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The vulnerable society

THE NEW VULNERABILITY AS A CHALLENGE TO FREEDOM.

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Many of the current heated debates are an expression of a creeping shift in values fundamentally changing our society, but we hardly realise it. More and more, we are willing to accept restrictions on our individual freedom in order to fulfil a heightened sense of vulnerability. We are slowly turning into a society of 'vulnerable people'. In her captivating investigation, Frauke Rostalski draws our attention to this new conflict between freedom and vulnerability - and pleads for an open dialogue: How much vulnerability do we want to allow ourselves at the expense of freedom?

Frauke Rostalski shows the extent to which ideas of vulnerability have already led to restrictions on freedom in law - not only in matters of medical and pandemic risks, but also in the areas of sexual self-determination, assisted suicide, protection against discrimination and abortion. However, vulnerability is not only the secret leitmotif of a new law and a new ethics. It also introduces a new sensitivity into our culture of debate that threatens to block social negotiation processes. Frauke Rostalski calls on us to moderate this 'discourse vulnerability' - so that we can actually start urgent public debates about freedom and vulnerability.

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Discussion of vulnerabilities is experiencing a boom today.

The concept of vulnerability came first into the public attention during the coronavirus years. Of course, it also existed even earlier. However, it was then primarily used in academic discourses in the social and cultural sciences, medicine and psychology. This has changed fundamentally. Vulnerability became a buzzword during pandemic as a term to describe those whose health is particularly at risk of infection with the coronavirus, primarily older people and those who were previously ill, although some voices also pointed to the vulnerability of those who were particularly affected by the coronavirus protection measures.

From the context of pandemic, however, the concept of vulnerability quickly made the leap into completely different areas of society. Vulnerabilities are now being recognised in very different areas of life and with regard to many different people and groups of people. As vulnerable, for example, are sex workers and victims of sexualised violence, but the term is also applied to refugees, transgender people, poor countries, life stages, digital societies, critical infrastructure and much more.

Vulnerability as a term has clearly enriched the vocabulary of broad sections of the population. Its almost inflationary use leads to the assumption that it has filled a gap - and thus perhaps makes it possible to speak more precisely about the vulnerability of certain people or institutions than before. The frequency with which vulnerabilities are mentioned in very different contexts indicates that the term has struck a nerve.

It is always used when a particularly important concern needs to be articulated. This connection is derived directly from the use of the term vulnerability in the coronavirus pandemic. Because it concerned the protection of life and limb of individuals, the term was strongly charged with a strong value judgement. It is obvious that this meaning was carried beyond the context of the pandemic. Anyone who currently refers to vulnerabilities in another area generally associates this with a very strong judgement. Labelling people as vulnerable therefore serves to highlight their concerns and interests as particularly important and to draw society's attention to them. The concept of vulnerability can therefore be found in those social debates that are currently being conducted very intensively. One needs only to think of issues of social justice or climate change. In both contexts, the concept of vulnerability is used with a certain constancy and frequency.

One example is the digital space, where insults against these groups of people accumulate and have a particularly intimidating effect on them. In the context of climate change, the term vulnerability characterises people's specific exposure to nature and climate changes.

The Russian attack in 2022, the ongoing Russian war of aggression against Ukraine highlights the particular vulnerability of mankind.

Even before that, social life seemed more and more like stumbling from one crisis to the next - whether this is the monetary system, the property market or the treatment of refugees. All of these events are predestined to highlight the vulnerability of individuals and society. It is therefore not very surprising that vulnerabilities are increasingly being recognised and openly discussed.

However, what seems to be rather new is the extent to which vulnerabilities are being taken seriously. The fact that vulnerability is energizing people to get more and more socially active - is a phenomenon that I believe is worth taking a closer look at.

Be it to strengthen the rights of socially marginalised groups or to positively influence climate developments through changes in human behaviour: Insights into individual and collective vulnerabilities are currently having far-reaching consequences. They create the basis for important social steps to be taken in order to meet a particular challenge.

These steps often include legal measures. In the fight against the coronavirus, social injustice and climate change, law represents an effective instrument for social action. This is not surprising: the more important the goals of society are, the more likely it is that law will be used to realize them. Vulnerability is therefore also a legal issue.

The more important the protection of vulnerable people becomes to society, the more obvious the use of the law becomes. Current debates about vulnerability can therefore also be interpreted as a sign that a discussion of values is imminent and that a modification in values is underway - a change that is to be achieved not least by legal means.

However, this brings another category onto the scene that is of particular importance for social coexistence: freedom.

Because law compels, it must justify itself in a liberal order. If law serves to protect vulnerable people, this protection goal comes into tension with individual freedom. The more vulnerable a society or its members perceive themselves to be, the more likely it is that they will want to protect themselves

from risks through the law. However, laws, measures or other legal acts fundamentally mean a curtailment of individual freedom.

It is therefore a particular challenge to harmonize the two: the need to protect vulnerabilities - possibly more comprehensively than before - and the constitutionally guaranteed freedom of individual citizens.

The very thesis that state measures to protect vulnerable individuals or groups would lead to a loss of individual freedom can be criticized.

In contrast, there is a widespread assumption that, particularly social justice is primarily about redistributing freedoms which means simply that the state-enforced loss of freedom for one person leads to a gain in freedom for the other, in the sense that what is given to others is taken away from some. Even if although this idea can often be read, it is not true.

Rather, I would like to show that whenever the state uses its means to protect the vulnerable, freedom is lost on all sides - not only for those who are among the 'strongest'. Everyone loses freedom, including the vulnerable as soon as the state intervenes. The debates about new laws to protect vulnerable people - be it in the context of climate change, social justice or dealing with environmental risks- this realization can have a significant impact. This sometimes gives the impression that the dispute is about who 'owes' how much freedom to whom - who has to give up how much of their own freedom so that the other has more freedom than before. From a legal perspective, however, this viewpoint urgently needs to be corrected. I hope that this will at least provide a clearer view of the factual problems that underlie current and future social debates.

Observing various discourses in recent times, one gets the impression that this core element of a vibrant democracy is exposed to more and more sources of interference. Risks threaten from within: Because some seem to have lost the conviction that it makes sense to talk to each other even if the other person has a completely different opinion.

And because, in view of the fundamental challenges facing society, for example with regard to climate change, some have completely lost faith in democracy or are at least on the way to lose it. In this situation, I would like to argue in favour of an open discourse:

About vulnerabilities and despite (or precisely because of) our own vulnerability. One thing should not be forgotten: Democracy is also vulnerable. Especially when it comes to its centrepiece, the free discourse.