1

Horizontal and Vertical Governance Models and Normativity

1.1 THE IDEA OF NON-COHERENCE AND POTENTIAL OBJECTIONS

The idea of non-coherence theory originates from the distorted image of well-established human rights[1] in digital settings. This distorted image appears in various ontological and epistemic aspects. It reveals an absence of clarity on whether human rights rules and principles, the possibility of their realisation and related obligations and remedies against violations as established in the offline world (human rights law and practice *as we know it*) continue to exist online with or without variance. If variance exists between the two domains, the obvious matters of interest are the degree and consequences of such variance, whether it amounts to distortion, and, if distorted, whether its degree calls into question the feasibility or limits the scope of the transposability of offline human rights law and practice to online. For the purposes of this book, I bring the terms *variance* and *distortion* under a common denominator of *non-coherence*. There is no clear boundary to distinguish between them; the dividing line is whether the difference reflected after transposition from offline to online is narrow and concerns only some elements or whether the difference is more comprehensive. Every distorted image is at variance from the

[1] Referral to 'well-established human rights' maintains the focus while introducing the idea of non-coherence theory. These are rights which are recognised in various global human rights instruments as uncontested. This is a one-way street: the observer is interested in how element 'A' from the offline domain is transposable and reflected in the online domain. This is because the well-established human rights carry theoretical and practical offline history. In principle, the reverse is also possible. There are several new human rights which have emerged due to new technologies and whose cradle is online. The observer can now ask if and how these rights are transposable and reflected offline. Occasionally the monograph will observe this reversal also. See for reference A. von Arnauld, K. von der Decken, M. Susi (eds.), *Cambridge Handbook on New Human Rights: Recognition, Novelty, and Rhetoric* (Cambridge: Cambridge University Press, 2020).

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original meaning and scope of the reflected element. But not every image at variance from the original can be labelled a distortion.

Numerous potential objections[2] can be raised against the idea of non-coherence theory – these are related to theoretical justifiability and the availability of evidence from practice. This book will address these potential objections in detail as it progresses. Here I raise the potential objection from normativity, in which it can be said that the main premise of non-coherence theory – the consistent condition of the unpredictability of human rights law and practice in the digital domain – remains speculative since normative regulation and policies do exist vis-à-vis human rights online. An objector could simply point to the vast body of norms and policies towards online human rights and certainly the related academic discourse. This argument can continue by highlighting that vertical and horizontal internet governance models, despite their mutual co-existence leading to a withering of the claim to exclusiveness against one another, as a sole source of online regulation, accomplish what normative structures are called to do – provide a rational basis for governance. At this point we have to note the focus of the discussion – governance models do not concern the content of rights but rather only concern formal questions about the processes by which the rights are defined – who are the relevant actors, how can the rights be enforced and what are the available remedies and sanctions in the event of violations. There are hundreds of articles and books on the topic, which leads me to confine myself to pointing out the main features relevant for the argument from normativity against non-coherence theory. In doing so I will, however, demonstrate that the simultaneous existence of multiple normative governance models does not speak against but for the justifiability of non-coherence theory.

In a nutshell, the vertical governance model in law is based on the coercive force of state structures against private entities. Despite some loss of linearity[3] in practice – some elements may be delegated to private entities – the fact remains that such delegation serves the goal of effectiveness and does not result in the incapability of the vertical model to operate all main features related to a normative framework on its own. New technologies are one reason

[2] These objections are potential, since here is the theory's inaugural presentation. Therefore, I can only speculate what might constitute the main points of any future critique.

[3] Vertical linearity is understood as a 'pure' model where all the main features of regulation are in the hands of the sovereign power, no matter its political characterisation as democratic or not. This sovereign power sets the rules of the game, oversees their implementation and operates judicial or quasi-judicial agencies to take action when the rules are not followed.

for the state easing its stance on interference into private matters.[4] Horizontal governance models are, by contrast, based on non-hierarchical structures involving a variety of actors in partnership over competition, where the output of regulation and compliance mechanisms is based on the idea I would term *working together*.[5] For the purpose of the non-coherence theory of digital human rights, we are interested in whether these governance models regarding the Internet continue to operate in isolation and whether there is a combination of elements, and if so, what is the degree of equilibrium.

1.2 THREE SCENARIOS OF THE TRANSPOSITION OF GOVERNANCE MODELS

A superficial glance at the development of the internet first highlights its relative shortness – since the beginning of the 2000s – and therefore seems to eliminate the predisposition that the transposal of human rights law and procedures from the offline to the online domain could have been countered by an existing conceptual and regulatory framework. Such a starting point for analysis would, therefore, not find it worthwhile to look at examples from the history of law where the intent to transpose a well-established and functioning legal system to unknown territory has failed or resulted in systemic variance due to existing ideas about rights and some form of regulatory structures from the *other side*. There are three possible scenarios whereby a normative-ideological regulatory framework – which is a concept of a more general level than a governance model – can be transposed to another environment.[6]

The first concerns a situation where a certain normative-ideological regulatory framework is carried to another socio-geographic environment, but it is countered by an existing framework, be it well or less well established. This scenario, which we may label the socio-geographic transposition of law, can be illustrated by the process of imposing colonial supremacy on the territories of the indigenous or more established albeit different cultures. Saliha

[4] Take, for example, the Mann-Elkins Act of 1910, where the United States Congress gave the telegraph and telephone companies immunity from liability for the content they carried on the basis of the 'common carriage' doctrine.

[5] For discussion see S. D. Philips, 'The Myths of Horizontal Governance: Is the Third Sector Really a Partner?', Intersectional Society for Third-Sector Research (ISTR) Conference, Toronto, July 2004.

[6] The choice of the term signifies a more general situation of any attempt to take the normative-ideological structure from an established setting and transpose or impose it elsewhere. There may be no countering normative-ideological regulatory framework, or it may be underdeveloped, hence the broader term 'environment'.

Belmessous has shown that the colonisation of indigenous people from America, Africa, Australia and New Zealand was countered not only by force but also by ideas and understanding of a law which should apply between people. She uses the expression of indigenous legal opposition to European legislative framework and justifications.[7] From the perspective of legal scholarship, this opposition means contestation between ideas and procedures, that is, mechanisms for how the ideas are made to govern. Non-coherence theory makes the assumption that there is no or only minor contestation. Yet such contestation may appear in time.

The second scenario concerns regime change, leading to the ideological transposition of law. Legal scholarship dominated by comparative methodology does not conclusively show the possibility of the full replacement of established legal ideologies and structures by an incompatible set of ideas, leading to an entirely different understanding of how the law should govern society.[8] The overthrow of the Russian tsarist regime by the Bolsheviks led to the enactment of socialist ideology, but the administrative and court systems were largely functionally retained. The French Revolution led perhaps, at least initially, to even broader chaos in terms of laws and procedures.[9] Regime change may go hand in hand with the adoption of legal norms from a regime falling into the same ideological paradigm.[10] The common characteristic of regime change is the generic variance of the legal framework before and after the change, whereas the variance can always be characterised by degree. Such a scenario would not make sense in the initial stages after the digital domain appeared for the simple reason that there was no regime to be changed. But it does not exclude the possibility that the regime may have appeared over time, either in disguise or openly, which is then subject to the aspiration of regime

[7] S. Belmessous (ed.), *Native Claims: Indigenous Law against Empire, 1500–1920* (Oxford Academic, 19 January 2012), https://doi.org/10.1093/acprof:oso/9780199794850.001.0001, accessed 24 November 2022.

[8] Peter Reich has explored the impact of regime change upon legal change and has identified various outcomes. For example, he writes that regime change in the Second Empire in ancient Rome resulted in hybridisation; in Canada, regime change led to legal conundrums for decades; and in California, gradual supplanting of the civil law system. See P. L. Reich, 'Regime Change and Legal Change – The Legacy of Mexico's Second Empire' (2005) 1 *Oxford U Comparative Law Forum*, https://ouclf.law.ox.ac.uk/regime-change-and-legal-change-the-legacy-of-mexicos-second-empire.

[9] R. G. Fuchs, *Contested Paternity: Constructing Families in Modern France* (Baltimore: John Hopkins University Press, 2008), pp. 34–41.

[10] P. Varul, H. Pisuke, 'Louisiana's Contribution to the Estonian Civil Code' (1999) 75 *Tulane Law Review*, 1027.

change from the offline domain. This concerns matters like self-normativity and self-constitutionalisation, discussed further on.

The third scenario concerns a situation where people and institutions enter an unknown territory with their own discursive history, ideas and values, but for one reason or another note that their regulatory and ideological equipment does not fully work. Imagine a colony established on Mars, where the colonisers soon experience that somehow the laws and legal procedures of Earth are not completely compatible with the challenges of an uninhabited planet. The planet Mars seems to have no preconditions for normative regulation, yet something has to be changed. It is similar in the online domain. We can term this scenario the transposition of law into normative *carte blanche*. This position might take it for granted that the digital domain could have been characterised – in its early years – as such an empty sheet available for the transposition of normative regulation; that is, there were no countering normative forces, and the offline regulatory and conceptual framework would appear welcome by the online. A deeper examination questions this predisposition for the reason of the *inadequacy of protection* thesis, which I have developed elsewhere to explain the element of novelty in human rights development.[11] This thesis claims that the development of new human rights is explainable through the recognition of the incapability of established human rights to provide adequate protection of certain groups in comparison with others, or that the novel contemporary conditions challenge the capability of an established human right to provide sufficient protection of an important social value. The common element of both reasons leading to the articulation of new human rights according to the inadequacy of protection thesis is contestation. The application of this thesis to the internet is at the bottom of questions on whether it is possible to provide in the online domain protection that is comparable to that in the offline domain by using the concepts entirely placed in and originating from offline, or whether offline remedies can be effectively applied online.

1.3 THE INADEQUACY OF PROTECTION THESIS

The inadequacy of protection thesis when applied to the internet is offline-morphic and practice-dependent. Offline-morphic means the view from the

[11] M. Susi, 'Novelty in New Human Rights: The Decrease of Universality and Abstractness Thesis' in A. von Arnauld, K. von der Decken, M. Susi (eds.), *Cambridge Handbook on New Human Rights of the 21st Century: Recognition, Novelty, and Rhetoric* (Cambridge: Cambridge University Press, 2020), pp. 21–22.

offline domain, analogous to when an animal rights lawyer projects her understandings onto other species and concludes that they exhibit behavioural patterns comparable to humans.[12] The image that can be posited as adequate from the perspective of the well-established offline legal system may be viewed as inadequate by a viewer from the electronic world. Just like when a Western lawyer deems the absence of adversarial proceedings among an indigenous group as inadequate, her view would find no understanding from inside the group. The offline-morphic component of the inadequacy of protection thesis is dichotomous, which may be in terms of degree between the online and offline regulatory realms. It eliminates the potential claims of regulatory superiority[13] from *non-coherence theory*, replacing it with the *capabilities approach* and *comparability of protection thesis*, discussed later in this monograph.

The practice-dependent aspect of the inadequacy of protection thesis refers to the method of verification. Careful observers can count from practical observation, scholarly statements and the views of the courts, individualised and generalised stories of how the digital domain affords a somewhat different protection in comparison with the offline. Certain remedies remain ineffective, even if theoretically accessible. The overarching verification, and thereby confirmation of the correctness of the practice dependency aspect of the inadequacy of protection thesis, is best understood via the traditional wisdom 'where there is smoke, there must be fire'. Smoke stands for contestation, that is, the process of a detail-oriented and arguments-based exchange of viewpoints about the full or partial compatibility of offline human rights ideas and norms with the online reality. Non-coherence stands for fire, that is, the revelation of a non-coherent image when comparing human rights normative-ideological frameworks offline and online.

Not every disagreement or alternative explanation regarding human rights law should be viewed as a contestation against the adequacy of non-digital human rights norms and ideas in the digital sphere. To term a discussion as contestation, a critical mass of discussants and actors must exist who, while not agreeing on a common outcome, are at the same time in agreement regarding the inadequacy of the protection. The reasons for such an agreement are not important at this point since this chapter is concerned with the explication of

[12] M. C. Nussbaum, 'Animal Rights: The Need for a Theoretical Basis' (2001) 114 *Harvard Law Review*, 5, 1506–1552.

[13] For the notion of regulatory superiority, see, for example, Friedrich F. Martens' concept of consular jurisdiction, exercised by the Western consuls over their nationals in the Oriental states. See A. T. Müller, F. F. Martens, 'The Office of Consul and Consular Jurisdiction in the East' (2014) 25 *European Journal of International Law*, 3, 871–891.

the dichotomy of internet governance models. Their very co-existence means contesting views on whether one of the models is solely, or in conjunction with some elements of the other model, more suitable for providing the regulatory structure for human rights in the digital sphere. There are no quantitative measurements about the frequency and intensity of questions that make it possible to establish universal criteria when differing viewpoints become a contestation. Yet there are instances when something is obvious prima facie, as is the case with the incompatibility of offline human rights governance models online. This is expressed in various discursive statements; for example, using expressions like fragmentation, polarisation and hybridisation.[14]

The element of contestation is also clearly evident in alternative categorisations of the processes whereby one legal system is transposed into a different setting. Berkowitz et al. write about four groups of classification applicable to the transposition of legal systems: direct-receptive, direct-unreceptive, indirect-receptive, and indirect-unreceptive.[15]

The non-coherent image of human rights in the digital domain does not appear immediately and develops over time. This does not mean gradual incremental transformation, since the element of time depends on the scope of actors and interests, both public and private. An example of this is someone who sporadically glances at the mirror in the morning and detects a small wrinkle, and then on closer inspection discovers that the whole face in the mirror appears fully distorted. This person may panic, yet after further scrutiny understands that the distorted image is not because the face has changed, but the cause is the mirror itself. This mirror then is not adequately reflecting the true nature of the face. Using this analogy for human rights, the inadequacy of the protection of human rights in the digital sphere is comprehensible after evidence from practice that something has changed. All previously described scenarios of normative-ideological transformation may be applied, leading to one and the same conclusion of non-coherence.

1.4 NORMATIVE TRANSPOSITION *CARTE BLANCHE* AND RHETORICAL FUNCTIONALITY

The last scenario, termed a normative transposition *carte blanche*, is primarily of a rhetorical nature and is short of concrete verification that human rights

[14] G. De Gregorio, R. Radu, 'Digital Constitutionalism in the New Era of Internet Governance' (2022) 30 *International Journal of Law and Technology*, 1, 68–87.

[15] See D. Berkowitz, K. Pistor, J.-F. Richard, 'Economic Development, Legality, and the Transplant Effect' (2003) 47 *European Economic Review*, 1, 165–195.

law and principles from the offline domain are not entirely or partially adequate in the digital reality. A statement from 1996 by John Perry Barlow, delivered at Davos, Switzerland, illustrates well the rhetorical attack against human rights *as we know it* without offering the quest of alternatives. He writes: 'Governments of the Industrial World, you weary giants of flesh and steel, I come from Cyberspace, the new home of Mind. On behalf of the future, I ask you of the past to leave us alone. You are not welcome among us. You have no sovereignty where we gather.'[16] When placing the normative transition *carte blanche* into the rhetoric of rights doctrine articulated by Arnaud and Theilen in 2020,[17] and relying on the communication theory of human rights, one detects that the distorted image of offline human rights through the online mirror initially captures our attention because of the novelty of the image. The magnitude of such a distortion appears in inverse correlation to its immediate explainability. As such, the traditional vertical human rights governance model seems to lose at least some effectiveness, yet we do not initially fully comprehend the reasons and alternatives. The functionalist approach discussed by Arnaud and Theilen[18] provides a conceptual tool to reflect how the rhetoric about the incompatibility of the offline human rights framework and governance models with the cyber reality gradually transforms into a discursive justification of new governance models. The functions are as follows, although they are interrelated, yet Arnaud and Theilen do not show specifically the extent to which these functions overlap or the logical path of when and why one function gives way to the other:

(i) The *appellative function* is related to the affective and energising element implied by statements that the regulative and ideological status quo

[16] J. P. Barlow, 'Declaration on the Independence of the Cyberspace', Electronic Frontier Foundation, 8 February 1996, www.eff.org/cyberspace-independence, accessed 25 May 2022. He continues: 'We have no elected government, nor are we likely to have one, so I address you with no greater authority than that with which liberty itself always speaks. I declare the global social space we are building to be naturally independent of the tyrannies you seek to impose on us. You have no moral right to rule us nor do you possess any methods of enforcement we have true reason to fear. Governments derive their just powers from the consent of the governed. You have neither solicited nor received ours. We did not invite you. You do not know us, nor do you know our world. Cyberspace does not lie within your borders. Do not think that you can build it, as though it were a public construction project. You cannot. It is an act of nature and it grows itself through our collective actions.'

[17] A. von Arnaud, J. T. Theilen, 'Rhetoric of Rights: A Topical Perspective on the Function of Claiming a "Human Rights to . . ."' in A. von Arnauld, K. von der Decken, M. Susi (eds.), *Cambridge Handbook on New Human Rights of the 21st Century: Recognition, Novelty, and Rhetoric* (Cambridge: Cambridge University Press, 2020), pp. 34–49.

[18] Ibid.

somehow is not compatible with the new realities. It strengthens activism, where the side of argumentation remains of secondary importance. In our framework of the distorted image of online human rights against human rights law *as we know it*, this function shows that the distortion is noted, and then the need for an explanation and alternative regulation is put forward either through activism, or academia or the political establishments.

(ii) Explanations of incompatibility and proposals for a different regulation and ideology appear through the *contesting function*, which logically taken follows the appellative function. For the purposes of this book and this review of the different governance models, the contesting function appears when a horizontal governance model is put forward as more or exclusively suitable for human rights in the digital realm. There is a specific aspect of contestation characterising human rights governance models for the Internet in comparison to contestation when new rights claims appear. New human rights claims run against the entrenched framework by proposing new rights – such as the right to water or right to euthanasia – but the contestation between the horizontal and vertical governance models is marred by lexical semantics. Both models use the same words and do not offer substantially alternative outcomes. To put it differently, multiple discursive frameworks can have a magnifying effect on the idealistic element of the quest for rights. This is simply because, when confronted with a choice between several ways to understand, communicate and regulate a shared reality, we would in an ideal world put ideas in front of pragmatics. To articulate this differently, the promise embedded inside human rights principles grows in importance – with normativity in the narrow sense at stake – when more than one rights narrative appears to carry the regulatory and remedial *metacode*. For digital human rights, this multiplicity of discursive frameworks and regulatory narratives appears with the co-existence of horizontal and vertical regulatory governance models for the Internet. Since such contestation appears at a high level of generality, it becomes a matter of contestation beyond argumentative justification, and in the Kelsenian spirit, a contestation between grounded norms, that is, the choice between horizontal and vertical governance models is rooted in ideology and culture rather than the effectiveness of the model. Non-coherence theory shows that one model does not have superiority over another in abstract. Here there are the hidden roots of relativity, and non-coherence theory appears as the key.

(iii) It is therefore questionable what the next function – the *connecting function* – can accomplish. Arnaud and Theilen have described this

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function as having the 'potential to connect various local, regional and global discourses across politics, law and morality and thereby give prominence to the underlying issue'.[19] This explanation is almost identical to the specific phenomenon of multistakeholderism in internet governance, formulated by Joanna Kulesza as 'a distributed policy-making model based on the voluntary cooperation of key actors, usually identified as: states, business and civil society, operating "in their respective roles" through "rough consensus and running code"'.[20] For more than one party to connect, a genuine willingness from both sides is needed, otherwise the logical sequence of rhetorical functions comes to a standstill. This is the position which appears in multistakeholderism.

1.5 THE MULTISTAKEHOLDERISM VEIL THESIS

Dialogue and connectivity may be an end in itself, or alternatively there may exist the expectation of reaching some form of regulatory end result. Both versions are conceivable for multistakeholderism as ramifications reflecting the connecting function, and both are explainable through the non-coherence theory of digital human rights, but for different reasons. Multistakeholderism as an end result in itself carries primarily non-regulatory aspirations, such as an advocacy tool for civil society or *whitewashing* the aspirations of stakeholders who are more equal than others.[21] Referring back to the Introduction, the connecting function of human rights rhetoric regarding human rights in the digital domain can reveal itself in the format of consistent process without reaching a qualitatively new and distinct outcome, but while displaying properties which seem at odds with human rights law as we know it offline. In this case, multistakeholderism says that the digital domain necessitates a regulatory and perhaps ideological framework which is at variance with the offline version but does not give a specific design of the features that would replace the previous version. Usually, there is no attention to whether such a new regulation is theoretically justifiable or practically possible, thus enforcing the inadequacy of protection thesis as a

[19] Ibid., p. 44.

[20] For the discussion about multistakehoderism, see J. Kulesza, 'Multistakeholderism – Meaning and Implications' in M. Susi (ed.), *Human Rights, Digital Society and the Law: A Research Companion* (London: Routledge, 2019), pp. 117–131.

[21] A. Kovacs, 'Moving Multistakeholderism Forward: Lessons from the NETmundial', Internet Policy Review: *Journal on Internet Regulation*, 12 May 2014, https://policyreview.info/articles/news/moving-multistakeholderism-forward-lessons-netmundial/281, accessed 5 June 2022.

practice-dependent view.[22] The situation resembles Plato's Cave, where discussants inside the cave try to guess what is happening outside. They plan activities and take up arms but upon exiting the cave may find these completely useless.

The connecting function of multistakeholderism can lead to regulatory aspirations,[23] which can be viewed as the manifestation of the *triggering function* in the framework of the rhetoric of rights formulated by Arnaud and Theilen. These aspirations can exist in two separate spheres: the first concerns ideas and the second concerns the format where ideas are discussed and normative conclusions drawn. The matter of ideas will be viewed later in this monograph in the sections on the ontological and epistemic dimensions of human rights law in the digital domain. Concerning the second sphere – discursive formats and various co-creation models – it suffices here to note the relative abundance of various public, private and semi-public-semi-private forums aspiring to standard setting.[24] By itself, the search for standards in forums overwhelmingly confirms the inadequacy of protection thesis and as a logical sequence justifies non-coherence theory. If there was no variance, there would be no haste towards creating or co-creating new regulatory mechanisms. The triggering function of human rights rhetoric in the digital domain therefore verifies the proposition that human rights ideology and regulation in the digital domain is at variance with the offline. This represents the image of non-coherence.

The *jurisgenerative function* of rights rhetoric explains how framing the recognition of the inadequacy of protection may have discursive effects which create legal meaning. This means, that in lieu of statements demonstrating

[22] See, for example, a statement regarding the need for normative development without specifics in J. Brake, 'Co-regulation or Capitulation? Addressing Conflicts Arising by AI and Standardization' (2020) 25 *Lex Electronica*, 2, 13: 'The need for regulation that reconciles high-level ethics, dynamic technological progress and enforceable rules calls for multi-stakeholder cooperation in the process of developing and enforcing rules, which can be found in co-regulation. This encompasses in the broadest sense all variations of regulation between state-exclusive and industry self-regulation'.

[23] See, for example, praise towards the Internet Governance Forum, which says that as 'an open, multistakeholder forum, it carries the potential to act as a legitimate governance network for the Internet regime, whose discussions not only carry normative influence on their own account, but are also reflected in the development and implementation of policy by other institutions and mechanisms, both public and private' – J. Malcoolm, 'Appraising the Success of the Internet Governance Forum', Internet Governance Project, 21 November 2008, www.internetgovernance.org/wp-content/uploads/MalcolmIGFReview.pdf, accessed 21 August 2022.

[24] See for reference A. Harcourt, G. Christou, S. Simpson, *Global Standard Setting in Internet Governance* (Oxford: Oxford University Press, 2020).

pure dissatisfaction with the status quo, a new model of rights governance is proposed, having the claim of normativity and ideological justification. Wischmeyer has distinguished two separate narratives characterising the digitisation of human rights – transformation and reconfiguration – both of which can be brought under the umbrella of jurisgeneration.[25] The transformation narrative claims that digital technologies have betrayed the original ideals of the digital revolution and have morphed from tools, which we employ to serve our ends, to express our thoughts and to communicate with others freely, into artefacts, which control how we act, think and communicate.[26] Wischmeyer writes like a clear proponent of non-coherence theory: 'it is far from clear how the regulatory instruments we could employ to protect the normative status quo would look'.[27] His statement is characterising an image where one notes variance, without being able to subject the image to detailed characterisation.

The jurisgenerative function of the reconfiguration narrative lies in the 'concern ... to make the rules and principles that were developed for the offline world fit for the digital age'.[28] Uncertainty connected to the transformation narrative of how the unclear image of human rights through the digital mirror can be solidified is omnipresent also in the reconfiguration narrative. It is evident through its search of governance mechanisms that increase the benefits and reduce the costs for individuals and societies. We notice consistent and ongoing contestation between various narratives and governance models.

Against this background, I am proposing the multistakeholderism veil thesis, which will be confirmed or rejected in various sections later in this monograph. This thesis is inspired by the various transposition scenarios described earlier in this chapter. The rise of the Internet in the late 1990s and early 2000s can be characterised by the expansion of technological horizons, overshadowing the absence of internet-specific regulation, thereby assuming that the law *as we know it* from offline can be easily transposed into the digital reality. This was the period of transformation *carte blanche*. Recognition of the unclear image led to the ideological transposition through the multistakeholderism scenario, where co-creation and dialogue were viewed as a means to arrive at the clear image, while still relying on the conceptual and procedural building blocks from offline. In parallel, the

[25] T. Wischmeyer, 'Making Social Media an Instrument of Democracy' (2019) 25 *European Law Journal*, Special Issue: Internet and Human Rights Law, 2, 169–181.
[26] Ibid., 170.
[27] Ibid.
[28] Ibid., 171.

online community construed its own understandings of human rights in the digital domain, either implicitly or explicitly intending to conceptually counter the offline framework. By the time the limitations of the multistakeholder approach became evident, the only scenario left was the rivalry between competing regulatory frameworks; that is, between the horizontal and vertical governance models. This thesis will be explored further for the purposes of rejection or verification. Having written this, the condition of regulatory uncertainty and proliferation has an axiomatic effect on human rights in the digital domain, which can be viewed as an element of non-coherence. The ambition of the non-coherence theory of digital human rights therefore lies, among many other characteristics, in providing a conceptual framework for understanding the implications from the co-existence of multiple internet governance models.

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