

Artificial Intelligence and Human Rights. Connecting the Dots

Marco Bassini

The contributions in this special issue offer a genuinely diverse overview of the evolving relationship between artificial intelligence and the protection of human rights within contemporary legal systems, with a particular focus on the European Union. As artificial intelligence systems become increasingly pervasive in mediating access to information, processing large volumes of personal data, and structuring decision-making processes, they no longer merely function as objects of regulation; rather, they have become constitutive elements of the environments in which fundamental rights are exercised. The contributions investigate this transformation from a number of perspectives, including freedom of expression, cognitive freedom, privacy, data protection and non-discrimination, as well as transparency. In doing so, they address both the limitations and the opportunities inherent in the existing legal frameworks. Following this trajectory, the special issue aims to highlight the fragmentation across different legal frameworks, which may hinder the development of a coherent framework, while also mapping convergences and connections across domains – such as content and data – that may reveal underlying common patterns.

A first axis of inquiry concerns the impact of AI on freedom of expression and the (increasingly private) governance of online speech. Giovana Lopes and Pratiksha Ashok engage in a detailed analysis of AI-driven content moderation, highlighting its dual role as both an enabler and a constraint on free speech rights. On the one hand, automated moderation is indispensable for managing the scale of modern digital communication and for maintaining safe online environments. On the other hand, the authors demonstrate how such systems engender significant risks, including the over-blocking of lawful content, false positives and false negatives, and the opacity of decision-making processes. These dynamics not only affect the active dimension of freedom of expression – i.e., the right to speak – but also its passive dimension – i.e., the right to receive information – thereby reshaping the twofold nature of this right in the digital sphere. The contribution's key finding is that while frameworks such as the Digital Services Act and the AI Act begin to address these concerns, they must be

interpreted and applied in a manner that structurally integrates fundamental rights protection into platform governance.

The question of opacity and its implications for accountability is further developed by Thomas Margoni and Leona King, who investigate the transparency obligations established by the AI Act, particularly in relation to general-purpose AI models. Their contribution identifies a fundamental tension between transparency, understood as a precondition for the effective exercise of fundamental rights, and trade secrecy, conceived as a legitimate protection of commercial interests. Through the notion of “authority-mediated trade secrecy”, the authors propose a model in which these competing values are not treated as mutually exclusive but are reconciled through procedural mechanisms that subject claims of confidentiality to independent review. Central to their analysis is the concept of “functional constitutionalisation of transparency”, on the basis of which transparency obligations acquire constitutional force because they work as indispensable preconditions for the exercise of fundamental rights, including access to information, effective remedy, and freedom of expression. The key insight is that the future of AI regulation is best served by institutional designs that can effectively mediate between competing rights in a proportionate and reviewable manner.

Federica Paolucci provides a complementary perspective, investigating the transformation of privacy in environments increasingly permeated by AI-driven surveillance technologies, particularly biometric identification systems. Departing from the conventional understanding of privacy as a spatial or secrecy-based concept, her article proposes a reconceptualization of privacy as a relational and constitutional condition. This new conceptualisation enables individuals to engage in social and democratic life without being subjected to constant identification and monitoring. The erosion of this “intermediate space”, especially through technologies such as facial recognition, raises profound concerns not only for privacy but also for related freedoms, including freedom of assembly and expression. The analysis centres upon the landmark *Glukhin v. Russia* judgment of the European Court of Human Rights to illustrate how the use of biometric identification systems can have a chilling effect on democratic participation. This, in turn, extends the impact of surveillance beyond the individual to the collective sphere. The article ultimately underscores the need for legal frameworks that do not merely regulate the use of such technologies but actively preserve the conditions under which a right to (truly) private life remains possible.

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In her article, Gloria González Fuster critically explores the evolving status of the right to personal data protection, questioning whether recent policy developments emerging in the Digital Omnibus and prioritising AI innovation risk undermining this cornerstone of EU digital constitutionalism. Her contribution revisits the right to the protection of personal data, traditionally conceived as a cornerstone of the EU's digital constitutionalism, and questions its current trajectory in light of policy developments that prioritise AI innovation. The article contends that data protection is increasingly regarded not as a safeguard but as an impediment to technological progress, resulting in pressures for its “simplification” or recalibration. This shift poses a considerable risk of subverting the fundamental rationale of the right, which lies in the framing of the parameters within which the processing of personal data can be conducted in a manner that is consistent with individual autonomy and democratic principles. The main takeaway is that while the AI Act introduces new regulatory layers, it cannot substitute for a robust commitment to data protection; rather, the two must operate in tandem if fundamental rights are to be effectively safeguarded.

Aimen Taimur's contribution extends the analysis into emerging domains, addressing the concept of neurorights and the challenges of regulating cognitive vulnerability in AI-mediated environments. As technologies increasingly enable the inference and potential manipulation of mental states, traditional legal categories such as privacy and freedom of thought are placed under strain. The article explores the efforts to articulate a set of universal principles, most notably through UNESCO's 2025 Recommendation on the Ethics of Neurotechnology, while also highlighting the difficulties of translating these principles into concrete obligations across diverse jurisdictions. A fundamental dichotomy underpinning this analysis concerns the interplay between universalism and contextualism. While the definition of global standards is imperative to address the transnational nature of artificial intelligence and neurotechnology, their implementation must be aligned with local legal and social conditions. The contribution situates neurorights within a broader continuum of fundamental rights, suggesting that the challenge lies less in the creation of new rights and more in the specification of how existing ones apply to novel forms of cognitive intrusion.

Finally, Costanza Nardocci discusses the implications of AI for anti-discrimination law, arguing that algorithmic systems give rise to forms of discrimination that cannot be fully captured by traditional legal categories. In contrast to human-driven discrimination, which is typically characterised

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by identifiable intent or explicit reliance on protected characteristics, AI-based discrimination frequently operates through what the author terms “proxy discrimination” – a distinct legal category where discriminatory outcomes arise from factors that serve as predictive indicators of membership in a protected class. This complicates the establishment of causal relationships and the integration of such practices within the prevailing frameworks of direct or indirect discrimination. The result is a regulatory gap, in which cases of harm may not be subject to legal scrutiny or remedy. The contribution calls for a reconceptualisation of anti-discrimination law that takes into account the specificities of algorithmic decision-making. These include its opacity, scalability, and capacity to reproduce structural biases.

The content of these contributions is highly relevant to the current debates on AI regulation and the protection of human rights in Europe, which have been revamped after the Commission’s proposals for a Digital Omnibus and a Digital Omnibus on AI. The creation of a comprehensive digital rulebook within the EU legal system is indicative of an ambition to establish the EU as a global standard-setter in this field. However, as demonstrated by the contributions, regulation alone cannot resolve some deeper and underlying tensions. To address this gap, it is necessary to engage with the foundational principles of fundamental rights in the age of AI and the institutional mechanisms through which these rights are operationalised. By bringing together diverse perspectives, this special issue not only maps the challenges ahead but also aims to contribute to ongoing efforts to ensure that the development and deployment of AI technologies remain aligned with the core values of democratic societies.

This special issue is funded under the “RetrAIIn– Enforcing Constitutional Rights in the Age of Generative Artificial Intelligence” Dutch government-funded starter grant, for which Marco Bassini serves as principal investigator.

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