Introduction to Part I

What Difference Does It Make to Move Online?

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As individuals, communities, and governments increasingly move online, long-standing legal frameworks face unprecedented challenges. The transition to the digital realm introduces new dimensions to established rights, amplifies existing vulnerabilities, and raises questions about whether current frameworks can adequately address the complexities of digitalisation. This first part of the book offers a comprehensive exploration of how the online context makes a profound difference in the application, governance, and enforcement of human rights. The seven chapters challenge readers to rethink traditional legal frameworks, adapt to the rapid pace of technological change, and embrace interdisciplinary solutions to ensure that human rights remain robust and relevant in the digital age. The chapters aim to answer a core question: *What difference does it make to move online?* The groundwork is then laid for understanding the digital transformation of rights and the need for innovative approaches to their protection. Through theoretical insights, case studies, and practical examples, the chapters collectively address key challenges related to governance, accountability, harm, and innovation in the digital sphere.

CHAPTER 2. IS THERE A NEED FOR NEW DIGITAL HUMAN RIGHTS IN AI GOVERNANCE?

Chapter 2 explores the evolving landscape of digital human rights. Wolfgang Benedek evaluates whether the emergence of digital technologies necessitates entirely new human rights (e.g., the right to digital self-determination) or whether existing rights can be extended to address new challenges (e.g., the right to privacy, freedom of expression). He focuses on artificial intelligence (AI) governance as a case study, examining regulatory initiatives by global, regional, and national actors. The discussion includes the role of the United Nations, the Council of Europe (CoE), and the European Union (EU) in addressing gaps in digital rights through frameworks such as the CoE Framework Convention on Artificial Intelligence and the EU Artificial Intelligence Act. The chapter also examines the interplay between state actors and private platforms in regulating AI and protecting digital rights. In

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response to the core question of the first part of the volume, the chapter notes the following: (a) human rights take on new dimensions in the digital context, requiring reinterpretation and the extension of traditional rights to address these challenges; (b) digital technologies introduce novel threats (e.g., disinformation, mass surveillance), which necessitate innovative legal responses; (c) moving online requires protection through binding international commitments, while non-binding soft law approaches are insufficient to enforce rights effectively; and (d) the borderless digital environment requires international co-ordination to avoid regulatory fragmentation.

CHAPTER 3. WHY AND HOW THE STATE SHOULD REGULATE THE INTERNET

Chapter 3 by Cathleen Powell examines the philosophical and practical foundations for state regulation of the internet, focusing on the relationship between individual rights and societal interests. It critiques the traditional view of rights as individualistic and argues for a more community-focused approach, emphasising that human rights should serve the common good. Powell argues that the digital realm introduces unique challenges – such as disinformation, manipulation, and hate speech – that require state intervention to preserve the integrity of public discourse and democratic values. Drawing on legal theory, particularly the ideas of Lon L. Fuller, she emphasises the importance of fostering trust, maintaining the rule of law, and balancing power between states, private actors, and users in internet governance. With regard to this part's core question (*What difference does it make to move online?*), the chapter identifies several transformative effects of moving online: (a) the digital realm magnifies the reach and impact of harmful content (e.g., disinformation and hate speech), making existing social and legal challenges more acute; (b) the internet's susceptibility to manipulation and false information erodes trust in public discourse and democratic institutions, making it harder for communities to reach shared understandings and maintain the rule of law; (c) online spaces, often privately owned, function as public forums, demanding state oversight to ensure that private governance aligns with public interests and fundamental rights; and (d) the state's regulatory power must be exercised in collaboration with non-state actors to prevent abuse and ensure responsiveness to public concerns. The chapter advocates a three-tiered model of internet governance involving self-regulation by platforms, oversight by independent regulatory bodies, and state intervention for serious threats such as hate speech or disinformation during elections.

CHAPTER 4. HOW TO TAME THE 'DIGITAL' SHREW: CONSTITUTIONAL RIGHTS GOING ONLINE

Chapter 4 examines the horizontal application of constitutional rights in the digital environment. It focuses on the accountability of social platforms, the limitations of

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current regulatory frameworks, and the growing role of private actors in regulating online spaces. Violeta Beširević analyses judicial practices in jurisdictions such as Germany, Canada, and the EU, and demonstrates how constitutional rights – traditionally enforceable only against the state – are being extended to regulate private actors, particularly social platforms, which now wield significant power over public discourse and individual freedoms. The chapter critiques the lack of adequate regulatory mechanisms for holding platforms accountable for human rights violations, emphasising their quasi-regulatory role in online governance. It advocates for a model of governance that enforces constitutional principles in the digital sphere, promoting accountability, transparency, and democratic legitimacy. The chapter responds to the core question by drawing attention to the following aspects: (a) the lines between public and private spaces have blurred (as private platforms such as Facebook and X function as public forums), so accordingly constitutional protections need to be extended to interactions governed by private actors; (b) as social platforms have quasi-regulatory roles, they should be recognised as duty bearers under constitutional rights; (c) the reach and permanence of digital actions amplify the potential harm caused by rights violations, necessitating stronger accountability mechanisms and legal protections; and (d) the online environment forces courts to reinterpret constitutional principles to address unique digital challenges (e.g., algorithmic decision-making and platform moderation).

CHAPTER 5. HOW DO WE DECIDE WHETHER MOVING ONLINE MAKES A DIFFERENCE?

Johanas Baltrimas continues the exploration of changes that occur in the digital environment in Chapter 5 by examining the legal reasoning behind determining whether the digital nature of an action or object requires different legal treatment to its offline equivalent. Through an analysis of court cases from different jurisdictions, he identifies two primary criteria that courts use to evaluate whether moving online makes a difference: (a) the purpose and function of the disputed object or action; and (b) the extent of harm caused by the disputed behaviour. Baltrimas highlights how courts compare digital cases with analogous offline situations to assess whether the online factor is legally relevant or whether traditional rules suffice. He provides a structured framework for evaluating the legal significance of moving online, addressing the following ways in which the digital realm impacts legal reasoning: (a) the online context often amplifies the extent of harm (e.g., the speed and scale of disinformation), which necessitates different legal responses; (b) moving online forces courts to reinterpret traditional laws and occasionally establish new rules when existing frameworks prove inadequate (e.g., the right to be forgotten); and (c) the difference made by moving online is not static – ongoing technological advancements continuously reshape the relevance of the online factor in legal disputes, requiring courts to remain adaptable.

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CHAPTER 6. SOME REFLECTIONS ON THE NON-COHERENCE THEORY OF DIGITAL HUMAN RIGHTS

Chapter 6 by Mart Susi analyses the challenges of applying human rights frameworks to the digital realm through the lens of non-coherence theory. This theory posits that human rights in the digital domain differ fundamentally from their offline counterparts owing to shifts in meaning, scope, and application. Susi critically examines the assumption that offline human rights norms can be seamlessly transposed into the digital environment, highlighting the distortions and variances that arise in this process. He calls for a reimagining of human rights as adaptable, context-dependent principles that can address the unique dynamics of the digital age. In response to this part's core question – *What difference does it make to move online?* – the chapter demonstrates that moving online fundamentally alters the structure, interpretation, and implementation of human rights as follows: (a) the digital environment transforms the meaning and scope of established rights (e.g., privacy online often involves the desire not to be left alone); (b) moving online shifts human rights from being absolute to relative, as digital contexts require rights to be balanced against one another in ways that differ significantly from offline contexts; (c) the digital realm creates competing governance systems (e.g., private versus public regulation), leading to non-coherence between rights frameworks and fragmenting their application; and (d) the digital environment's fast-paced nature leaves little time for traditional legal processes (e.g., judicial balancing), compromising the effectiveness of rights protection.

CHAPTER 7. INTERNET ADDICTION AS A HUMAN RIGHTS ISSUE

After addressing broad conceptual and theoretical issues regarding human rights in the digital realm, Chapter 7 introduces a specific harm – internet addiction – that uniquely arises in the online environment. Vygantė Milašiūtė examines internet addiction through the lens of human rights, highlighting how the online environment amplifies the risks of addiction and introduces new legal and policy challenges. She explores the interplay between medical research and legal frameworks, analysing how internet addiction affects rights such as health, non-discrimination, and the rights of vulnerable groups such as children. The chapter also evaluates international and regional responses, including public health interventions, consumer protection laws, and the emerging concept of the 'right to disconnect'. With regard to the core question, the chapter provides a comprehensive analysis of how moving online changes the nature of addiction and introduces new challenges for human rights law: (a) the online environment's accessibility, anonymity, and engaging design features make addiction more prevalent and

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severe than in offline contexts, affecting vulnerable groups disproportionately; (b) digital tools blur the boundaries between leisure and harm, turning everyday internet use into a potential health risk that requires public health and regulatory interventions; (c) online platforms increasingly function as de facto regulators of user behaviour, raising questions about their responsibilities in mitigating addiction and the state's role in holding them accountable; and (d) the online context requires new approaches to existing rights (e.g., the right to health) and the creation of novel legal concepts such as the 'right to disconnect', which respond specifically to digital harms.

CHAPTER 8. JUST DON'T GET CAUGHT!

Chapter 8, the final chapter in the first part of the book, provides a different perspective, critically examining the limitations of legal regulations in governing the digital realm. Laws struggle to keep pace with technological advancements, leading to vague, inconsistent, or unenforceable rules in the digital space. Barbora Bad'urová explores the potential of digital ethics and education as complementary solutions. She highlights the challenges of regulating digital technologies, including the slow pace of legal development, the limitations of law enforcement, and the unique nature of the online environment, such as anonymity and global reach. Bad'urová emphasises the role of intrinsic motivation, individual responsibility, and moral education in addressing the ethical dilemmas posed by digital technologies. The chapter responds to the core question by noting the following: (a) the anonymity and lack of accountability online (making it difficult to detect and address violations effectively) amplifies the need for internal regulation and moral responsibility; (b) as digital activities transcend national borders and create regulatory challenges and inconsistencies, there is a need for universal ethical principles to address these gaps; and (c) as legal regulation lags behind technological advancements, it becomes essential to complement laws with flexible and forward-looking ethical education. The chapter argues for a multidimensional approach, combining legal regulation with the promotion of digital ethics and education, to effectively address the complexities of the digital realm.

SHARED THEMES AND INTERCONNECTIONS

The seven chapters collectively provide a nuanced exploration of how moving online transforms the nature, application, and governance of human rights. Each chapter addresses distinct facets of this transformation, but they converge around several overarching themes that highlight the fundamental differences introduced by the digital realm. Listed here are the key parallels across the chapters and their shared contributions to answering the question: *What difference does it make to move online?*

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A. TRANSFORMATION OF RIGHTS

All chapters acknowledge that moving online reshapes the scope, interpretation, and enforcement of human rights, shifting their application from static, state-centred frameworks to dynamic, context-dependent interpretations:

- Chapter 2 on new digital rights emphasises that existing rights, such as privacy and freedom of expression, require reinterpretation in the context of AI and digital governance.
- Chapter 3 on state regulation of the internet shows how the internet amplifies risks such as disinformation and hate speech, necessitating reimagined frameworks to preserve public trust and democratic values.
- Chapter 4 on constitutional rights online explores how private platforms function as public forums, requiring constitutional rights to extend beyond state obligations to regulate platform behaviour.
- Chapter 5 on legal reasoning in digital contexts argues that courts must adapt their reasoning to address new harms and purposes unique to the online world, such as the permanence of digital information.
- Chapter 6 on non-coherence of digital rights argues that moving online disrupts the coherence of traditional human rights, leading to the relativisation of rights and the need for novel theoretical approaches.
- Chapter 7 on internet addiction discusses how digital environments amplify behavioural risks, such as addiction, which require integrating health and human rights approaches to governance.
- Chapter 8 on digital ethics and law critiques the limits of legal frameworks in addressing the unique challenges of the online space, emphasising the need for ethics and education.

B. AMPLIFICATION OF HARM AND VULNERABILITY

Each chapter highlights how the digital environment magnifies risks and harms that were less prominent offline:

- Chapter 2 shows how AI exacerbates risks such as bias, discrimination, and surveillance, amplifying existing inequalities.
- Chapter 3 illustrates how disinformation and manipulation online distort public discourse and erode trust at a scale unprecedented in offline contexts.
- Chapter 4 demonstrates that the privatisation of public spaces online amplifies the power of platforms to influence discourse, often to the detriment of individual freedoms.
- Chapter 5 notes that the reach and permanence of digital actions, such as online defamation or data breaches, heighten harm compared with their offline equivalents.

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- Chapter 6 draws attention to the fact that the fast-paced and opaque nature of digital systems increases the likelihood of rights violations, complicating traditional legal safeguards.
- Chapter 7 shows how digital environments intensify the risk of addiction, particularly for vulnerable groups such as children, and require targeted public health interventions.
- Chapter 8 highlights how anonymity and the global reach of digital spaces amplify unethical behaviour, making it harder to enforce accountability.

C. SHIFTING DUTY BEARERS AND ACCOUNTABILITY

Most of the chapters discuss how moving online partly shifts responsibilities for rights protection from states to private actors, creating gaps in accountability:

- Chapter 2 notes the role of private AI developers in adhering to human rights standards, emphasising the need for public oversight.
- Chapter 3 advocates for shared responsibility between states, platforms, and independent regulators to address disinformation and other digital harms.
- Chapter 4 argues that constitutional rights must be horizontally applied to hold private platforms accountable for human rights violations.
- Chapter 6 points out the fragmented governance of digital rights, with overlapping responsibilities between states, platforms, and international bodies.
- Chapter 7 critiques platforms for failing to mitigate addictive design features, placing the burden on individuals and states to address the issue.
- Chapter 8 stresses the importance of ethical self-regulation alongside legal frameworks to address the accountability gaps created by anonymity and global reach.

D. FRAGMENTATION AND GLOBALISATION

Several of the chapters highlight the tension between the global nature of the internet and fragmented legal and regulatory frameworks, and advocate for harmonised regulatory frameworks based on international cooperation:

- Chapter 2 discusses the need for the harmonised international governance of AI to address cross-border rights violations.
- Chapter 3 emphasises the difficulty of regulating global platforms using national laws, advocating for international cooperation.
- Chapter 4 highlights how platform governance transcends national boundaries, necessitating transnational constitutional approaches.
- Chapter 5 illustrates how courts struggle to apply consistent reasoning when addressing global digital cases using local legal norms.
- Chapter 6 critiques the lack of coherence in global digital governance, arguing for more integrated frameworks.

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E. THE NEED FOR COMPLEMENTARY APPROACHES

Several chapters also advocate for combining legal regulation with other mechanisms, such as ethics, education, and public awareness. Legal regulation alone cannot address the complexities of the digital realm, so complementary tools and cross-sectoral collaboration are essential:

- Chapter 2 stresses the need for enforceable legal obligations alongside ethical AI guidelines.
- Chapter 3 proposes a multi-tiered regulatory model combining self-regulation, independent oversight, and state intervention.
- Chapter 7 advocates for public health initiatives and digital literacy campaigns to mitigate addiction risks.
- Chapter 8 highlights the role of digital ethics and education in addressing gaps left by slow legal responses.

The seven chapters collectively argue that moving online fundamentally alters the nature of governance, accountability, and the protection of human rights. They draw attention to the amplified harms, shifting responsibilities, and global complexities of the digital environment, emphasising the need for innovative, multidisciplinary, and collaborative approaches to address the challenges posed by digital technologies.

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