## Contents

*Foreword*

ORESTE POL LICINO  
*Foreword*  
page xiii

*Acknowledgements*  

xv

1 Digital Constitutionalism: An Introduction  
1.1 Reframing Constitutionalism in the Digital Age  
1.2 Paths of Constitutionalisation  
1.3 Governing the Algorithmic Society  
1.4 The Forgotten Talent of European Constitutionalism  
1.5 Investigating European Digital Constitutionalism  
1.6 Research Structure  

2 The Rise of European Digital Constitutionalism  
2.1 Moving towards European Digital Constitutionalism  
2.2 The Charm of Digital Liberalism  
2.2.1 Immunising Online Intermediaries  
2.2.2 Ensuring the Free Circulation of Personal Data  
2.3 Judicial Activism As a Bridge  
2.3.1 The Constitutional Dimension of Online Intermediaries  
2.3.2 The Judicial Path towards Digital Privacy  
2.4 The Reaction of European Digital Constitutionalism  
2.4.1 Democratising Content Moderation  

Published online by Cambridge University Press
2.4.2 Centring a Personal Data Risk-Based Approach 74
2.5 Freedoms and Powers in the Algorithmic Society 78

3 The Law of the Platforms 80
3.1 From Public to Private As from Atoms to Bits 80
3.2 The Governance Shift 83
  3.2.1 The First Constitutional Asymmetry 89
  3.2.2 The Second Constitutional Asymmetry 92
3.3 Delegated Exercise of Quasi-Public Powers Online 95
  3.3.1 Delegating Powers on Content 102
  3.3.2 Delegating Powers on Data 105
3.4 Autonomous Exercise of Quasi-Public Powers Online 110
  3.4.1 A New Status *Subjectionis* or Digital Social Contract 112
  3.4.2 The Exercise of Autonomous Powers 116
3.5 Converging Powers in the Algorithmic Society 120

4 From Parallel Tracks to Overlapping Layers 123
4.1 The Intimate Connection between Content and Data 123
4.2 An Evolving Relationship on Different Constitutional Grounds 125
4.3 The Blurring Lines between Content and Data 131
  4.3.1 Active Providers and Data Controllers 135
  4.3.2 From the Takedown of Content to the Delist of Data 138
4.4 From Legal Divergence to Convergence 143
  4.4.1 Constitutional Conflict and Converging Values 145
  4.4.2 From Content to Process 148
  4.4.3 Content and Data Liability 150
4.5 The Challenges Ahead in the Field of Content and Data 155

5 Digital Constitutionalism and Freedom of Expression 157
5.1 Expressions in the Algorithmic Society 157
5.2 From the Free Marketplace of Ideas ... 160
5.3 ... To the Algorithmic Marketplace of Ideas 166
5.3.1 The Public Sphere in the Age of Algorithms 169
5.3.2 The Logic of Moderation 176
5.3.3 Private Enforcement of Freedom of Expression 184
5.4 The First Reaction of European Digital Constitutionalism 187
5.5 Horizontal Effect Filling Regulatory Gaps 192
5.6 Rethinking Media Pluralism in the Age of Online Platforms 201
5.6.1 The Positive Side of Freedom of Expression 203
5.6.2 The Passive Side of Freedom of Expression 207
5.6.3 The Digital Services Act 211
5.7 Expressions and Personal Data 214

6 Digital Constitutionalism, Privacy and Data Protection 216
6.1 Data in the Algorithmic Society 216
6.2 From the Right to Be Let Alone ... 219
6.3 ... To Privacy and Data Protection in the Age of Big Data 225
6.4 The Constitutional Challenges of Big Data 229
6.4.1 The Blurring Boundaries of Personal Data 234
6.4.2 Clashing General Principles 240
6.4.3 The Freedom from Algorithmic Processing 246
6.5 The Constitutional Reframing of the GDPR 253
6.5.1 Recentring Human Dignity 255
6.5.2 Conflicting Positions and Proportionality 262
6.5.3 Enhancing Due Process 267
6.6 Constitutional Values in the Algorithmic Society 271

7 The Road Ahead of European Digital Constitutionalism 273
7.1 The Consolidation of European Digital Constitutionalism 273
7.2 Values: Digital Humanism versus Digital Capitalism 277
7.3 Governance: Public Authority versus Private Ordering 286
7.4 Scope: Constitutional Imperialism versus Constitutional Protectionism 296