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Perpetuity of the Digital Past and the Scales of Legal Justice

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Abstract

This study examines the problematic of privacy in the digital era amid the ongoing tension between the imperative of "digital memory" and the entitlement to the "right to be forgotten." The research investigates the philosophical and epistemological shift brought about by modern technologies, wherein memory has transformed from its selective human paradigm anchored in an existential equilibrium between recollection and forgetting into an extended artificial infrastructure characterized by absolute permanence, infinite replication, and autonomy from human will. The study aims to conceptualize the right to be forgotten as a modern legal mechanism and a philosophical necessity that prevents the fixation of an individual's identity within their past informational footprint, thereby granting them a second chance to reconstruct the self and transcend past negative occurrences. Furthermore, the research highlights the conflict between this right and competing constitutional mandates, such as freedom of expression and the public's right to know, while addressing empirical challenges like the transnational nature of the Internet and the hegemony of Big Tech conglomerates. The study concludes by recommending a paradigm shift from rigid statutory rules to a flexible, judiciary-led approach grounded in the principle of proportionality and *ad-hoc* evaluation, ultimately balancing the protection of human dignity with the free flow of information.

Keywords: Digital Memory, Right to be Forgotten, Privacy, Digital Panopticon, Principle of Proportionality

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Introduction

Human nature was divinely endowed by the Almighty Creator with the faculty of "innate forgetting", serving as a fundamental biological and psychological prerequisite for existential equilibrium, self-reconstruction, and the transcendence of past grievances and transient errors. Nevertheless, the contemporary digital revolution has upturned this cosmic equation, giving rise to what is conceptualized as the "absolute digital memory". This artificial cognitive structure is inherently characterized by permanence, infinity, and an unprecedented capacity for algorithmic archiving and data storage, entirely immune to the dual factors of time and obsolescence.

In the face of this incessant influx of data, Cyberspace has morphed from a medium of connectivity into an instrument for freezing identity and perpetuating the "digital past" of individuals. Consequently, human beings have been rendered captives of their historic informational footprint, left vulnerable to perpetual social stigma and psychological duress that pose a grave threat to human dignity and private life. Out of this structural tension emerged the "Right to be Forgotten on the Internet", manifesting as an existential necessity and a modern legal mechanism. It endeavors to re-engineer time within the digital ecosystem and empower individuals to liberate themselves from the perpetuity of forced data retention by compelling tech giants to delete their data or restrict access to it.

However, the enforcement of this right does not operate within a comfortable legislative vacuum; rather, it collides with the "scales of legal justice" and its traditional doctrines, standing as a stumbling block before intricate and complex counterweights. It oscillates between safeguarding the inalienable, personality-rooted rights to privacy and dignity on one hand, and protecting the public rights of society, such as freedom of expression, the right to information, public access to data, and the preservation of the collective historical memory of nations on the other. More critically, an unchecked expansion of this right risks transforming it into a vehicle for concealing truths, selectively reconstructing reality, and obstructing judicial accountability by erasing the vestiges of crimes.

Hence, to what extent can the contemporary legal system and the judiciary bridge the existing legislative loopholes and attain the standard of proportionality and balancing on the scales of justice, between the perpetuity of digital memory that immortalizes the defamatory past of individuals, and the recognition of the right to be forgotten as a mechanism for safeguarding human dignity, without jeopardizing the public interest and society's right to knowledge and history?

Chapter I: The Essence of the Right to be Forgotten on Internet for Individuals

In most comparative domestic legislations, we find provisions for the "Right to Legal Rehabilitation" (Expungement) as a concept akin to the right to be forgotten. Under this mechanism, individuals convicted of judicial sentences are entitled to request the expungement of such records from their criminal record certificate after the lapse of a

specific period determined by the state's procedural laws. Even if judicial authorities retain these precedents in their physical archives or internal electronic databases via a secured intranet, such retention remains strictly confidential and accessible solely to authorized personnel particularly if these individuals return to the corridors of justice. Consequently, following a favorable judicial ruling for rehabilitation, these criminal certificates are issued clean to their holders.

This legal mechanism enables individuals with prior convictions to reintegrate into society and exercise their rights without third parties gaining access to their past. While this mechanism is deemed highly positive in terms of the psychological rehabilitation of former offenders, especially if they relocate from their original residence or move away from social circles aware of their past, the same inherent right exists biologically within human beings, as God has divinely endowed them with the blessing of forgetting, ensuring their lives are not continuously disrupted by accumulated sorrows.

Conversely, neither this divinely ordained faculty nor the mechanism of legal rehabilitation exists when it comes to publishing private matters on the Internet. In the digital realm, deleting or removing such information is profoundly difficult, and at times, utterly impossible. This is particularly true when psychological suffering intensifies for the affected individuals, who find no viable path toward putting their past to rest.

From this juncture, legal scholars, lawyers, and even members of the judiciary diverge on the necessity of adopting forgetting as a fundamental privacy right, which in turn falls under the broader umbrella of human rights, lauding its profound merits. On the other hand, internet search engine operators, politicians in certain nations, and even some legal scholars and judges do not recognize forgetting as an established right. Instead, they view it as a counter-revolution against freedom of opinion, media freedom, and the right of access to information. Some aspects of this perspective hold a degree of validity, particularly in non-democratic or dictatorial states, where this mechanism could potentially be exploited as a tool to obliterate all criminal or unlawful traces committed by natural or legal persons within these countries, or even by their accomplices abroad.

Accordingly, throughout this chapter, we shall shed light on the following points:

- **Section I:** The Conceptual Definition of the Right to be Forgotten on Internet for Individuals
- **Section II:** The Legal Nature of the Right to be Forgotten on Internet for Individuals

Section I: The Conceptual Definition of the Right to be Forgotten on Internet for Individuals

Many individuals, particularly children, often commit uncalculated errors when publishing their digital privacies on the Internet, whether in the form of photographs, videos, or other personal data. Such actions are frequently driven by spontaneous moments or a lack of sufficient awareness regarding the perils of cyberspace and its permanent

nature. However, the predicament does not cease at the boundaries of publication itself; rather, it exacerbates when this data transforms into archived and stored content within the information systems of tech giants, such as Google, Apple, Amazon, Microsoft, and Facebook (Meta). These conglomerates often retain publishing rights or act as data controllers, frequently refusing or delaying compliance with requests for data deletion or the de-referencing of electronic links associated with these privacies.

The gravity of this situation intensifies given the profound psychological and social repercussions resulting from the perpetual dissemination of such data. It can morph into a permanent source of social stigma or psychological duress, thereby jeopardizing the individuals' present and future. Furthermore, this impact may occasionally extend to their physical health, given the intrinsic correlation between the psychological and somatic dimensions. Confronted with this reality, a fundamental question of a legal and sovereign dimension arises: To what extent have states sought to intervene to protect the rights of their citizens or residents within their territories, by empowering them to compel digital corporations to respond to requests for the deletion or de-referencing of electronic links that immortalize their personal data, especially those that have become a psychological burden or an infringement upon their human dignity?

This inquiry leads us to what is recognized in contemporary jurisprudence as the "Right to be Forgotten", conceptualized as a modern legal mechanism aiming to restore equilibrium between the individual and cyberspace by enabling them to control the continuity of their informational existence. On this basis, this section sheds light on this right through the following subsections:

- **Subsection I:** Definition of the Right to be Forgotten on the Internet for Individuals
- **Subsection II:** Characteristics of the Right to be Forgotten on the Internet for Individuals

Subsection I: Definition of the Right to be Forgotten on the Internet for Individuals

Moath Suleiman Al-Mulla conceptualized the right to be forgotten as: "A right that vests individuals with the legal instruments necessary to assert their right to be forgotten online, achieved by restricting the retention of personal digital data and rendering it susceptible to erasure." (Mulla, 2018). Globally, the right has been defined from a techno-legal standpoint by researchers Salvatore Villella and Giancarlo Ruffo as follows: "The right to be forgotten vests individuals with the entitlement to demand the removal of anachronistic or detrimental data from the public domain." (Vilella, 2025). In relation to informational independence, the formulated definition dictates that" the right to be forgotten is invoked… to embrace a wider paradigm pertaining to informational self-determination. " (Terwangne).

Conversely, the European Commission defines the concept as follows: "The right to be forgotten constitutes the entitlement of individuals to no longer have their personal data

processed, and to ensure its erasure once it ceases to be necessary for legitimate purposes." (Commission, 2012), and in the words of Jeffrey Rosen, the prominent American legal academic and constitutional writer: "The right to be forgotten tackles a critical issue inherent to the digital age: fleeing one's internet past is now exceedingly difficult, given that every image, status update, and tweet persists permanently in the cloud." (Rosen, 2012)

Accordingly, I define the right to be forgotten as follows: "It is the legal authority that intermediates between the right to privacy and the public interest, empowering individuals to effectuate the erasure of their digital data from the internet. Consequently, the exercise of this right is strictly contingent upon statutory law, judicial rulings, and court decrees."

Section II: Legal Attributes of the Right to be Forgotten Online for Individuals

The right to be forgotten online represents a novel category of rights precipitated by rapid technological evolution and the expansion of cyberspace, alongside the attendant threats posed to personal privacy and reputation. Given the current ease of data dissemination and protracted retention, historical digital footprints remain incessantly active in the lives of individuals. Against this backdrop, the necessity emerged to establish this right as a legal instrument enabling individuals to exercise autonomy over their digital assets and ensure their protection.

Consequently, the right to be forgotten online possesses several characteristics that reflect its juridical and practical essence, parsed as follows:

- **Novelty and Recency:** Formal legal and jurisprudential engagement with this right is exceedingly nascent, spanning a temporal horizon of less than a single decade.
- **Expansive Victimization Threshold:** Violations may potentially encompass tens of millions of victims, owing to systemic technical vulnerabilities scattered across web applications, most notably service-oriented software.
- **Internet-Centric Causation:** The causal link connecting the injured party to the tortious actor is inherently bound to the infrastructure of the internet as a virtual publishing instrument.
- **Juristic Flexibility:** It is a malleable prerogative that can toggle between an inviolable personality right and a collective public right. In most scenarios, judicial adjudications and court decrees act as the definitive instruments to dismantle ambiguity within legal disputes, frequently necessitating judicial activism (*jurisprudence*) to bridge statutory voids or ambiguous codifications.
- **Temporal Perpetuity:** It represents a temporally continuous right; it addresses historical digital inputs that exert ongoing effects on the present, allowing the claimant to legally arrest their prospective endurance and perpetuation across cyberspace.

- **Spatial Restriction to the Digital Realm:** Its enforcement matrix is tethered to the digital space, where compliance is monitored and regulated through judicial rulings addressing technical, visual, and electronic interfaces.
- **Applicability Despite Indirect Contributory Fault:** The right remains invocable by the aggrieved claimant even when they have acted as an indirect catalyst to the harm, occurring when the individual fails to deploy the most secure and efficacious digital mechanisms to insulate the processed electronic data.
- **A Multi-Stakeholder Prerogative:** The operationalization of the right to erasure involves a complex web of actors directly tied to the containment of digital data:
  - **Digital Host Platforms:** Intermediaries technically hosting the data. Functioning essentially as passive repositories, active content curation remains a secondary, non-compulsory obligation. Standardizing this responsibility demands transnational codification and bilateral alignment between digital giants like Google and sovereign nations, an infrastructure already verified in state-level counter-terrorism operations.
  - **The Injured Subject:** The petitioner seeking the removal of personal digital footprints. This right accommodates both natural persons and legal persons (encompassing both public law and private law entities). Crucially, the State retains the authority to assert this right if a cyber-publication threatens its constitutional stability.
  - **The Intentional Tortfeasor:** The individual who maliciously weaponizes personal information to cause moral or financial prejudice. Faced with non-compliance from this actor, the injured party must bypass them to petition the content aggregator directly or initiate formal litigation.
  - **The Unintentional Infringer:** Entities that disseminate data absent any animus nocendi (intent to harm) yet produce adverse moral or material consequences. This paradigm predominantly includes public and private journalistic institutions that regularly digitize current events involving private citizens.
  - **Internet Search Engines:** Transnational corporate entities responsible for harvesting and indexing digital metadata. As private international legal persons operating beyond strict territorial boundaries, compliance is mediated through international treaties, national laws accepted via terms of service, or judicial mandates. However, enforcement often collides with competing fundamental rights, such as freedom of speech, journalistic liberty, academic and scientific research, law enforcement tracking, and historical accountability.
  - **Syndicated Cyber-Actors:** Sophisticated hackers who infiltrate private networks and electronic accounts to execute unauthorized data leaks across the public domain.

- **Special Provisions for Minors:** The aggrieved party may be a minor, in which case the right to erasure is invoked on their behalf by a legal guardian, custodian, or a designated caregiver.
- **Exemption from Traditional Legal Maxims:** This right is not currently bound by the classical legal maxim *"No right is lost as long as there is a claimant seeking it."* This modern prerogative triggers an inherent jurisdictional conflict with transnational private corporate entities, such as Google, that operate outside the scope of absolute state sovereignty. Consequently, when the Court of Justice of the European Union (CJEU) adjudicated a pivotal case regarding the right to be forgotten against Google, it rendered a compromise judgment. This ruling affirmed the entitlement of data subjects within the European Union to demand the erasure of their digital data and mandated Google's compliance, yet restricted this obligation strictly to the EU's geographical jurisdiction. By *argumentum a contrario* (inverse implication), EU citizens cannot compel the global de-indexing of links across third-party states, nor can non-EU citizens assert this right with equivalent efficacy. Nonetheless, this analysis reflects the general rule, leaving room for evolving exceptions given the recency of the right and its reliance on international political consensus.
- **Intersection with Psychological and Physical Well-being:** This right is intrinsically linked to psychological health, and by extension, physical health. The de-indexing or removal of prejudicial digital inputs serves as a catalyst for restoring the psychological and somatic well-being of the aggrieved individual. Accordingly, the petitioner possesses the legal standing to initiate litigation under the doctrinal umbrella of rights inherent to personality (*droits attachés à la personne*), specifically the fundamental rights to health protection and the preservation of human dignity

Section III: The Juristic Characterization of the Right to be Forgotten Online for Individuals

Scholars frequently diverge regarding the dogmatic foundation of the right to be forgotten; some classify it as an inviolable personality right, thereby framing it as a strictly private prerogative. This classification applies uniformly across both terrestrial environments and cyberspace, as long as the core metadata relates to the individual's private life. It represents the inner sanctum of personal privacy that the data subject shields from public exposure motivated either by the need to rectify erroneous data or to protect their moral integrity and social environment.

Nonetheless, an alternative doctrinal approach views the right to be forgotten as expanding far beyond the traditional matrix of privacy. This paradigm incorporates the collective interest of mankind in accessing historical archives or scientific data essential for addressing contemporary existential dilemmas. Consequently, this right is argued to

surpass the classical boundaries of personal autonomy, ultimately converging with the outer limits of collective human rights or the public domain.

Yet, an essential inquiry arises: does this juristic characterization vest the right-holder with the legal standing to initiate litigation to enforce this right?

To address this, a taxonomy of distinct scenarios must be delineated:

- **Domestic Litigation Against Digital Service Providers:** Initiating lawsuits for the right to be forgotten against natural or legal persons operating commercial entities, websites, or digital service platforms located within the same domestic jurisdiction.
- **Transnational Litigation Against Digital Service Providers:** Initiating lawsuits for the right to be forgotten against natural or legal persons operating commercial entities, websites, or digital service platforms located outside the territorial borders of the state.
- **Litigation Against Digital Media Corporate Bodies:** Initiating lawsuits for the right to be forgotten against legal entities operating within the digital journalism and media sector across its tripartite modalities: audio, print, and visual media.
- **Litigation Against Intermediary Search Engines and Tech Conglomerates:** Initiating lawsuits for the right to be forgotten against algorithmic search engines and multinational digital conglomerates (Big Tech), including Google, Apple, Amazon, Meta (Facebook), Microsoft, among others.

Nevertheless, a substantial portion of these judicial claims faces summary dismissal in numerous jurisdictions due to a lack of substantive legal basis , routinely predicated on the absence of explicit statutory codifications in this domain. Consequently, seasoned litigators frequently initiate identical actions by bypassing the explicit invocation of the digital right to be forgotten; instead, they anchor their claims within established privacy paradigms, such as the right to live with dignity and the right to safeguard confidential personal data.

In contrast, certain jurisdictions have successfully leveraged regulatory pressure on internet conglomerates to insulate the digital privacy of data subjects within their territories. This is epitomized by the U.S. framework governing the privacy of children under the age of 13, which strictly conditions online data processing upon verifiable, explicit written parental or guardian consent. Similarly, British statutory instruments safeguard the digital privacy of minors under 16. Ultimately, the European Union remains the singular supranational bloc that has institutionalized a comprehensive digital privacy matrix protecting all natural persons residing within its geopolitical jurisdiction.

Furthermore, both the European Parliament and the Court of Justice of the European Union (CJEU) have played a pioneering role in institutionalizing the digital right to be forgotten. Under this framework, data subjects residing within EU Member States possess the legal capacity to initiate judicial proceedings against Big Tech conglomerates, such as

Google and Apple seeking the total erasure and de-indexing of their personal digital inputs that infringe upon their psychological integrity or human dignity. Crucially, these legal actions may also be pursued as class actions or collective redress, institutionalized by delegating authority to qualified European non-governmental or voluntary organizations. This treatise provides comprehensive analytical studies of these regulatory frameworks.

Chapter II: The Functions and Boundaries of the Right to be Forgotten

It is evident that the right to be forgotten does not merely constitute a technical extension of the right to privacy; rather, it reflects a qualitative paradigm shift in the architecture of contemporary legal thought. Jurisprudence is no longer restricted to safeguarding private life within its classical dimensions of isolation or secrecy. Instead, the law now intervenes in a highly convoluted domain: regulating the nexus between the human subject and their digital memory.

Within classical societal frameworks, oblivion was an organic phenomenon indeed, a fundamental prerequisite for psychological and social equilibrium inherent to human nature. It enabled individuals to reconstruct their identities and divest themselves of historical encumbrances. Conversely, the digital revolution has inverted this dynamic; memory has been externalized, rendered permanent, and made susceptible to infinite retrieval, culminating in what may be conceptualized as the "perpetuation of the past." Against this backdrop, the right to be forgotten operates as a legal mechanism designed to reintroduce the temporal dimension into the digital ecosystem, thereby empowering the individual to govern the continuity of their informational presence. (Mayer-Schönberger, 2009).

From a philosophical perspective, this prerogative signals a transition from the mere protection of privacy toward safeguarding the individual's temporal identity. This encapsulates the subject's right not to be reductively defined by their past, ensuring instead the latitude for personal evolution and transformation. Consequently, it converges with the doctrine of human dignity-viewed not merely as a shield against unwarranted interference, but as the autonomous capacity for self-reconstitution over time.

Nevertheless, this right does not operate in a vacuum; it is contingent upon intricate and delicate balancing tests, particularly regarding its interplay with freedom of expression and the public's right to know. An over-extension of this right risks erasing historical truths or facilitating the revision of history, whereas an undue restriction threatens to condemn the individual to perpetual captivity within their digital past. Against this backdrop, its essence emerges as a malleable and dynamic construct, continuously sculpted by technological mutations, jurisprudential evolution, and societal imperatives. Therefore, comprehending the right to be forgotten extends beyond delineating its statutory scope; it necessitates a rigorous analysis of its functions and limitations within the structural tension between oblivion as a human necessity and memory as a collective societal value.

Premised on the foregoing, this subject will be analyzed in accordance with the following structural taxonomy:

- Subsection I: The Operational Functions of the Right to be Forgotten
- Subsection II: The Jurisdictional Boundaries of the Right to be Forgotten

Section I: The Operational Functions of the Right to be Forgotten

The relationship between digital memory and the right to be forgotten reveals a complex dialectic that cannot be absolutely resolved in favor of either party, as each represents a fundamental dimension of contemporary social organization. Digital memory is essential for ensuring transparency and knowledge, whereas the right to be forgotten is necessary for protecting human dignity. It operates to achieve several functions, such as:

- **Rebalancing the relationship between the individual and technology** in favor of digital systems, where the right to be forgotten serves as a mechanism to restore this equilibrium by limiting the dominance of digital memory and enabling the individual to regain control over it. (Ausloos, 2020)
- **Providing a legal tool to resist technological dominance,** provided the most appropriate codification for the right to be forgotten is established, regardless of how the value of this digital data and information changes over time. (Ambrose, 2013)
- **Protecting psychological and social health,** as the perpetual circulation of negative information frequently leads to prolonged social stigmatization that induces isolation. In contrast, the right to be forgotten contributes to rehabilitating the individual, alleviating psychological burdens, and safeguarding dignity and reputation, thereby facilitating social integration. (González, 2014)
- **Empowering individuals to control their digital past,** granting them decision-making authority over their data through the ability to delete it, restrict access to it, and prevent its redistribution. Consequently, the individual transforms into an active agent in managing their digital identity rather than being merely a subject of digital processing. (Ausloos, The Right to Erasure in EU Data Protection Law, 2020)
- **Enhancing trust in the digital environment** through the recognition of the right to be forgotten, which transforms the fear of digital privacy infringement into an incentive for active participation in the technological revolution.

Section II: The Jurisdictional Boundaries of the Right to be Forgotten

While digital memory frequently preserves invaluable cognitive and archival assets, it simultaneously harbors the risk of algorithmic hegemony. Conversely, though the right to oblivion embodies profound humanistic value, it risks mutating into an instrument for truth obfuscation. Consequently, the quintessential challenge does not reside in granting absolute supremacy to either paradigm, but rather in institutionalizing a delicate balancing test (*mise en balance*) between the logic of digital retention and the imperative of the digital right to be forgotten. This equilibrium must safeguard individual autonomy without fracturing collective societal interests. Framed by this doctrinal tension, the structural limitations of the right to be forgotten are delineated as follows:

- **The Constitutional Friction with Freedom of Expression and Journalistic Liberty:** The right to erasure frequently collides with free speech and the freedom of the press. Compelling the removal of data may inadvertently suppress information of public concern, thereby imposing impermissible restrictions on journalistic liberty and the public's right to know (Ricœur, 2004).
- **The Overriding Prism of the Public Interest and Criminal Prosecution:** The activation of this right is heavily contingent upon public interest considerations, particularly where it intersects with the mandate of public prosecutors to initiate and pursue public criminal actions (*laction publique*).
- **The Preservation of Historical Integrity and Public Personas:** The right to oblivion exhibits a unique tension with historical preservation when applied to public figures who command public attention. An unfettered expansion of this right risks inducing historical revisionism and eroding the integrity of collective digital archives (Rosen, The Right to Be Forgotten, 2012).
- **The Dilemma of Transnational Codification and Extraterritoriality:** The absence of a unified international regulatory framework severely undermines the efficacy of this right, given that the architecture of the internet inherently transcends Westphalian sovereignty and territorial state borders (Kuner, 2013).
- **The Hegemonic Infringement of Big Tech Monopolies:** The systemic corporate harvesting of personal privacy by multinational tech giants routinely frustrates the practical execution and enforcement of the right to be forgotten (Zuboff, 2019).
- **The Ad-Hoc Relativity and Elasticity of Judicial Remedies:** Characterized by inherent relativity, the judiciary habitually addresses this right through a meticulous, case-by-case assessment (*in concreto*), balancing competing fundamental rights before delineating the exact parameters of protection (CJEU, 2014).
- **The Peril of Truth Obfuscation and the Subversion of Accountability:** An over-extended application of data erasure risks expunging datasets of critical judicial or security relevance. By suppressing factual realities or selectively reconstructing historical truths, it directly compromises forensic investigations and subverts legal accountability. (Rosen, The Right to Be Forgotten, 2012).

Chapter III: Privacy between Digital Memory and the Right to be Forgotten

The digital revolution has brought about a new reality that reshaped traditional legal concepts, foremost among which is the concept of privacy. Privacy is no longer merely a

right associated with private life in its spatial and temporal dimensions; rather, it has transformed into a complex problematic where technical, legal, and philosophical dimensions intersect. The massive advancement in data storage and processing technologies has led to the emergence of what can be termed "digital memory." This is a memory that is not subject to the natural rules of forgetting that characterize humans; instead, it is predicated on accumulation, continuity, and permanence. In contrast to this indefinite extension of digital memory, the "right to be forgotten" has emerged as a modern legal mechanism. It aims to empower individuals to regain control over their personal data by requesting its erasure as a general rule, or at least restricting access to it as an exception. However, the relationship between these two concepts is not one of complementarity, but rather one of perpetual conflict and tension, which poses a fundamental problematic regarding the future of privacy in the digital age.

Accordingly, it can be argued that digital memory is not merely a technical evolution, but rather a profound cultural and philosophical transformation that has reshaped human relationships with the self, time, and society. It is a memory that neither forgets nor forgives, leaving no room for natural forgetting, which places it in direct conflict with human nature that is fundamentally based on change and reconstruction. Consequently, understanding digital memory cannot be achieved within a purely technical framework; rather, it must be approached as a philosophical-legal problematic that touches the core of human dignity and paves the way for the emergence of new rights, foremost among which is the right to be forgotten. Through this chapter, we aim to analyze this conceptual and empirical tension existing between the nature of digital memory and the limits of the right to be forgotten, ultimately evaluating the feasibility of achieving a legal equilibrium between them.

Accordingly, we shall shed light on the following two sections:

- **Section I:** The Essence and Characteristics of Digital Memory
- **Section II:** The Right to be Forgotten as a Philosophical and Legal Necessity in the Face of Digital Memory

Section I: The Essence and Characteristics of Digital Memory

In the digital era, the concept of memory is no longer confined to its human dimension; which is inherently linked to consciousness and perception. Rather, it has undergone a radical shift toward a new paradigm that can be described as "extended artificial memory." This paradigm transcends the boundaries of the human brain to reside within complex technical structures based on the continuous storage and processing of data. Consequently, digital memory does not represent a mere technical apparatus for preserving information; rather, it constitutes a new epistemological framework that reshapes the human relationship with the past, present, and future (Mayer-Schönberger V. D., 2009). Within this framework, digital memory can be defined as (Solove, 2008): a technical system designed for the digital storage and preservation of individuals' private information,

intended for the utilization of the whole or part thereof for multifaceted purposes, without being diminished by the passage of time or the human capacity for recollection.

Subsection I: The Philosophical Shift in the Concept of Memory

From a philosophical perspective, human memory is predicated upon selection and forgetting just as much as it is upon recollection, given that forgetting constitutes an essential function for the psychological and existential equilibrium of human beings. Indeed, humans cannot exist without forgetting, as it allows for the reconstruction of the self and the transcendence of negative experiences. However, digital memory inverts this equation, as it operates through the following modalities:

- Accumulation instead of selection
- Perpetuation instead of forgetting
- Recording instead of experience

These modalities constitute the grand paradox when contrasted with human memory, which is divinely fashioned by the Almighty Creator upon:

- Qualitative selection instead of accumulation
- Relativity between perpetuation and forgetting
- Selective recording anchored in lived experiences

Thus, digital memory; although ostensibly appearing as a neutral technical tool is, in its essence, subject to the logic of algorithms and computational systems; a logic that radically differs from that of human memory. While human memory is selective, prone to forgetting, and governed by time and experience, digital memory exhibits a quasi-absolute character, predicated on continuous storage, instantaneous retrieval, and technical permanence. (Stiegler, 1998) Hence, it can be characterized as a semblance of an absolute memory not in the sense of perfection, but in terms of liberation from the constraints of forgetting and human time. It neither forgets nor deteriorates, nor does it reconstruct the past as human consciousness does; rather, it renders the past perpetually present, readily recallable at any given moment (Belkeziz, 2019), with the exact same intensity and vividness.

This induces a profound transformation in the relationship between the human being and their temporality, even altering their relations with the alterity (the other). The past is no longer transitory; rather, it becomes protracted within the present, thereby obliterating the existential function of forgetting a function that historically permitted the individual to reconstruct the self and transcend past transgressions. In this sense, digital memory ceases to be a mere repository for information; it transmutes into an identity-fixation mechanism, potentially confining the individual within an antecedent image that fails to reflect their subsequent development. Consequently, within the digital milieu, the human being is threatened with becoming a captive of their digital footprint, particularly regarding negative information or occurrences that have lost their contemporary relevance yet remain circulated by virtue of the logic of algorithmic proliferation and reproduction. (Zuboff, The Age of Surveillance Capitalism, 2019)

Herein lies the conceptual paradox: while technology purports to enhance human knowledge, it can devolve into an instrument that freezes the self rather than enabling its transformation. From this perspective, the right to be forgotten emerges not as a secondary legal privilege, but as a indispensable mechanism for reintroducing temporality into the digital space, and restoring equilibrium between a memory that never forgets and a human being who inherently requires to forget to overcome a past that has adversely impacted their psyche, and equally requires *to be forgotten*, meaning that others forget all that pertains to their past.

Subsection II: The Characteristics of Digital Memory in its Philosophical and Legal Dimensions

Digital memory does not merely represent an incidental threat to privacy; rather, it constitutes a profound structural threat through a set of characteristics with philosophical and legal dimensions, the most prominent of which are:

- **The Characteristic of Permanence:** Wherein digital memory retains individuals' private information without temporal limitations. This creates the dialectic of the human right to be forgotten. While the human memory gradually erases a vast amount of data over time, digital memory preserves everything, causing identity fixation in the past and eliminating the possibility of personal transformation, thereby undermining the concept of a second chance. (Gillespie, 2018)
- **The Characteristic of Infinite Proliferation of Private Information:** To a degree that may lead to a loss of control. This is because digital memory is predicated upon the principle of infinite replication, whereby information can be reproduced and disseminated across multiple spheres without spatial or temporal constraints. This characteristic exerts a detrimental impact on privacy, leading to a loss of control over personal data and the dissolution of boundaries between the private and public realms.
- **The Characteristic of Autonomy from Human Will:** Wherein digital memory continues to operate independently of the data subject's intent. Private information can be disseminated without the owner's authorization, and continually recirculated despite explicit objections or non-compliance with erasure requests. This underscores that the human being has become a captive to their private information rather than its master, owing to digital dependency on systems and algorithms. (Zuboff, The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power, 2019)
- **The Characteristic of Continuous Identity Reproduction:** Through the perpetual utilization of private information to construct a digital profile for the individual, aiming to interpret their behavior and predict their future conduct.

Section II: The Right to be Forgotten as a Philosophical and Legal Necessity in the Face of Digital Memory

If digital memory has spawned a new paradigm that can be characterized as "absolute recollection", whereby information is liberated from the constraints of time and forgetting, and stored within technical infrastructures capable of permanent retrieval and infinite redistribution; this was not merely a neutral technological evolution, but a profound transformation in the existential structure of the human being. The human being is no longer an entity living within a linear temporality where the past is transcended; rather, they have become encompassed by a digital memory that perpetually reproduces this past, imposing it upon them as a permanent present. Consequently, the right to be forgotten emerges not merely as a techno-legal mechanism aimed solely at data erasure, but as a profound philosophical response to the ontological imbalance between humanity and technology. This right reflects an attempt to reintegrate the human being within their own temporality, in the face of a technological time that recognizes neither obsolescence nor forgetting, and threatens to reduce human identity into a static, immutable record.

From a philosophical perspective, the right to be forgotten is intrinsically linked to the notion that forgetting is not a deficiency of memory, but rather a fundamental condition for human freedom. It permits the individual to reconstruct the self, transcend errors, and maintain a relative detachment from their past. Conversely, within the digital environment; where this possibility is obliterated by virtue of permanent storage and perpetual redistribution, the human being is threatened with being reduced to their informational footprint, rather than their evolving reality.

Hence, the right to be forgotten constitutes, in its essence, a right to time, a right to reshape identity, and a mechanism to resist the digital fixation of the self. This right is not merely a right to erase information; rather, it is a right that prevents the past from becoming a perpetual constraint upon the present, and a right to be forgotten to the exact extent that the individual requires to forget.

On this basis, the right to be forgotten is not a right to expunge the past, but rather a right to liberate the present from the hegemony of the past. Consequently, its analysis necessitates an approach from two complementary angles: first, as a philosophical concept reflecting profound transformations in the human relationship with memory, time, and technology, which will be addressed in Subsection I; second, as a modern legal mechanism engendered by legislative and judicial evolution to regulate the digital space and achieve an equilibrium among rights, which will be examined in Subsection II.

Subsection I: The Philosophical Foundation of the Right to Be Forgotten

When delving into the intellectual dialectic of the right to be forgotten juxtaposing the human memory divinely fashioned by the Almighty Creator with digital memory; we can extract the philosophical foundation of the right to be forgotten through the following dimensions:

- **Forgetting as a Prerequisite for Human Existence:** Philosophical thought universally consensus that forgetting is not a deficiency of memory; rather, it constitutes an indispensable function for human life. The philosopher Friedrich Nietzsche asserted that the human being cannot exist without forgetting, given that absolute recollection induces an existential paralysis, rendering the individual incapable of transcending their past. Consequently, we deduce that the right to be forgotten is not merely an instrument for liberation from the past, but a mechanism for psychological equilibrium through the reconstruction of the self. (Nietzsche, 1997) Conversely, the absence of the right to be forgotten within digital memory completely obliterates this vital function.
- **Forgetting as a Condition for Controlling the Temporal Dimension:** Temporality cannot be reduced to an antecedent moment or a fleeting past mistake resulting from an individual's immaturity. However, digital memory structurally freezes the human being within their past as a temporal dimension, potentially converting them into a static entity, thereby obstructing future-oriented thinking and the fluid reshaping of identity. (Ricœur, 2004)
- **Forgetting as an Ethical Dimension for Self-and-Alterity Tolerance:** Forgetting facilitates social reintegration. Accordingly, judicial rehabilitation mechanisms manifested in the expungement of criminal records following the statute of limitations; serve as a concrete expression of both individual and collective manifestations of the right to be forgotten, which ultimately safeguards and preserves social cohesion (Arendt).

Subsection II: The Right to be Forgotten as a Modern Legal Mechanism

Prior to the massive digital revolution, forgetting was naturally achieved through the passage of time. However, with the emergence of digital memory, such forgetting has become impossible, thereby necessitating legal intervention to regulate forgetting as a codifiable extension of a natural right. This personal legal right to be forgotten can be instantiated through the following dimensions:

- The erasure of personal data
- The restriction of access to such data
- The prevention of its recirculation

However, the right to be forgotten is not exercised in an absolute manner; rather, it is subject to rigorous legal and judicial constraints. It constitutes one of the rights inherent to personality, which exhibits an elastic nature in its temporal dimension, owing to a set of intersecting balances that collide with it, such as:

- **The Conflict Between the Right to be Forgotten and Freedom of Expression and the Right to Know:** Manifested in the freedom of the press, the public's right to information, and the documentation of individuals' histories that are intrinsically linked to the history of nations.

- **The Conflict Between the Right to be Forgotten and the Judiciary and Justice:** Whereby this right could devolve into a mechanism for distorting facts, leading to the concealment or alteration of criminal evidence; essentially reconstructing reality in a selective manner.
- **The Conflict with Empirical Challenges of Implementation:** Driven by numerous factors, most notably:
  - The transnational nature of the Internet.
  - The hegemony of Big Tech conglomerates (e.g., Google, Amazon, Meta/Facebook, etc.).
  - The absence of globally unified legislation.

By successfully codifying the right to be forgotten, it becomes possible to dismantle the monopoly of digital memory and reintegrate forgetting into the digital ecosystem. This empowers individuals to control their past privacy, construct their future identity, and mitigate the psychological harm to which they are subjected. (Mbah, 2022)

On this basis, the principle of proportionality and balance stands as one of the most critical requisites for codifying this right when transitioning its intellectual philosophy into a legal framework. In this transition, numerous intricate details must be meticulously considered, most prominent of which are: (Kaur, 2024)

- **Ad-hoc evaluation:** Assessing each case of the right to be forgotten individually on its own merits.
- **The nature of the information:** Taking into profound consideration the specific character of the data subject to the right to be forgotten.
- **The nature of the harm:** Determining whether the damage is moral (reputational) or material, and whether it is actual or potential.
- **Delineation of liability:** Accurately defining and establishing legal responsibility.
- **Determination of the public interest:** Identifying and weighing the overarching public benefit.
- **Determination of the personal interest:** Assessing the scope and legitimacy of the individual's private interest.

Even when the legislative authority fails to keep pace with rapid digital evolutions, the judiciary plays a complementary role through the totality of its jurisprudence to fill various legal lacunae.

Thus, it becomes evident that achieving an equilibrium between digital memory and the right to be forgotten cannot be accomplished through rigid rules, but rather through a flexible, judiciary-led approach predicated on the principle of proportionality and anchored in a set of intertwined criteria. Consequently, the judiciary becomes the cornerstone in constructing a legal framework capable of reconciling the protection of human dignity with the guarantee of the free flow of information through:

- **Establishing judicial precedents** issued by supreme judicial bodies.
- **Harmonizing judicial interpretations** emanated from various courts.

- **Developing legal concepts** pertaining to the right to be forgotten via legislative initiatives of the Ministry of Justice acting as a regulatory authority responsible for drafting substantive and procedural bills.

Furthermore, this study demonstrates that privacy in the digital age is no longer a static right; rather, it has transformed into a dynamic concept oscillating between the logic of digital memory and the logic of the right to be forgotten. While the former threatens privacy by perpetuating data, the latter seeks to restore equilibrium by empowering individuals to command their digital past.

Conclusion

Based on the rigorous analysis and conceptual framework developed throughout this research, we conclude that the dialectic between digital memory and the right to be forgotten is not merely a technical dispute over data erasure or retention mechanisms; rather, it constitutes an existential and philosophical struggle wherein contemporary humanity seeks to reshape dignity and freedom in the face of technological hegemony. This study has demonstrated that digital memory characterized by its absolute permanence, infinite replication, and autonomy from human will has induced a structural rupture in "human temporality." By freezing the dynamic identity of the individual, it has rendered the past a perpetual constraint that dominates the present and forecloses the future, thereby undermining the fundamental "concept of a second chance" upon which psychological, social, and legal equilibrium has historically been predicated.

In response to this technological encroachment, the scholarly originality of this thesis lies in conceptualizing the "right to be forgotten" not as a peripheral legal privilege or a legislative luxury, but as an indispensable philosophical necessity and a vital response to reintroducing the human temporal dimension into cyberspace. From this perspective, striking an equilibrium between an individual's right to protect their informational footprint and conflicting constitutional mandates; such as freedom of expression, the public's right to know, and historical documentation presents the ultimate challenge for modern legislative frameworks.

Given the frequent lag of traditional legislatures in keeping pace with the exponential leaps of transnational Big Tech conglomerates, the core recommendation of this study emphasizes a paradigm shift from "rigid statutory rules" to a "flexible, judiciary-led approach" grounded in the principle of proportionality and *ad-hoc* evaluation. Delineating the boundaries between the public and private realms within the digital milieu requires the synchronization of legislative and judicial efforts. This ensures that technology does not devolve from an instrument of human knowledge into a digital panopticon that perpetuates transgressions and obliterates the capacity for personal transformation and growth. Ultimately, the right to be forgotten remains the cornerstone for reclaiming human existential sovereignty over personal data, and the primary safeguard against the artificial memory swallowing the essence of human consciousness.

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Ethical approval

Ethical approval and informed consent are not applicable to the study as described. This article is based on doctrinal legal analysis and philosophical discussion of published sources and does not involve human participants, animal subjects, or primary personal data collection.

Author contributions

Ali Latreche: Conceptualization, methodology, investigation, formal analysis, writing-original draft, and writing-review and editing. As the sole author, he takes responsibility for the arguments, interpretations, and conclusions presented in the article.

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Ali Latreche is a legal scholar affiliated with Ahmed Draia University of Adrar, Algeria. His publications address labour law, trade union freedoms, legal drafting, and the legal and ethical dimensions of digital technologies. His work includes studies on arbitration in Algerian labour law and the linguistic characteristics of legal rules. In the present article, he examines digital memory and the right to be forgotten, focusing on privacy, human dignity, and the balancing of individual rights against the public interest.

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Data Availability Statement

No original empirical datasets were generated or analysed in this study. The analysis draws on published legal materials, judicial decisions, and scholarly literature identified in the article and its references.

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