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Writing a will via assistive technology: protecting people with disabilities in inheritance law

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ABSTRACT

The lack of coordination between technology, law and society can create various discriminatory situations for people with disabilities. Speech-impaired people who are unable to write and use assistive technology encounter these situations within the sphere of inheritance law. Even though people use this technology to express themselves in daily life, current frameworks don't always allow for legal transactions to be completed (or considered valid) *via* technology. This article addresses this issue through a legal investigation of inheritance law in Italy and compares it with legal systems in other countries. The analysis interrogates both the laws and the theoretical, social and organizational factors that create contradictions regarding technology use and legitimacy. These contradictions reinforce exclusion of people with disabilities from social and juridical institutions. Referring to Posthuman Disability Studies, the article proposes ways of rethinking inheritance law, including recognizing wills created *via* assistive technology as being legitimate.

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Points of interest

- People with disabilities can use new technologies to overcome communication barriers, but sometimes the use of these technologies is not recognized by the law.
- This article looks at this problem in relation to laws concerning wills and inheritance. It mainly focuses on the law in Italy, and also compares it with the law in other countries.
- In Italy, the legal system does not accept the use of technologies such as speech-generating devices, or other communication tools, to write a valid will.
- The law is based on certain traditional ideas about how people should write a will and how they are expected to use their bodies and technology.
- This study suggests two practical ways that the law could formally accept and protect the making of a will using technological mediation. This contributes to respect the rights, dignity, and full participation of people with disabilities.

Introduction

Assistive technology is gaining relevance in disability studies debates as a tool that can support the removal of disabling barriers (Borg, Larsson, and Östergren 2011; Cranmer 2018; Ochsner, Spöhrer, and Stock 2022; Ravneberg and Soderstrom 2017; Temple Jones et al. 2024). However, this technology can also indirectly produce new disabling barriers (Alper 2017; Banner 2019; Egard and Hansson 2023; Napolitano and Sicca 2024; Shew 2023). Interest in assistive technology is demonstrated within the United Nations Convention on the Rights of Persons with Disability (UNCRPD 2007) – hereafter referred to as UNCRPD. The Convention states the importance of guaranteeing access to communication and sees assistive technology as a tool which improves accessibility and inclusion (UNCRPD 2007, art. 4 letter h; art. 9 letters g and h). The impact and potential of assistive technology is being widely explored in the field of education (Mankoff, Hayes, and Kasnitz 2010), workplace accommodation (Morash-Macneil, Johnson, and Ryan 2018; Sundar 2017; Yeager et al. 2006) and care for the elderly (Saborowski and Kollak 2015). Nevertheless, the relationship between assistive technology and law has thus far received little attention (Gooding, Arstein-Kerslake, and Flynn 2015).

This article will explore how assistive technology can help protect the fundamental rights of people with disabilities within inheritance law. This protection is not currently guaranteed (and, at worst, is totally absent) for people who have lost physical functions due to severely disabling pathologies in terms of their valid expression of a *last will and testament*. This group of people includes those no longer able to use their upper limbs to write their signature or write a will in holographic form, as well as persons no longer able to express themselves through verbal communication but only through technological devices. In the current legal landscape concerning inheritance, the above-mentioned functions are considered necessary to autonomously exercise legal capacity (Barba 2023; Gooding, Arstein-Kerslake, and Flynn 2015; Lytvinenko 2021), while the expression of a will *via* assistive technology is rarely recognized as valid. The rigid formalism (Harrington, Series, and Keene 2019) that characterizes both Civil Law and Common Law systems (Banks 2015; Banta 2019; Horton 2019; Mann 1994; Wilson 2021) prevents persons with disabilities from being able to validly express their will.

This lack of protection indicates a general situation where individuals with disabilities are routinely denied inheritance rights (Groce, London, and Stein 2014). The judicial decisions issued over the past fifteen years, such as those examined in this study, show the growing incidence of this phenomenon in practice, even though there is still a lack of empirical data on how many people are affected by these barriers. Therefore, it is important for disability studies to consider the making of wills *via* assistive technology as an area of interest and a matter of social justice, despite largely being ignored so far.

It should immediately be pointed out that, in legal terms, a *will* is the expression by a person of their wishes, which they intend to take effect only upon their death. Therefore, a will is used to dispose of their property, not to provide instructions regarding assisted death (a matter that won't be dealt with in this article), although similar issues are also encountered in those cases (Lytvinenko 2021).

This study focuses on the following questions: which theoretical, epistemological and social frameworks should we start with to rethink inheritance law and protect people with disabilities who use assistive technology? What should the nature of interaction be between technology firms, organizations, individuals and the law, allowing an effective use of assistive devices and fully respecting the rights of people with disabilities?

The study consists of a doctrinal analysis method. The most relevant judgments concerning the use of assistive technology in inheritance law over the past fifteen years are analyzed. This includes the examination of real court case outcomes, decided by judges. The analysis of these decisions contributes to an understanding of the relevant legal foundations and the limits of the legal system, while also providing insight into the details of the cases and the barriers faced by the individuals involved. The methodology is complemented with a comparative analysis between different legal systems to show how different regulatory solutions that adequately protect people with disabilities are possible.

The article starts with an overview of the assistive technologies that may be used by people with disabilities to express their will, and the issues that arise within inheritance law. Following this, Posthuman Disability Studies (Goodley, Lawthom, and Runswick-Cole 2014) are introduced as a framework that considers humans as being 'co-constituted' with technology, thereby providing theoretical tools to rethink the expression of will *via* assistive technology. Subsequently, the formalities of Italian wills and testaments are presented, with a particular focus on the limits placed on the use of technological devices in inheritance law by people with disabilities. After analyzing the Italian legal framework, the article considers other juridical systems by way of comparison. The Discussion presents two proposals for ensuring that will creation *via* assistive technology is legally viable, while the Conclusions reflect on how to integrate those juridical tools into social and organizational contexts.

This study draws attention to the fact that vulnerability may be determined by multiple external or contextual factors, identifying a *relational* dimension (Caggiano 2022; Fusaro 2019; Gatt 2020) which involves both humans and nonhumans. In this way, the article draws on a social model of disability (Oliver 1986, 1996, 2013), expanding it to include the relationship with technology in the wake of posthumanist approaches. This implies that, for people with disabilities, vulnerability does not depend on a pathological

condition of the person but rather on limitations determined by a non-inclusive society, which undermine the full expression of the individual's personality. Recovering the relational character of the subject thus avoids relegating disability to an individual level and underlines that disability does not represent an absolute of the person themselves but rather concerns the relationship between the person and their environment.

Speech-synthesis and BCI technology for the expression of will

Advances in scientific and medical research have enabled the development of technologies capable of establishing direct communication pathways with the human brain. These technologies, called Brain-Computer Interfaces (*BCI*), were initially designed for the diagnosis and treatment of severe neurodegenerative conditions that deprive individuals of the ability to express themselves. *BCI* technologies can detect and decode brain signals, thereby enabling the reconstruction of an individual's communicative intention, even in situations where conventional forms of verbal or non-verbal communication are not possible (Council of European Union 2024; Maiseli et al. 2023).

This technology can also be used to capture the expression of will. In other words, one could abstractly imagine a twofold level of effectiveness of the technology for the person with disability: firstly, it facilitates the outward manifestation of one's naturally formed will (preventing it from being hetero determined); secondly, it acts as a means through which to preserve the expression of will, to give it an official and recognizable form.

In reference to the first use, one example of this is the connection of *BCI* with speech-synthesis technology. Besides various commercial uses (i.e. virtual assistants such as Alexa), speech synthesis technology has interesting applications in assisting speech-impaired people, artificially producing the faculty of speaking and communicating (Napolitano 2022; Napolitano and Sicca 2026). This technology could allow individuals to re-acquire the possibility of expressing their will orally, especially if they are connected to brain-computer interfaces or various human-computer interfaces, such as eye-trackers or Alternative and Augmentative Communication interfaces. Systems where speech synthesis is coupled with customized human-computer interfaces are usually called *VOCAs* (Vocal Output Communication Aids). These can be effectively used by people with speech and mobility impairment, such as people with ALS (Amyotrophic Lateral Sclerosis): an eye-tracker can detect the eyes' movements as they point to letters on a computer screen, thus allowing text to be 'written' which is then vocalized through speech synthesis (a process called text-to-speech). In case of residual mobility of upper limbs, other interfaces based on big buttons and joysticks can allow people to compose computer texts that are then

transformed from text to speech through speech synthesis. Another interesting feature which complements such systems is so-called ‘voice cloning’ (Napolitano 2022), a digital reconstruction of the characteristics of someone’s voice that can be used to personalize text-to-speech, to make it sound non-generic. As proved by recent research conducted at Google (Chen, et al. 2019), this technology may be useful when people have become speech-impaired after a disease or an accident. Using recordings from the person’s voice before a disease or an accident caused its loss, Artificial Intelligence algorithms can create a digital profile of that voice and apply it to generic speech synthesis, making it sound like the person’s previous unique voice. This system may allow for a will, expressed through assistive technology, to be a very personal document (although not signed by hand). This kind of customization, in fact, allows synthetic voice to sound personal and unique, and performs identity, overcoming typical limits related to the cold and robotic character of synthetic voices (Napolitano 2022).

However, the customization of synthetic voice doesn’t necessarily guarantee a more authentic expression of one’s will, as it also allows for more realistic fakes, known as ‘deepfakes’ (Wilson 2018). The assumption that a more realistic voice is more reliable in the expression of will needs to be questioned. Concerns have also been expressed in disability studies about the overoptimistic assumption that assistive technology is empowering and enhancing (Alper 2017; Banner 2019; Egard and Hansson 2023; Napolitano and Sicca 2026; Shew 2023). These studies highlight security vulnerabilities, privacy issues for users with disabilities, as well as questioning the trustworthiness and accuracy of assistive technologies (Banner 2019; Cranmer 2018; Mollo, Caggiano, and Sartor 2026).

In the context of inheritance law, these issues concern the protection of the testator’s privacy (i.e. the person who makes a will) when a will is created using assistive technology, since the text could potentially be read by third parties or stored in non-secure repositories managed by technology providers. Moreover, there are concerns regarding the accuracy of the texts produced by the device in reflecting the testator’s actual intentions (Mollo, Caggiano, and Sartor 2026).

These issues impact the possibility of adopting such systems as legally recognized tools to express one’s will. However, speech-impaired people who are also unable to write would benefit hugely from using such tools to create a will. It is therefore of great importance to understand the theoretical and practical obstacles to legal recognition of these systems, and to try and overcome them through critical juridical and social analysis. Posthuman Disability Studies provide a theoretical framework to such analysis, as they rethink the relationship between disability and technology.

Rethinking assistive technology in inheritance law: the contribution from posthuman disability studies

A fundamental aspect of disability studies, as deployed by scholars and activists such as Oliver (1986, 1996, 2013), Shakespeare (2006) and Siebers (2008) among others, involves challenging the medical model of disability, which views disability as an ‘individual defect’ requiring cure or elimination for the person to attain full human capacity. In contrast to the individual, rehabilitative, and productivity-focused approach of the medical model, disability studies aim to de-naturalize and de-pathologize disability, proposing different articulations of the so-called social model (Shakespeare 2006). Such articulations, ranging from the social-relational model (Thomas 2004) to the cultural model (Garland Thomson 1997) and the relational political model (Kafer 2013), don’t seek to cure or prevent impairment but rather examine the social meanings, symbols, and stigmas associated with the concept of disability as an integral part of identity. Given their differences, the focus is on understanding how disability intersects with enforced systems of exclusion and oppression that work on social, material, cultural and political levels. According to this viewpoint, disability is socially constructed and distinct from impairment, which refers to the physical attribute.

To quote Michael Oliver’s Oliver (1996, 22) famous claim (adapted from the original formulation by UPIAS 1976):

we define impairment as lacking part or all of a limb, or having a defective limb, organ or mechanism of the body; and disability as the disadvantage or restriction of activity caused by a contemporary social organization which takes little or no account of people who have physical impairments and thus excludes them from participation in the mainstream of social activities.

More recently, scholars of Posthuman Disability Studies (De Schauwer et al. 2021; Goodley, Lawthom, and Runswick-Cole 2014; Goodley et al. 2019; Liddiard et al. 2019) have revised this definition, arguing that the relation between disability and impairment is a complex one and should not be seen in a dichotomous way. According to this approach, in fact, while disability is constructed through normative assumptions underpinning socially constructed categories of difference, those assumptions are not only located in ideas and discourses, but are also constructed in the entanglement between bodies, material artifacts (such as prosthesis and assistive technology) and organizational structures.

Authors in this field of studies question the nature of prosthesis as an extension of the human body and of the human mind, in particular highlighting the assemblage of body, mind and technology as constitutive of a more-than-human subjectivity (De Schauwer et al. 2021; Goodley, Lawthom, and Runswick-Cole 2014). According to this line of thinking, leaning towards posthumanism, disability should be considered as the expression of this

assemblage, overcoming the dualisms that either retrace the essence of disability in bodily or mental impairments – as per the medical model – or place too much importance on social organization, underestimating the lived and embodied experience and perception, as per the social model (Hughes and Paterson 1997). This non-dualistic approach underlines how lived and embodied experiences are never purely human, or just organic (De Schauwer et al. 2021). Rather, they are affected by the non-human agencies of technologies (Sterne 2022), both in terms of what technologies allow us to do and perceive, and also in terms of the limits and misperception they foster through their faults and glitches. In this sense, both sensory-motor apparatus and cognitive faculties should not be considered as biological or organic, but as the product of cultural and material interactions between humans, environments and artifacts. This consideration overcomes the classic assumptions of the social model: rather than considering impairment as a bodily limitation, this approach invites a rethinking of the body itself as more than the object of medical or ergonomic knowledge. In a posthumanist view, the body is a liminal entity, influenced and affected by various elements.

Moreover, the posthuman approach differentiates itself from the trans-human one (Marchesini 2023), because it doesn't see technology as a vehicle of enhancement of the human, but focuses on the relationality between human and nonhuman. This relationality is not necessarily positive or enhancing, as it may also produce negative consequences when it is overlooked or presents an obstacle. Technophile trans-human approaches are often informed by an 'ideology of ability' (Siebers 2008, 8) that portrays technology as something that aims to 'overcome' disability – considered as an individual limitation – while assuming ability as an unquestioned and neutral condition corrupted by disability. Shew (2023) defines this approach 'technoableism.'

Countering such approaches, Posthuman Disability Studies recall Jasanoff's Jasanoff (2003, 240) distinction between 'technologies of enhancement' and 'technologies of humility.' Technologies of humility are not seen as independent agents that provide solutions to individual and social problems, but rather as social agents in themselves which are co-constructed and entangled with the collective. This approach places emphasis on the mutual construction of 'human' and 'technology' in a non-dualistic way. From the perspective of Posthuman Disability Studies, there's no clear boundary between human and technology. This is proven by the way technology reconfigures agency and responsibility. Technology transforms the relationship between body and agency (for example reconfiguring what we can do with the body or the voice). It also affects the link between subjectivity and responsibility. While philosophy has traditionally emphasized responsibility as a matter of *responding* – an 'ability' proper to the subject characterized by

interiority, unity and continuity (Lévinas 1961; Shearer 2002) – Posthuman Disability Studies emphasize how such a definition risks excluding many people with speech and communication impairments from the field of moral and juridical subjectivity. This may eventually lead to people with disabilities being denied access to the category of ‘human’. Nevertheless, the technologies analyzed in the second section of this article highlight that today the link between response and responsibility is inevitably questioned, as those very technologies allow people to respond in alternative ways.

These considerations affect the issue of inheritance law, as they invite us to rethink the very juridical categories on which law is grounded. If the concept of the human subject is reconfigured beyond the classic definition of subjectivity, responsibility for one’s acts and will has therefore to be extended to those who don’t fit within that definition of subjectivity, and as a result to those who use technologies and prosthesis to express themselves. This means that the expression of will *via* assistive technology should be recognized as authentic and intentional, a proper expression of someone’s will, as that will is never (also in non-disabled individuals) the product of a supposed pure inner (metaphysical, we might say) self, but it’s always the product of a mediation, a co-constitution between human and technology.

According to this line of thought, there’s no theoretical foundation for not including the use of technology in making wills. The following sections propose ways of rethinking inheritance law which consider the expression of a will *via* assistive technology as being legitimate, preserving adequate protection for the people who express it. To articulate this proposal in a comprehensive way, the next section analyzes the Italian law, followed by a comparison with other juridical systems.

The making of wills: formalities under Italian law

All legal systems, even in different historical periods, have always adopted the principle of testamentary formalism as the cardinal principle of inheritance law (Amelotti 1992; Talamanca 1990; Volterra 1980). This is mainly due to the so-called diachronic effectiveness of the testamentary transaction: the will only takes effect after the death of the testator, and for this reason the intention is to make the testator aware of the importance of the legal consequences that it may determine when they will no longer be able to modify them.

The will – in addition to being a personal, unilateral, exclusive, revocable, patrimonial act – is also a formal act, because it must necessarily be made in one of the forms established by law (Boero et al. 2014; Branca 1986). This formalism, however, is a source of unacceptable injury to the rights of persons with disabilities, as one can understand from reading the rules of the Italian legal system. This is an emblematic case study of inheritance issues for

people with disabilities, as the Italian legal system is characterized by rigid and insurmountable formalities.

The Italian regulatory framework is particularly complex due to the various sources which the discipline derives from, which must be coordinated:

- The second book of the Civil Code.
- Law n. 89 of 16 February 1913, regulating the notarial function (Notary Act).

The fundamental principle laid down in these regulatory texts is that of the written form *ab substantiam* of the will, since the testator cannot make a will in oral form. Moreover, the testator must (the rules are mandatory) use one of the following forms, as stipulated by the Italian Civil Code:

- *Public will*: received by a notary public at which the testator, in the presence of two witnesses, declare their will, which is reduced to writing by the notary public. The will must then be signed by the testator, the witnesses, and the notary (art. 603).
- *Holographic will*: written in full, dated and signed by the testator's own hand (art. 602).
- *Secret will*, which consists of two parts: the testamentary form (this may be written either by the testator or by a third party, even by mechanical means, but it should always be drafted on paper) and the deed of receipt by the notary who seals the form, in the compulsory presence of witnesses (art. 604).

Where the above formalities are not complied with, article 606 of the Civil Code stipulates that:

- the *holographic will* is null and void if it lacks a handwriting or signature;
- *public wills* and *secret wills* are null and void where the notary's writing of the testator's declarations, or the signature of the notary, or the signature of the testator are missing.

It should also be considered that, in applying the principle of equivalence of testamentary forms, these are autonomous and distinct from each other in terms of requirements, but they are also equivalent as they all produce the same effects. In other words, since there is no hierarchy, the future testator may choose in total autonomy, subject to the limits of the law, in which form to draft their will.

However, this principle seems to be disproved in specific cases where persons with disabilities wish to draft their last will *via* assistive technology. To draw up a valid will, persons with disabilities must, under the Italian legal

system, have so-called 'testamentary capacity' (Barba 2023, 321), which is an expression of the capacity to act, i.e. the ability to dispose of one's own assets and substances by means of a will. From a legal perspective, testamentary capacity also refers to persons with reduced capacity to act (Bianca 2002). Therefore, where there is testamentary capacity, the testator should have the right to make a valid testamentary transaction, even in the presence of a disability.

In this regard, it should be noted that both the Italian Civil Code and the Notarization Law provide rules to enable persons with physical disabilities to be part of a public act drawn up by a notary. More specifically, these rules concern cases in which the testator is deaf, speech-impaired or blind. Specific formalities are requested by the Italian Notary Act and the Italian Civil Code:

1. *Deaf party*, who is totally deaf and cannot hear what the notary declares. Art. 56 (1) and (2) of the Notary Act provides that:
 - if the deaf party knows how and is able to read, they must personally read the act, and this shall be mentioned therein;
 - if the deaf party cannot read, an interpreter must attend the deed, to be appointed by the presiding judge from among persons accustomed to dealing with the deaf party and who can make himself understood by signs and gestures.
2. *Speech-impaired party*, in addition to recalling the presence of the interpreter referred to in art. 56 of the Notary Act above, art. 57 of the Notary Act distinguishes two hypotheses:
 - if the party can read and write, they must read the document and write at the end of it, before the signatures, that they have read it and acknowledged that it conforms to their wishes
 - if the party cannot read and write, it will be necessary for the party's sign language and gestures to be understood by one of the witnesses or for a second interpreter to be present when the document is drafted
3. *Blind party*, who cannot read the notarial deed but is able to read other documents with the aid of Braille. Law no. 18 of 3 February 1975 requires:
 - the compulsory presence of an assistant to the blind person chosen from among their trusted people if they expressly request it
 - the compulsory presence of two assistants of the blind person when they are unable to affix their signature.

Finally, all the formalities indicated must be coordinated, in the case of a *public will*, with art. 603 of the Civil Code, which prescribes the necessary intervention in the deed of four witnesses where the testator (deaf, speech-impaired, blind) is also incapable of reading, for any reason, even temporarily.

This is, however, a partial regulation which typifies a certain hypothesis of physical disability, and does not encompass all possible cases. This prevents a generalized protection of the testators' right to draw up a valid will regardless of their disabilities.

Following this brief analysis of the formalities required by different sources within the Italian legal system, it is clear that:

- a *holographic will* cannot be made by a person who does not know how to (or cannot) write
- a *secret will* cannot be made by someone who does not know how to (or cannot) read and cannot sign the testamentary form
- a *public will*, on the other hand, by complying with the formalities laid down by notarial law, can overcome both the inability or incapacity to read and the inability to write and sign.

Therefore, not only in the case of a deaf, speech-impaired or blind person, but in all cases in which the subject is unable to use their upper limbs to write and affix their signature at the foot of the testamentary form, they are obliged to use the format of a *public will*. This choice becomes compulsory, as it is the only form in which it is possible to express one's will without signing the deed drawn up by the notary. However, the situation suppresses the freedom of choice between the various forms of will, resulting in unreasonable inequality. This can qualify as *discrimination on the basis of disability* according to Article 2 of the UNCRPD:

'discrimination on the basis of disability' means any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of impairing or nullifying the recognition, enjoyment and exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation.

This becomes all the more evident if we consider that, although it is possible to formalize one's will in the form of a *public will* without a signature, the notary must necessarily in this case specify in the deed the cause preventing the signature pursuant to art. 51 (2) no. 10 of the Notary Act.

Attempts to overcome the formalities of wills through interpreting the law: examples of some Italian court decisions

The limits imposed by testamentary formalism become macroscopic when considering cases where an impairment is such as to prevent not only the signing of the deed but also the verbal communication itself by the testator. From this perspective, it should be noted that, in the *public will* format provided by the Italian legal system, the testator must declare their will to

the notary. However, the Italian Code does not specify how this will must be declared or made public. On this point, it seems clear that a more evolved interpretation of the rule, which takes technological development into account, is required precisely to protect persons with disabilities. This is what has been done in case law within the Italian courts, which on several occasions have had to rule on specific cases of persons with amyotrophic lateral sclerosis (ALS) who had lost their use of speech. The solutions proposed were, however, different – and in some respects considerably so.

In a first judgment, in fact, the Court of Varese allowed the person with ALS to validly express their testamentary will by means of an eye-tracking device, then authorized the helper appointed (so-called '*curatore speciale*') to formalize that will in a *holographic will*. This conclusion was reached based on the existence of persons with ALS' genuine right to *non-verbal communication*, not considering it admissible that persons would lose the capacity to make a will because of their illness, as this leads to discrimination on the basis of disability.

After this judgement, the Court of Milan partially modified this approach. While confirming that the right to make a will must always be recognized, even when the person with ALS cannot communicate in conventional forms, it held that in such cases recourse to the *public will* was necessary on the basis of the greater protection of the will and interests of the testator that the professional figure of the notary could guarantee when compared to the form of the *holographic will*.

The same orientation was then also confirmed by the Court of Venice by specifying that, for those who express their will by means of eye-tracking, the judicial appointment of an interpreter (pursuant to articles 56 and 57 of the Notary Act) is not necessary in order to draw up a public deed, as the function performed by the interpreter would add nothing to the notary's understanding of the will thus expressed, which has already been rendered intelligible through eye-tracking.

The judgments analyzed here express a shared position in terms of the correct balance of interests that should characterize matters of succession, especially when concerning persons with disabilities. In fact, on the one hand the judges acknowledged the importance and value of technology as a means of facilitating the expression of one's will; on the other hand, they drew attention to the centrality of the figure of the notary as a guarantor of the effective and necessary protection for persons with disabilities in these matters.

However, the above analysis shows that this function is not effectively pursued given the rigidity of the regulatory framework, which is still based on respecting testamentary formalism – which the Notary is unable to disregard. These court rulings show that the succession law involves unequal treatment

of subjects as related to their precise physical characteristics. For persons with disabilities, the power of autonomy in making their will encounters a glaring limitation: the impossibility of freely choosing the form through which to express their will, resulting in the infringement of fundamental principles (such as the principle of equality), and situations of vulnerability that represent insurmountable external limits for persons with disabilities.

This becomes even more evident when we look at other legal systems, as explored in the following section.

Regulating electronic wills: examples from other legal systems

A brief analysis of how the digitization of wills is already regulated in other legal systems may provide further food for thought.

Within the United Kingdom legal system, Section 9 of the Wills Act of 1837 (as amended by the Administration of Justice Act of 1982) stipulates that no will shall be valid unless it is in writing and signed by the testator, or by some other person in their presence and under their direction. However, a paragraph has been added to the end of this Act, which expressly states that ‘presence’ includes presence by means of videoconference or other visual transmission.

In the United States, several States (Beyer and Hargrove 2007; Beyer and Peters 2019) have adopted specific legislative acts to allow the valid formation of an ‘electronic will’ which must be written and stored on an electronic disk, dated and signed by the testator, the notary and the witnesses.

In addition, in view of the increasing proliferation of laws and proposals relating to electronic wills, in 2019 *The Uniform Law Commission* (an American non-profit association established with the intention of promoting legislative standardization in those areas of state law) adopted a proposed uniform law – The Uniform Electronic Wills Act (Hirsch 2020) – which recognizes the possibility of formalizing *wills* created on a computer or other portable digital non-paper device, and signed electronically by the testator in the physical or virtual presence of witnesses. This may take place without the presence of a notary, and may also be carried out by engaging specialized companies who offer services for filing electronic wills.

Such a solution is certainly open to criticism from the point of view of the weak level of protection offered, opening up the field to a market of online wills drawn up without any legal assistance, and without any certainty that the last will and testament thus formed will be properly preserved. This fear also seems to be confirmed by a reading of the emergency decree during the pandemic period (Anand and Arora 2020).

A different approach is adopted by Australian and Canadian legislators, which tends to value the use of technology in matters of succession only within certain narrow limits, with the intention of safeguarding the

expression of the testator's will as much as possible (Hirsch and Kelety 2020). In Australia and Canada, in fact, no law has been enacted that deems electronic wills to be valid, however the principle through which the court may give effect to the electronic will is recognized only to the extent that the court deems the will to be authentic, i.e. expressive of the testator's true intentions without any external interference - the so-called 'harmless-error' rule. This is a corrective mechanism for the annulment of improperly formed electronic wills.

This harmless-error rule – under the different name of the 'dispensing power rule' (Zatucki 2021) – also exists in several American states and in different versions. They all originate from the Uniform Probate Code (section 2-503), which considers a will drafted without complying with the required formalities to be valid only where there is certain proof that the document in question contains the real will of the testator (Norton 2018).

In Peru, it has been possible since 2012 to create a will using the Braille code (Perez Gallardo 2017). Legislative Decree 1384 of 2018 amended the Civil Code, introducing a broad and inclusive concept of manifestation of will in Article 141, understood as that made 'orally, in writing, through any direct, manual, mechanical, digital, electronic means of communication, by sign language or by any alternative means, including the use of reasonable adaptations or supports required by the person.'

Following the Peruvian model, Cuba has also amended Article 50 of the Civil Code, which, adopting the same formula as the Peruvian Legislative Decree, aims to break down the barriers that prevent people with visual or intellectual disabilities from expressing their will, inserting the possibility of using or employing technological devices, suitable for facilitating the manifestation of the person's will (Perez Gallardo 2017).

In relation to the same case, in a very recent judgment of the Constitutional Court of Colombia issued last March, it was stated that the adverb 'only' should be removed from Article 1076 of the Civil Code with reference to the will before the notary as the only possible form for visually impaired persons. On the contrary, in line also with Colombian Law no. 1996 of 2019, adults with any type of disability must have access to any communication tools available to them to express their will, including the Braille system and Colombian sign language (Newsroom Infobae 2022).

The various situations outlined above refer to hypotheses in which the will, albeit in digital form, in any event reproduces the will of the disposer in written form. However, a real turning point would be recognizing the validity of a will drawn up orally, with the aid of technology.

At present, no legal system has adopted a law in line with this approach. Australia, however, from the same – albeit reductive – perspective of the harmless-error rule, admits that the courts may recognize written electronic wills but also wills drawn up by means of a mere audio and/or video

recording (even if made by the testators themselves with a simple iPhone) as equally valid as expressing the real will of the testator (Hirsch and Kelety 2020). This approach, however complex, has the added benefit – beyond that of the American Uniform Act analyzed above – of preventing companies from marketing electronic wills to vulnerable consumers who are unaware of the consequences of their declarations. On the other hand, however, it does not recognize a rule of general validity of wills in digital form.

Therefore, what emerges from the comparative analysis is that, while digitizing wills could grant persons with disabilities the broadest level of freedom from testamentary formalism, this hypothesis needs adequate regulation. Given the specific characteristics of each legal system, not all the examples provided may be applicable in other systems – mainly as some of them adopt Civil law while others Common law. While Peru has been able to introduce a law *ex novo*, other legal systems would need to amend their entire regulatory framework. This is far more complex, as it would require rethinking many of the conceptual assumptions on which the legal system itself has been built.

However, the analysis also highlights that legal systems can, in fact, adequately protect persons with disabilities' inheritance rights by reframing the relationship between human and technology, while finding the most appropriate solution to avoid infringing the fundamental rights as recognized by the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).

Discussion: recognizing testamentary will *via* assistive technology

The analysis of the legal system in Italy and other states can be read using a Posthuman Disability Studies approach, prompting a rethinking of traditional testamentary forms through the legal recognition of will *via* assistive technology.

To this end, a very strong normative position is represented by the United Nations Convention on the Rights of Persons with Disabilities, whose principle does not lie in recognizing new rights for persons with disabilities, but rather in making them able to enjoy the same rights as other citizens on equal terms. The inspiring principles of the Convention are, in fact, those of autonomy, equality and non-discrimination of persons with disabilities, which are reflected first and foremost in the freedom to be able to make their own choices in an autonomous manner (UNCRPD 2007, art. 3 letter a).

This implies that in official activities, the use of any means of communication which enables expression of choices must constitute a guarantee, including sign language, Braille or other known forms of communication including

'augmentative and alternative communications and [to] any accessible means, modalities and systems of communication of their choice' (UNCRPD 2007, art. 21 letter b).

It is evident, however, that this principle – which has been implemented in various countries, including Italy *via* law n. 18 of 3 March 2009 (Barba 2021) – remains unimplemented within systems that require testamentary forms which are inaccessible to persons with disabilities. This means that the systems in question are in breach of precisely the legal obligations that expressly require them to adopt all legislative measures to implement the rights recognized by the United Nations Convention on the Rights of Persons with Disabilities and 'to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities' (UNCRPD 2007, art. 4 letter b). Therefore, the current formalism of the will appears to be a real 'discrimination on the basis of disability,' detrimental to the dignity of persons with disabilities, and disregards the fundamental principle of the Convention (UNCRPD 2007, art. 1). Finally, it seems necessary to emphasize that the Convention on the Rights of Persons with Disabilities also imposes 'promot[ing] the availability and use of new technologies [...] giving priority to technologies at an affordable cost' (UNCRPD 2007, art. 4 letter g).

From the perspective of Posthuman Disability Studies (De Schauwer et al. 2021; Goodley, Lawthom, and Runswick-Cole 2014; Goodley et al. 2019; Liddiard et al. 2019), these recommendations have to be framed as part of a rethinking of the very ideas of the human subject and technologies as they are usually assumed. The cases of inheritance law analyzed above, in fact, highlight that a key limit of assistive technology lies not in its functions, but rather in the idea of subject to which it is applied, and according to which it is regulated. In fact, the idea of testamentary capacity (Barba 2023; Gooding, Arstein-Kerslake, and Flynn 2015) lies in the assumption that the subject can make an authentic will only if they possess certain faculties. Accordingly, a will is considered legally valid insofar as it corresponds to a supposed 'inner truth' of the subject, expressed in the forms traditionally regarded as capable of conveying that inner truth – i.e. orality and writing. For Posthuman Disability Studies, the limit of this approach is that of considering these faculties and forms of expression as innate, rather than the result of a co-constitution between the human and the nonhuman. Technology is an integral part of this co-constitution, as communicative agency is reconfigured across human-technological assemblages (Liddiard et al. 2019; Sterne 2022). Therefore, assistive technology must be considered coextensive with the very possibility of expressing someone's will.

In light of this, a practical proposal can be advanced for reforming inheritance law in order to recognize wills made *via* assistive technology. The core of this proposal is to allow the legal professional to act as a guarantor of the

proper use of technological devices and services produced by companies, in close cooperation with persons with disabilities, to enable them to regulate their own inheritance in a valid manner.

Two distinct scenarios could inspire legislature with interventions to put this proposal into practice:

1. The creation of a digital platform entirely managed by legal experts in succession law, which people with disabilities could easily be given access to – both from an economic point of view (by keeping costs low and accessible to everyone) but also from a technical point of view, through the creation of special tools that allow every possible form of communication. This would allow for a *will via assistive technology* to be drafted by persons with disabilities, with the support of a legal professional:
 - *in written form* (by any means possible, including Braille code), using technology to overcome the necessity of a handwritten signature on the deed
or
 - *in oral form* by giving the person with disability the opportunity to make a video in which he or she is filmed expressing their last wishes.

This solution could also be cost-effective, through public investment, by leveraging the digital infrastructure already available to notaries. Moreover, it would allow to avoid notary fees, making it possible to keep costs low and accessible to everyone.

2. In any case, the recognition of the right of persons with disabilities to be able to use, as an alternative to the platform described above, ‘all other accessible means, modes and formats of communication of their choice’ (UNCRPD 2007, art. 21 letter b), thus giving effect to the principle of equality and full autonomy of persons with disabilities as expressed in the Convention on the Rights of Persons with Disabilities.

The main practical obstacle to the implementation of this proposal concerns the cooperation between legal professionals, technology users and assistive technology firms. Such cooperation is necessary for legal professionals to oversee the technology and fully exercise their role as guarantors. This aspect that could help overcome some of the rigid formalism surrounding wills, thereby making all forms of will-making inclusive for people with or without disabilities. The conclusions of this article reflect on this issue.

Conclusions

This article has analyzed the disabling barriers related to expressing a will *via* assistive technology. Adopting a doctrinal analysis method informed by a

Posthuman Disability Studies approach, it has identified theoretical and practical limits in the Italian juridical system (as well as in other countries) and proposed two scenarios for an inheritance law framework that would allow the legal professional to act as a guarantor of the proper use of assistive technology. Such a proposal makes sense in the context of a fair conversation and cooperation between legal professionals, technology users and the organizations who develop and manage technology. In fact, what has been analyzed above in relation to inheritance law is not only a purely legal matter, but it is strongly connected to organizational and societal spheres (Groce, London, and Stein 2014).

The conclusions of this article outline the complexity of such interconnection, as the legal proposal here advanced would require cohesion across all those levels in order to be applied.

This cohesion is necessary for three main reasons. First of all because technology is not a mere tool, but a *social force* that embeds social meanings (Jasanoff 2003) – originating from ideas, narratives, values and norms – and subsequently helps to produce them.

The second reason is that, when the nodes of this network don't communicate with each other, a lack of participation in the design and implementation of technology occurs, with the consequence of undermining the inclusive and emancipatory potential of assistive technology, as this article has shown. This lack of participation regards both legal professionals – who can only adapt *ex post* to technological developments through *ad hoc* training – and users with disabilities – whose needs and concerns are often considered by technology firms but not adequately addressed by the law.

The third reason is that technology is employed in ways that are nonlinear and that can be unpredictable from both the designers' and the legislators' point of view.

To address the problems deriving from the lack of cooperation among these levels, Jasanoff's idea of 'technologies of humility' (Jasanoff 2003, 227) seems particularly fruitful. Technologies of humility 'require not only the formal mechanisms of participation but also an intellectual environment in which citizens are encouraged to bring their knowledge and skills to bear on the resolution of common problems.' Jasanoff underlines how, in modern industrial societies, decisions regarding the design, use and safety of new technologies are frequently delegated to producers, excluding all other social actors. However, non-specialists may not possess enough knowledge and material resources to participate in such decisions.

The way Jasanoff suggests achieving a democratic and participatory organization of technology is based on *framing*, *vulnerability*, *distribution* and *learning*. Participation that acknowledges these four points ensures that there is neither a hardening of respective positions nor endless deconstruction, but rather a richer deliberation on the substance of decision-making. In

particular, vulnerability seems to be a crucial point when discussing assistive technology. Citizen participation in democratic technology must also include people with disabilities and must account for how vulnerability is produced by the system. This should avoid promoting technologies and laws that, in attempting to assist people with disabilities, have the side effect of producing new vulnerabilities because of their lack of coordination. In light of this, the participation of people with disabilities within assistive technology design and regulation is a way to disrupt assumptions of non-disability (or ableism) that infuse organizing processes and are also maintained within laws – as seen in the analysis of the various forms of ‘discrimination on the basis of disability’ (UNCRPD 2007) present in inheritance law.

This form of participation can serve as a model for decision-making in broader institutional issues related to disability, including social, legal, and organizational contexts. It is a model of participation that engages plural viewpoints in which the human subject is not seen as closed in itself, but – in line with a posthumanist approach – as an incomplete, active, imaginative and vulnerable agent (De Schauwer et al. 2021; Goodley, Lawthom, and Runswick-Cole 2014; Goodley et al. 2019; Liddiard et al. 2019). Vulnerability, in fact, is determined by multiple external or contextual factors which identify a *relational* dimension (Caggiano 2022; Fusaro 2019; Gatt 2020) involving both humans and nonhumans. Recovering this relational element in the links between law, organizations and society contributes to emancipating disability from an individualistic dimension and fosters participation as a fundamental (and not peripheral) aspect.

In this scenario, recognizing the validity of expressing a will *via* assistive technology is an important way of increasing the agency of people with disabilities within inheritance law. A widespread, coordinated and rigorous adoption of the scenarios outlined in our argument can strengthen the protections for this essential human right – the expression of one’s final wishes – and contribute to the creation of a society that respects the rights, dignity, and full participation of people with disabilities.

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