

Table of Contents

<i>Leading Theses</i>	xvii
<i>Judgments</i>	xix
<i>Laws</i>	xxi
<i>Documents</i>	xxiii
<i>List of Tables</i>	xxxiii
<i>Abbreviations</i>	xxxv
1. Introduction	1
1.1 <i>Ubi Societas, Ibi Ius</i>	1
1.1.1 <i>Approaching Online Order</i>	1
1.1.2 <i>Regulating Communicative Spaces as a Historical Constant</i>	2
1.1.3 <i>Distinguishing Cyberspace</i>	4
1.1.4 <i>Norms Without Order?</i>	5
1.2 <i>Situating the Research</i>	7
1.2.1 <i>Within Interdisciplinary Approaches</i>	7
1.2.2 <i>Within (International) Legal Approaches</i>	9
1.2.3 <i>With Regard to the Concept of "Normative Orders"</i>	11
1.3 <i>Hypotheses</i>	14
1.4 <i>Structure</i>	17
2. Foundations of Online Order	20
2.1 <i>A Network of Networks</i>	20
2.1.1 <i>Foundations</i>	20
2.1.2 <i>Beginnings of the Information Society</i>	20
2.1.3 <i>Internet and "Internet(s)"</i>	22
2.2 <i>Criticality of the Internet</i>	24
2.2.1 <i>Conditions of its Functionality</i>	24
2.2.2 <i>Internet Integrity</i>	25
2.2.3 <i>The Internet as/and Critical Infrastructure</i>	26
2.2.4 <i>Critical Internet Resources</i>	27
2.2.4.1 <i>Concept and Vulnerabilities</i>	27
2.2.4.2 <i>Addressing System</i>	29
2.2.4.3 <i>Technical Standards</i>	31
2.2.4.4 <i>Routing and Interconnections</i>	33
2.3 <i>Common Interest and the Internet</i>	33
2.3.1 <i>Protection of and from the Internet as a Common Interest?</i>	33
2.3.2 <i>Relating Internet Integrity to Human Rights</i>	36
2.3.3 <i>Relating Internet Integrity to Human Development</i>	37
2.3.4 <i>Relating Internet Integrity to International Security</i>	42
2.3.5 <i>Custodial Sovereignty</i>	43
2.4 <i>Challenges of Regulating the Internet</i>	45
2.4.1 <i>Foundational Myths</i>	45
2.4.2 <i>Evolving Composition of the Normative Medium</i>	47

2.4.3	<i>Code and Protocols as Law?</i>	49
2.4.4	<i>Algorithmic Decision-Making</i>	53
2.5	Conclusions	56
3.	Law and Governance of the Internet	59
3.1	Foundational Rules	59
3.2	Applicability of International Law	61
3.2.1	<i>From Disorganized Normativity to the "Ius Necessarium"</i>	61
3.2.2	<i>Toward a Consensus</i>	64
3.2.3	<i>Old Rules or New Rules?</i>	66
3.3	International Law of the Internet	68
3.3.1	<i>Definition</i>	68
3.3.2	<i>International Conventions</i>	69
3.3.2.1	<i>Direct Protection</i>	69
3.3.2.2	<i>Indirect Protection</i>	70
3.3.3	<i>Custom</i>	76
3.3.3.1	<i>Direct Protection</i>	76
3.3.3.2	<i>Indirect Protection</i>	79
3.3.4	<i>General Principles of International Law</i>	81
3.3.4.1	<i>Origin</i>	81
3.3.4.2	<i>Principle of Sovereign Equality</i>	83
3.3.4.3	<i>Non-Use of (the Threat of) Force</i>	87
3.3.4.4	<i>Non-Intervention in Domestic Affairs</i>	89
3.3.4.5	<i>Duty of Cooperation</i>	90
3.3.4.6	<i>Peaceful Settlement of International Disputes</i>	92
3.3.4.7	<i>Principle of Equal Rights and Self-Determination of Peoples</i>	93
3.3.4.8	<i>Principle of Good Faith</i>	95
3.3.4.9	<i>No Harm Principle (Principle of Good Neighborliness)</i>	95
3.3.4.10	<i>Principle of Prevention and Due Diligence</i>	97
3.3.4.11	<i>Principle of Sustainable Development</i>	101
3.3.5	<i>Normative Acculturation</i>	102
3.4	Internet Governance	103
3.4.1	<i>Introduction</i>	103
3.4.2	<i>Concept</i>	104
3.4.3	<i>Actors</i>	105
3.4.4	<i>Evolution</i>	107
3.4.4.1	<i>Early Internet Governance Approaches</i>	107
3.4.4.2	<i>First Normative Commitments</i>	110
3.4.5	<i>Internet Governance Forum Process</i>	113
3.4.6	<i>Politicization</i>	116
3.4.7	<i>Taxonomy of Internet Governance</i>	118
3.4.8	<i>Principle Hype</i>	120
3.4.9	<i>Critique</i>	122
3.4.10	<i>Reform</i>	124
3.5	Order on the Internet?	127
4.	Normative Disorder on the Internet	131
4.1	Dynamics of Disorder	131
4.2	Dimensions of Disorder	132
4.2.1	<i>Normative Froth</i>	132

4.2.1.1	<i>WSIS Principles</i>	132
4.2.1.2	<i>New Principles</i>	136
4.2.1.3	<i>Degrees of Normativity</i>	144
4.2.1.4	<i>Consequences</i>	147
4.2.2	<i>Normative Friction</i>	148
4.2.2.1	<i>Problem</i>	148
4.2.2.2	<i>Intermediaries</i>	149
4.2.2.3	<i>Public and Private Spaces</i>	152
4.2.2.4	<i>Technical Norm-Setting Cyberwar</i>	153
4.2.2.5	<i>Consequences</i>	154
4.2.3	<i>Normative Fractures</i>	155
4.2.3.1	<i>Problem</i>	155
4.2.3.2	<i>International Law and Other Norms</i>	155
4.2.3.3	<i>Universality and Subsidiarity</i>	156
4.2.3.4	<i>Territoriality and Reterritorialization</i>	159
4.2.3.5	<i>Cyberwar</i>	160
4.2.3.6	<i>Trust</i>	161
4.2.3.7	<i>Regime Deficiencies</i>	165
4.3	<i>Fragmentation</i>	166
4.3.1	<i>Forces of Fragmentation</i>	166
4.3.2	<i>Technical Fragmentation</i>	171
4.3.3	<i>Commercial Fragmentation</i>	171
4.3.4	<i>Governmental Fragmentation</i>	173
4.4	<i>Defragmentation</i>	175
4.4.1	<i>Technical Predisposition</i>	175
4.4.2	<i>Internet Invariants</i>	175
4.5	<i>Conclusions</i>	177
5.	<i>Theorizing Order(s) on the Internet</i>	182
5.1	<i>Introduction</i>	182
5.2	<i>Legal Theory and the Digital Condition</i>	183
5.2.1	<i>Epistemology of Computer Culture</i>	183
5.2.2	<i>Binary Operations Under Uncertainty</i>	185
5.2.3	<i>Liquid Law and Networked Regimes</i>	187
5.2.4	<i>Dehierarchization and Heterarchy</i>	189
5.2.5	<i>Self-Constitutionalizing Regimes</i>	191
5.2.6	<i>Internal Politicization of the Lex Digitalis</i>	194
5.2.7	<i>Transnational Constellations</i>	196
5.2.8	<i>Permeability and Regime Dialog</i>	199
5.2.9	<i>Hybrid Legal Spaces</i>	200
5.2.10	<i>Exercising Authority Beyond the State</i>	204
5.2.11	<i>Normative Ordering and Undernormativity</i>	207
5.3	<i>Online Order Theories</i>	209
5.3.1	<i>Internet Constitutionalization</i>	209
5.3.2	<i>Interoperability</i>	213
5.3.3	<i>Jurisdictional Approaches</i>	216
5.3.4	<i>Governance by Microdecisions</i>	217
5.3.5	<i>Governance by Infrastructure</i>	221
5.3.6	<i>Reconceptualizing Governance</i>	226

5.4	A Theory of the Normative Order of the Internet	227
5.4.1	<i>Making Normative Change Visible</i>	227
5.4.2	<i>Theoretical Imports</i>	228
5.5	Envisaging the Normative Turn	231
6.	The Normative Order of the Internet	233
6.1	The Normative Turn	233
6.1.1	<i>A New Regulatory Order for the Internet</i>	233
6.1.2	<i>Stopping the Singularity</i>	235
6.1.3	<i>Regulatory Remit</i>	238
6.2	The Nomos of the Internet	240
6.3	Normativity of the Order	242
6.3.1	<i>Explicit and Implicit Normativity</i>	242
6.3.2	<i>Constitutionalization</i>	242
6.3.3	<i>Localization</i>	244
6.4	Legality of the Order	245
6.4.1	<i>The Normative Order of the Internet as a Legal Order</i>	245
6.4.2	<i>Norms of the Order</i>	247
6.4.3	<i>Normative Processes</i>	251
6.5	Principles of the Order	256
6.5.1	<i>Notions of Principles</i>	256
6.5.2	<i>Substantial Principles</i>	258
6.5.3	<i>Procedural Principles</i>	259
6.5.4	<i>Normative Descriptors of the Order</i>	261
6.6	Legitimacy of the Order	262
6.6.1	<i>Conditions of Legitimacy</i>	262
6.6.2	<i>Proceduralizing Legitimacy</i>	264
6.6.3	<i>Legitimation of the Order</i>	268
6.7	Narratives of Justification	271
6.8	Facticity of the Order	273
6.8.1	<i>Facticity and Ordering</i>	273
6.8.2	<i>Facticity and Imperfectness</i>	275
6.9	Conclusions	276
7.	The Normative Order of the Internet in National Legal Orders	279
7.1	The Protective Dimension of National Legal Orders	279
7.2	Normative Integration as Legitimation	280
7.3	Constitutional Integration of the Normative Order of the Internet	281
7.3.1	<i>Multinormativity as Reality</i>	281
7.3.2	<i>Permeability</i>	282
7.3.3	<i>Openness</i>	284
7.4	Judicial Integration of the Normative Order of the Internet	286
7.4.1	<i>Threats to Rights as the Normative Background</i>	286
7.4.2	<i>Internet Access as a Precondition for Exercising Fundamental Rights</i>	287
7.4.3	<i>Access and Subsistence Minimum</i>	289
7.4.4	<i>Fundamental Right to Access as a Human Right to Access</i>	290
7.5	Systematic Integration of Tertium Norms	291
7.5.1	<i>Automatic Application</i>	291
7.5.2	<i>Post-Consent Application</i>	291
7.5.3	<i>Deformalized Application</i>	293

7.5.4 <i>Transposition</i>	295
7.5.5 <i>Referencing</i>	296
7.6 Reterritorialization as a Challenge to the Normative Order of the Internet	298
7.7 Conclusions	303
8. Conclusions	305
<i>Bibliography</i>	311
<i>Index</i>	337