing data sharing among private actors: a tale of evolving balances, Alphen aan den Rijn, The Netherlands 2022 [cit.: ***Tombal*, Imposing data sharing among private actors**]

Veil, Winfried, Datenaltruismus: Wie die EU-Kommission eine gute Idee versemmelt, CR-online.de Blog 01.12.2020, https://www.cr-online.de/blog/2020/12/01/datenaltruismus-wie-die-eu-kommission-eine-gute-idee-versemmelt/ (last visited 10.12.2022) [cit.: ***Veil*, Datenaltruismus: Wie die EU-Kommission eine gute Idee versemmelt, CR-online.de Blog 01.12.2020, https://www.cr-online.de/blog/2020/12/01/datenaltruismus-wie-die-eu-kommission-eine-gute-idee-versemmelt/**]

Veil, Winfried, DGA is Dada, CR-online.de Blog 07.12.2021, https://www.cr-online.de/blog/2021/12/07/dga-is-dada/ (last visited 10.12.2022). [cit.: ***Veil*, DGA is Dada, CR-online.de Blog 07.12.2021, https://www.cr-online.de/blog/2021/12/07/dga-is-dada/**]

Veit, Barbara, BGB § 1626 Elterliche Sorge, Grundsätze, in: Wolfgang Hau/Roman Posseck (eds.), Beck'scher Online-Kommentar BGB, 63rd edition, Munich 01.11.2019 [**cit.: *Veit*, in: BeckOK BGB, BGB § 1626 Elterliche Sorge, Grundsätze**]

Volkmann, Uwe, Rechtsphilosophie, 2019 [cit.: ***Volkmann*, Rechtsphilosophie**]

von Hagen, Prisca/Völzmann, Lisa, Datenaltruismus aus datenschutzrechtlicher Perspektive, Multimedia und Recht 2022, p. 176–181 [cit.: ***von Hagen/Völzmann*, MMR 2022**]

von Hirsch, Andreas/Schorscher, Vivian C., Die Kriminalisierung der unterlassenen Hilfeleistung: Eine Frage von „Solidarität" oder Altruismus?, in: Andreas von Hirsch/Ulfrid Neumann/Kurt Seelmann (eds.), Solidarität im Strafrecht, 2013, p. 77–92 [cit.: ***von Hirsch/Schorscher*, in: Solidarität im Strafrecht**]

Weisbrod, Carol, Other Parts of the Forest Some – Aspects of Global Legal Pluralism, in: Jules L. Coleman/Kenneth Einar Himma/Scott J. Shapiro (eds.), The Oxford Handbook of Jurisprudence and Philosophy of Law, 2004 [cit.: ***Weisbrod*, in: Other Parts of the Forest Some – Aspects of Global Legal Pluralism**]

Weiss, Raquel/Peres, Paulo, Beyond the Altruism-Egoism Dichotomy: A New Typology to Capture Morality as a Complex Phenomenon, in: Vincent Jeffries (eds.), The Palgrave Handbook of Altruism, Morality, and Social Solidarity, Houndmills, Basingstoke, Hampshire ; New York, NY 2014, p. 71–99 [cit.: ***Weiss/Peres*, in: The Palgrave Handbook of Altruism, Morality, and Social Solidarity**]

Wilson, David Sloan, Does altruism exist? culture, genes, and the welfare of others, New Haven/London 2015 [cit.: ***Wilson*, Does altruism exist?**]

Woozley, A. D., A Duty to Rescue: Some Thoughts on Criminal Liability, Virginia Law Review 69 (1983), p. 1273-1300 [cit.: ***Woozley*, Virginia Law Review 69 (1983)**]