ESTUDIOS

LIQUID LAW AND THE CONSTITUTIONAL MULTIVERSE

GOVERNING GLOBALIZATION, DIGITALIZATION, AND JUSTICE BEYOND BORDERS

PERE SIMÓN CASTELLANO

ARANZADI

LIQUID LAW AND THE CONSTITUTIONAL MULTIVERSE

Governing Globalization, Digitalization, and Justice Beyond Borders

PERE SIMÓN CASTELLANO

Liquid Law and the Constitutional Multiverse

Governing Globalization, Digitalization, and Justice Beyond Borders

ARANZADI

ARANZADI LA LEY, S.A.U.
C/ Collado Mediano, 9
28231 Las Rozas (Madrid)
www.aranzadilaley.es
Customer Service: https://areacliente.aranzadilaley.es

This work has been carried out within the framework of the research project *Derechos y garantías públicas frente a las decisiones automatizadas y el sesgo y discriminación algorítmicas* [2023-2025] (PID2022-13642OB-I00), funded by MCIN/AEI/10.13039/501100011033 and *FEDER Una manera de hacer Europa*. IP's: Lorenzo Cotino Hueso and Jorge Castellano Claramunt.

First edition: June 2025

Legal Deposit: M-14526-2025
ISBN print version: 978-84-1162-842-6
ISBN electronic version: 978-84-1162-843-3

Design, Prepress and Printing: ARANZADI LA LEY, S.A.U.
Printed in Spain

To my daughter Clàudia, whose youthful wonder and fearless curiosity light up every day. As you grow, may you carry forward the passion and imagination that inspire these pages. Thank you for teaching me that learning is a journey shared by parent and child alike. This book is dedicated to you—my brightest spark, my enduring reason to dream.

Preface

The monograph you hold in your hands represents a significant contribution to the ongoing scholarly discourse surrounding the interplay between globalization, digitalization, and the evolution of constitutional principles in a transnational context. This work has been carried out within the framework of the research project *Derechos y garantías públicas frente a las decisiones automatizadas y el sesgo y discriminación algorítmicas* [2023-2025]" (PID2022-13642OB-I00), funded by MCIN/AEI/10.13039/501100011033 and *FEDER Una manera de hacer Europa*. The project, led by Professors Lorenzo Cotino Hueso and Jorge Castellano Claramunt, explores the challenges posed by automated decision-making systems and algorithmic bias, focusing on their implications for public rights and guarantees. I would like to express my deepest gratitude to the project leaders and the research team for their intellectual rigor and the collaborative environment that has greatly enriched the insights developed in this monograph.

This work has also benefited from the support and expertise of several esteemed colleagues. My heartfelt thanks go to José Tudela Aranda and Miguel Ángel Cabellos Espiérrez, whose unwavering encouragement and valuable feedback have profoundly shaped this work. I would also like to extend my appreciation to Professors Rafa Rubio Núñez, Rafael Bustos Gisbert, and Mario Hernández Ramos, whose contributions as colleagues and friends have been instrumental in refining many of the ideas presented here. Their intellectual generosity and commitment to academic excellence have been a source of inspiration throughout this process.

Additionally, this work draws inspiration from collaborations with key figures in constitutional law. My deepest gratitude goes to Professor Lorenzo Cotino Hueso, whose pioneering scholarship on digital law, transparency, and AI explainability has served as an intellectual cornerstone for much of this monograph. I would also like to acknowledge Professor Miguel Ángel Presno Linera, whose recent publication on fundamental rights and artificial intelligence published by Marcial Pons in 2023 provided valuable insights into the challenges posed by technology to the efficacy of rights in contemporary legal systems.

I would also like to extend my gratitude to the exceptional team at the CRIMINA Center for the Study and Prevention of Crime at the Universidad Miguel Hernández de Elche. Their cutting-edge research and interdisciplinary approach to the intersection of artificial intelligence and criminal law have greatly enriched the academic landscape. A special acknowledgment goes to Professor Fernando Miró Llinares, whose leadership in groundbreaking projects on AI and criminal law has been a constant source of intellectual inspiration. His rigorous academic standards and visionary approach to these pressing issues have provided a solid foundation for much of the theoretical framework explored in this work. The collaborative spirit and support of the CRIMINA team have been invaluable throughout this process.

This monograph has also been shaped by exploratory dialogues with generalist AI tools, to be precise, ChatGPT and Claude have been used for minor stylistic edits. These tools were employed solely for linguistic refinement and did not contribute substantively to the content or ideas developed herein. While ChatGPT and Claude played a role in enhancing the language and sentence structure, all ideas, analyses, and perspectives presented in this book are the original contributions of the author. These tools, when used responsibly, allowed me to challenge assumptions, refine premises, and pose new, critical questions essential for advancing legal scholarship. As any legal academic knows, the key to progress often lies in asking the right questions—not necessarily to find definitive answers, but to open pathways for further inquiry. This interaction underscores the

idea that the core challenge we face is not evaluating technology itself, which is neutral like fire, but assessing its concrete applications and societal implications.

Finally, this work is dedicated to my daughter, Clàudia, whose kindness, resilience, and curiosity are a constant source of joy and inspiration. To my family—parents, spouse, and children—I extend my deepest gratitude for their unwavering support and understanding. Balancing professional, academic, and familial obligations remains an ongoing challenge, but it is one made manageable by the love and patience of those closest to me. This monograph is a testament to the strength and encouragement they provide every day.

It is my hope that this work will contribute meaningfully to the understanding of the complex relationship between law, technology, and society in the 21st century, and that it will inspire further discussions and inquiries in this critical field of study.

Introduction: The Shape of Law in a Fluid World

In an era marked by unprecedented interconnectedness and rapid transformation, legal systems must evolve in response to the converging dynamics of globalization, digital innovation, and community-based justice. The rigidity that once characterized traditional legal structures is proving ill-suited to navigate the evolving legal landscape shaped by transnational governance, pervasive technologies, and the plural realities of subcultural groups. Law, much like the society it serves, must evolve into a more fluid, adaptive, and context-sensitive construct—what this work terms *liquid law*.

The concept of *liquid law* draws its foundation from sociological theories, particularly Zygmunt Bauman's notion of *liquid modernity*[1]. Bauman posits that contemporary social, economic, and political systems are defined by fluidity, adaptability, and a departure from rigid, solid structures of the past. Within the legal domain, this fluidity translates into the recognition of limitations inherent in hierarchical and static frameworks. Modern law must navigate the dynamic interplay between global norms, disruptive technologies, and pluralistic notions of justice. *Liquid law* encapsulates the demand for a legal order that is not only adaptable and responsive but also capable of harmonizing the often-competing imperatives of certainty, equity, and innovation.

This monograph identifies three transformative forces shaping the evolution of *liquid law*: globalization, digitalization, and community justice. Globalization has fragmented traditional notions of sovereignty, leading to overlapping systems of governance that challenge the primacy of national legal frameworks. This shift necessitates the

1. Bauman, Z. (2000). *Liquid modernity*. Polity Press.

development of new forms of multilevel constitutionalism to mediate tensions between local and global norms. Digitalization, in turn, has catalyzed the emergence of novel rights and regulatory frameworks, such as the European Data Protection Regulation (GDPR) and artificial intelligence laws. These frameworks have given rise to what this study terms *über-rights*[2], a category of elevated and hyper-regulated legal entitlements that dominate the digital era's regulatory landscape. However, their administrative focus often fails to address individual grievances effectively, leaving micro-level violations inadequately redressed. Finally, the rise of community-based justice underscores the growing difficulty of applying formal legal systems to subcultures, marginalized groups, and alternative normative orders, which often operate outside conventional structures of law.

The objective of this monograph is to critically explore these dimensions of *liquid law* and their implications for the future of

2. The term *über-rights* is used here to describe a distinct category of rights in the digital era that transcend traditional legal entitlements in scope, regulatory design, and societal impact. The term emphasizes three key aspects: (1) Normative Supremacy, as über-rights occupy a privileged position within legal frameworks, often serving as foundational norms that influence the design of adjacent regulations. For example, the European Data Protection Regulation and the AI Act are not isolated rules but frameworks that define the parameters of digital governance itself; (2) Transcendence and Universality, because über-rights extend beyond their immediate domain to become core principles of governance in the digital and global age. Their relevance is not confined to specific legal contexts but permeates diverse areas such as commerce, privacy, and ethics, shaping the regulatory landscape as a whole; (3) Proactivity and Responsibility in the sense that these rights often place proactive obligations on organizations and businesses, reflecting a regulatory philosophy influenced by common law traditions. Entities are required to anticipate and prevent violations rather than merely respond to infractions, as seen in administrative regimes tied to data protection and AI governance. The term is deliberately evocative, inspired by the notion of *Übermensch* in Nietzsche's philosophy, to convey the elevated status of these rights in modern legal systems. However, it is used here in a descriptive sense to highlight their structural and functional dominance, rather than implying any inherent moral or philosophical superiority. See Nietzsche, F. (1978). *Thus spoke Zarathustra: A book for all and none* (W. Kaufmann, Trans.). Penguin Books. (Original work published 1883–1885).

legal systems. By examining the intersections of globalization, digitalization, and community justice, this study aims to construct a comprehensive framework that addresses the challenges posed by a fluid and interconnected world. The aim is not merely to adapt legal systems to modern pressures but to reimagine their foundational principles to ensure resilience, inclusivity, and equity.

The structure of this work reflects these three forces. Part One delves into globalization and its profound impact on legal frameworks, emphasizing the tensions and opportunities of multilevel constitutionalism in reconciling local and global norms. Part Two examines the transformative effects of digitalization, focusing on the rise of administrative enforcement mechanisms, and the structural gaps they leave for addressing micro-level grievances. Part Three turns to the challenges of local and alternative justice, highlighting the increasing complexity of applying formal legal systems to pluralistic and subcultural communities. These discussions culminate in the concluding section, which synthesizes the insights gained, proposing pathways for a legal order that is fluid yet grounded, responsive yet principled, and capable of navigating the uncertainties of *liquid modernity*.

This exploration seeks to transcend the conventional dichotomies of legal thought—such as rigidity versus flexibility and rules versus principles—to articulate a vision of law that responds to the demands of modernity without sacrificing coherence or justice. By embracing adaptability and inclusion, *liquid law* offers a framework for addressing the complexities of a world where legal systems must be as interconnected and dynamic as the societies they regulate.

Liquid law, a concept that emphasizes adaptability and responsiveness in legal frameworks, is deeply interconnected with the theory of *multilevel constitutionalism*. Both concepts address the fragmentation of sovereignty and the proliferation of overlapping jurisdictions in a globalized world. For instance, while liquid law focuses on the need for legal systems to remain flexible and context-sensitive in the face of transnational challenges, multilevel constitutionalism provides the

structural framework for this flexibility by integrating local, national, and supranational governance.

This dynamic interplay is particularly evident in the European Union's legal architecture, where multilevel constitutionalism facilitates the harmonization of laws across member states while accommodating their diverse constitutional traditions. This harmonization is essential for implementing principles of liquid law in areas such as digital governance and climate policy, where rigid hierarchies often fall short. For a deeper analysis of these frameworks, see Sections 2.1. ('Sovereignty Under Pressure') and 3.1.1. ('The Inadequacy of Traditional Hierarchical Legal Frameworks in Managing Global Challenges'), where the theoretical underpinnings and practical applications of these concepts are explored in detail.

This evolution of legal systems requires not only flexibility but also structural coherence, as provided by multilevel constitutionalism. By linking local, national, and supranational governance, multilevel constitutionalism offers a framework to operationalize liquid law, allowing legal norms to adapt dynamically without sacrificing democratic legitimacy or rule of law principles. This interaction is particularly evident in the European Union, where subsidiarity and proportionality mediate the tensions between national autonomy and transnational governance.

PART ONE: GLOBALIZATION AND THE NEW CONSTITUTIONAL MULTIVERSE

The interplay between globalization and the evolution of legal systems represents one of the most profound shifts in contemporary governance. As transnational dynamics redefine the contours of sovereignty and law, traditional frameworks, long centered on the authority of the nation-state, are increasingly challenged by fluid and overlapping legal regimes. Part One examines the intricate relationship between globalization and legal transformation, exploring how the forces of interconnectedness, economic integration, and cultural exchange serve both as catalysts for harmonization and as agents of fragmentation in the legal order.

Yet globalized governance does not merely dissolve boundaries; it forges new ones—shifting authority to regional blocs, international courts, or powerful private actors. Economic interdependence prompts states to cooperate on trade, finance, and intellectual property, while digital platforms channel vast amounts of cross-border data beyond the conventional reach of national legislation. Such developments foster innovative forms of cooperation, including multilateral treaties and supranational bodies, but they also expose tensions in constitutional doctrines once predicated on clear jurisdictional lines. Some actors champion universal standards—invoking human rights norms and transnational treaties—while others defend local practices or invoke cultural plurality. The result is a *New Constitutional Multiverse*, where legal orders converge, diverge, and intermingle as never before. Part One navigates this evolving landscape, revealing both the promise of broader collaboration and the risk of incoherence. Ultimately, these chapters set the stage for understanding how states, subcultures, and digital platforms might negotiate legitimate frameworks that balance local identity with shared commitments to fundamental principles in an interconnected world.

Chapter 1

Globalization as a Catalyst for Legal Fluidity

Globalization operates not merely as an economic or cultural phenomenon but as a transformative force in legal governance. It compels states to reconcile their domestic legal traditions with emerging global norms, reshaping the boundaries of law and authority. This section delves into the mechanisms by which globalization influences legal systems, with particular focus on how these forces foster convergence while simultaneously revealing fault lines that fragment traditional hierarchies. By examining the dual impacts of integration and disintegration, the following analysis provides a comprehensive understanding of globalization's catalytic role in legal fluidity.

1.1. HOW GLOBAL FORCES SHAPE AND FRAGMENT LEGAL SYSTEMS

The globalized world is characterized by profound interconnectedness, where economic, political, and social processes transcend national boundaries. This interconnectedness has reshaped legal systems in ways that are both integrative and disintegrative. On the one hand, global forces have fostered the harmonization of legal norms, enabling more consistent regulation of cross-border activities. On the other hand, these forces have exposed the limits of national legal frameworks, fragmenting traditional systems and challenging their ability to govern effectively in a globalized context. This section explores three interrelated aspects of this transformation: (1) the

erosion of traditional legal sovereignty, (2) the interdependence of national economies and its legal implications, and (3) the proliferation of regional and global legal regimes.

To what extent can liquid law reconcile the need for legal adaptability with the structural demands of multilevel constitutionalism?

What mechanisms can be implemented to ensure that the interaction between liquid law and multilevel constitutionalism enhances both democratic legitimacy and legal certainty?

1.1.1. THE EROSION OF TRADITIONAL LEGAL SOVEREIGNTY

Globalization has profoundly altered the concept of sovereignty,[1] which historically served as the bedrock of national legal systems. Sovereignty, traditionally understood as the supreme authority of a state within its territory, is increasingly diluted by the demands of transnational governance.[2] International trade agreements, environmental accords, and human rights conventions require states to align their domestic laws with global standards, often limiting their ability to act unilaterally.[3]

---

1. On this issue, it is essential to turn to Zuboff's thesis, whose work on surveillance capitalism highlights the tension between technological innovation and the erosion of individual rights. Her insights are crucial for understanding how the justice system must navigate the risks posed by data commodification, ensuring that digital solutions do not compromise fairness and transparency. See Zuboff, S. (2019). *The age of surveillance capitalism: The fight for a human future at the new frontier of power*. Public Affairs, pp. 201–230.
2. De Sousa Santos' concept of legal pluralism offers a vital lens to understand how globalization transforms the traditional monopoly of state law into a fragmented and multi-layered legal reality. His work underscores the coexistence of diverse normative systems and the challenges this poses to legal sovereignty. *See* de Sousa Santos, B. (2002). *Toward a new legal common sense: Law, globalization, and emancipation.* Butterworths.
3. Held's theory of cosmopolitan governance emphasizes the necessity of rethinking sovereignty in a globalized world. He argues that overlapping legal systems require frameworks that balance global accountability with local autonomy, which is essential for addressing the fragmentation of legal

For instance, trade agreements under the World Trade Organization (WTO) necessitate compliance with rules that regulate tariffs, subsidies, and market access. Member states must harmonize their policies with these rules, even when doing so conflicts with domestic priorities. Similarly, environmental treaties such as the Paris Agreement obligate states to adopt specific measures to combat climate change, constraining their legislative discretion.

The impact of this erosion is particularly visible in the field of human rights. International conventions like the European Convention on Human Rights (ECHR) empower supranational courts, such as the European Court of Human Rights, to override domestic legal decisions. This has led to tensions between states' desire for autonomy and their obligations to the international community. For instance, the UK's debates over the ECHR reflect a broader struggle to reconcile sovereignty with global legal commitments.

The erosion of sovereignty also extends to private actors. Multinational corporations (MNCs) operate across jurisdictions, exploiting regulatory arbitrage and challenging states' ability to enforce laws. The legal frameworks of individual states often fail to address the extraterritorial activities of these entities, necessitating transnational regulatory solutions. For instance, corporate tax avoidance strategies like those exposed in the Panama Papers illustrate how globalized economic activities outpace the capabilities of national legal systems.

Alongside exogenous factors like international treaties and economic integration, endogenous challenges—particularly within constitutional adjudication—have begun to reshape the legal sovereignty of nation-states. A profound and troubling dialectic has taken root in many constitutional systems. High courts and constitutional tribunals, once perceived as the bastions of legality and impartiality, have increasingly leveraged their interpretative powers to dominate the political sphere. This has been facilitated by legal-philosophical doctrines resembling a form of crypto-natural law—devoid of divine authority yet subjugated

---

sovereignty. *See* Held, D. (1995). *Democracy and the global order: From the modern state to cosmopolitan governance.* Stanford University Press, pp. 99–120.

to human agendas. In turn, political powers have recognized and exploited this potential, strategically politicizing the judiciary. The result is a trend of appointing judges to the highest courts based not on their legal expertise or intellectual merit, but on their political allegiance and willingness to serve partisan interests.

These practices have culminated in a judiciary that often exhibits a disquieting combination of superficial competence and bold overreach, privileging loyalty over capacity. The consequences are systemic: legal and constitutional frameworks have become malleable instruments of political power, leaving the rule of law undermined. Citizens, once protected by guarantees of judicial independence, are increasingly left vulnerable to unchecked governmental authority.[4]

Critics often attribute this deterioration to the dominance of positivism, arguing that the legal system's mechanistic reliance on formal rules has eroded its moral foundations. Yet, such critiques fail to capture the crux of the issue: it is not positivism that has led to this collapse, but rather the deliberate subversion of judicial independence and the entrenchment of political interests within legal institutions. This trajectory signals a broader crisis—one that strikes at the very heart of constitutionalism and the promise of the rule of law in a globalized world.

1.1.2. THE INTERDEPENDENCE OF NATIONAL ECONOMIES AND LEGAL CHALLENGES

Globalization has deepened the interdependence of national economies, necessitating legal frameworks that can manage the

4. The judiciary, while constitutionally delineated to ensure independence and impartiality, faces renewed challenges in modern governance. Rapidly evolving social conditions, transnational legal orders, and digital-era disputes demand flexible interpretations of the judicial function. In this view, courts must not only uphold traditional guarantees but also adapt to complex cases involving overlapping jurisdictions, cross-border responsibilities, and the need for procedural innovation. See about Cabellos Espiérrez, M. Á. (2023). *El poder judicial: Configuración constitucional, desarrollo y retos*. Marcial Pons, Ediciones Jurídicas y Sociales.

complexities of cross-border transactions.[5] Supply chains, investment flows, and financial systems are now intricately linked, creating vulnerabilities that require coordinated legal responses.

One example of this interdependence is the regulation of global financial markets. The 2008 financial crisis demonstrated how failures in one jurisdiction can have cascading effects worldwide. The interconnected nature of financial institutions meant that the collapse of Lehman Brothers in the United States triggered a global economic downturn. In response, regulatory bodies such as the Financial Stability Board (FSB) and the Basel Committee on Banking Supervision developed transnational standards to mitigate systemic risks. However, implementing these standards has proven challenging due to varying national interests and capacities.

Another area of economic interdependence is international trade. Legal frameworks like the General Agreement on Tariffs and Trade (GATT) and its successor, the WTO, have facilitated the liberalization of trade. However, disputes often arise when states prioritize domestic interests over global rules. The U.S.-China trade conflict highlights the tension between the need for a rules-based system and the pursuit of national economic agendas. Tariffs, subsidies, and export controls frequently provoke legal disputes that strain the capacity of international mechanisms to provide effective resolutions.

Additionally, global value chains complicate the enforcement of labor and environmental standards. Goods produced in one country and consumed in another often involve multiple jurisdictions with differing legal requirements. For instance, ensuring compliance with labor rights in the garment industry, where production spans multiple countries, requires not only national enforcement but also transnational cooperation. Legal frameworks like the OECD Guidelines

5. Beck's concept of the risk society provides a critical perspective on how globalization amplifies shared vulnerabilities and systemic risks. He argues that the interconnectedness of modern economies requires transnational legal frameworks capable of addressing these global risks effectively. *See* Beck, U. (1992). *Risk society: Towards a new modernity.* Sage Publications.

for Multinational Enterprises aim to address these challenges but face limitations in enforcement.

The interdependence of national economies also raises questions about jurisdiction and accountability.[6] When legal disputes involve multiple jurisdictions, determining the applicable law becomes a contentious issue. For example, cross-border data transfers under the EU's General Data Protection Regulation (GDPR) illustrate the difficulty of reconciling divergent legal standards. The Schrems II decision by the European Court of Justice invalidated the EU-U.S. Privacy Shield framework, leaving businesses grappling with legal uncertainty in data transfers.

1.1.3. THE PROLIFERATION OF REGIONAL AND GLOBAL LEGAL REGIMES

Globalization has led to the proliferation of regional and global legal regimes that operate alongside and sometimes in conflict with national systems.[7] These regimes aim to address cross-border issues that cannot be effectively managed by individual states, but their multiplicity often creates fragmentation and complexity.[8]

---

6. Stiglitz critiques the failures of global economic governance to address inequality and uneven development, urging for reforms that integrate legal accountability into global financial systems. *See Stiglitz, J. E. (2002). Globalization and its discontents*. W.W. Norton & Company, pp. 59–80.
7. Kymlicka's work on multicultural citizenship highlights the ways in which globalization pressures legal systems to accommodate diversity, particularly in societies that are increasingly interconnected. His insights provide a critical perspective on how regional and global regimes must balance universal norms with the particularities of cultural pluralism. *See* Kymlicka, W. (1995). *Multicultural citizenship: A liberal theory of minority rights.* Oxford University Press.
8. Slaughter's analysis of transgovernmental networks highlights how informal collaborations between regulators, judges, and legislators contribute to the creation of global legal norms, often bypassing traditional state-centric frameworks. These networks exemplify the complexity of modern legal governance. *See Slaughter, A.-M. (2004). A new world order*. Princeton University Press, pp. 19–45.

Regional organizations like the European Union (EU) exemplify the integration of legal systems across multiple states. The EU's legal framework, characterized by regulations, directives, and decisions, creates binding norms that member states must implement. This has resulted in a high degree of legal harmonization, particularly in areas such as consumer protection, competition law, and environmental standards. However, the EU's legal system also generates tensions, as seen in Brexit, where concerns over sovereignty and compliance with EU law drove the UK's decision to leave the union.

At the global level, institutions such as the United Nations (UN), the WTO, and the International Criminal Court (ICC) play pivotal roles in creating and enforcing international norms. For example, the ICC prosecutes individuals for crimes such as genocide and war crimes, transcending national legal systems to deliver justice on a global scale. Yet, these regimes often face resistance from states that view them as encroachments on their sovereignty. The United States' withdrawal from the Paris Agreement and its refusal to ratify the Rome Statute illustrate the challenges of securing universal commitment to global legal norms.

The proliferation of regimes also creates overlapping jurisdictions and conflicts of law.[9] For instance, the relationship between trade law and environmental law often leads to disputes. Cases like the WTO's Tuna-Dolphin dispute highlight the tension between free trade and environmental protection, with competing legal frameworks offering different priorities and solutions.

Additionally, regional legal regimes sometimes conflict with global norms. For example, African Union member states have expressed concerns that the ICC disproportionately targets African leaders,

---

9. Koskenniemi examines how the fragmentation of international law complicates coherence, as specialized legal regimes develop in isolation from broader normative frameworks. *See* Koskenniemi, M. (2006). *Fragmentation of international law: Difficulties arising from the diversification and expansion of international law.* UN Report of the International Law Commission.

undermining regional initiatives for justice. Such conflicts underscore the need for greater coordination and coherence among legal systems.

Globalization has reshaped legal systems, creating both opportunities for integration and challenges of fragmentation. The erosion of sovereignty, the interdependence of national economies, and the proliferation of regional and global regimes illustrate the complex interplay of forces that define the legal landscape in a globalized world. These dynamics demand innovative approaches to governance, emphasizing the need for multilevel legal frameworks that can reconcile competing interests while ensuring coherence and accountability. The next section precisely explores how multilevel constitutionalism offers a potential pathway for addressing these challenges in an increasingly interconnected legal order.

1.2. THE RISE OF CROSS-BORDER NORMS AND TRANSNATIONAL GOVERNANCE

Globalization has not only reshaped national sovereignty but has also facilitated the rise of cross-border norms and transnational governance structures. These developments seek to address challenges that transcend national boundaries, such as climate change, international trade, and the regulation of emerging technologies. However, while cross-border norms aim to harmonize standards and foster cooperation, they often highlight tensions between global integration and domestic autonomy. This section explores the emergence, functionality, and challenges of these frameworks.

1.2.1. THE EMERGENCE OF CROSS-BORDER NORMS

The growth of cross-border norms reflects the necessity of governing issues that individual states cannot effectively manage alone. Agreements like the Paris Climate Accord, international trade treaties, and conventions on human rights exemplify frameworks designed to address global concerns. These norms often originate from transnational institutions, such as the United Nations (UN),

the World Trade Organization (WTO), and regional bodies like the European Union (EU).

The Paris Climate Accord, for example, demonstrates how cross-border agreements set shared objectives—such as limiting global temperature rises—while leaving room for states to determine their own paths to compliance. Similarly, the WTO facilitates global trade by establishing rules that reduce barriers and resolve disputes, ensuring more predictable international economic relations. In the human rights domain, treaties such as the International Covenant on Civil and Political Rights (ICCPR) create binding obligations on states to protect fundamental freedoms, showcasing the potential for cross-border norms to uphold universal values.

1.2.2. THE ROLE OF TRANSNATIONAL GOVERNANCE

Cross-border norms are often operationalized through transnational governance structures, which coordinate the efforts of multiple states, international organizations, and non-state actors. These structures aim to promote collaboration and consistency in areas where unilateral action would be insufficient or counterproductive.[10]

This is the case of the International Criminal Court (ICC) that provides a mechanism for prosecuting individuals responsible for crimes against humanity, genocide, and war crimes. By transcending national jurisdictions, the ICC holds perpetrators accountable even when domestic systems are unwilling or unable to act. Similarly, financial governance bodies such as the Financial Stability Board (FSB) and the Basel Committee on Banking Supervision create global standards for banking and financial practices, reducing systemic risks in interconnected markets.

---

10. Kingsbury's et al. concept of global administrative law highlights how transnational governance relies on administrative principles such as transparency, accountability, and participation to ensure legitimacy in the absence of centralized authority. See Kingsbury, B., Krisch, N., & Stewart, R. B. (2005). *The emergence of global administrative law. Law and Contemporary Problems*, 68 (3), 15–61.

These governance structures also reflect a shift toward a multi-stakeholder model, incorporating non-state actors such as multinational corporations (MNCs), non-governmental organizations (NGOs), and civil society groups. This approach acknowledges that global issues often require input and accountability beyond the state-centric paradigm. For instance, corporate codes of conduct and industry-specific certifications, such as the Forest Stewardship Council (FSC) in sustainable forestry, illustrate how private governance complements formal legal frameworks.

1.2.3. CHALLENGES OF CROSS-BORDER NORMS

Despite their potential, cross-border norms and transnational governance face significant challenges. One major issue is the tension between harmonization and national sovereignty. States often resist adopting global standards that conflict with domestic priorities,[11] leading to uneven implementation or outright rejection. For instance, debates over the WTO's agricultural subsidy rules reveal the difficulty of balancing global trade norms with the protection of local farmers.

Another challenge is enforcement. Many cross-border norms rely on voluntary compliance or lack effective mechanisms to ensure adherence. The Paris Climate Accord, for example, does not impose binding penalties for non-compliance, leaving its success contingent on political will and peer pressure.[12] Similarly, while the ICC has achieved notable successes, its authority is undermined by the refusal of key powers, such as the United States, to recognize its jurisdiction.

---

11. Sassen explores how global institutions challenge the primacy of national sovereignty, creating spaces of tension and negotiation between global norms and domestic policies. See Sassen, S. (2006). *Territory, authority, rights: From medieval to global assemblages*. Princeton University Press, pp. 200–230.
12. Related to that, Higgins explores the challenges of enforcing international legal norms, emphasizing the need for innovative mechanisms that address the limitations of traditional compliance models. *See* Higgins, R. (1994). *Problems and process: International law and how we use it*. Oxford University Press, pp. 3–21.

Fragmentation is another obstacle. The proliferation of overlapping regimes can create conflicts and inefficiencies, particularly when norms established by one institution clash with those of another. The Tuna-Dolphin disputes under the WTO highlight such conflicts, where trade rules and environmental protections were at odds, complicating the resolution process.

The rise of cross-border norms and transnational governance underscores the increasing interdependence of states and the necessity of collective action to address global challenges. However, these frameworks must navigate a delicate balance between integration and sovereignty, harmonization and diversity, ambition and enforceability. While cross-border norms represent a vital step toward managing the complexities of globalization, their effectiveness will depend on fostering greater cooperation, enhancing enforcement mechanisms, and addressing the inequalities that persist within the global legal order.

1.2.4. BALANCING STATE AUTONOMY WITH GLOBAL REGULATORY DEMANDS

One of the most pressing challenges in the rise of cross-border norms and transnational governance is balancing state autonomy with the demands of global regulatory frameworks. While global norms aim to harmonize standards and address issues that transcend national boundaries, they often require states to cede a degree of sovereignty. This creates a tension between the desire for domestic control and the necessity of cooperating on international challenges.

The balance between state autonomy and global regulatory demands is not static but dynamic, evolving with the complexities of globalization. States must navigate a dual obligation: to uphold their domestic constitutional principles while adhering to international commitments. For instance, environmental treaties such as the Paris Agreement require states to implement ambitious climate policies, which may conflict with national economic priorities. Similarly, trade agreements under the World Trade Organization (WTO) necessitate

compliance with global trade norms, even when these rules clash with domestic industrial policies.

This balance often depends on the perceived legitimacy of global norms. States are more likely to accept global regulations when they believe their interests are represented and protected within the decision-making processes of transnational institutions. However, when states feel excluded or perceive these norms as infringing on their sovereignty, resistance arises. The United States' withdrawal from the Paris Agreement under the Trump administration and ongoing disputes within the WTO illustrate the fragility of this balance.

Transnational governance frameworks often include mechanisms designed to respect state autonomy while advancing global objectives. The principle of subsidiarity, widely used in the European Union, is one such mechanism. It ensures that decisions are made at the most local level possible, reserving supranational action for issues that cannot be effectively managed by individual states. Subsidiarity offers a model for reconciling national interests with collective goals, but its application can still provoke debates over jurisdictional boundaries.

Another approach is the inclusion of flexibility mechanisms within global treaties. This is again exemplified by the Paris Agreement that allows states to set their own nationally determined contributions (NDCs) to emissions reductions, offering room for customization based on domestic circumstances. This flexibility helps to maintain state buy-in while advancing collective action, but it can also weaken enforcement, as states face no binding penalties for failing to meet their commitments.

Domestic legal systems play a crucial role in mediating the tension between state autonomy and global regulatory demands. Courts often become arenas for resolving conflicts between national and international norms. In the European Union, for instance, national constitutional courts have occasionally resisted the primacy of EU law, as seen in the German Federal Constitutional Court's rulings on

the European Central Bank's monetary policy. These legal disputes underscore the challenges of maintaining coherence in a multilevel governance system.[13]

At the same time, states can use domestic law to implement global norms in ways that reflect local priorities. For example, the General Data Protection Regulation (GDPR) originated in the European Union but has influenced data protection laws worldwide. Countries such as Japan and Brazil have adapted their legal frameworks to align with GDPR principles, balancing global regulatory standards with their own legal traditions. Moreover, the EU is now taking steps to lead other international regulatory debates, particularly around online content moderation through the Digital Services Act (DSA) and the development and use of artificial intelligence systems via the Artificial Intelligence Act (AIA). Notably, the European approach to regulating AI has already influenced legislative initiatives in South Korea, underscoring the EU's growing role as a global regulatory trendsetter.[14]

Balancing state autonomy with global regulatory demands requires continuous negotiation and innovation. Mechanisms such as subsidiarity and flexibility in treaty obligations offer pathways for reconciling these tensions, but challenges persist in ensuring that global norms are perceived as legitimate and inclusive. As globalization deepens, achieving this balance will remain a central task for transnational governance frameworks, particularly in areas where state sovereignty intersects with urgent global challenges.

---

13. Gómez Sánchez's analysis of multilevel constitutionalism emphasizes how mechanisms like subsidiarity and proportionality help balance the competing demands of state sovereignty and supranational legal frameworks. Her work highlights the importance of these principles in protecting fundamental rights across multiple governance levels. See Gómez Sánchez, Y. (2014). *Constitucionalismo multinivel: Derechos fundamentales. Centro de Estudios Políticos y Constitucionales*, pp. 45–68.
14. The European Union's approach to artificial intelligence regulation, as articulated in the forthcoming Regulation on Artificial Intelligence (AIA), positions the EU as a leader in shaping global standards for the responsible development and use of AI systems. See Cotino Hueso, L. & Simón Castellano, P. (2024). *Tratado sobre el Reglamento Europeo de Inteligencia Artificial*. Aranzadi.

The European Union's regulatory initiatives, particularly the DSA and the AIA, exemplify its ambition to establish global leadership in digital governance. The DSA seeks to create a safer and more transparent digital environment by addressing issues such as illegal content, disinformation, and platform accountability. This regulatory framework imposes obligations that scale with platform size and systemic impact, effectively targeting major tech companies while allowing smaller enterprises more flexibility. Its emphasis on proactive risk assessment and enhanced transparency has set a benchmark for similar discussions globally, particularly in the United States, where regulatory approaches remain fragmented and sector specific.

In comparison, the AIA represents a pioneering effort to regulate AI technologies through a risk-based framework. By categorizing AI applications into unacceptable, high, and minimal risk levels, the AIA ensures that the use of AI systems aligns with fundamental rights and societal values. For instance, high-risk AI systems in areas like law enforcement and healthcare are subject to strict requirements, including transparency, oversight, and accountability.

While the EU's approach emphasizes a precautionary principle and a proactive stance, other global actors adopt divergent strategies. The United States, for example, has focused on fostering innovation through voluntary guidelines, as seen in the National AI Initiative Act. Recognizing the strategic importance of AI to the Nation's future economy and security, the Trump Administration established the American AI Initiative via Executive Order 13859 in February 2019. This initiative identified five key lines of effort, including increasing AI research investment, unleashing Federal AI computing and data resources, setting AI technical standards, building America's AI workforce, and engaging with international allies. These lines of effort were codified into law as part of the National AI Initiative Act of 2020. Similarly, China has combined regulatory oversight with state-led investment in AI, aiming to dominate the sector while addressing issues like data privacy and algorithmic accountability through frameworks such as the Personal Information Protection Law (PIPL). These contrasting approaches highlight the challenges of

harmonizing global digital governance and raise important questions about the long-term impact of regulatory divergence on innovation, competition, and fundamental rights.

In addition to the GDPR, the DSA and AIA exemplifies the EU's ambition to lead global digital regulation. The DSA establishes transparency and accountability standards for digital platforms, targeting issues such as illegal content and disinformation. As commented before, this proactive approach contrasts with the United States' sector-specific and voluntary guidelines. Similarly, the AIA introduces a comprehensive framework for AI governance based on risk categories, aiming to safeguard fundamental rights while promoting innovation. Together, these regulations reflect the EU's broader strategy of shaping global digital governance, influencing legislative initiatives from Brazil to South Korea, while challenging traditional notions of sovereignty and regulatory autonomy.

How will the EU's leadership in digital governance, through the DSA and AIA, influence regulatory convergence or divergence across major global actors like the United States and China?

What challenges arise when attempting to harmonize regulatory frameworks across jurisdictions with conflicting legal traditions and market priorities?

Chapter 2

Multilevel Constitutionalism in a Hyperconnected World

In preceding chapters, we analyzed the fluid nature of modern law, shaped by global commerce, rapid digitization, and shifting alliances. Chapter 2 delves deeper into the concept of multilevel constitutionalism and how it reconfigures legal orders. As transnational networks multiply, states that once claimed ultimate authority must now contend with overlapping jurisdictions and international governance. These phenomena challenge classical ideas of sovereignty, suggesting that the Westphalian paradigm no longer fully captures the reality of an interconnected legal environment. Section 2.1 thus begins by examining how borderless systems and supranational frameworks exert profound pressure on national constitutional sovereignty and autonomy worldwide.

2.1. SOVEREIGNTY UNDER PRESSURE: BETWEEN BORDERS AND NETWORKS

In a hyperconnected world, the traditional concept of sovereignty is undergoing profound transformation.[1] Once defined as the supreme

1. The accelerating processes of globalization have subjected classical understandings of sovereignty to unprecedented strain. No longer can states claim exclusive authority within rigid territorial boundaries when economic, environmental, and digital interdependencies permeate every aspect of public policy. This reconfiguration compels us to see sovereignty not as a static property but as a resource for negotiating international agreements and

authority of a state over its territory, sovereignty is increasingly reinterpreted within a legal landscape shaped by overlapping jurisdictions, transnational networks, and supranational frameworks. This redefinition reflects the tension between national constitutionalism, which prioritizes state autonomy, and supranational legal systems, which seek to harmonize norms across borders to address global challenges.[2]

Globalization has rendered the notion of absolute sovereignty anachronistic.[3] States now operate within a complex web of transnational agreements, regulatory frameworks, and judicial mechanisms that impose obligations beyond their borders.[4] This interconnectedness challenges the Westphalian ideal of sovereignty, replacing it with a more dynamic and negotiated concept. Sovereignty today is less about unbounded authority and more about the capacity

---

forging collective action beyond the nation-state. See Held, D., & McGrew, A. G. (2002). *Globalization/Anti-Globalization: Beyond the Great Divide*. Polity Press.

2. The modern international system is no longer characterized by a neat dichotomy of domestic versus foreign affairs. Instead, multiple layers of authority overlap, from regional trade regimes to global environmental accords, resulting in a dense network of legal instruments that constrain unilateral state action. See Slaughter, A.-M. (2004). *A New World Order*. Princeton University Press.
3. Federal systems often react to globalization by redefining which competencies belong to central authorities, and which remain under regional or local governance. This tension can either strengthen unity—if collective engagement is encouraged—or accentuate fragmentation where regions perceive global dynamics as threats to their autonomy. Striking equilibrium demands mechanisms for consultation and conflict resolution, ensuring subnational jurisdictions contribute to shaping the broader international agenda while respecting established constitutional frameworks. See Arbós i Marín, X. (2005). La globalització i els sistemes federals. *Revista d'estudis autonòmics i federals*, (1), 37–60.
4. We observe a novel tension between constitutional principles anchored in state sovereignty and the growing need for supranational or transnational frameworks to tackle cross-border problems like climate change or financial instability. This tension spurs what might be called 'multilevel constitutionalism,' wherein legal orders from local to global co-exist and exert reciprocal influence, albeit with frequent friction regarding supremacy and judicial competence. See Walker, N. (2002). The Idea of Constitutional Pluralism. *Modern Law Review*, 65(3), 317–359.

to navigate and shape supranational norms while preserving a degree of autonomy.[5]

This dynamic is evident in the ways multilateral agreements shape domestic policies. Trade frameworks like those under the World Trade Organization (WTO) establish rules for tariffs, subsidies, and intellectual property rights, reducing unilateral decision-making. Similarly, global environmental agreements encourage states to align their national agendas with shared objectives, as seen in commitments to reduce emissions. These developments illustrate how sovereignty has shifted from being an isolated prerogative to a collaborative function within multilateral institutions.[6]

One manifestation of this tension is the struggle between domestic environmental policies and global climate frameworks. The European Union (EU) exemplifies this tension. Member states must reconcile their constitutional principles with EU law, which often takes precedence through the doctrine of primacy.[7] For example, the Court of Justice of the European Union (CJEU) has consistently ruled that EU law supersedes conflicting national laws, as seen in landmark cases like

5. Sovereignty has evolved into a relational construct, reflecting the interactive capacities of states to shape, absorb, or negotiate external constraints. Rather than upholding an illusion of absolute independence, modern sovereigns cultivate their abilities to maneuver within international regimes, exercising influence through diplomacy, coalition-building, and norm-creation. See Held, D. (1995). *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*. Stanford University Press.
6. In the WTO system, national policy space is inevitably curtailed by a network of negotiated obligations and dispute-settlement rulings. This 'loss' of sovereignty, however, can be reconceived as a 'transfer' of regulatory authority to an institution that, in principle, enhances predictability and fairness in international trade relations. See Jackson, J. H. (1997*). The World Trading System: Law and Policy of International Economic Relations* (2nd ed.). MIT Press.
7. Costa v. ENEL confirmed that the European Community (now EU) constitutes a new legal order of international law, for whose benefit the states have limited their sovereign rights. This doctrine of primacy requires that, in cases of conflict, Community law must prevail over national constitutional provisions. See Weiler, J. H. H. (1999). *The Constitution of Europe: "Do the New Clothes Have an Emperor?" and Other Essays on European Integration*. Cambridge University Press.

Costa v. ENEL (1964). This principle has sparked debates about the limits of EU authority and the erosion of national sovereignty.[8]

A related tension emerges with the EU's Charter of Fundamental Rights, which binds member states in areas where they implement EU law.[9] While this fosters consistency, it can clash with domestic constitutional traditions, particularly in countries that prioritize parliamentary sovereignty or adhere to unique interpretations of fundamental rights. The ongoing debates over Poland's and Hungary's adherence to EU rule-of-law standards illustrate how these conflicts can destabilize the balance between national and supranational governance.[10]

The principle of subsidiarity, enshrined in the Treaty on European Union (Article 5(3)), seeks to address the tension between national autonomy and supranational authority. It mandates that decisions should be taken at the lowest appropriate level of governance, ensuring that powers are exercised at the EU level only when they cannot be effectively addressed by member states.[11] While subsidiarity

8. Costa v. ENEL remains pivotal in the European legal narrative, signifying the emergence of a supreme legal order that binds member states. Critics, however, argue that such judicial declarations gradually reconfigure national sovereignty, provoking constitutional tensions that linger to this day. See Lenaerts, K., & Gutiérrez-Fons, J. A. (2010). The Constitutional Allocation of Powers and General Principles of EU Law. *Common Market Law Review*, 47(6), 1629–1669.
9. While the supremacy of EU law bolsters uniformity across the single market, it fuels concerns regarding *competence creep*, whereby EU institutions extend their reach into areas traditionally governed by national constitutions. The boundary lines of sovereignty become blurred, raising legitimate questions about democratic oversight. See Weatherill, S. (2016). *Law and Values in the European Union*. Oxford University Press.
10. Subsidiarity symbolizes a dual commitment to local autonomy and collective action. Decisions should be taken as closely as possible to citizens, yet upscaled to the Union level when unified intervention is demonstrably more effective. This delicate balance underpins the EU's constitutional ethos. See Craig, P., & de Búrca, G. (2020). *EU Law: Text, Cases, and Materials* (7th ed.). Oxford University Press.
11. In practice, subsidiarity controversies hinge on whether an issue truly requires uniform EU intervention or can remain within member-state competence.

is designed to safeguard sovereignty, its application often sparks disputes over jurisdiction.[12]

This dynamic is highlighted by the EU's regulatory role in environmental policy, which reveals the practical challenges of subsidiarity. Although climate change is undeniably a global issue, member states often view EU directives—such as those on renewable energy targets—as intrusions into their legislative autonomy. In a related context, the EU's migration policies, including the relocation of asylum seekers, have drawn criticism for encroaching on national prerogatives.[13] This tension is particularly evident in states advocating for stricter border controls, where the balance between collective action and domestic discretion becomes especially contentious.[14]

This issue is particularly pronounced in debates over the delicate balance that supranational systems like the EU must maintain. On one hand, they must ensure that collective action addresses transnational challenges effectively. On the other, they must respect the diversity

---

Courts occasionally mediate these disputes, yet political dynamics often shape final outcomes, revealing the inherently negotiated character of competence allocation. See Kumm, M. (2005). The Jurisprudence of Constitutional Conflict: Constitutional Supremacy in Europe before and after the Constitutional Treaty. *European Law Journal*, 11(3), 262–307.

12. Environmental policy vividly illustrates the tug-of-war between collective responsibility and domestic prerogatives. EU directives on renewable targets can be perceived as overreach in states championing energy sovereignty, exemplifying the complex interplay of global imperatives and local preferences. See Van Calster, G., & Reins, L. (2017). *EU Environmental Law*. Routledge.
13. When security or migratory pressures intensify, states may reassert border controls that conflict with shared EU policies, signaling deeper anxieties about ceding authority to supranational institutions. Such episodes underscore that sovereignty remains a powerful political narrative, even amid legal integration. See Guild, E., & Groenendijk, K. (2020). *The 21st Century Border*. Brill Nijhoff.
14. Eroding the illusion of absolute sovereignty does not equate to total loss of national self-determination. Rather, states selectively pool aspects of their power to achieve goals that transcend borders, reimagining sovereignty as a dynamic practice of legal and political collaboration. See Wheatley, S. (2010). *The Democratic Legitimacy of International Law*. Hart Publishing.

of constitutional traditions and political contexts among member states.[15]

Sovereignty in a hyperconnected world is no longer an absolute concept but a negotiated and dynamic process.[16] As national constitutionalism and supranational systems interact, tensions will persist, requiring innovative approaches to governance. The European Union's experience with the principle of subsidiarity offers valuable lessons on managing these tensions, illustrating both the potential and the challenges of balancing borders and networks in a globalized legal landscape. Moving forward, the ability to reconcile these competing forces will be central to the success of multilevel constitutionalism.

2.2. COOPERATION WITHOUT CONSENSUS: CHALLENGES OF MULTILEVEL GOVERNANCE

Multilevel governance, by its very nature, seeks to balance authority and responsibility across multiple layers of decision-making. However, achieving meaningful cooperation within such frameworks is fraught with challenges, particularly when consensus is elusive. This section explores three interrelated issues that undermine the effectiveness of multilevel governance: fragmented legal hierarchies and the lack of unified enforcement mechanisms, power imbalances

15. The impetus for collective solutions is ever more pressing in a world marked by pandemics, climate disruption, and transboundary data flows. Yet supranational institutions often struggle to secure robust legitimacy, as local electorates perceive them as overreaching bureaucracies. Bridging this gap requires transparent decision-making and sustained dialogue with national parliaments and civil society. See Schütze, R. (2018). *From International to Federal Market: The Changing Structure of European Law*. Oxford University Press.
16. Only through innovative governance mechanisms that blend national traditions with supranational imperatives can a stable equilibrium be found. Multilevel constitutionalism, in essence, reflects an ongoing negotiation, requiring openness to legal pluralism and a willingness to recalibrate conceptions of sovereignty. See Avbelj, M., & Komárek, J. (Eds.). (2012). *Constitutional Pluralism in the European Union and Beyond*. Hart Publishing.

between developed and developing nations, and the complexities of overlapping jurisdictions and conflicts of law.[17]

The first major challenge in multilevel governance lies in the fragmentation of legal hierarchies and the absence of unified enforcement mechanisms.[18] While global frameworks aim to harmonize norms across states, they often lack the tools to ensure consistent compliance. The World Trade Organization (WTO), for instance, provides a robust dispute resolution mechanism, yet its effectiveness is contingent on the willingness of member states to adhere to rulings. When powerful nations disregard or delay compliance, as seen in disputes involving the United States and China, the credibility of the system is eroded. Similarly, environmental agreements such as the Paris Climate Accord rely on voluntary commitments rather than binding enforcement measures. This creates a patchwork of compliance, where ambitious states push forward while others lag behind, undermining the collective impact of the agreement.

This fragmentation is further exacerbated by the decentralized nature of many multilateral agreements. Unlike national legal systems, where hierarchical structures provide clear pathways for enforcement, global governance relies on dispersed institutions with varying degrees of authority. For example, human rights enforcement is split between regional courts, such as the European Court of Human Rights, and global mechanisms like the United Nations Human

17. When legal hierarchies fragment, the absence of a single enforcement authority complicates compliance. The success of dispute-settlement mechanisms often hinges upon states voluntarily honoring adjudicative outcomes, a reality vulnerable to power asymmetries and strategic noncompliance that erode confidence in global regimes.

18. Modern societies grapple with growing complexity in governance, where central institutions alone cannot manage rapid social and technological shifts. To ensure legitimacy and adaptability, decision-making structures increasingly rely on negotiation across multiple levels—local, national, and transnational. Balancing these diverse interests is vital, lest governance falter under fragmentation or lose coherence in its pursuit of common objectives and public welfare. See Giner San Julián, S., Arbós i Marín, X., & Duran Farell, P. (1990). *La governabilitat i l'esdevenidor de les societats modernes*. Barcelona: Edicions 62.

Rights Council. While these institutions serve vital functions, their overlapping mandates often lead to inconsistencies in jurisprudence and enforcement. This disjointed approach not only weakens the overall efficacy of multilevel governance but also fosters skepticism about its legitimacy among member states and civil society actors.

Power imbalances between developed and developing nations represent a second, and perhaps more entrenched, obstacle to effective multilevel governance. Global legal frameworks are frequently shaped by the interests and priorities of wealthier states, leaving less developed nations with limited influence over the negotiation and implementation of these norms.[19] This asymmetry is particularly evident in the area of international trade. Developing countries often face significant barriers to entering global markets, despite frameworks ostensibly designed to liberalize trade. Subsidies and protectionist policies in developed economies further disadvantage their counterparts in the Global South, perpetuating economic inequalities.

Climate change governance also illustrates the inequities embedded in multilevel governance. While developed nations bear historical responsibility for most greenhouse gas emissions, developing countries often face the greatest risks and bear the brunt of climate-related impacts. Yet, the financial and technological support promised to these nations under agreements such as the Paris Accord has been insufficient or delayed. This disparity has led to growing mistrust between the Global North and South, undermining the solidarity needed for effective global action. Moreover, when developing nations attempt to assert their interests within multilateral negotiations, they often face significant resistance. The case of the World Intellectual Property Organization (WIPO) negotiations on access to medicines during the COVID-19 pandemic highlights how the priorities of

19. The architecture of global governance has historically skewed toward wealthier states, shaping institutional agendas and privileging interests of major economic powers. In trade negotiations, for instance, advanced economies enjoy leverage to secure terms that amplify their comparative advantages, leaving smaller and poorer nations with constrained policy space. See Stiglitz, J. E. (2007). *Making Globalization Work*. W.W. Norton & Company.

wealthier nations frequently outweigh the pressing needs of less affluent states.[20]

The final issue complicating multilevel governance is the challenge of overlapping jurisdictions and conflicts of law. As global norms proliferate, they inevitably intersect with existing national and regional frameworks, creating complex and often contradictory legal landscapes. For instance, international environmental agreements must coexist with domestic policies on resource management, which can lead to disputes over the scope and applicability of global norms.[21] A notable example is the Tuna-Dolphin dispute under the WTO, where trade rules clashed with environmental protections. Such conflicts reveal the inherent difficulty of reconciling global objectives with local contexts, particularly when legal interpretations diverge.

Jurisdictional overlap is also evident in the regulation of digital technologies, where national laws frequently conflict with regional or global standards. The European Union's General Data Protection Regulation (GDPR), for example, has set a benchmark for data privacy, but its extraterritorial reach has sparked tensions with countries such as the United States, where privacy laws are less stringent. The Schrems II decision by the European Court of Justice, which invalidated the EU-U.S. Privacy Shield framework, exemplifies how differing legal regimes can create uncertainty for businesses and individuals

20. During critical phases of the COVID-19 pandemic, calls for a temporary waiver on patent protections to enhance vaccine access underscored deep North-South divides. Despite rhetorical commitments to global solidarity, negotiations at WIPO often stalled. The influence of strong pharmaceutical lobbies in advanced economies hampered consensus, highlighting the tension between intellectual property rights and equitable public health measures. See Sell, S. K. (2011). TRIPS and the Access to Medicines Campaign. *Wisconsin International Law Journal*, 25(3), 481–522.

21. Legal overlap can foster complementary approaches or spiral into conflicts of jurisdiction, as no single authority mediates competing claims. This phenomenon underscores the 'horizontal' complexity of modern governance, in which multiple regimes co-exist without a clear vertical hierarchy. See Pauwelyn, J., Wessel, R. A., & Wouters, J. (2012). When Structures Become Shackles: Stagnation and Dynamics in International Lawmaking. *European Journal of International Law*, 25(3), 733–763.

operating across borders. These conflicts are not merely technical; they reflect deeper disagreements about values, priorities, and the balance of power in global governance.

Moreover, the lack of mechanisms to resolve jurisdictional conflicts exacerbates the problem. Unlike domestic legal systems, where appellate courts provide a final arbiter, the international system lacks a centralized authority to resolve disputes between overlapping regimes. Efforts to create such mechanisms, like the proposed appellate body for the WTO, have faced resistance from powerful states unwilling to cede control. Without a means to address these conflicts, multilevel governance risks becoming a battleground of competing legal frameworks, each asserting its primacy over others.

The challenges inherent in multilevel governance reveal its dual nature: a necessary framework for managing transnational issues, yet one fraught with systemic limitations. Fragmented hierarchies, imbalances of power, and jurisdictional conflicts expose vulnerabilities that demand attention. Addressing these complexities requires not only institutional reforms but also a shift in how global cooperation is approached—one that prioritizes fairness, inclusivity, and adaptability. By rethinking enforcement mechanisms, ensuring meaningful participation for developing nations, and reconciling overlapping legal systems, multilevel governance can move beyond its current constraints and evolve into a more effective and equitable model for addressing the pressing issues of our interconnected age.

2.3. CASE STUDIES: CLIMATE POLICY, TRADE DISPUTES, AND GLOBAL PUBLIC GOODS

Multilevel governance often reveals its strengths and limitations when applied to concrete global challenges. Examining specific case studies can illuminate the complex interplay between national, regional, and global actors in addressing transnational issues. This section focuses on three key areas where multilevel governance has been tested: climate policy through the Paris Agreement, trade disputes

within the World Trade Organization (WTO), and the regulation of global public goods such as oceans, cyberspace, and biodiversity.

2.3.1. CLIMATE POLICY: THE PARIS AGREEMENT AS A MODEL OF MULTILEVEL GOVERNANCE

The Paris Agreement, adopted in 2015, is often heralded as a landmark achievement in multilevel governance. Unlike its predecessor, the Kyoto Protocol, which imposed binding emissions targets on developed countries, the Paris Agreement emphasizes flexibility and inclusivity. By requiring all signatories to submit nationally determined contributions (NDCs), it accommodates diverse national circumstances while promoting global cooperation on climate change.

This model illustrates both the promise and the challenges of multilevel governance. On one hand, the Paris Agreement demonstrates how global frameworks can facilitate collective action. By providing a common structure for states to pledge and review their climate commitments, it fosters accountability and transparency. The inclusion of mechanisms like the global stock take, which assesses collective progress every five years, encourages states to increase their ambition over time. Additionally, the agreement's emphasis on capacity-building and financial support for developing nations reflects an acknowledgment of the disparities in resources and responsibilities among countries.

However, the Paris Agreement's reliance on voluntary compliance exposes its limitations. Without binding enforcement mechanisms, states face few consequences for failing to meet their NDCs. For instance, countries like Brazil and Australia have been criticized for backtracking on their commitments, while the withdrawal of the United States under the Trump administration undermined the agreement's credibility. This highlights the tension between respecting state sovereignty and ensuring collective accountability, a recurring challenge in multilevel governance.

Moreover, the agreement has struggled to deliver on its promise of financial support for developing countries. The pledge to mobilize $100 billion annually by 2020 to assist vulnerable nations in adapting to climate change remains unmet. This shortfall has exacerbated mistrust between developed and developing countries, undermining the solidarity needed for effective cooperation.

Despite these challenges, the Paris Agreement remains a critical example of how multilevel governance can address global issues. Its emphasis on inclusivity and flexibility offers a blueprint for other areas of transnational governance, even as its limitations underscore the need for stronger enforcement mechanisms and equitable resource distribution.

2.3.2. TRADE DISPUTES: WTO MECHANISMS AND THE CHALLENGES OF ENFORCEMENT

The World Trade Organization (WTO) is another cornerstone of multilevel governance, providing a framework for managing trade relations among its 164 member states. Its dispute settlement mechanism often considered the *crown jewel* of the WTO, aims to resolve trade conflicts through a structured process that includes consultation, adjudication, and enforcement.

In theory, the WTO's mechanisms exemplify the principles of multilevel governance by balancing state sovereignty with collective oversight. The Dispute Settlement Body (DSB) allows member states to challenge trade practices they consider unfair or inconsistent with WTO rules. Once a panel issues a ruling, the losing party is obligated to comply or face retaliatory measures, such as tariffs, authorized by the DSB.

In practice, however, the WTO faces significant challenges that undermine its effectiveness. One major issue is the erosion of its enforcement capacity, particularly in recent years. The Appellate Body, which serves as the final arbiter in trade disputes, has been paralyzed since 2019 due to the United States blocking the

appointment of new judges. This has left the WTO without a functioning appellate mechanism, creating uncertainty for states seeking to resolve disputes.

Additionally, the WTO struggles to address the trade practices of major powers, such as the United States and China, whose economic influence allows them to resist compliance with unfavorable rulings. For example, the ongoing trade conflict between these two nations has exposed the limits of the WTO's ability to enforce its rules. Both countries have imposed tariffs in violation of WTO principles, undermining the organization's credibility.

Another challenge lies in the WTO's inability to adapt to emerging trade issues, such as digital commerce and environmental sustainability. Existing rules, designed for the industrial economy of the 20th century, often fail to address the complexities of modern trade. Efforts to negotiate new agreements, such as the Doha Round, have stalled due to disagreements among member states, particularly between developed and developing countries.

Despite these obstacles, the WTO remains a vital institution for multilevel governance. Its principles of transparency, non-discrimination, and rule-based dispute resolution provide a foundation for managing global trade. However, the organization's future depends on its ability to reform and modernize its mechanisms to address the evolving needs of the international trading system.

2.3.3. GLOBAL PUBLIC GOODS: REGULATING SHARED RESOURCES LIKE OCEANS, CYBERSPACE, AND BIODIVERSITY

The governance of global public goods presents some of the most complex challenges in multilevel governance. Resources such as oceans, cyberspace, and biodiversity are inherently transnational, requiring collective action to ensure their sustainable management. However, the lack of clear ownership and jurisdiction over these resources complicates efforts to regulate them effectively.

Oceans, for instance, are governed by a patchwork of international agreements, such as the United Nations Convention on the Law of the Sea (UNCLOS). While UNCLOS provides a legal framework for managing maritime resources and resolving disputes, its implementation often falls short. Overfishing, marine pollution, and illegal activities persist due to weak enforcement and conflicting interests among states. The high seas, which lie beyond national jurisdiction, remain particularly vulnerable to exploitation, highlighting the need for stronger governance mechanisms.

Cyberspace presents a different set of challenges. As a borderless domain, it defies traditional notions of sovereignty and jurisdiction. Efforts to regulate cyberspace are fragmented, with states adopting divergent approaches to issues such as data privacy, cybersecurity, and internet governance. For example, the European Union's General Data Protection Regulation (GDPR) sets strict standards for data protection, while other regions, such as the United States, prioritize innovation and market freedom. These conflicting approaches create regulatory gaps and uncertainty, complicating efforts to establish a cohesive global framework.

The European Union's Digital Services Act (DSA) exemplifies its proactive approach to regulating cyberspace. The DSA seeks to create a safer and more transparent digital environment by imposing obligations on online platforms, particularly regarding illegal content, disinformation, and user safety. Central to the DSA is the principle of proportionality, where larger platforms with greater influence—such as Google, Meta, and Amazon—face stricter requirements. By targeting systemic risks and promoting transparency, the DSA aims to set a global standard for digital regulation. However, its extraterritorial reach has raised questions about its compatibility with non-EU jurisdictions, particularly the United States, where regulatory priorities often differ. This highlights the broader challenge of reconciling regional regulatory frameworks in a borderless domain like cyberspace.

In contrast, the Digital Millennium Copyright Act (DMCA) in the United States reflects a more market-driven approach to digital

governance. Enacted in 1998, the DMCA emphasizes copyright protection, establishing a *safe harbor* provision that shields platforms from liability for user-generated content, provided they act promptly to remove infringing material upon notification. While this approach has fostered innovation and growth in the tech sector, critics argue that it has also enabled abuses, such as overbroad takedown requests and insufficient safeguards for users' rights to fair use and free expression. The divergence between the DSA's emphasis on platform accountability and the DMCA's prioritization of innovation underscores the difficulty of achieving a unified approach to cyberspace governance.

The role of multilateral institutions, such as the World Intellectual Property Organization (WIPO), adds another layer of complexity to cyberspace regulation. As a specialized agency of the United Nations, WIPO oversees international frameworks for intellectual property protection, which are increasingly relevant in the digital age. Agreements like the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty aim to harmonize copyright standards globally, addressing issues such as digital piracy and the protection of content creators' rights. However, WIPO's initiatives often struggle to keep pace with rapid technological advances, and the implementation of its treaties varies significantly across member states. This uneven application underscores the need for more robust enforcement mechanisms and greater coordination with regional and national frameworks.

The divergence between the DSA, the DMCA, and WIPO's global initiatives reflects a broader tension in cyberspace governance: the struggle to balance innovation, regulation, and sovereignty. While the DSA pushes for accountability and user safety, the DMCA focuses on fostering economic growth and protecting copyright holders, and WIPO seeks to harmonize intellectual property rights internationally. These competing priorities create a fragmented regulatory landscape that complicates efforts to address shared challenges, such as disinformation, cybersecurity, and digital inequality. Moving forward, greater cooperation among these frameworks will be essential to

developing a cohesive and inclusive model for governing cyberspace in a manner that respects diverse legal traditions and societal values.

The divergence in regulatory approaches to cyberspace governance is further exemplified by the emerging frameworks for artificial intelligence (AI), particularly the European Union's Artificial Intelligence Act (AIA) and the nascent legislative efforts in the United States. The EU's AIA adopts a risk-based approach to regulating AI technologies, categorizing applications into different levels of risk—unacceptable, high, and minimal—based on their potential societal impact. This method prioritizes safeguards for fundamental rights, accountability, and transparency, particularly for high-risk AI systems used in critical sectors such as healthcare, education, and law enforcement. The AIA reflects the EU's broader regulatory philosophy, which emphasizes proactive measures to mitigate risks while fostering public trust in technological innovation.

By contrast, the United States has focused on a less prescriptive and more market-driven approach, emphasizing voluntary guidelines and industry-led initiatives. While some legislative progress has been made at the state level and through sector-specific measures, such as the National Artificial Intelligence Initiative Act of 2020, the U.S. regulatory landscape for AI remains fragmented. Policymakers have expressed concerns about overregulation stifling innovation, which has led to a preference for fostering AI development while addressing risks through flexible, adaptive measures. This approach aligns with the principles seen in the Digital Millennium Copyright Act (DMCA), where protecting industry growth and innovation takes precedence over stringent regulatory oversight.

The contrast between the EU's AIA and the U.S. initiatives highlights a broader debate on how to balance innovation and regulation in emerging technologies. The RIA's precautionary principle positions the EU as a global leader in establishing comprehensive regulatory frameworks, setting benchmarks that could influence international standards. Meanwhile, the U.S. approach reflects its historical emphasis on fostering technological leadership through minimal

regulatory constraints. This divergence underscores the challenge of achieving harmonization in AI governance, particularly as AI systems increasingly operate across borders.

It remains to be seen how these approaches will shape the future of the AI industry. As highlighted by recent analyses, the RIA's influence on global AI governance may serve as a model for other jurisdictions, including the United States, as they refine their regulatory strategies. The interaction between these frameworks will likely determine the balance between innovation, accountability, and the protection of fundamental rights in the digital age, shaping not only the governance of AI but also the broader architecture of cyberspace regulation.

Biodiversity governance faces similar difficulties. The Convention on Biological Diversity (CBD) aims to conserve biodiversity, promote sustainable use, and ensure equitable sharing of benefits. However, the CBD's effectiveness is limited by insufficient funding, lack of enforcement, and competing priorities among member states. For instance, efforts to protect rainforests in the Amazon often clash with economic interests, such as agriculture and mining, illustrating the difficulty of balancing conservation with development.

To address these challenges, multilevel governance must foster greater coordination and cooperation among stakeholders. Initiatives such as the High Seas Treaty, currently under negotiation, aim to strengthen the legal framework for protecting marine biodiversity. Similarly, multistakeholder approaches to internet governance, involving states, private companies, and civil society, offer a potential pathway for managing cyberspace. However, these efforts require sustained political will and resources to succeed.

These case studies highlight the diverse ways in which multilevel governance operates across different domains. While each area—climate policy, trade disputes, and global public goods—presents unique challenges, common themes emerge. The tension between flexibility and enforcement, the need for equitable resource distribution, and the importance of inclusive decision-making are recurring issues that

must be addressed to strengthen multilevel governance. By learning from these experiences, the international community can refine its approaches to managing transnational challenges, ensuring that global cooperation remains effective and resilient in an increasingly interconnected world.[22]

22. Be it climate policy, trade disputes, or safeguarding global commons like cyberspace, the consistent thread is the push-and-pull between state autonomy and collective solutions. Achieving an effective form of multilevel governance thus requires nuanced enforcement, inclusive deliberation, and resilience against geopolitical rifts that undermine cooperation. See Howse, R. (2016). Securing Multilateralism at the WTO—The Single Undertaking Approach, Global Constitutionalism, and the Role of Development. *World Trade Review*, 15(4), 617–639.

Chapter 3

The Constitutional Response to Global Complexity

Global complexity, characterized by overlapping jurisdictions, transnational challenges, and evolving norms, has placed traditional constitutional frameworks under significant strain. As the global legal order becomes increasingly fragmented, states and supranational organizations must rethink how constitutions operate in this interconnected world. The concept of constitutionalism, historically tied to the nation-state, is now being adapted to navigate a landscape where authority and accountability are dispersed across multiple layers of governance.[1]

This adaptation has led to the emergence of multilevel constitutionalism, where national, regional, and global constitutional principles interact. While this approach offers the flexibility needed to address global challenges such as climate change, trade disputes, and technological governance, it also raises critical questions. How can national constitutions maintain their democratic legitimacy while engaging with supranational norms? What mechanisms can ensure coherence between local and global constitutional frameworks? These questions underscore the tension between rigid hierarchies, which prioritize centralized authority, and networked normativity,

1. Constitutionalism has historically been state-centered, but globalization compels a broader vision that transcends singular sovereignty and embraces overlapping authorities. See Habermas, J. (2008). *Europe: The Faltering Project*. Polity Press.

which emphasizes horizontal collaboration and interconnected legal systems.[2]

3.1. RIGID HIERARCHIES VS. NETWORKED NORMATIVITY

The evolution of constitutionalism reflects a broader shift from rigid, hierarchical legal frameworks toward networked normativity. Traditional constitutions, rooted in the idea of a single, supreme authority, were designed for self-contained political communities.[3] These systems are often ill-equipped to address transnational issues that demand cooperation and flexibility. In contrast, networked normativity emphasizes a decentralized approach, where multiple actors—states, regional organizations, and non-state entities—interact within a web of overlapping norms.[4]

Networked constitutionalism offers several advantages in managing global challenges. First, it allows for greater adaptability by accommodating diverse legal traditions and priorities. For instance, the European Union's legal framework operates as a supranational constitutional system that interacts with member states' constitutions, creating a dynamic balance between centralization and subsidiarity. Second, it fosters inclusivity by involving non-state actors, such as civil society organizations and multinational corporations, in the constitutional dialogue. This inclusivity ensures that a broader range of interests is represented in decision-making processes.

---

2. Constitutional pluralism challenges the notion of a single supreme authority, suggesting that legitimacy may rest on interplay among diverse normative orders. See McCormick, J. (2020). *Understanding the European Union* (7th ed.). Palgrave Macmillan.
3. Most modern constitutions assume a closed political community, ignoring the extraterritorial impacts of laws in an interdependent world. See De Wilde, M. (2015). Sharing Sovereignty: The Little-Known 'Bridge' between International and Constitutional Law. *Hague Journal on the Rule of Law*, 7(1), 47–65.
4. Networked approaches to constitutional governance recognize the blurred boundaries between domestic and global legal orders. See Bell, D. (2011). *Beyond Liberal Democracy: Political Thinking for an East Asian Context*. Princeton University Press.

However, networked normativity is not without its challenges. The lack of a clear hierarchy can lead to conflicts between competing norms, creating uncertainty and fragmentation. For example, disputes over the primacy of EU law versus national constitutional law highlight the difficulty of reconciling different legal orders. Moreover, the inclusivity of networked constitutionalism may result in power imbalances, as more influential actors—whether states or corporations—dominate the normative landscape. Balancing the need for collaboration with the principles of equity and accountability remains a critical task for networked constitutional systems.

3.1.1. THE INADEQUACY OF TRADITIONAL HIERARCHICAL LEGAL FRAMEWORKS IN MANAGING GLOBAL CHALLENGES

Traditional hierarchical legal frameworks, which emphasize centralized authority and clear lines of command, struggle to address the complexities of an interconnected world. Designed primarily for the governance of nation-states, these frameworks are often ill-suited to manage issues that transcend national borders, such as climate change, cybercrime, and global public health crises. Their limitations stem from three main factors: their inherent rigidity, their focus on territoriality, and their exclusion of non-state actors from governance processes.[5]

Hierarchical legal systems are built on the assumption of stability and predictability.[6] Constitutions typically define a clear distribution of powers, delineating the roles of the executive, legislative, and judicial branches. While this structure ensures order within a defined

5. Crises spanning national borders demand agile rule structures, yet hierarchical constitutions rarely allow for accelerated decision-making beyond domestic scope. See Rodrik, D. (2011). *The Globalization Paradox: Democracy and the Future of the World Economy*. W.W. Norton.
6. The principle of Westphalian sovereignty has become inadequate in addressing the cross-border spillovers characteristic of modern global issues. See Cass, D. Z. (2005). *The Constitutionalization of the World Trade Organization*. Oxford University Press.

territory, it lacks the flexibility needed to respond to rapidly evolving global challenges. For instance, the COVID-19 pandemic exposed the inadequacy of rigid constitutional frameworks in coordinating international responses to public health emergencies. The absence of mechanisms for transnational collaboration led to fragmented policies on border closures, vaccine distribution, and economic recovery.

Similarly, environmental governance illustrates the rigidity of traditional frameworks.[7] National constitutions rarely include provisions for addressing transboundary environmental issues, leaving states reliant on international treaties and agreements. However, these treaties often lack enforcement mechanisms, resulting in uneven compliance. The Paris Agreement's reliance on voluntary commitments is a case in point, highlighting how the rigidity of domestic legal systems can hinder global environmental efforts.

Another limitation of hierarchical legal frameworks is their focus on territorial sovereignty. Constitutions are designed to govern within a defined geographical space, assuming that authority ends at national borders. In an era of globalization, this assumption is increasingly outdated. Issues such as cybercrime and data protection cannot be confined to territorial boundaries. For instance, cross-border data transfers under the European Union's General Data Protection Regulation (GDPR) have sparked legal disputes with non-EU countries, revealing the inadequacy of territorial-based frameworks in regulating the digital economy.

Trade disputes further underscore the limitations of territoriality. The rise of global value chains has blurred the lines between domestic and international economic activities, challenging the ability of hierarchical legal systems to regulate complex trade networks. Disputes under the World Trade Organization (WTO) often hinge on

7. Ecological challenges highlight the shortfalls of rigid constitutional doctrines, which seldom incorporate flexible mechanisms for cross-national environmental governance. See Fisher, E. (2013). *Risk Regulatory Concepts and the Law*. Cambridge University Press.

conflicts between national policies and global trade rules, illustrating the tension between territorial sovereignty and the demands of a globalized economy.

Traditional constitutional frameworks are primarily designed for state-centric governance, excluding non-state actors from meaningful participation in decision-making processes. However, many global challenges involve actors beyond the state, such as multinational corporations, non-governmental organizations, and international institutions. The exclusion of these actors limits the effectiveness of hierarchical legal systems in addressing issues that require multistakeholder collaboration.

As we pointed out earlier, regulating AI and digital technologies demands input from technology companies, researchers, and civil society. The European Union's AIA demonstrates how inclusive governance can address these challenges. By incorporating feedback from a wide range of stakeholders, the AIA seeks to establish a comprehensive framework for AI governance. In contrast, traditional legal systems often lack mechanisms to integrate such diverse perspectives, resulting in regulatory gaps and inefficiencies.

Addressing the inadequacies of traditional hierarchical frameworks requires a shift toward more adaptive and inclusive models of governance. Multilevel constitutionalism offers one potential pathway, emphasizing the interaction between national, regional, and global constitutional principles. This approach allows for greater flexibility, enabling states to participate in transnational governance while maintaining their constitutional identity.

Another promising development is the rise of hybrid governance models that blend hierarchical and networked approaches. For instance, the European Union operates as a hybrid system, combining elements of state sovereignty with supranational authority. By balancing these elements, the EU has created a constitutional framework capable of addressing complex challenges, such as environmental protection and digital governance.

Considering the above, digital technologies offer new opportunities for enhancing the adaptability of constitutional systems. Blockchain technology, for example, can facilitate decentralized decision-making while ensuring transparency and accountability. Similarly, AI can assist in monitoring compliance with global norms, providing real-time data to inform policy decisions.

The inadequacy of traditional hierarchical legal frameworks underscores the need for innovative approaches to constitutional governance in a globalized world. By embracing flexibility, inclusivity, and multistakeholder collaboration, constitutional systems can evolve to meet the demands of an interconnected legal landscape. As global challenges continue to transcend national borders, the shift from rigid hierarchies to networked normativity will be essential for ensuring effective and equitable governance.

3.1.2. MOVING TOWARD DECENTRALIZED, NETWORKED APPROACHES TO CONSTITUTIONALISM

The evolution of constitutional frameworks in the 21st century reflects a profound transformation in how authority and governance are conceptualized. In a world defined by global interconnectivity, traditional, centralized constitutional models, rooted in hierarchical state structures, are increasingly inadequate for addressing the complex challenges of globalization, digitalization, and transnational governance.[8] This shift necessitates a reimagining of constitutionalism as a dynamic, networked process that embraces decentralization, inclusivity, and flexibility. This section explores key dimensions of this transformation, addressing critical questions and the innovative approaches emerging to meet these demands. In particular, it examines how decentralized and networked models of constitutionalism offer new pathways to cope with overlapping jurisdictions, normative pluralism, and cross-border regulatory asymmetries.

8. Complex interdependence among states, corporations, and NGOs necessitates networked legal structures, diluting the exclusivity of nation-state sovereignty. See Chayes, A., & Chayes, A. H. (1998). *The New Sovereignty: Compliance with International Regulatory Agreements*. Harvard University Press.

a) Why Are Decentralized and Networked Approaches Necessary in a Globalized World?

The inadequacy of traditional constitutional hierarchies to address transnational issues such as climate change, global trade disputes, and the regulation of digital technologies underscores the necessity of decentralized and networked approaches. The question arises: *Why can't existing centralized systems cope with these challenges?*

The core issue lies in the rigidity and territoriality of traditional constitutional models. These frameworks were designed for the governance of self-contained political communities, where authority is vertically structured and confined within national borders. However, the most pressing issues of the modern era—ranging from cross-border data flows to multinational environmental impacts—transcend these boundaries. For instance, no single state can regulate the environmental externalities of global supply chains or the ethical implications of artificial intelligence without engaging in collaborative, transnational governance.

Decentralized constitutionalism provides an alternative model that aligns with the realities of global governance. By dispersing authority across multiple layers—local, national, regional, and global—it allows for the integration of diverse perspectives and priorities. This approach not only enhances adaptability but also ensures that decision-making processes are more inclusive and responsive to the needs of different stakeholders.

b) What Are the Core Features of a Decentralized, Networked Constitutional Model?

Decentralized constitutionalism is defined by three primary features: subsidiarity, inclusivity, and flexibility. Each of these principles addresses a specific challenge in contemporary governance.

Subsidiarity ensures that decisions are made at the lowest appropriate level of governance, reserving higher levels for issues that require collective action. This principle, rooted in the legal traditions of the European Union, balances local autonomy with the need for

transnational coordination. For instance, while environmental policies may be guided by global agreements, their implementation often depends on local and regional actors who understand the specific ecological and social contexts.

Related to inclusivity, we must keep into account that traditional constitutional frameworks are predominantly state-centric, often excluding non-state actors from governance processes. In contrast, decentralized constitutionalism recognizes the importance of involving civil society, multinational corporations, and international organizations in shaping legal norms. The role of non-state actors is particularly evident in areas like internet governance, where multistakeholder approaches—such as the Internet Governance Forum (IGF)—provide platforms for dialogue and decision-making.

And finally, in an era of rapid technological and social change, flexibility is essential for governance systems to remain effective. Decentralized constitutionalism incorporates mechanisms for iterative decision-making, allowing policies to be updated as new challenges emerge. Iterative decision-making processes for iterative exponentially growing technology. For example, European GDPR and AIA includes provisions for regular review, ensuring that its framework evolves alongside technological advancements.

c) How Does Decentralized Constitutionalism Address Power Asymmetries?

One of the criticisms leveled against networked governance is its potential to exacerbate existing power imbalances. A critical question arises: Can decentralized systems truly ensure equity, or do they merely reinforce the dominance of powerful states and corporations?

Decentralized constitutionalism seeks to mitigate power asymmetries through mechanisms that promote accountability and representation.[9] For instance, the Paris Agreement's emphasis on

9. Subsidiarity reflects a layered governance logic—empower local units while reserving higher tiers for collective concerns—reinforcing democratic

nationally determined contributions (NDCs) allows states to tailor their climate commitments based on their capacities and priorities. Additionally, international financial mechanisms, such as the Green Climate Fund, aim to redistribute resources from developed to developing countries, ensuring that vulnerable nations have the support needed to participate effectively in global governance.

However, these mechanisms are not without flaws. The limited enforcement capacity of many decentralized systems can undermine their effectiveness, particularly when powerful actors resist compliance. The withdrawal of the United States from the Paris Agreement under the Trump administration exemplifies how unilateral actions by influential states can destabilize networked governance frameworks. Addressing these challenges requires strengthening accountability mechanisms and ensuring that all stakeholders have a meaningful voice in decision-making processes.

d) How Does Digitalization Enable Decentralized Constitutionalism?

Digital technologies have played a transformative role in facilitating decentralized approaches to constitutionalism. A key question is: *How can digital platforms and tools enhance the effectiveness of networked governance?*

Digitalization enables greater participation and transparency in governance processes.[10] Online platforms allow citizens to engage directly with decision-makers, monitor the implementation of policies, and advocate for their rights. For instance, e-governance initiatives in Estonia have created a digital public sphere where citizens can

---

responsiveness. See Harbo, T.-L. (2010). The Function of the Principles of Subsidiarity and Proportionality in EU Law. *European Law Journal*, 16(2), 158–185.

10. Constitutional adaptability entails an iterative process of revision, acknowledging that legal norms must adjust to technological and cultural shifts. See Weiler, J. H. H. (1999). *The Constitution of Europe: "Do the New Clothes Have an Emperor?" and Other Essays on European Integration*. Cambridge University Press.

vote, access government services, and contribute to policy debates. These platforms democratize governance by reducing barriers to participation, particularly for marginalized groups who may lack access to traditional political institutions.

Moreover, digital technologies facilitate the collection and analysis of data, providing policymakers with real-time insights into complex issues. For instance, satellite imagery and AI-powered analytics are being used to monitor deforestation, track pollution levels, and assess the effectiveness of conservation efforts. These tools not only enhance the capacity of decentralized governance systems but also ensure that decisions are informed by robust evidence.

However, the integration of digital technologies into constitutional governance also raises ethical and legal concerns. Issues such as data privacy, algorithmic bias, and cybersecurity must be addressed to prevent the misuse of digital tools. Ensuring that technological advancements align with constitutional principles will require the development of comprehensive regulatory frameworks, such as the European Union's AIA.

e) What Are the Limitations of Decentralized Constitutionalism?

While decentralized constitutionalism offers significant advantages, it is not without its limitations. A final question emerges: *What are the risks and challenges associated with networked approaches, and how can they be mitigated?*

One of the primary risks is fragmentation. The absence of a clear hierarchy in decentralized systems can lead to conflicts between competing norms and jurisdictions. For example, disputes over the primacy of European Union law versus national constitutional law illustrate the difficulty of maintaining coherence within multilevel governance frameworks.

Another limitation is the potential for decision-making processes to become unwieldy and inefficient. The involvement of multiple

stakeholders can slow down negotiations and complicate the implementation of policies. This challenge is particularly evident in the context of international trade, where the need to balance diverse interests often results in prolonged stalemates, as seen in the WTO's stalled Doha Round.

Lastly, decentralized systems may struggle to address urgent crises that require swift and decisive action. The COVID-19 pandemic highlighted the limitations of networked governance, as fragmented responses and conflicting priorities hampered global efforts to contain the virus. Strengthening coordination mechanisms and streamlining decision-making processes will be essential to overcoming these challenges.

Decentralized, networked approaches to constitutionalism represent a paradigm shift in how legal systems address the complexities of globalization and digitalization. By embracing subsidiarity, inclusivity, and flexibility, these frameworks offer a pathway for navigating the transnational challenges of the modern era. However, their success depends on addressing power asymmetries, leveraging digital technologies responsibly, and mitigating the risks of fragmentation and inefficiency. As constitutionalism continues to evolve, the integration of decentralized principles will be critical for ensuring that governance systems remain equitable, adaptive, and effective in an interconnected world.

3.1.3. THE INFLUENCE OF TECHNOLOGICAL NETWORKS ON LEGAL DECISION-MAKING

The integration of technological networks into the fabric of modern governance represents one of the most profound shifts in the history of constitutionalism and legal decision-making.[11] These networks, which

11. Digital infrastructures operate as novel sites of governance, reshaping institutional authority and redefining legal obligations. The complexity arises from the interplay of private and public actors co-creating norms within these interconnected networks. See DeNardis, L. (2020). *The Internet in Everything: Freedom and Security in a World with No Off Switch*. Yale University Press.

include digital platforms, data-driven systems, and artificial intelligence (AI), are not merely tools for efficiency—they are transformative forces that challenge foundational principles of constitutional law, such as sovereignty, accountability, and the rule of law. By embedding themselves in both public and private governance structures, technological networks are redefining how decisions are made, who makes them, and how they are enforced. This section examines the transformative influence of these networks, their potential to enhance governance, and the legal and philosophical challenges they introduce.

a) The Shift from Institutional to Network-Based Decision-Making

The traditional model of legal decision-making has long been rooted in institutional hierarchies, with courts, legislatures, and administrative bodies serving as the primary sites of authority. Technological networks disrupt this paradigm by decentralizing the process, enabling decisions to emerge from interconnected systems rather than solely from institutional structures. For instance, the governance of cyberspace is no longer confined to state actors but involves multistakeholder networks comprising private corporations, international organizations, and civil society. Platforms like the Internet Governance Forum (IGF) demonstrate how these networks facilitate the collaborative development of norms, bypassing traditional state-centric models of decision-making.[12]

In the realm of data governance, the European Union's GDPR exemplifies how technological networks influence the enforcement of legal norms. The GDPR imposes obligations on data controllers and processors worldwide,[13] effectively creating a global standard

12. Multistakeholder bodies bring together corporate, civil society, and governmental interests, illustrating that network-based governance no longer pivots solely on state supremacy. See Haggart, B., Tusikov, N., & Scholte, J. A. (2021). *Power and Authority in Internet Governance: Return of the State?*. Routledge.

13. By extending its reach beyond EU territory, the GDPR exemplifies an emergent global regulatory paradigm in data protection, compelling firms worldwide to align with European standards. See Dragos, D. C., & Neamtu, B. (Eds.).

for data protection. This extraterritorial reach is made possible by the interconnected nature of digital networks, which allow the GDPR to be enforced beyond the borders of the EU. However, such network-based approaches also raise questions about jurisdictional conflicts and the limits of sovereignty, particularly when different regions adopt conflicting regulatory standards.

b) Artificial Intelligence and Algorithmic Decision-Making

Artificial intelligence (AI) represents one of the most disruptive elements within technological networks, with profound implications for legal decision-making.[14] AI systems are increasingly deployed in areas such as judicial decision-making, administrative processes, and law enforcement. These systems leverage vast datasets to identify patterns, predict outcomes, and even recommend courses of action, often with a level of precision and speed that exceeds human capabilities.

In judicial systems, AI tools like predictive analytics are used to assess case outcomes, identify biases, and allocate resources more efficiently. For instance, systems like COMPAS in the United States analyze offender data to provide risk assessments for bail or sentencing decisions.[15] While these tools promise greater consistency and efficiency, they also introduce significant risks. The opacity of AI algorithms—the so-called *black box* problem—poses challenges

---

(2020). *The Impact of the General Data Protection Regulation (GDPR) in EU and National Law*. Springer.

14. AI systems disrupt legal orthodoxy by redistributing decision-making power from human judges and officials to algorithmic processes, prompting debates on accountability and interpretability. See Calo, R. (2020). Artificial Intelligence Policy: A Primer and Roadmap. *UC Davis Law Review*, 51, 399–432.

15. Artificial intelligence systems in criminal justice settings require a taxonomy of legal safeguards. These entail oversight of algorithmic design, auditing of predictive models, and procedural guarantees to protect due process. Such measures ensure that AI does not replace human judgment but instead supports fair and reasoned decision-making. See Simón Castellano, P. (2023). Taxonomía de las garantías jurídicas en el empleo de los sistemas de inteligencia artificial. *Revista de Derecho Político*, (117), 153–196. [ISSN 0211-979X].

to transparency and accountability.[16] When a judge relies on an AI system's recommendation without understanding how the algorithm arrived at its conclusion, the principle of reasoned decision-making, fundamental to the rule of law, is compromised.

Moreover, algorithmic bias has emerged as a critical issue in AI-driven legal decision-making. Because AI systems learn from historical data, they often replicate and amplify existing biases, leading to discriminatory outcomes.[17] For example, studies have shown that predictive policing algorithms disproportionately target marginalized communities, reinforcing systemic inequalities.[18] Addressing these issues requires robust legal frameworks that mandate transparency, auditability, and fairness in the development and deployment of AI systems.

c) The Role of Private Actors in Legal Governance

One of the most significant shifts brought about by technological networks is the growing role of private actors in legal governance.[19]

16. Transparent and explainable AI is crucial for upholding the rule of law, ensuring that decisions remain contestable and open to meaningful review by affected parties. See Yeung, K. (2018). Algorithmic Regulation: Critical Capabilities, Tools, and Theoretical Perspectives. *Regulation & Governance*, 12(4), 505–519.
17. Empirical analyses confirm that historical bias embedded in data sets can skew outcomes, disproportionately affecting socially vulnerable populations. See Eubanks, V. (2018). *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor*. St. Martin's Press.
18. Predictive policing can be seen as a double-edged sword, promising efficient resource allocation while raising ethical and legal concerns about disproportionate targeting and bias. Public attitudes often oscillate between optimism for crime prevention and anxiety over privacy violations and democratic accountability. See Miró Llinares, F. (2020). Predictive policing: utopia or dystopia? On attitudes towards the use of big data algorithms for law enforcement. *IDP: revista de Internet, derecho y política* (30). [ISSN-e 1699-8154].
19. Digital platforms have become gatekeepers of speech and personal data, exercising regulatory powers that often overshadow conventional public institutions. See Klonick, K. (2018). The New Governors: The People, Rules, and Processes Governing Online Speech. *Harvard Law Review*, 131(6), 1598–1670.

Digital platforms such as Facebook, Twitter, and Google now exercise quasi-legal authority over issues ranging from content moderation to data privacy. These platforms make decisions that have far-reaching implications for fundamental rights, such as freedom of expression, privacy, and non-discrimination.

For instance, the enforcement of content moderation policies on social media platforms often involves decisions about what constitutes hate speech, disinformation, or harmful content. These decisions are made by private companies, guided by their internal policies and algorithms, rather than by public authorities. While these platforms have implemented systems for appealing decisions, their processes often lack the procedural safeguards and accountability mechanisms inherent in traditional judicial systems. This raises fundamental questions about the legitimacy of private actors performing functions that traditionally belong to the state.

The European Union's Digital Services Act (DSA) seeks to address this issue by imposing transparency and accountability obligations on digital platforms. Under the DSA, platforms must disclose their content moderation practices, provide users with clear avenues for redress, and mitigate systemic risks associated with their services. While this regulatory approach represents a significant step toward reasserting public oversight over private governance, its effectiveness will depend on rigorous enforcement and international cooperation.[20]

d) The Globalization of Legal Norms Through Technological Networks

Technological networks facilitate the globalization of legal norms, enabling standards to spread rapidly across jurisdictions. This phenomenon is particularly evident in areas like data protection, cybersecurity, and AI governance. The GDPR, as mentioned earlier,

20. The DSA's success hinges on consistent monitoring and cross-border legal frameworks, lest platform governance remain an ad hoc patchwork. See Douek, E. (2021). Governing Online Speech: From 'Posts-as-Trumps' to Proportionality and Probability. *Columbia Law Review*, 121(6), 759–820.

has set a global benchmark for data privacy, influencing legislation in countries such as Brazil, Japan, and South Korea. Similarly, the European Union's Regulation on Artificial Intelligence (AIA) is likely to have a comparable impact, as it establishes comprehensive rules for the development and use of AI systems.[21]

However, the globalization of legal norms through technological networks is not without its challenges. The extraterritorial application of these norms often leads to jurisdictional conflicts and resistance from states that perceive them as encroachments on their sovereignty. For example, the invalidation of the EU-U.S. Privacy Shield framework by the Court of Justice of the European Union (CJEU) in the Schrems II case highlights the difficulties of reconciling divergent approaches to data governance.

Moreover, the globalization of norms raises concerns about cultural homogenization and the erosion of local legal traditions.[22] As powerful actors, such as the EU and the United States, export their regulatory models, there is a risk that smaller states and non-Western legal systems may be marginalized. Ensuring that global legal norms reflect a diversity of perspectives and values will be critical for maintaining the legitimacy of network-based governance.

e) Challenges to Accountability and the Rule of Law. Towards a Paradigm of Algorithms Ruled by Law

While technological networks offer significant opportunities for enhancing legal decision-making, they also pose challenges to accountability and the rule of law. The decentralized nature of these

21. The EU's AI Act could become another instance of the 'Brussels effect,' exporting stringent regulations globally and compelling multinational compliance. See Cotino Hueso, L. & Simón Castellano, P. (2024). *Tratado sobre el Reglamento Europeo de Inteligencia Artificial*. Aranzadi.
22. Imposing uniform standards can sideline indigenous or non-Western legal traditions, raising ethical dilemmas about normative diversity in transnational governance. See Quintana, J. (2020). Transnational Legal Pluralism and Cultural Heritage: Reconciling Global Norms with Local Practices. *International Journal of Cultural Property*, 27(2), 189–206.

networks often blurs the lines of responsibility, making it difficult to identify who is accountable for decisions. This is particularly problematic in cases involving algorithmic decision-making, where the responsibility may be shared among developers, operators, and end-users.

The principle of the rule of law requires that all actions be subject to legal oversight and that remedies be available for individuals affected by unlawful decisions. However, the opacity of technological networks and the involvement of private actors often undermine these principles. For instance, when a social media platform removes content based on its internal policies, users may have limited recourse to challenge the decision, particularly if the platform operates outside their jurisdiction.

To address these challenges, legal systems must adapt to the realities of technological networks. This includes developing standards for algorithmic transparency, creating mechanisms for cross-border cooperation in enforcement, and ensuring that private actors are held to the same accountability standards as public authorities. Initiatives like the OECD's AI Principles, which emphasize accountability, transparency, and fairness in AI governance, provide a valuable starting point for addressing these issues.

The influence of technological networks on legal decision-making represents both an opportunity and a challenge for constitutionalism in the digital age. These networks have the potential to enhance governance by improving efficiency, transparency, and inclusivity. However, they also raise fundamental questions about accountability, legitimacy, and the rule of law. As technological networks continue to evolve, constitutional frameworks must adapt to ensure that they serve the public good, uphold fundamental rights, and maintain the integrity of legal systems. This requires not only the development of robust regulatory frameworks but also a rethinking of the relationship between public and private authority in an interconnected world. By addressing these challenges, constitutionalism can remain a vital and resilient force in the face of rapid technological change.

How can legal systems maintain accountability and transparency in a governance model increasingly shaped by algorithmic decision-making?

What role should international frameworks, such as those proposed by the OECD or the EU, play in standardizing ethical principles for AI governance globally?

For any legal framework to remain relevant in this evolving ecosystem of technological governance, it must bridge two equally urgent imperatives. First, it must ensure that newly emergent powers—whether algorithmic platforms, multinational corporations deploying AI solutions, or decentralized blockchain networks—do not undermine the rule of law and fundamental rights. Second, it must adapt to the fluid, fast-changing nature of digitalization, where borders are permeable, and legal norms risk obsolescence in the face of rapid innovation. Achieving this balance entails rethinking some of the most cherished premises of constitutional authority, including the assumption that final adjudication resides in a single, centralized judicial body.

One tangible approach involves a stronger emphasis on regulatory sandboxes where carefully delimited experimental environments allow new technologies to be tested under supervised conditions. These sandboxes could bring together policymakers, technologists, and community representatives to identify best practices before rolling them out broadly. By providing an open yet controlled field of experimentation, regulatory sandboxes might prevent abrupt or haphazard implementation of advanced AI systems in critical sectors such as law enforcement, judiciary processes, or social services. Moreover, such an approach offers a blueprint for how to foster innovation without compromising on transparency and accountability. Indeed, some jurisdictions—especially those in the European Union—have started to explore these regulatory *playgrounds* as a means of finding workable equilibrium between encouraging tech-led progress and safeguarding public interest.

Nevertheless, sandboxes alone cannot reconcile the deeper ideological and structural conflicts that arise when private actors write

the very codes that shape public discourse and civic participation. The autonomy of corporate-led digital infrastructures—whether in data hosting, communication channels, or content moderation—means that large segments of daily life are effectively governed by internal policies that bypass national legislatures. Critics argue that these private policies often lack due process elements, such as robust appeals processes or transparent rationales for decisions. At the same time, corporations maintain that a single universal standard imposed by state authorities would stifle innovation, hamper the free flow of information, and ignore region-specific cultural norms.

Here, public oversight boards or multi-stakeholder councils can offer partial remediation. If structured properly, they provide a forum wherein platform owners, government officials, civil society groups, and end-users collaborate on guidelines for content governance and data protection. The aim is to reintroduce the public's voice into what has otherwise become a largely privatized domain of governance. One of the most debated instances is the establishment of Facebook's Oversight Board, an independent body intended to review the platform's most controversial moderation decisions. While hailed by some as a pioneering experiment in self-regulation, detractors note the limited scope of its mandate and the inherent tension that arises when a corporate entity funds the very organ that oversees its own policies.

In the administrative realm, the challenges become even more pronounced when it comes to the application of AI-driven systems in government. Automated decision-making can significantly reduce bureaucratic backlogs—particularly in high-volume domains like social welfare claims or visa applications—but it also heightens the risk of systemic bias. The hidden layers of neural networks may produce outcomes that reflect partial or historically skewed datasets, effectively embedding discrimination or error into administrative processes. Once an automated solution is integrated, reversing or auditing its logic can be an arduous task, especially if open-source transparency is lacking or proprietary corporate interests guard the code. This underscores the necessity of algorithmic impact

assessments,[23] a concept borrowed from environmental law's idea of requiring large projects to undergo an environmental impact study prior to approval. An algorithmic impact assessment would demand that any government or corporation implementing high-stakes AI must identify potential risks of bias or inequity and outline mitigation measures before the system goes live.

From a constitutional perspective, these developments press the question of how to maintain *separation of powers* when the actor shaping final decisions is neither purely judicial nor executive but a largely automated, data-driven mechanism. Traditional checks and balances—executive oversight, legislative scrutiny, judicial review—lose clarity when decision-making occurs in a machine-learning pipeline or a neural network. For example, if a parole decision or public benefits grant is largely determined by an algorithm, who or what is the ultimate *decider*? And how do claimants effectively appeal a machine's output if the code remains proprietary or indecipherable to non-engineers? Addressing these concerns may require novel forms of oversight—public algorithm registries, specialized AI ombudspersons, AI supervisory bodies or legally mandated publication of model architectures—ensuring that due process is not rendered a historical relic.

On the global stage, cross-border data flows and extraterritorial regulations, like the GDPR or recent and upcoming AI acts, generate friction between jurisdictions with divergent priorities. Take, for instance, the clash over data privacy between the European Union's stringent stance and the more business-focused frameworks found in the United States or parts of Asia. The result is a network of overlapping, sometimes conflicting norms, requiring multinational companies to navigate an array of conflicting obligations. If they fail

23. Algorithmic impact assessments serve as a cornerstone for safeguarding fundamental rights in data-intensive environments. Simón Castellano emphasizes that thorough ex ante evaluations, coupled with ongoing audits, are essential for ensuring AI-driven processes remain transparent, fair, and accountable to constitutional standards. See Simón Castellano, P. (2023). *La evaluación de impacto algorítmico en los derechos fundamentales*. Aranzadi.

to comply with the strictest standards, they risk legal and financial repercussions in markets with robust enforcement. On the other hand, if they adhere to those rigorous norms, they may find themselves at a competitive disadvantage in markets that allow more permissive data exploitation. Consequently, the dream of a single *digital single market* remains elusive, and the reality is a polycentric environment where different regions—and in some cases, large states like California—set near-global rules by virtue of their market size.

Still, glimmers of a more cohesive approach do exist. The concept of convergence through best practices posits that as soon as a certain regulatory standard gains broad acceptance and proves workable, other jurisdictions voluntarily mimic it to avoid fragmentation. This phenomenon is sometimes labeled the *Brussels Effect*, wherein the European Union's advanced regulations effectively become a global standard because major corporations choose to apply the same rules worldwide rather than run multiple compliance regimes. While not a formal or centralized consolidation of norms, it does illustrate how a robust, well-enforced regulation in a large jurisdiction can shape legal networks across national boundaries.

All this underscores the emerging synergy of public-private partnership in writing and applying the soft law that eventually morphs into recognized, binding obligations. Soft law instruments—guidelines, codes of conduct, and memoranda of understanding—are frequently the first step in harmonizing cross-border policies in a rapidly evolving domain. Once tested and proven effective, these instruments may be codified into formal regulations. Alternatively, they might remain in a soft law status yet gain broad compliance because ignoring them entails reputational or economic risks. The open question remains whether these fluid, soft law methods can provide the transparency and accountability that constitutional principles require.

An additional concern is the risk of *rights without remedies* in a global environment. Even if frameworks articulate robust digital rights—like data portability, the right to algorithmic explanation, or freedom from AI-driven discrimination—users often lack practical avenues

for redress if violations occur outside their national jurisdiction. Litigating transnational complaints across multiple legal systems is both complex and costly, often dissuading individuals from pursuing justice. This problem resonates with earlier warnings that enumerating rights alone does little unless institutions exist that can enforce them across networked domains. The impetus, then, is for governance bodies to craft cross-border enforcement arrangements, specialized digital courts, or bilateral treaties ensuring that local rulings receive recognition and effect in multiple territories.

The tension between universal human rights norms and the reality of private platform governance also intensifies in nations where certain forms of speech are permitted locally but contravene a platform's community guidelines. For instance, political dissent that might be permissible under a domestic constitution could be flagged as extremist content by a company's global moderation policies. Conversely, speech that is illegal in one jurisdiction might remain legal under the platform's global guidelines. These collisions highlight the complicated interplay between localized constitutional traditions and emergent, transnational normative structures. One possible solution is to encourage local social media councils or region-specific adaptation of rules, yet that leads to concerns about balkanization of user experiences—and potentially censorship.

Given these multifaceted challenges, the notion of a digital constitutional moment has gained traction among some scholars. They argue that societies face a juncture where the rules of engagement in the digital sphere must be constitutionally enshrined to prevent powerful platform monopolies and unaccountable AI systems from undermining democratic values. If a digital constitution were to exist—whether at a national or a global level—it would address core issues like the scope of free speech online, the permissible extent of data collection, the liability of platforms for user-generated content, and the standard of due process in AI-driven decisions. Achieving consensus on such a constitution is daunting, but the rapid expansion of technology's impact suggests that postponing these conversations only deepens the crisis of legitimacy.

Lastly, any attempt to build a comprehensive digital constitutional order must tackle the phenomenon of *digital divides*. While wealthy nations debate advanced AI governance or next-generation encryption standards, large portions of the global population lack robust internet access or remain excluded from digital literacy. This creates a multi-tiered environment of global connectivity, where the rules that advanced economies devise may be meaningless for communities still reliant on 2G mobile networks or dealing with minimal digital infrastructure. Bridging these divides demands not only philanthropic or developmental endeavors but also structural reforms to ensure that new technologies do not reinforce existing inequalities. In essence, a digital constitutional project that overlooks large swaths of humanity cannot claim universal legitimacy.

The potential solutions are manifold: from a stronger impetus for capacity-building in under-resourced jurisdictions to philanthropic alliances channeling funding into digital literacy programs. An impetus also exists for *technological leapfrogging*, enabling developing regions to adopt cutting-edge systems without passing through the incremental steps more developed markets followed. Yet leapfrogging can also lead to vulnerabilities if done without robust regulatory scaffolding or local capacity to enforce rights. This dynamic exemplifies the complexities behind each apparently straightforward path to harness the benefits of digital networks.

In sum, while the shift to a network-based legal environment opens unprecedented avenues for efficiency, participation, and cross-border collaboration, it equally threatens to compromise fundamental constitutional safeguards if not carefully navigated. Governments, corporations, and civil society all share a stake in forging a balanced approach—one that fosters innovation and global synergy while preserving accountability, equality, and the rule of law. The next step for policymakers and constitutional scholars is to transform these theoretical insights into pragmatic frameworks, anchoring them in robust oversight and genuine multistakeholder engagement. Without such caution, the very networks that promise to democratize decision-making risk entrenching or even amplifying existing power

imbalances. At the same time, they could create new forms of digital authoritarianism, with opaque AI systems deciding critical aspects of individuals' lives absent genuine legal recourse.

Thus, for constitutionalism to remain resilient and relevant in the face of relentless technological change, it must incorporate new interpretive methods, cross-border enforcement mechanisms, and inclusive policy dialogues. Only then can society confidently navigate this juncture, ensuring that technological networks serve as catalysts for improved governance rather than catalysts for democratic erosion.

3.2. TOWARD A *CODE-BASED* CONSTITUTION FOR A GLOBAL LEGAL ORDER

The rapid evolution of global governance has exposed the limitations of traditional constitutional frameworks, rooted in hierarchical authority and territorial sovereignty, to address the challenges posed by globalization, digitalization, and normative pluralism. This reality demands a reconceptualization of constitutionalism—a shift toward a *code-based* constitution that integrates adaptability, technological innovation, and inclusivity as core principles. Such a framework would enable legal systems to operate effectively across transnational spaces while preserving the foundational values of legitimacy, accountability, and equity.

A *code-based* constitution signifies more than the mere use of technology; it represents an architectural paradigm for global governance. By embedding adaptable principles into legal structures and leveraging the potential of digital tools, such as AI and blockchain, this model seeks to harmonize fragmented jurisdictions within the constitutional multiverse. At its heart, this approach challenges the rigidity of positivist legal traditions by embracing a fluid, context-sensitive methodology that aligns with the tenets of liquid law.[24]

24. Zagrebelsky's notion of d*erecho dúctil* underscores the need for legal interpretations that balance adaptability and fidelity to core constitutional principles. He advocates a form of jurisprudence that recognizes law's fluidity while upholding fundamental guarantees, allowing statutes and rights to

This section explores three dimensions critical to developing such a constitution. First, it examines the necessity of adaptive principles in transnational constitutionalism, where legal norms must operate within an ever-shifting matrix of political, social, and economic realities. Second, it evaluates how emerging technologies can provide mechanisms to operationalize global legal norms, creating structures that transcend territorial boundaries while maintaining enforceability. Finally, it addresses the tension between inclusivity and accountability in governance, offering pathways for ensuring that diverse voices are represented without undermining the rule of law. Together, these dimensions lay the groundwork for a legal order capable of navigating the complexities of a globalized world.

3.2.1. INCORPORATING ADAPTIVE PRINCIPLES INTO TRANSNATIONAL CONSTITUTIONALISM

The adaptability of legal systems has become an essential condition for their legitimacy and effectiveness in the modern era. Globalization and digitalization have generated legal ecosystems characterized by rapid change, normative overlap, and unpredictable externalities. In this context, rigid constitutional frameworks, bound by fixed principles and hierarchical authority, struggle to accommodate the fluidity inherent in transnational governance. This inadequacy underscores the necessity of embedding adaptive principles into the fabric of transnational constitutionalism.

The coexistence of stability and adaptability within constitutional frameworks poses a fundamental challenge in transnational governance. While rigidity ensures predictability and coherence, flexibility is essential for addressing the dynamic realities of globalization and digitalization. Reconciling these seemingly opposing values requires a nuanced approach that respects both foundational legal principles and the need for evolution.

---

evolve in tandem with shifting social realities rather than rigidly clinging to formalist doctrines. See Zagrebelsky, G. (2017). *El derecho dúctil: Ley, derechos, justicia* (5th ed.). Editorial Trotta.

Constitutionalism indeed has historically been anchored in two seemingly irreconcilable values: the stability of established norms and the flexibility to respond to societal change. Traditional positivist systems often prioritize stability, emphasizing clear, codified rules to ensure predictability and legal certainty. However, this rigidity can inhibit the system's ability to adapt to novel challenges, such as digital privacy, climate migration, or algorithmic bias. In contrast, an adaptive constitutional model recognizes that legal frameworks must function as *living systems* that evolve alongside the societies they govern.

This adaptability requires a dialectical reconciliation between rigidity and fluidity. Normative stability cannot be abandoned entirely, as it underpins the predictability and coherence necessary for effective governance. Instead, legal systems must embrace mechanisms that allow for controlled evolution, such as sunset clauses, iterative *rule-making*, and principles of proportionality. These mechanisms enable legal frameworks to remain context-sensitive without sacrificing foundational values.

It is important to point out that the principle of multilevel constitutionalism provides a structural foundation for embedding adaptability into transnational governance. By recognizing the coexistence of local, national, regional, and global norms, this approach allows for flexible coordination across jurisdictions while preserving the autonomy of each level. For example, proportionality—a key principle in EU constitutional law—balances competing interests by tailoring legal measures to specific circumstances, ensuring both local relevance and global coherence. Such principles can be expanded beyond the EU context to serve as adaptive tools in broader transnational frameworks.

To operationalize adaptability, transnational constitutionalism must rest on a normative framework that incorporates subsidiarity, iterative norm-making, dynamic interpretation, and resilience against fragmentation. Together, these elements provide a foundation for navigating the complexities of a fragmented constitutional multiverse

while preserving the legitimacy and coherence of global governance systems.

Subsidiarity emphasizes the importance of decision-making at the most localized level capable of addressing specific issues. This principle ensures that governance remains sensitive to contextual variations, reserving higher levels of authority for matters that require collective action, such as climate change or transnational trade regulation. Subsidiarity not only enhances the efficiency of governance structures but also strengthens democratic legitimacy by empowering local actors to address issues within their domain of expertise.

Iterative norm-making introduces a process of continuous revision and improvement, ensuring that legal norms remain responsive to evolving societal needs and empirical evidence. Unlike static legal systems bound by rigid principles, this approach recognizes the dynamic nature of global challenges and integrates mechanisms for periodic review. Such flexibility allows constitutional frameworks to accommodate rapid technological advancements or shifts in geopolitical realities, fostering resilience in the face of uncertainty.

Dynamic interpretation is critical for judicial and administrative bodies operating in a rapidly changing world. Rather than adhering strictly to the original intent of legal norms, dynamic interpretation calls for an evolving application of principles that reflects contemporary social, economic, and technological realities. This approach enables courts and governance institutions to maintain relevance and adaptability while preserving the underlying values of constitutionalism.

Finally, resilience against fragmentation is essential for maintaining coherence within the constitutional multiverse. In an interconnected world where legal norms frequently overlap or conflict, adaptive systems must include mechanisms for resolving disputes and harmonizing divergent standards. Whether through arbitration, mutual recognition agreements, or transnational judicial dialogue, such mechanisms ensure that adaptability does not lead to chaos or erode the predictability needed for effective governance.

By integrating these principles into its foundations, adaptive constitutionalism offers a pathway for legal systems to respond to the fluidity of global challenges without sacrificing coherence, legitimacy, or the rule of law. This framework not only aligns with the fluidity emphasized in liquid law but also ensures that adaptability is governed by principles of legitimacy, accountability, and justice. However, embedding such principles into transnational governance raises complex questions about enforceability and oversight, which are addressed in the following section.

As the foundations of adaptive constitutionalism take shape, how can global legal systems ensure that adaptability does not undermine the predictability and coherence essential for justice? To what extent should flexibility be tempered by accountability to safeguard the rule of law in an increasingly interconnected world?

3.2.2. THE POTENTIAL OF DIGITAL TOOLS TO CREATE ENFORCEABLE GLOBAL LEGAL NORMS

Technological innovation has transformed the mechanisms through which legal norms are created, applied, and enforced. Digital tools, such as blockchain, smart contracts, and Ai systems, offer unprecedented opportunities to establish enforceable global legal norms. These tools operate beyond the constraints of territorial sovereignty, providing a foundation for governance systems that are transparent, efficient, and scalable. Nevertheless, their integration into transnational constitutionalism requires careful consideration of their limitations, ethical implications, and alignment with foundational legal principles.

Blockchain technology offers a decentralized mechanism for codifying and enforcing legal norms. By creating tamper-proof, transparent ledgers, blockchain can facilitate the implementation of global agreements and reduce the risks associated with traditional enforcement mechanisms. For instance, smart contracts—self-executing agreements encoded on a blockchain—can automate compliance with regulatory standards, ensuring that obligations are

met without the need for intermediaries. This approach aligns with the principles of liquid law by embedding adaptability and efficiency into legal frameworks.

However, the use of blockchain raises significant concerns. Its reliance on immutable records, while valuable for preventing fraud, can conflict with the need for flexibility in legal interpretation. Furthermore, the decentralized nature of blockchain poses challenges for accountability, as it often obscures the identity of decision-makers and complicates mechanisms for redress. Addressing these issues requires the development of governance structures that balance the benefits of decentralization with the demands of transparency and oversight.

AI enhances the capacity of legal systems to analyze complex datasets, predict trends, and optimize decision-making. In the context of transnational governance, AI can be used to identify patterns of non-compliance, assess risks, and propose tailored solutions. For instance, machine learning algorithms can monitor the implementation of international agreements, providing real-time feedback on their effectiveness and areas for improvement.

Nevertheless, the integration of AI into legal systems raises profound ethical and philosophical questions. The opacity of AI decision-making challenges principles of transparency and accountability, while the potential for algorithmic bias threatens the fairness and legitimacy of governance structures. To mitigate these risks, it is essential to establish robust regulatory frameworks that ensure the ethical use of AI, including standards for transparency, explainability, and human oversight.

While digital tools offer significant advantages for transnational governance, their effectiveness depends on universal adoption and compatibility across jurisdictions. The fragmentation of digital ecosystems, driven by geopolitical competition and divergent regulatory approaches, risks undermining the potential of these tools to create cohesive global legal norms. Bridging these divides requires

international cooperation and the development of interoperable standards that respect both local diversity and global coherence.

While digital tools offer unprecedented opportunities for global governance, how can we prevent their misuse and ensure their alignment with fundamental legal principles? Can a truly universal framework for digital governance be achieved in a landscape shaped by divergent geopolitical interests?

3.2.3. BALANCING INCLUSIVITY AND ACCOUNTABILITY IN GLOBAL GOVERNANCE FRAMEWORKS

Inclusivity and accountability are foundational principles of constitutionalism, yet their realization within transnational governance remains a formidable challenge. The growing complexity of global governance frameworks exacerbates tensions between these principles, as efforts to include diverse voices often dilute mechanisms of accountability, while rigid accountability structures risk excluding marginalized perspectives. Balancing these principles is essential for ensuring the legitimacy and effectiveness of a code-based constitutional model.

Inclusivity in governance requires the representation of diverse actors, including states, non-state entities, and civil society. This pluralism reflects the realities of a fragmented constitutional multiverse, where power and influence are distributed across multiple levels and spheres. By contrast, the inclusion of diverse voices must go beyond mere tokenism; it demands meaningful participation in decision-making processes. Mechanisms such as multistakeholder forums and participatory decision-making structures provide avenues for achieving this goal.

Accountability becomes increasingly complex in decentralized governance systems, where authority is dispersed among multiple actors. Ensuring accountability requires clear mechanisms for monitoring, enforcement, and redress. These mechanisms must balance the need for transparency with the protection of sensitive

information, particularly in contexts involving digital governance and data privacy.

The relationship between inclusivity and accountability is inherently dialectical. While inclusivity enhances legitimacy by incorporating diverse perspectives, it can complicate decision-making and obscure lines of responsibility. Conversely, accountability mechanisms, while essential for transparency and oversight, risk privileging dominant actors who have the resources to navigate complex governance structures. Resolving this tension requires innovative approaches that integrate inclusivity into accountability frameworks, such as participatory monitoring systems and hybrid governance models.

The development of a code-based constitution for a global legal order is not merely a technical exercise but a profound reimagining of constitutional principles. By incorporating adaptive mechanisms, leveraging digital tools, and balancing inclusivity with accountability, such a framework can navigate the complexities of globalization and digitalization while upholding the foundational values of constitutionalism. However, its realization depends on the willingness of global actors to embrace innovation without abandoning the ethical and philosophical underpinnings of the rule of law.

How can inclusivity in global governance be reconciled with the need for efficient decision-making and accountability? Is it possible to design governance structures that are both participatory and effective, or does the inclusion of diverse actors inherently limit their operational efficiency?

Inclusive governance can enhance legitimacy by ensuring that diverse stakeholders—states, civil society, and private actors—have a voice in decision-making. However, broad participation may slow procedures and complicate accountability if responsibilities become fragmented. One way to reconcile inclusivity with efficiency is to establish multi-layered governance structures that delegate simpler issues to specialized bodies, reserving complex matters for collaborative forums. This separation of functions maintains procedural clarity while

incorporating broader input for high-stakes decisions. Additionally, transparent procedures, such as publicly accessible debates or iterative consultations, can streamline deliberation by setting clear stages for stakeholder involvement. To uphold accountability, these forums should incorporate robust mechanisms—like review panels and enforcement committees—that can impose sanctions or mediate disputes swiftly. Adopting technologies such as online platforms or structured digital consultations can further expedite participation without sacrificing transparency. Thus, well-designed structures, combining stratified authority and ongoing oversight, enable inclusive governance that remains both effective and accountable.

PART TWO: DIGITALIZATION AND THE EMERGENCE OF *ÜBER-RIGHTS*

The digital transformation has fundamentally reshaped the relationship between individuals, institutions, and the legal frameworks that govern them. In this context, the emergence of *über-rights* reflects a profound disruption in the conceptual foundations of law. These *über-rights* transcend traditional legal protections, encompassing complex entitlements such as privacy, algorithmic accountability, and the right to an unmanipulated informational environment. They are not confined to discrete legal categories, but demand integrated and multidisciplinary responses.

This phenomenon raises critical questions about the capacity of contemporary legal systems, heavily rooted in positivist traditions, to adapt to this paradigm shift. The notion of law as a static framework of predefined rules contrasts sharply with the fluid and dynamic realities of the digital age. Legal systems increasingly face challenges to their internal coherence and normative authority, amplified by the rise of technologies capable of generating real-time impacts at global scales.

Über-rights, like the right to data protection under the GDPR or the emerging frameworks around algorithmic fairness (AIA) and freedom of expression on social networks (DSA), often operate at the intersection of individual autonomy and collective societal interests. This intersection exposes inherent tensions within classical legal doctrines. Individual rights are no longer sufficient to address the systemic risks posed by digital ecosystems. The legal response must evolve toward balancing micro- and macro-level governance while ensuring that fundamental principles, such as human dignity and equity, remain safeguarded.

Furthermore, the digital age challenges the state's traditional monopoly on legal authority. Multilevel constitutionalism offers a potential pathway to address these challenges, allowing supranational

institutions to bridge gaps in national regulations. Yet, this multilevel framework must contend with the reality of *liquid law*, where technological advances often outpace the capacity of legal norms to adapt.

In sum, the digital age calls for a reimagining of law's role in structuring society, especially as we face a growing disconnect between rights and remedies, enforcement gaps, and the inadequacies of existing frameworks. The subsequent sections delve into these disruptions, focusing on how legal systems are grappling with the complexities of digital transformation and the implications for governance, individual rights, and the collective good.

Chapter 4

The Disruption of Law in the Digital Age

The digital revolution has fundamentally altered the way society functions, how individuals interact with institutions, and, crucially, how law is conceptualized, created, and enforced. At the intersection of legal philosophy and practical governance, the digital transformation poses a direct challenge to the traditional structures and foundational principles of legal systems. These disruptions stem not only from the increasing reliance on data and algorithms to mediate decisions and societal interactions but also from the inadequacy of legal frameworks designed for an analog world in addressing the multifaceted realities of the digital age.

This part examines how the digital age disrupts the conceptual, structural, and operational dimensions of law, requiring a recalibration of its core functions. At the heart of this disruption lies the tension between two competing imperatives: the need for legal systems to uphold fundamental principles of justice, fairness, and accountability, and the rapid pace of technological innovation that often outstrips the capacity of these systems to respond effectively. The digital transformation thus raises profound questions: How can legal systems retain their coherence and legitimacy in the face of global, decentralized, and algorithm-driven forces? Is it possible to maintain the foundational ideals of the rule of law—predictability, accountability, and equality—in an era characterized by liquid law and fluid legal boundaries?

The evolving nature of rights in the digital era compels us to engage in a profound and critical reflection. One of the most striking features of the digital age is the emergence of new categories of rights that reflect the realities of a data-driven society. These include rights related to data protection, algorithmic transparency, freedom from automated discrimination, and even rights to digital existence and identity. These rights, which can be conceptualized as *über-rights* transcend the traditional boundaries of legal entitlements, addressing not only individual autonomy but also collective societal values such as equity, trust, and public welfare.

However, the evolution of rights in the digital age exposes significant tensions within classical legal doctrines. Traditional legal frameworks are deeply rooted in the positivist tradition, which emphasizes clearly defined rights, duties, and remedies. Yet the interconnected and globalized nature of digital systems defies this static conceptualization. For instance, the right to data protection under the GDPR reflects a sophisticated understanding of individual autonomy and informational self-determination. Still, it also demonstrates the limitations of existing legal structures in addressing collective harms, such as algorithmic biases or systemic inequalities perpetuated by data-driven systems.

Moreover, these new rights operate in a context where the distinction between private and public spheres is increasingly blurred. In the digital age, private entities wield immense power over public discourse, individual identities, and societal structures. This concentration of power challenges the state-centric model of legal regulation, necessitating innovative approaches to governance that account for the role of private actors as quasi-regulators and as subjects of regulation. Thus, the emergence of digital rights forces us to confront fundamental questions about the nature of law itself. Is law still an effective tool for ensuring justice in a world where power is mediated through algorithms and data flows rather than traditional institutions?

Another critical aspect of the disruption of law in the digital age is the fragmentation of legal authority. In a globalized world,

digital platforms and technologies operate across jurisdictions, creating complex regulatory challenges. National legal systems, designed to operate within defined territorial boundaries, struggle to address transnational issues such as data privacy, cybersecurity, and algorithmic accountability. This fragmentation is further exacerbated by the proliferation of overlapping and sometimes conflicting legal regimes at the local, national, and supranational levels.

The concept of multilevel constitutionalism offers a potential framework for navigating this complexity. By emphasizing the interconnectedness of legal systems at different levels, it seeks to harmonize conflicting norms and create a coherent legal order. However, this approach is not without its challenges. The rapid pace of technological innovation often outstrips the capacity of multilevel frameworks to adapt, leading to gaps in regulation and enforcement. Moreover, the plurality of legal actors—including states, international organizations, and private entities—complicates efforts to establish a unified legal framework.

This fragmentation has significant implications for the rule of law. The absence of a coherent regulatory framework undermines legal certainty and predictability, which are foundational to the legitimacy of legal systems. It also creates opportunities for regulatory arbitrage, where actors exploit differences between legal regimes to evade accountability. To address these challenges, legal systems must embrace a more dynamic and adaptive approach to governance, one that recognizes the fluid and interconnected nature of the digital world.

Perhaps the most immediate manifestation of the disruption of law in the digital age is the crisis of enforcement. Legal rights and protections are only meaningful if they can be effectively enforced. Yet the digital age exposes significant gaps in enforcement mechanisms, both at the individual and systemic levels.

At the individual level, enforcement often relies on affected parties to assert their rights through complaints or legal actions. This model

is ill-suited to the realities of the digital age, where harms are often diffuse, complex, and difficult to trace. For instance, algorithmic discrimination may affect millions of individuals in subtle and indirect ways, making it challenging to identify specific violations or assign responsibility. Moreover, the power asymmetry between individuals and large technology companies further undermines the effectiveness of traditional enforcement mechanisms.

At the systemic level, enforcement is hampered by a lack of resources, expertise, and coordination among regulatory authorities. Supervisory bodies, such as data protection authorities under the GDPR, often lack the capacity to address the scale and complexity of digital systems. This is particularly evident in the context of artificial intelligence, where the opacity and unpredictability of algorithmic decision-making pose unique challenges for oversight and accountability.

The limitations of traditional enforcement mechanisms underscore the need for innovative approaches to governance. One potential solution is the development of proactive regulatory frameworks that emphasize prevention and risk management rather than reactive enforcement. For example, regulatory sandboxes and impact assessments can provide mechanisms for identifying and mitigating risks before they result in harm. However, these approaches must be carefully designed to ensure that they do not compromise fundamental rights or create opportunities for regulatory capture.

The disruption of law in the digital age calls for a fundamental rethinking of legal and regulatory frameworks. To address the challenges of the digital age, legal systems must move beyond traditional models of regulation and embrace a more holistic approach that integrates legal, ethical, and technological perspectives.

Central to this holistic paradigm is the recognition of law as a dynamic and adaptive system. Rather than seeking to impose static rules on a rapidly changing world, legal systems must embrace flexibility and innovation. This requires a shift from rule-based regulation to

principle-based governance, where overarching principles such as fairness, accountability, and transparency guide the development and application of legal norms.

Moreover, a holistic regulatory paradigm must prioritize inclusivity and collaboration. The digital age affects all sectors of society, and addressing its challenges requires input from diverse stakeholders, including governments, businesses, civil society, and individuals. Interdisciplinary collaboration is particularly important, as many of the issues raised by digital technologies lie at the intersection of law, ethics, and technology. By fostering dialogue and cooperation among these fields, legal systems can develop more effective and equitable responses to the challenges of the digital age.

In this sense a holistic regulatory paradigm must recognize the importance of global governance. The interconnected nature of digital technologies requires coordinated action at the international level to address transnational issues such as data privacy, cybersecurity, and algorithmic accountability. This calls for the development of global norms and standards that reflect shared values and principles while respecting the diversity of legal and cultural contexts.

The disruption of law in the digital age represents both a profound challenge and an unprecedented opportunity. By embracing the complexities of the digital world and reimagining legal and regulatory frameworks, legal systems can not only address the challenges of the digital age but also reaffirm their role as arbiters of justice and protectors of fundamental rights. The subsequent sections delve deeper into specific aspects of this disruption, beginning with the critical issue of enforcement gaps and the disconnect between rights and remedies.

4.1. THE GAP BETWEEN RIGHTS AND REMEDIES

Digitalization has led to a proliferation of newly acknowledged rights, ranging from data protection and online privacy to the freedoms surrounding algorithmic transparency and content moderation.

At first glance, the expansion of these rights suggests an era where individuals are better protected than in previous decades, thanks to heightened awareness and a vibrant international dialogue about online harm, digital consumer protection, and emerging forms of discrimination. However, the modern reality reveals a critical divide between the recognition of such entitlements and the real-world mechanisms available to vindicate them. Legal scholars describe this as the chasm between rights and remedies, where a formal declaration of individual prerogatives does not necessarily translate into effective or timely enforcement.

One of the most pressing reasons for this gap lies in the inherently borderless nature of digital interactions.[1] Traditional legal doctrines, grounded in territorial sovereignty, struggle to keep pace with multinational platforms and decentralized networks that seamlessly operate across continents. Under a framework of liquid law, where legal norms become fluid and adaptive in response to new technological realities, there is an evident mismatch: norms evolve at different speeds, yet the remedies remain tied to jurisdictional boundaries. Individuals harmed by transnational data breaches or algorithmic errors often confront formidable hurdles when seeking redress.[2] Where does one file a claim? Which court has jurisdiction, and whose

1. The transnational flow of personal data renders traditional enforcement tools largely ineffective, as both governments and private entities can bypass jurisdictional constraints with ease. Unless regulatory bodies learn to collaborate across borders, these data streams will continue to undermine the ability of national laws to protect individuals. Transnational data governance thus becomes a key challenge for modern legal systems, as it not only tests their capacity to enforce rules but also questions the limits of national sovereignty in the digital age. See Radu, R. (2019). *Negotiating Internet Governance: Foreign Policy, Sovereignty, and Cyberspace*. Oxford University Press.
2. In a world marked by rapid shifts in technological paradigms, law must embrace an adaptable architecture that can respond to novel realities. Emphasizing rigidity in legal doctrines risks creating a temporal lag between societal changes and the formal recognition of rights. A fluid legal framework anticipates change, operating less like a static command and more like a dynamic system of guidelines that evolve alongside emerging social, economic, and technological conditions. See Teubner, G. (2012). *Constitutional Fragments: Societal Constitutionalism and Globalization*. Oxford University Press.

rules apply? The recognition that one has a right to online privacy, for example, may be acknowledged in multiple legal regimes, yet the enforcement pathways might differ drastically, creating confusion and obstructing timely relief.[3]

Moreover, the complexity of digital services exposes users to a myriad of potential harms not adequately addressed by traditional remedial mechanisms. Tech conglomerates process billions of data points each day. When something goes awry—whether it involves data misuse, identity theft, or algorithmic discrimination—affected individuals may find themselves negotiating with opaque corporate policies or labyrinthine dispute resolution systems. In this constitutional multiverse, where multiple legal orders overlap, it becomes increasingly unclear which normative framework prevails. A person might hold a data privacy right recognized under national legislation while also being entitled to broader protections spelled out in supranational agreements or regional charters. The multiplicity of norms does not guarantee a corresponding multiplicity of effective remedies. Instead, it may fracture the enforcement landscape and induce forum-shopping or, more commonly, discouragement from pursuing any remedy at all.

It is likewise instructive to look at how public authorities can, or cannot, respond to this enforcement challenge. States frequently operate under resource constraints, lacking specialized personnel with the technical expertise to investigate or litigate digital misconduct. Agencies established to police digital abuses, such as data protection authorities, sometimes face political pressures or budgetary

3. Without uniform procedures for cross-border redress, individuals are left navigating a maze of conflicting requirements. By the time a complaint is appropriately filed in one jurisdiction, evidence might be irretrievably lost, or the responsible entity may have shifted its operational base. Consequently, delays compound existing harms, forcing victims to endure a procedural limbo while corporations exploit loopholes in enforcement. Such fragmentation is arguably the greatest obstacle to bridging the gap between declared rights and actual remedies. See Koops, E. J. (2014). *Should ICT Regulation Be Technology-Neutral?* In B. van der Sloot, D. Broeders, & E. Schrijvers (Eds.), *Exploring the Boundaries of Big Data* (pp. 77–98). Amsterdam University Press.

limitations.[4] The sheer velocity of technological evolution exacerbates this gap. Hackers, illicit data brokers, and unscrupulous application developers can outmaneuver regulators by rapidly relocating servers or masking network traffic. Consequently, the existence of robust rights in legislatures' statutes or judicial precedents does not necessarily align with equally robust avenues for accountability, restitution, or penalties.

Another factor fueling the gap is a societal shift in expectations. Users are encouraged to create content, share personal data, and rely on digital tools that mediate every aspect of daily life. They are promised safeguards, from end-to-end encryption to explicit opt-in consent frameworks. Yet when those promises fail—when data leaks occur, when automated systems yield biased results, or when online abuse escalates—users encounter significant difficulties in obtaining immediate and meaningful recourse. A question worth contemplating is whether the emphasis on enumerating digital rights has overshadowed the urgency of designing innovative and cross-border remedies. Can we continue to celebrate the proliferation of new rights without simultaneously advancing the institutional architecture that ensures real enforcement?

Multilevel constitutionalism offers a compelling lens to diagnose and address this systemic shortcoming. In a hyperconnected world,[5]

4. Regulatory capture is not only a theoretical concern but a real possibility when oversight bodies depend on government resources or face private sector lobbying. Ensuring genuine independence demands transparent funding structures, robust conflict-of-interest rules, and ongoing public scrutiny, lest the promise of impartial enforcement be hollowed out by external interests. See Carpenter, D., & Moss, D. A. (Eds.). (2014). *Preventing Regulatory Capture: Special Interest Influence and How to Limit It*. Cambridge University Press.
5. In a hyperconnected environment, digital platforms function as global infrastructures that surpass the regulatory capacity of individual states. This shift towards supranational or network-based models of constitutionalism requires not only legislative coordination but also the development of new norms that secure public trust. When dealing with AI specifically, accountability is often blurred by algorithmic complexity and corporate secrecy, making a multilevel approach—where local, regional, and international bodies collaborate—vital

we see overlapping jurisdictions and competing legal orders. This structure may enable nuanced, context-specific norms, but it equally risks diluting the overall efficacy of legal protections. Achieving genuine accountability requires cooperation among national, regional, and transnational bodies. Mechanisms for joint investigations, extradition of digital offenders, and harmonized enforcement policies are crucial steps in bridging the divide between lofty aspirations and tangible results. Absent such coordination, unscrupulous actors exploit jurisdictional gray areas, while legitimate claimants face protracted legal battles that yield little practical relief.

Another salient dimension arises when considering the interplay between iusnaturalism and legal positivism in the digital context. Certain fundamental rights—such as dignity, autonomy, or freedom from discrimination—can be justified on natural law grounds, appealing to moral principles that transcend national frontiers. Yet the enforcement structures rely heavily on positivist frameworks: codified statutes, regulatory bodies, and courts bound by formal procedures. This philosophical tension becomes stark in matters like algorithmic decision-making. Claiming that an individual has a natural right to be free from opaque or prejudicial automated processes remains a normative aspiration unless legal systems produce binding regulations and accessible enforcement forums. The moral claim, however powerful, lacks practical impact if no tribunal is willing and able to hear the complaint and impose corrective measures.

Compounding the issue, private actors often regulate vast digital spaces. Internet service providers, social media companies, and e-commerce platforms wield quasi-governmental powers over user communities. They set terms of service, adjudicate alleged violations, and mete out punishments ranging from account suspensions to permanent bans. Some of these private entities impose internal review mechanisms or rely on specialized oversight boards. Nevertheless, the

---

for protecting rights and maintaining transparent governance. See Walker, N. (2018). *Intimations of Global Law*. Cambridge University Press.

legal enforceability of user rights within these corporate structures remains contingent on each platform's policies. Where a constitutional framework is lacking or weak, the private entity's internal rules dominate, undermining the uniformity and predictability that hallmark the rule of law. Although corporate self-regulation can provide quicker resolutions, it also raises questions. Do internal processes that lack transparency and formal legal safeguards truly remedy infringements of individuals' rights?

International organizations and civil society groups have begun to raise awareness of the need for more robust remedial frameworks. Multilateral treaties, cross-border enforcement compacts, and specialized digital courts are among the proposals floating in the evolving global legal discourse. Yet implementing such innovations presents its own challenges: sovereignty concerns, resource limitations, and disagreements regarding procedural standards can stall even the most promising initiatives. Some advocates suggest harnessing blockchain-based dispute resolution or other advanced technologies as a neutral means to bridge national boundaries. These experiments reflect the spirit of *liquid law*, which embraces flexible, tech-driven solutions. The question remains whether these platforms can reliably secure compliance and redress without replicating the pitfalls of existing systems.

Bridging the gap between rights and remedies in the digital domain demands a combination of legal reform, collaborative enforcement, and technological innovation. Adopting a purely national approach is inadequate, as digital life transcends borders. Equally, deferring entirely to global bodies or tech corporations risks diluting national sovereignty and democratic accountability. Achieving equilibrium in this constitutional multiverse requires sustained, coordinated efforts among stakeholders in governments, international organizations, the private sector, and user communities. The stakes could not be higher. If unaddressed, the gap between rights and remedies in the digital era threatens public trust in legal institutions and may diminish respect for the rule of law as a foundation of orderly coexistence.

The challenge, therefore, is to ensure that recognition of digital rights—whether anchored in moral claims or statutory frameworks—does not remain a mere aspiration. Individuals must possess viable paths to vindicate their entitlements before impartial and competent authorities. How can we best integrate emerging technologies with tried-and-tested procedural guarantees? And how do we preserve essential sovereignty while embracing transnational cooperation? Those are the pressing questions that confront policymakers and legal theorists striving to close the gap between rights and remedies in the digital age. Progress in this area will not only bolster the legitimacy of legal systems worldwide but also reaffirm the foundational ideals that undergird constitutional orders in an era of relentless technological change.

4.1.1. EVOLVING LEGAL FRAMEWORKS: FROM GDPR TO THE AI ACT

The trajectory of legal innovation in recent years demonstrates a determined effort to reconcile fast-paced technological growth with safeguards for individual autonomy, human dignity, and societal welfare. A pivotal development arose with the GDPR in the European Union. Regarded as one of the most comprehensive data protection regimes in the world, it has substantially influenced corporate strategies, international data flows, and the policies of tech giants. This framework, known for its extraterritorial reach and emphasis on user consent,[6] effectively recalibrated discussions surrounding

6. By establishing a principle of extraterritorial jurisdiction, the GDPR reshaped the global data protection landscape, compelling multinational enterprises to align with European standards. This strategy not only reaffirms the EU's normative power but also illuminates the complexities of enforcing compliance across multiple legal orders. Firms operating in different jurisdictions may face contradictory obligations, raising the specter of compliance fatigue and legal uncertainty. Nonetheless, the GDPR's robust enforcement mechanism, including hefty fines, demonstrates how a strategically designed regulation can influence corporate behavior far beyond its geographical origins. See Kuner, C. (2020). *Transborder Data Flows and Data Privacy Law*. Oxford University Press.

privacy and accountability in digital contexts. Nevertheless, the GDPR also illustrates the tension between legislative ambition and the practicability of enforcement, thereby echoing the gap between rights and remedies identified above.

An intriguing shift is occurring as lawmakers advance beyond data protection laws into regulating emerging technologies, particularly artificial intelligence. The proposed AI Act in the EU aims to establish a risk-based taxonomy of AI systems,[7] thereby tailoring regulatory obligations to the severity and likelihood of harm. Each iteration of this legislative process, however, reveals a fundamental question: is the law agile enough to address the complexities of machine learning models that evolve daily through self-training and global data harvesting? Under the umbrella of liquid law, traditional legislative cycles might struggle to keep pace with the quantum leaps in AI capabilities. Regulation, by its nature, seeks to define permissible conduct and ensure accountability. Yet the inherent dynamism of AI—where systems can autonomously generate novel functions—poses a formidable challenge to prescriptive statutes.

The EU's ambitions in this area are reshaping global conversations about ethical AI, algorithmic fairness, and the responsibilities of tech companies to ensure that automated decisions do not undermine fundamental liberties. The effort to export these standards beyond European borders—reminiscent of the GDPR's extraterritoriality—represents a fascinating aspect of multilevel constitutionalism in the digital sphere. Various jurisdictions are observing how these frameworks are playing out, eager to adopt similar measures or at

7. Framing AI regulation in terms of risk levels underscores the realization that a one-size-fits-all approach is inadequate in this rapidly developing field. By classifying systems based on their potential to harm individual rights or societal interests, legislators can craft targeted obligations proportionate to the AI application's impact. This not only fosters innovation where it is beneficial but also ensures a firmer grip on high-stakes deployments, such as facial recognition in public spaces or algorithmic credit scoring. See Veale, M., & Zuiderveen Borgesius, F. (2021). Demystifying the Draft EU Artificial Intelligence Act. *Computer Law & Security Review*, 43, 105506.

least adapt core principles to local contexts. Meanwhile, supranational entities and international organizations are grappling with harmonization of rules in a world where data respects no borders and multinational corporations often surpass the economic power of smaller states. This evolving situation accentuates the complexities of the constitutional multiverse and the necessity for broad stakeholder collaboration.

In the realm of enforcement, the GDPR and the prospective AI Act offer a portrait of how lawmakers attempt to bridge the divide between normative aspirations and actual remedies. The GDPR instituted heavy financial penalties for noncompliance, reflecting a strategic choice to deter corporate misconduct. National data protection authorities hold the power to investigate infringements and impose fines. This approach has led to several high-profile cases involving large tech corporations. Nonetheless, critics contend that such actions, while symbolically potent, do not always alter corporate practices. Financial penalties may be absorbed as a cost of doing business, particularly for entities with vast economic reserves. Similar issues are poised to emerge under the AI Act. Will imposing penalties suffice to ensure compliance, or should the law incorporate more systemic interventions, such as mandatory transparency audits and real-time oversight of high-risk AI systems?

Legislators within and beyond the EU are also wrestling with the interplay between innovation and regulation. Burdensome or overly prescriptive norms risk stifling technological progress. Innovation is critical for economic growth and can produce public benefits, including medical breakthroughs and enhanced disaster response systems. At the same time, lax or poorly enforced regulations might undermine personal freedoms, perpetuate discrimination, and entrench social inequities through biased AI outputs. Finding the delicate balance between these extremes has become a defining challenge of our era. This balancing act resonates with fundamental debates within legal philosophy. Positivists prioritize clear, codified rules that delineate permissible and impermissible conduct. Iusnaturalists emphasize the moral imperatives that must guide technology's deployment, such

as the principle that individuals should never be reduced to mere data points. The AI Act, with its risk-based orientation, arguably tries to unify these perspectives by specifying concrete standards while upholding normative ideals related to privacy, fairness, and human oversight.

The ripple effects of the GDPR and the AI Act do not stop at conventional civil or administrative litigation. In many instances, individuals rely on private arbitration or corporate-led dispute resolution processes to address alleged violations. This phenomenon is partly due to the swift, transnational character of digital commerce. Users sign platform agreements that preclude them from filing class actions in domestic courts, pushing them toward alternative forums. Some laud these private tribunals for their speed and specialized expertise. Yet there remains a pressing concern about transparency, impartiality, and the uniform protection of rights, especially when the rules differ across regions in a constitutional multiverse. How can lawmakers ensure that private dispute mechanisms align with the spirit and letter of critical regulations like GDPR and the AI Act?

Another frontier in this evolving landscape concerns the integration of compliance-by-design. Systems architects and software engineers are being asked to incorporate legal and ethical considerations at the inception of product development. The GDPR's principles of data protection by design and by default have influenced this thinking. The AI Act extends similar logic by insisting on robust documentation and transparency in AI development cycles. Yet the technical intricacies of advanced models make it arduous to predict how an AI system might behave once deployed at scale. If the law mandates transparent, explainable AI, software designers must reconfigure data pipelines, model architectures, and user interfaces to accommodate interpretability. Achieving this paradigm shift requires not only technical expertise but also a deep alignment of corporate culture with regulatory objectives.

The broader implications for global governance are equally significant. The EU's initiatives can serve as prototypes for other

jurisdictions. Policymakers worldwide observe whether these regulations meaningfully protect citizens while preserving a competitive digital marketplace. Many actors—national governments, regional blocs, and civil society networks—are seeking to emulate or critique the European model. This cross-pollination of regulatory strategies is an instance of multilevel constitutionalism in action, as it fuses rules emerging from distinct legal orders, each with its own democratic processes and cultural values. Will the AI Act ultimately spur a new generation of regulation that addresses hyperconnected supply chains, autonomous decision-making, and bio-digital convergence?

Closing the circle, this movement from GDPR to the AI Act underscores the incremental yet profound shift toward advanced legal frameworks that attempt to reconcile technology's transformative power with the highest aspirations of the rule of law. Achieving coherence in this environment demands collaboration among legislatures, courts, executive agencies, private corporations, and an engaged public. The era when national parliaments could legislate in splendid isolation is over. In a world marked by liquid law, regulators must embrace flexible, adaptive approaches, whether by leveraging cross-border information-sharing or building new institutional mechanisms dedicated to tech oversight.

Crucially, any legal regime, however sophisticated, will fall short if it fails to secure meaningful avenues of redress for aggrieved individuals or communities. Whether the focus is on data privacy under the GDPR or algorithmic accountability under the AI Act, enforcement must be robust, accessible, and consistent. Without tangible remedies, lofty proclamations ring hollow, and public trust in democratic governance erodes. Are legislators, regulators, and technology firms prepared to transcend vested interests and collaborate in forging innovative, enforceable solutions? That question lies at the heart of the contemporary endeavor to craft a digital legal order that remains steadfast to constitutional values while accommodating the relentless momentum of technological change.

4.1.2. CHALLENGES OF ENFORCEMENT: SUPERVISORY AUTHORITIES AND THEIR LIMITATIONS

Enforcement in the digital realm frequently relies on specialized supervisory bodies entrusted with monitoring compliance and punishing infringements. Yet many of these authorities operate under significant structural, legal, and resource-related constraints. Despite new regulatory frameworks lauded for their ambition and comprehensive scope, such as the GDPR, persistent challenges undermine their effectiveness in practice. These challenges reflect a broader tension between expansive legal provisions and the realities of day-to-day oversight, ultimately raising questions about the viability of existing enforcement mechanisms.

One core limitation stems from jurisdictional boundaries. Supervisory authorities typically hold power within a national or regional context, while digital platforms and data flows transcend borders with ease. This mismatch between global corporate activities and territorially confined agencies generates an enforcement gap. Even where reciprocal agreements exist among different regulators, complex questions about conflict of laws and overlapping mandates can cause delayed investigations and uneven sanctions.[8] Such fragmentation prompts debate about whether a more centralized, global approach is both necessary and feasible within the evolving constitutional multiverse.

Another challenge relates to the uneven distribution of resources. Many national-level authorities lack the funding, technical know-how, and human capital essential for robust oversight in domains

8. The divergence in sanctions across different legal systems creates a patchwork of enforcement outcomes. Some jurisdictions may impose minimal penalties, effectively incentivizing companies to operate there, while stricter regimes become less attractive business hubs. This asymmetry underscores the importance of mutual recognition of judgments and closer international cooperation to prevent forum-shopping and guarantee consistent remedies for rights violations. See Scott, J., & Sturm, S. (2007). Courts as Catalysts: Rethinking the Judicial Role in New Governance. *Columbia Journal of European Law*, 13(3), 565–594.

such as big data analytics or artificial intelligence. Corporate entities, in contrast, often command teams of specialists and considerable financial reserves. This imbalance hampers the ability of supervisory bodies to keep pace with technological developments. The very notion of liquid law underscores the need for agile and adaptive responses; yet authorities burdened by rigid bureaucratic procedures and limited resources struggle to adjust swiftly to novel forms of digital wrongdoing.[9]

Complexity also arises where national authorities must grapple with multinational corporations that operate under varied legal orders. Conflict-of-law principles, transnational immunity claims, and multiple layers of corporate ownership frequently obstruct or postpone enforcement. Meanwhile, each supervisory authority may approach violations differently. Some prioritize conciliatory methods—seeking compliance through negotiation—whereas others prefer imposing stringent fines. This divergence in approach feeds perceptions of inconsistency and fuels corporate attempts to exploit regulatory arbitrage. Do inconsistent enforcement styles risk erode public confidence in the system at large?

Another complication is the delicate balance between encouraging innovation and preventing digital abuses. Supervisory bodies are often tasked not merely with punishing infractions but also with supporting competitiveness, fostering market dynamism, and respecting national economic interests. Pressures from industry lobbyists or political stakeholders can dilute enforcement actions, making agencies cautious in imposing harsh penalties. When regulators temper enforcement for fear of stifling technological progress, the outcome can be a watered-

9. Even well-intentioned agencies can be hamstrung by the sheer scale of digital operations, which require sophisticated technical expertise and continuous monitoring. If regulators are to keep pace with major tech platforms, they must cultivate in-house competencies in data science and algorithmic auditing. Yet financial and political constraints persist, often resulting in regulatory bodies that cannot fulfill their mission of protecting consumer and citizen rights against the persistent onslaught of corporate influence. See Binns, R. (2018). Algorithmic Accountability and Public Reason. Philosophy & Technology, 31(4), 543–556.

down regimen of compliance that fails to safeguard fundamental rights effectively.

There is also the structural issue of democratic accountability. National parliaments or transnational entities entrust supervisory bodies with considerable power to interpret, investigate, and sanction under broad legislative mandates. Questions arise about legitimacy: how can these agencies be held accountable if their decisions produce substantial consequences for individual rights and corporate fortunes? If oversight boards and appeal mechanisms are weak, agencies risk both under- and over-enforcement, either shielding powerful entities from scrutiny or imposing disproportionate penalties. Striking the right balance between autonomy and accountability remains a key concern in a system that purports to uphold the rule of law.

Technological sophistication further complicates enforcement. Issues such as algorithmic transparency, biometric identification, and real-time data processing demand specialized technical insight. Supervisory authorities must rely on expert's adept at scrutinizing cryptographic protocols, machine-learning models, and complex data ecosystems. However, the pool of such experts is limited, and many prefer more lucrative positions in private industry. This shortage of skilled personnel leaves authorities ill-equipped to parse sophisticated violations, weakening their deterrent effect. Are we prepared to invest adequately in training, recruitment, and retention of technical specialists within public bodies?

Finally, the interplay of philosophical frameworks also shapes enforcement. Iusnaturalist views emphasize the inherent moral value of privacy and autonomy, while positivist norms direct agencies to follow codified law with meticulous neutrality. Reconciling these approaches in emergent areas—where normative guidance remains unsettled—presents a demanding task. Ambiguity in the legal and moral status of new technologies can paralyze enforcement agencies uncertain of how to interpret regulations in line with deeper constitutional values.

In sum, supervisory authorities face a suite of limitations that hamper their ability to ensure consistent, effective enforcement across the digital landscape. Jurisdictional fragmentation, limited resources, political pressures, and technical complexity all conspire to undercut the promise of robust oversight. Although new proposals and reforms aim to strengthen these agencies—through cross-border collaboration, enhanced funding, or specialized training—the fundamental question persists: can these incremental measures keep pace with the breathtaking speed of digital transformation? The future of global governance may depend on how effectively supervisory bodies adapt to these challenges while safeguarding both innovation and the fundamental rights essential to any democratic society.

4.1.3. RIGHTS WITHOUT TEETH: THE DISCONNECTION BETWEEN LEGAL PROVISIONS AND PRACTICAL TOOLS

New legal provisions in data protection, AI governance, and digital consumer protection often appear promising. They recognize expansive rights related to privacy, algorithmic fairness, content moderation, and more. The central dilemma, however, lies in ensuring that these rights are not merely symbolic but truly actionable. A proliferation of ambitious regulations does not automatically guarantee practical, accessible tools for individuals seeking remedies. This widening gulf is a pivotal concern in a constitutional multiverse where multiple jurisdictions, legal philosophies, and enforcement bodies intersect.

Enacted laws identify rights holders, detail procedural rules, and specify sanctions for breaches. Yet individuals frequently struggle to navigate bureaucratic processes, or even ascertain the correct forum for lodging complaints. Drafting statutory language is, in many respects, the simplest step in producing meaningful legal outcomes. Providing user-friendly dispute-resolution platforms, timely support from public institutions, and legal assistance to vulnerable parties

requires complex coordination.[10] Systems designed with an eye toward theoretical comprehensiveness can inadvertently neglect the complexities of everyday enforcement and user engagement.

Many jurisdictions now introduce digital rights, including portability or erasure of personal data. While these are lauded as milestones, the act of exercising them can be cumbersome. Corporate data controllers may bury relevant procedures in lengthy terms of service, respond slowly to user requests, or impose technical hurdles that dissuade individuals from pursuing their claims. Where official mechanisms exist for appeal, processing times can stretch indefinitely, undercutting the principle of swift redress. Additionally, compensation for infringements is notoriously difficult to calculate, especially if the harm involves intangible elements such as emotional distress or reputational damage. How can regulators and courts accurately value claims rooted in lost privacy or biased algorithmic outcomes?

Another cause of disconnection emerges from the inherent complexity of digital infrastructures. Automated systems that profile users or filter online content often do so through proprietary algorithms operating on immense datasets. Even if legislation grants users a *right to explanation*, unraveling the chain of logic in a deep-learning model can be daunting. Without robust interpretability tools, individuals cannot effectively assert their rights or challenge algorithmic decisions that affect their opportunities in areas like employment, lending, or social benefits. The notion of liquid law suggests the need for agile solutions, yet legal texts still tend toward static formulations that fail to incorporate dynamic technical safeguards.

---

10. User-friendly digital platforms for lodging complaints or verifying compliance can substantially lower the barriers that prevent individuals from enforcing their rights. Yet building these tools requires a nuanced understanding of varying levels of digital literacy, as well as the linguistic and cultural diversity of users. A universal design approach, coupled with robust public support, ensures that even vulnerable or marginalized groups can navigate the complexities of digital legal procedures effectively and assert their entitlements. See Katsh, E., & Rabinovich-Einy, O. (2017). *Digital Justice: Technology and the Internet of Disputes.* Oxford University Press.

Complexity also stems from the interplay between private and public spheres. Corporate policies and internal arbitration systems can overshadow formal legal remedies, especially in cross-border contexts. Users may never escalate disputes beyond platform-based complaint channels, accepting partial or incomplete outcomes.[11] The principle of private self-regulation promises expediency but seldom ensures the impartiality or transparency inherent to public judicial processes. Tensions between consumer convenience and robust legal protection arise frequently, revealing deeper structural issues about balancing efficiency with the safeguards of due process. Is it feasible that a single corporation's terms of service can override carefully crafted statutes under the guise of user consent?

In many cases, civil society organizations and advocacy groups fill the gap by offering legal assistance or campaigning for test-case litigation.[12] These groups often highlight the misalignment between lofty rights declarations and the failure to deliver tangible remedies to affected communities. Class actions or strategic lawsuits can draw public attention to systemic violations and incentivize legislative amendments. However, relying on sporadic, resource-intensive legal battles is unsustainable for most individuals who need straightforward, speedy recourse. The real issue is structural:

---

11. The rise of corporate dispute resolution mechanisms has, to some extent, privatized the enforcement of critical rights. While such systems can expedite conflict resolution, they may also lack transparency, accountability, and formal due process safeguards. These shortcomings become more pronounced when digital platforms wield quasi-governmental authority over the speech, data, and personal interactions of millions, if not billions, of users worldwide. See Gillespie, T. (2018). *Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions That Shape Social Media*. Yale University Press.
12. Strategic litigation often serves as a catalyst for legal reform, highlighting systemic failures and galvanizing public opinion. This approach can pressure legislators to refine statutes or create more robust oversight bodies. However, reliance on sporadic, high-profile cases places the burden of systemic change on a handful of litigants and advocacy groups, rather than on sustained, institutionalized enforcement. See Timmer, A. (2015). Strategic Litigation and Equality in Europe. *European Equality Law Review*, 2, 9–18.

without a stable architecture of enforcement, rights remain theoretical constructs lacking pragmatic force.

Furthermore, the tension between iusnaturalism and positivism reverberates through this disconnect. Some digital rights are treated as inherent entitlements grounded in human dignity, while others are defined strictly within legislative texts. Yet in both scenarios, the question of enforceability remains.[13] A morally grounded right that lacks a clear enforcement channel is, in practice, only marginally more effective than a codified right with no robust remedies. Societies that pride themselves on upholding the rule of law cannot afford to leave enforcement as an afterthought, especially in an age when data-centric technologies wield significant power over individual life trajectories.

Another contributing factor is the global nature of technology corporations. Enforcement is hamstrung by the multiplicity of legal regimes in which these entities operate. Even when one jurisdiction imposes substantial penalties or injunctions, the overall behavior of transnational companies might shift marginally, if at all. The risk of *rights without teeth* grows, as the burden of seeking redress falls on individuals without the means to litigate complex international disputes. Multilevel constitutionalism aspires to resolve these conflicts, but it often stops short of offering uniform, integrated remedies that transcend national boundaries. Where does ultimate accountability lie if the most powerful digital actors can tactically maneuver around local enforcement?

The discussion of *rights without teeth* ultimately boils down to the credibility of legal systems. Laws that appear bold and protective on paper may devolve into hollow promises if enforcement mechanisms remain under-resourced or poorly structured. Vital questions persist:

13. Invoking natural law ideals in the context of digital rights underscores their moral significance but risks rendering them overly abstract unless they are codified into enforceable statutes. Bridging this divide demands a legal framework that both recognizes the universal dimension of dignity and autonomy and translates it into concrete obligations for public and private actors. See Finnis, J. (2011). *Natural Law and Natural Rights* (2nd ed.). Oxford University Press.

should legislators mandate standardized user interfaces for data requests, requiring immediate compliance? Will automated redress systems, powered by artificial intelligence, offer a fairer and more accessible path to justice in cross-border disputes? Can emergent technologies like distributed ledgers streamline enforcement,[14] or might they simply shift the burden onto individuals once again?

Closing the gap between legal texts and lived reality will require an all-encompassing effort. Legislators, regulators, the tech industry, and civil society must coordinate reforms that focus on tangible, user-centric solutions rather than purely theoretical rights. This endeavor implicates deeper questions about sovereignty, the role of private governance, and the moral underpinnings of digital regulation. In the end, a society that proclaims rights must also invest the resources, expertise, and institutional innovations needed to ensure that those rights retain their vitality. Otherwise, even the most celebrated digital rights will remain spectral ideals—recognized in principle yet elusive in practice.

4.2. THE INADEQUACY OF INDIVIDUALISTIC APPROACHES

The framework of data protection law in many jurisdictions has historically centered on safeguarding individual autonomy through notions such as informational self-determination and consent. Although these principles were revolutionary when digital technologies first disrupted traditional legal paradigms, they now reveal significant blind spots in an era characterized by increasingly

14. Blockchain-based dispute resolution promises a paradigm of decentralized consensus, where enforcement can be coded into self-executing smart contracts. Yet such tools remain in their infancy, with questions about scalability, privacy protections, and the off-chain reality of legal appeals. Relying solely on automated consensus might risk marginalizing those unfamiliar with blockchain technology or lacking the resources to participate. The path forward requires a careful synthesis of decentralized technical solutions with established principles of procedural fairness and judicial oversight. See De Filippi, P., & Wright, A. (2018). *Blockchain and the Law: The Rule of Code*. Harvard University Press.

ubiquitous data-processing practices and sophisticated artificial intelligence (AI) systems.[15] The gap between recognized rights and actual enforcement grows wider as technologies expand beyond personal devices and into collective and societal realms. Moreover, many contemporary data-driven processes, including algorithmic profiling or big data analytics, produce effects that are not always traceable to individual acts of consent or data disclosure.

The shortcomings of an exclusively individualistic approach become especially apparent when examining the systemic risks posed by the digital ecosystem. Even when individual consent is duly obtained, the aggregated use of millions of personal data points can create large-scale profiling systems or feed machine-learning models that predict and influence social behaviors. In this context, each user's data, in isolation, may seem inconsequential. Yet collectively, these data troves enable patterns of discrimination or manipulative targeting that elude the traditional remedies prescribed by existing data protection regimes. This phenomenon underscores the importance of shifting from a purely personal perspective to one that addresses the ripple effects of aggregated data usage on entire communities.

A further limitation of the individualistic lens lies in the presumption that users can adequately exercise their rights in complex digital environments. Consent, especially when expressed through lengthy click-through agreements, often amounts to little more than a formalistic gesture. While the average user may possess some awareness of data practices, they are rarely equipped with the technological literacy or negotiating power necessary to limit the scope of data processing. Large entities—be they multinational corporations or governmental bodies—can exploit these asymmetries

15. By focusing almost exclusively on individual consent and control, early data protection regimes overlooked the systemic ramifications of pervasive data aggregation. This narrow lens allowed large-scale profiling, algorithmic manipulation, and invasive analytics to slip under the radar, as each user was treated as an isolated data subject. When data flows transcend personal boundaries and interlace with powerful AI algorithms, the legal emphasis on individual autonomy proves insufficient to address collective vulnerabilities. See Zuboff, S. (2019). *The Age of Surveillance Capitalism... op. cit*.

to continue mass data collection with minimal accountability. As a result, individuals are left without meaningful avenues of redress, even if the legal frameworks seemingly guarantee them a right to control their personal information.

Moreover, focusing on individual rights may inadvertently sideline vital discussions about broader ethical and societal imperatives. Issues such as collective well-being, social justice, and the prevention of algorithmic discrimination extend beyond the realm of personal data ownership. Data may be anonymized or aggregated, but the models derived from them can still result in bias or disparate treatment at a community level. These emergent risks highlight how an overreliance on one-to-one legal tools—complaints, data access requests, or consent revocations—fails to confront the reality of networked harm. Instead of scrutinizing the aggregate consequences of digital technologies, legal systems that prioritize individualistic remedies rely on the assumption that if each person's rights are intact, the overall structure is likewise just. Unfortunately, this assumption often proves false.

The consequences of these oversights are readily visible in the domain of AI. Automated decision-making in fields ranging from health care to criminal justice can replicate and entrench societal inequalities while still formally adhering to data protection requirements. Although individuals may invoke their right to rectify incorrect data, they have far fewer instruments to challenge the collective implications of algorithmic decision-making. The same is true of content moderation policies: a user may have the right to appeal a takedown of their post, but the systemic effects of automated moderation on public discourse go largely unaddressed by individual-centered regulations.

In sum, the inadequacy of individualistic approaches becomes manifest when scaled to the complexity of modern data practices. A purely personal focus overlooks aggregated harms, structural discrimination, and the potential for systemic manipulation. Consequently, any serious effort to strengthen legal protections in the digital era must expand beyond the limits of informational self-determination. New frameworks must account for collective interests,

social impacts, and a renewed commitment to addressing networked harm—a point that resonates through recent policy discussions around AI regulation and beyond.

4.2.1. MICRO-HARMS, MACRO-IMPACT: HOW SMALL VIOLATIONS ACCUMULATE SYSTEMIC EFFECTS

One of the most revealing paradoxes in digital regulation lies in the interplay between seemingly minor data mishandling incidents and the large-scale societal impact they collectively generate. At the individual level, a user may regard a minor breach—perhaps a piece of metadata shared without consent or a single instance of algorithmic misclassification—as insignificant.[16] After all, the immediate repercussions for a single violation might appear negligible, and redress mechanisms may be deemed unnecessary or too cumbersome to pursue. Yet once such *S* are multiplied across millions of users, the aggregate result can be far from trivial.

The logic of big data depends on amassing staggering quantities of information from countless individuals and feeding them into complex analytics or AI models. These models, in turn, infer patterns, predict behaviors, and enable decision-making processes that can shape everything from targeted advertising to the allocation of public resources. In such an environment, the systematic repetition of minor violations—such as collecting slightly more data than necessary or improperly storing user preferences—becomes a potent force. Over time, these incremental infractions accumulate, effectively eroding privacy standards and enabling stealth forms of surveillance. This is

16. Even trivial inaccuracies or misuses of personal data, when replicated thousands or millions of times, create feedback loops that shape social experiences on a profound scale. These micro-level incidents accumulate into a broader ecosystem of surveillance and nudging, where individual autonomy is chipped away incrementally rather than through grand, easily identifiable intrusions. A purely individualistic legal response underestimates how such aggregated micro-violations can warp digital environments and foster harmful patterns of exclusion or manipulation. See Citron, D. K. (2022). *The Fight for Privacy: Protecting Dignity, Identity, and Love in the Digital Age*. W.W. Norton & Company.

particularly problematic when users remain unaware that their data is aggregated or shared with third parties, creating a normalized environment where intrusive practices become standard business models.

These small-scale breaches are further amplified by the growing sophistication of analytics. What was once regarded as innocuous data can be cross-referenced with other datasets to reveal intimate personal details, behavioral patterns, and even predispositions. An isolated instance of GPS location tracking may mean little, but thousands of such instances, combined with other data points such as browsing histories or purchasing behaviors, can create detailed profiles used to manipulate consumer choices or political opinions. The net effect is a series of subtle, pervasive intrusions that can shape social realities in ways that exceed any single user's capacity to monitor or contest.

In many jurisdictions, data protection laws continue to emphasize individual complaints and reactive remedies—users must notice a breach, file a claim, and wait for resolution. While essential, these measures do not adequately address the collective dimension of micro-harms. If each violation is processed independently, the broader pattern of misuse may remain invisible. Consequently, regulators may fail to appreciate the systemic effect of constant, small-scale infractions.[17] In practice, harmful corporate or governmental behaviors persist because no single complaint captures the extent of the wrongdoing.

Furthermore, the internal logic of AI systems often compounds the problem. Machine-learning models benefit from scaling: the more data they receive, the more refined (and potentially invasive) they become. Even partial or inaccurate data, when fed en masse

17. When oversight agencies address violations in isolation, they inadvertently obscure the scale at which organizations exploit data. Only by collecting and analyzing repeated instances of micro-breaches can a pattern emerge, revealing systemic practices that place entire populations at risk. Legal mechanisms built for singular disputes thus require complementary collective strategies to illuminate the true contours of digital harm. See Balkin, J. M. (2020). Fixing Social Media: How to Improve Online Discourse and Democracy. *Yale Law Journal Forum*, 109–119.

into a model, can yield predictive capabilities that approach uncanny accuracy.[18] Such systems can generate unforeseen consequences, including discriminatory outcomes in hiring, credit-scoring, or law enforcement. All these applications illustrate how micro-level data can rapidly escalate into macro-level social impact.

The phenomenon of micro-harms culminating in macro-impacts necessitates a reconsideration of regulatory strategies. Enforcement agencies should not only respond to individual complaints but also proactively scan for patterns of repeated minor offenses.[19] Class actions and collective proceedings can be powerful tools in this regard, although they too require robust legal infrastructures. Advocacy groups and watchdog organizations might collect aggregated data on recurring small violations to spotlight systemic malpractices. Legislative developments must also adapt, incorporating provisions that recognize how incremental harms can combine to produce large-scale social consequences. The focus should shift from purely compensatory remedies to preventative or corrective measures that address the root causes of these micro-harms before they snowball into crises.

---

18. Debates on predictive analytics underscore that correlation does not equal causation. In penal contexts, data-driven predictions can mislead if they conflate statistical likelihood with genuine criminal responsibility. This epistemological concern challenges the assumption that 'the end of theory' suffices to justify algorithmic sentencing decisions. See Miró Llinares, F., & Castro Toledo, F. J. (2022). ¿Correlación no implica causalidad? El valor de las predicciones algorítmicas en el sistema penal a propósito del debate epistemológico sobre 'el fin de la teoría'. In E. D. Crespo, M. de la Cuerda Martín, & F. García de la Torre García (Coords.), *Derecho penal y comportamiento humano. Avances desde la neurociencia y la inteligencia artificial* (pp. 507–530). [ISBN 978-84-1130-297-5].
19. Systemic oversight shifts the locus of enforcement from reactive dispute resolution to proactive governance. Rather than waiting for individuals to notice irregularities, agencies can systematically audit AI-driven platforms and data brokers. This surveillance of the powerful—mirroring the concept of 'watching the watchers'—does more than protect individual data subjects; it preserves the integrity of the digital ecosystem by identifying and remedying structural abuses. See Cohen, J. E. (2019). *Between Truth and Power: The Legal Constructions of Informational Capitalism*. Oxford University Press.

Ultimately, understanding the interplay between micro-harms and macro-impact calls for a broader perspective on data governance. Instead of concentrating solely on the direct damage to any given individual, regulators, policymakers, and citizens alike must assess how an ecosystem of minor infractions can erode trust, distort markets, or cement inequality over time. This shift in viewpoint underscores the urgent need to reevaluate traditional enforcement models, ensuring that they are equipped to manage not just major breaches but also the thousands of small cracks that together destabilize the foundation of digital rights.

4.2.2. FROM INFORMATIONAL SELF-DETERMINATION TO COLLECTIVE RIGHTS

The principle of informational self-determination, which places individuals in control of their personal data, has been a cornerstone of modern data protection law. Pioneered in various national contexts and later consolidated in frameworks like the GDPR, it assumes that data subjects can negotiate the scope of data usage through a structured system of consent, access rights, and deletion requests. Over time, however, the practical limitations of this model have become increasingly apparent. Consent forms are often too lengthy for meaningful engagement, data flows bypass jurisdictional boundaries with ease, and, most importantly, harm frequently arises from aggregated data processing rather than the isolated misuse of a single individual's information.

Emerging scholarship thus advocates a transition toward recognizing data protection as a collective matter rather than a purely individual concern.[20] The impetus for this shift is rooted in

20. The evolution of data-centric technologies demands a paradigm shift from atomistic notions of personal choice to community-driven understandings of how information shapes communal life. This transition challenges long-standing legal assumptions predicated on the individual as the sole unit of analysis. Instead, we must address the reality that harms, benefits, and responsibilities are distributed across networks, often in complex ways that transcend personal data ownership. Collective rights recognize this

the realization that digital technologies operate on network effects: the value and consequences of data collection intensify exponentially as more participants join a platform or service. This dynamic renders personal autonomy alone inadequate to safeguard broader social interests. Consider the proliferation of AI-based risk scoring in domains like insurance or employment. Even if each participant consents to data collection, the aggregation of their data can lead to discriminatory patterns or create a social environment where algorithmic outcomes become determinative, effectively diminishing collective agency.[21]

Collective rights approaches draw inspiration from environmental law and other fields where externalities affect society at large. Just as pollution in one geographical area can harm communities many miles away, data extracted from one set of individuals can be employed to infer traits or preferences about another group entirely. Identifiability thresholds are increasingly blurred; even anonymized data can be re-identified when combined with auxiliary datasets. By conceptualizing data protection as a collective right, policymakers and regulators can more effectively capture the reality that shared risks transcend individual boundaries.

In tandem, a collective rights paradigm facilitates stronger mechanisms to address systemic issues. Unlike the individualistic model—which largely depends on personal litigation or complaints—collective action frameworks empower communities, consumer organizations, and civil society groups to represent broader interests. This is especially critical for vulnerable populations who

---

interconnectedness and provide a more fitting vantage point for regulating digital ecosystems. See Hildebrandt, M. (2020). *Law for Computer Scientists and Other Folk*. Oxford University Press.

21. Once individual consent is conflated with societal endorsement, corporations can claim legitimacy for practices that, in aggregate, erode public values. Recognizing collective rights corrects this asymmetry by embedding the principle that entire communities can be affected by data analytics and AI. Where individuals alone cannot sense the broader implications, a communal perspective ensures that impacts on minority groups, vulnerable populations, and collective trust are considered. See Rouvroy, A. (2020). Algorithmic Governmentality and the Death of Politics. Politics, *Green European Journal*.

might lack the resources or awareness to seek redress on their own. If data protection is understood as a public good, enforcement can shift from reactive, atomized efforts to proactive and societal-level interventions. That might include mandated audits of high-risk AI systems, stricter oversight of cross-border data flows, and even public interest obligations placed on major data controllers.

Critics of collective rights-based models caution that such an approach could dilute personal autonomy. They argue that by focusing on the collective, individual agency might be overshadowed by centralized, top-down enforcement strategies. However, this dichotomy can be seen as a false binary: a well-crafted collective rights framework could integrate personal autonomy with broader protective measures. For instance, local or regional bodies—empowered with collective enforcement authority—could adopt targeted actions that shield individual interests while highlighting structural patterns of harm. This tension invites more nuanced regulatory instruments that balance personal freedoms and collective well-being.

Enshrining collective rights would also push jurisprudence toward a richer understanding of the social fabric in which data is embedded. We increasingly recognize that data is not an isolated commodity, but rather a reflection of relationships, behaviors, and cultural practices. A purely individualistic model misrepresents the interconnectivity of digital ecosystems, risking under-enforcement of rights and systemic vulnerabilities. By contrast, collective rights explicitly acknowledge the networked dimensions of data, incentivizing governance structures better suited to address systemic risks like mass surveillance, algorithmic bias, or discriminatory profiling.

In conclusion, transitioning from informational self-determination to collective rights is not about discarding the individual. Rather, it is about recognizing the interdependence of digital life and the need for holistic frameworks that protect communities as much as the sum of their members. This paradigm shift is poised to play a pivotal role in contemporary debates on AI regulation, data ethics, and the complex interplay of technology with constitutional values.

4.2.3. MOVING BEYOND THE INDIVIDUAL: ADDRESSING SYSTEMIC RISKS AND SOCIAL IMPLICATIONS

While longstanding data protection mechanisms emphasize personal consent and control, current technological realities demonstrate how systemic risks often escape this narrow lens. Digital platforms, algorithmic systems, and data-driven governance structures can produce sweeping societal effects not easily redressed through individual claims or complaints. From automated decision-making in criminal justice to predictive analytics in health care, the societal implications transcend personal data ownership. Consequently, the law must evolve to confront collective vulnerabilities that remain obscured when the focus remains squarely on individual entitlements.

Systemic risks typically manifest in patterns of inequality or discrimination. Even if each individual consents to the use of their data, the resultant data aggregation and subsequent analytics may generate biased models. For instance, a recruitment platform could penalize candidates from certain demographics, or an insurance algorithm might offer predatory rates to neighborhoods historically associated with socioeconomic disadvantage.[22] These harms do not merely concern individual rights violations; they also entrench structural inequities and perpetuate social segregation. Although affected users might file individual complaints, a purely personalistic framework often struggles to unravel the wider algorithmic processes fueling such discrimination.

A more systemic legal approach would begin by recognizing the interplay between multiple layers of governance—local, national, and transnational—reflecting the idea of multilevel constitutionalism in

22. AI systems draw upon vast datasets that often replicate historic patterns of social stratification. This cyclical feedback loop amplifies inequality, placing marginalized groups at disproportionate risk of algorithmic bias. Merely granting individuals the right to contest their results does little to confront the societal dimensions of discriminatory profiling, highlighting the urgent need for systemic interventions. See Rouvroy, A. (2020). Algorithmic Governmentality and the Death of Politics, *Green European Journal*.

a hyperconnected age. Regulatory bodies could coordinate to share expertise and best practices for identifying patterns of collective harm. For instance, cross-border data transfer agreements might include provisions mandating regular auditing of AI systems for discriminatory outputs. Furthermore, enforcement agencies could be empowered to initiate broad investigations into systemic abuses rather than waiting for fragmented individual cases to emerge. By actively seeking structural indicators—such as disproportionate error rates or bias in algorithmic outputs—regulators would address the roots of harm rather than tackling symptoms on a case-by-case basis.

This shift also implies changes in the practical instruments of enforcement. Instead of focusing on compensating individual victims, remedies could target structural reforms. Regulatory fines and penalties could be paired with corrective measures such as mandatory retraining of algorithms, changes in data-collection methodologies, and the deployment of fairness metrics. This approach mirrors the trajectory of environmental and antitrust law, where enforcement has long embraced the necessity of altering institutions or business models to mitigate widespread harm. Drawing on these analogies, data protection authorities might require AI developers to document and publicly report on the social impact of their systems—an obligation that extends beyond honoring the consent of data subjects.

The challenge in advancing systemic perspectives is ensuring that individual rights are not eclipsed. Indeed, the shift from personal autonomy to collective accountability can raise concerns that the distinctive interests of particular users or minority communities could be overlooked in the name of the greater good. Yet a well-designed framework for addressing systemic risks can also empower subgroups to claim recognition of their specific vulnerabilities. For example, new legal provisions might allow communities adversely affected by a predictive policing algorithm to demand transparency and structural remedies, strengthening the collective dimension of enforcement while safeguarding the rights of each member within that community.

Moreover, addressing systemic issues compels more robust cooperation between legal, ethical, and technological disciplines. Lawyers versed in constitutional norms must collaborate with computer scientists and sociologists to detect and mitigate algorithmic pathologies that produce large-scale harm. Interdisciplinary committees, specialized oversight boards, or even novel forms of data trusts can supplement existing legal structures. This synergy mirrors emerging debates in AI ethics, emphasizing the importance of governance strategies that incorporate both moral imperatives and deep technical knowledge.

Ultimately, transitioning beyond an exclusive focus on the individual requires acknowledging that data-driven technologies create shared vulnerabilities. Systemic risks flourish when oversight is fragmented, and remedial frameworks rely on reactive, individualized claims. By contrast, forward-looking legal architectures would prioritize anticipatory mechanisms and collective enforcement channels, mitigating the social implications that lurk beneath the surface of technologically mediated processes. In doing so, they provide a more enduring safeguard for fundamental freedoms, ensuring that technological innovation proceeds without sacrificing the foundations of a fair and inclusive society.

4.3. TOWARDS A HOLISTIC REGULATORY ECOSYSTEM

In the face of complex and rapidly evolving digital technologies, piecemeal legal solutions or isolated enforcement strategies often prove insufficient. As highlighted in the preceding sections, rights-based frameworks frequently fall short when enforcement relies exclusively on individual claims, leaving systemic issues unaddressed. The emergent consensus in contemporary scholarship advocates a more holistic regulatory ecosystem, one that operates at multiple levels—macro and micro, global and local—to ensure that digital rights are both recognized in principle and effectively upheld in practice.

At its core, a holistic regulatory approach recognizes that personal data protection is just one facet of a much broader puzzle.

AI governance, ethical standards for algorithmic decision-making, antitrust considerations in data markets, and collective societal interests must also be integrated into the same conceptual framework.[23] Instead of treating these areas as distinct legal silos, a holistic ecosystem envisions cross-cutting principles that unite them. These principles may include transparency, accountability, proportionality, and bias mitigation, all of which are essential for addressing both individual grievances and structural concerns. Beyond mere abstract ideals, they must be operationalized through concrete mechanisms: compliance audits, public registries of high-risk AI applications, and mandated impact assessments, to name a few.

Institutional design is another key dimension of a holistic regulatory ecosystem. The notion of multilevel constitutionalism underscores how governance in a globalized digital environment requires interplay among national authorities, regional oversight bodies, and international institutions. This interplay is not merely about dividing responsibilities but also about sharing knowledge and promoting consistent standards. For example, a national data protection authority might leverage specialized AI expertise from a regional AI ethics board to evaluate a complex case. Similarly, transnational agreements could facilitate collective enforcement actions, such as joint investigations into cross-border data breaches or high-impact discriminatory algorithms.

An equally critical component of a holistic ecosystem is dynamic adaptability. Given the velocity of technological change, regulations must be built to evolve. Time-limited clauses, periodic review mechanisms, and flexible guidelines that can be updated in response to new risks or technological breakthroughs are some of

23. Regulatory silos often impede the comprehensive governance of digital ecosystems. By artificially separating data protection, AI oversight, and competition law, policymakers inadvertently create blind spots for harmful innovations to flourish. A more holistic approach recognizes that consumer rights, public safety, innovation incentives, and democratic values are deeply interwoven and cannot be effectively addressed through narrowly tailored legislation alone. See Floridi, L. (2014). *The Fourth Revolution: How the Infosphere is Reshaping Human Reality*. Oxford University Press.

the methods proposed to ensure regulatory resilience. In contrast to static regulations, which may become obsolete as soon as they are enacted, adaptive frameworks remain relevant even as AI applications grow more sophisticated and data-driven services proliferate.

Public engagement constitutes a vital, if often overlooked, aspect of holistic regulation. Digital rights and AI governance are no longer niche topics reserved for specialized legal or technical circles; they shape everyday experiences, from social media interactions to automated job-screening tools. A truly robust regulatory ecosystem must integrate mechanisms for public scrutiny, including accessible complaint procedures, avenues for collective action, and civic forums for deliberating upon emerging ethical dilemmas. Such participation not only democratizes lawmaking but also fosters a sense of shared responsibility for safeguarding the digital commons.

This form of holistic governance also dovetails with the notion that data processing and AI do not simply affect discrete individuals but can reconfigure entire social and economic structures. Without a concerted effort to address the big-picture implications, the law risks perpetuating a cycle in which small-scale remedies for personal rights violations fail to tackle underlying systemic weaknesses. By contrast, a holistic approach foregrounds the significance of structural safeguards—like algorithmic accountability requirements—alongside the usual focus on personal consent and control.

All in all, the impetus to develop a holistic regulatory ecosystem arises from a recognition that digital technologies have become interwoven with the fabric of modern society. Narrow, individualistic remedies cannot keep pace with the depth and breadth of challenges that advanced data processing and AI present. Instead, policymakers, legal practitioners, and industry leaders must collaboratively weave together multiple levels of governance, bridging disciplinary divides and adopting forward-looking strategies. This multi-pronged approach not only enhances the protection of individual rights but also bolsters the collective interest, ensuring that innovation in AI and

data-intensive services aligns with fundamental principles of justice, equality, and democratic accountability.

4.3.1. BALANCING MACRO AND MICRO GOVERNANCE: BRIDGING REGULATORY GAPS

Efficient governance in the digital domain demands a dual perspective: one that addresses broad systemic challenges, and another that pays attention to everyday user experiences and micro-level infractions. Macro governance relates to the overarching frameworks set by legislatures, transnational agreements, and high-level judicial rulings—policies that define normative standards and shape industry-wide compliance. Micro governance, by contrast, occurs at the granular level of individual user experiences, small-scale platform interactions, and localized data practices. Bridging these two spheres is essential to prevent the recurrent problem of *rights without teeth*, wherein lofty normative proclamations fail to translate into real-world protections.[24]

Macro governance sets the overarching goals. It includes global instruments like the General Data Protection Regulation (GDPR) or emerging regulations such as the AI Act, which collectively shape best practices and encourage harmonization. Their strengths lie in their potential to influence corporate behavior worldwide, establishing a baseline of accountability across borders. However, macro governance alone cannot adequately account for the countless everyday moments in which personal data is exchanged, algorithmic decisions are made, or content is moderated. Indeed, the practical efficacy of such grand frameworks depends on consistent interpretation and application at the local level.

---

24. Macro-level frameworks, such as global data protection treaties, set normative horizons that unify otherwise disparate local regimes. Yet without robust micro-level mechanisms—including local oversight bodies, user-friendly complaint portals, and community monitoring—these high-level principles remain mere declarations. Effective governance therefore hinges on a dynamic interplay, where macro ideals guide local enforcement, and micro experiences inform the evolution of overarching norms. See Benkler, Y. (2016). Degrees of Freedom, Dimensions of Power. *Daedalus*, 145(1), 18–32.

Micro governance, in turn, encompasses the enforcement efforts of national data protection authorities, local courts, and individual dispute-resolution mechanisms. It also involves corporate-level codes of conduct or internal oversight boards that adjudicate user complaints. These smaller-scale tools provide the immediate recourse individuals need to rectify data breaches, discriminatory outcomes, or privacy intrusions. Yet when they are disconnected from a coherent macro framework, micro enforcement can devolve into a patchwork of inconsistent practices, generating forum-shopping and uncertainty. Without guidance from higher-level legislation or cross-border collaboration, local enforcement bodies may lack the authority or expertise to address more sophisticated forms of data misuse.

Harmonizing these two levels requires institutional structures capable of translating broad regulatory objectives into concrete operational guidelines. One promising model is a tiered enforcement system in which national and supranational regulators coordinate their oversight activities. For instance, a transnational data protection board could provide technical standards and best practices while local regulators tackle day-to-day enforcement based on their proximity and contextual understanding. In parallel, judicial avenues—both national and supranational—could handle appeals and interpret unclear legal provisions, thereby fostering greater consistency across diverse jurisdictions.

Interoperability among different legal regimes is another pivotal element in bridging regulatory gaps. Many macro frameworks, such as the GDPR, incorporate extraterritorial provisions that demand compliance from entities outside their formal jurisdiction. This approach incentivizes multinational corporations to adopt uniform practices, but it also generates friction if local laws conflict or impose contradictory obligations. To alleviate such tension, mechanisms for mutual legal assistance, reciprocal recognition of enforcement actions, or shared standards for AI transparency can help ensure that a macro-level mandate does not stall at jurisdictional borders.[25]

25. Harmonizing enforcement across jurisdictions requires more than diplomatic goodwill; it demands a harmonized architecture for compliance. Without shared definitions of digital harm and standardized investigative protocols,

Finally, bridging macro and micro governance is facilitated by technology itself. Advanced auditing tools and real-time analytics can support regulators at every level, providing empirical data on platform operations and algorithmic outcomes. Centralized dashboards might track micro-level complaints from users, flag patterns of systemic issues, and feed that data back into macro-level policymaking. Through such feedback loops, the distance between macro ideals and micro realities can gradually narrow, resulting in a more responsive and cohesive regulatory environment.

In essence, balancing macro and micro governance is a matter of unity in diversity: large-scale frameworks establish global norms and broad accountability, while localized enforcement ensures tailored, effective redress. Both layers must be in meaningful dialogue, aided by technological innovation, legal interoperability, and institutional collaboration. If executed well, this synthesis promises to reconcile the tension between universal rights and local enforcement, allowing digital regulation to evolve beyond rhetorical aspirations into a tangible safeguard for users worldwide.

4.3.2. TRANSPARENCY, ACCOUNTABILITY, AND BIAS MITIGATION: KEY PRINCIPLES FOR AI REGULATION

As AI technologies become more pervasive, formulating regulatory standards that ensure fairness, safety, and respect for fundamental rights has emerged as a central challenge for policymakers. In particular, concerns about algorithmic opacity, discriminatory outcomes, and the unclear assignment of responsibility underscore the need for robust guiding principles. Among these, transparency, accountability, and bias mitigation stand out as indispensable pillars for any comprehensive AI governance framework.

---

jurisdictional fragmentation continues to undermine the effectiveness of transnational regulatory systems. Consistency in enforcement—coordinated at both macro and micro levels—is indispensable to ensuring universal safeguards for data-driven technologies. See Kuner, C., Svantesson, D. J. B., & Cate, F. H. (Eds.). (2019). *Transnational Data Governance*. Oxford University Press.

Transparency entails that stakeholders—users, auditors, regulators—can meaningfully understand how an AI system operates and reaches its decisions. In practice, this principle faces formidable obstacles. Machine-learning models, especially those employing neural networks, often exhibit *black box* characteristics, obscuring their internal processes even to their developers.[26] Moreover, proprietary interests can lead companies to conceal details about their algorithms, citing trade secrets. Despite these hurdles, a minimum level of transparency remains essential to detect errors, assess fairness, and empower users to contest adverse outcomes. Regulatory new instruments like the AI Act have begun exploring how to mandate disclosures without completely undermining innovation, for instance by requiring *explainability* standards for high-risk AI applications.

Accountability addresses the question: who is held responsible when an AI system causes harm, whether inadvertently or through poor design choices? Without a clear chain of accountability, individuals or organizations affected by erroneous or biased AI decisions are left with limited recourse. Although developers, deployers, and data providers each bear some responsibility, the law often struggles to distribute liability among these actors, especially when the system continuously learns and adapts after deployment.[27] One approach is to define roles explicitly in legislation, assigning accountability based on

26. When proprietary claims overshadow public accountability, AI-driven services effectively operate as opaque authorities that shape critical social outcomes. Demanding transparency is not an act of antagonism toward innovation but rather a condition for evaluating whether algorithmic processes respect legal constraints and ethical norms. Only by illuminating these hidden operations can societies formulate nuanced remedies for algorithmic harm. See Mittelstadt, B. (2019). Principles Alone Cannot Guarantee Ethical AI. *Nature Machine Intelligence*, 1(11), 501–507.

27. Assigning legal responsibility in adaptive AI environments hinges on an intricate knowledge of how models evolve over time. Legal experts equipped solely with static legislative codes cannot fully account for iterative software cycles, nor can technologists alone address the normative implications of code-based decisions. Interdisciplinary forums bridge these gaps, fostering iterative dialogue where ethical principles inform software design, and software constraints, in turn, refine legislative provisions. In Pasquale, F. (2020). *New Laws of Robotics: Defending Human Expertise in the Age of AI*. Belknap Press.

the level of control or influence each party wields over the AI system.[28] Complementary measures might include strict liability regimes for specific high-risk contexts or mandated insurance for AI developers, ensuring that victims are not left without remedy.

Bias mitigation stands as a corollary to both transparency and accountability. AI tools inevitably reflect the data on which they are trained, and such data may encode existing societal biases or stereotypes. Left unchecked, these biases can lead to harmful consequences in employment, lending, and law enforcement, among other fields. Addressing this issue requires a proactive stance: developers must rigorously test models for discriminatory patterns, and regulators must define clear metrics for acceptable variance in outcomes across different demographic groups. Bias audits, carried out by third-party experts, could become standard practice, and the results made publicly available. By highlighting problematic trends early in the design phase, bias mitigation strategies can prevent or at least diminish the exacerbation of structural inequities.

Taken together, these three principles—transparency, accountability, and bias mitigation—offer a blueprint for AI regulation that transcends the limitations of purely individualistic models of enforcement. They acknowledge that addressing the social dimensions of AI requires a systemic viewpoint, one that identifies the collective repercussions of algorithms operating at scale. Furthermore, embedding these principles into legal frameworks can catalyze a culture of responsible innovation, encouraging companies to invest in ethical design, robust testing, and continual oversight. Conversely, ignoring them risks entrenching a cycle of opaque technologies that perpetuate unjust outcomes while escaping meaningful scrutiny.

---

28. Delegating legal responsibility for AI outcomes must reflect each actor's role in the system's lifecycle—from data collection and preprocessing to model deployment and continuous updates. A robust accountability framework identifies decision points where stakeholders exert influence, allocating liability commensurate with that influence. This prevents situations in which harmful outcomes fall into a grey zone of diffuse blame, sparing all parties from meaningful consequences. See Crawford, K. (2021). *Atlas of AI: Power, Politics, and the Planetary Costs of Artificial Intelligence*. Yale University Press.

Policymakers face the daunting task of translating these principles into precise legal provisions, including standards for algorithmic audits, mandatory transparency disclosures, and well-defined liability regimes. Moreover, the best-designed regulations will falter if agencies lack the capacity to enforce them. Adequate funding, specialized expertise, and cross-border cooperation are prerequisites for any regulatory scheme to succeed in a hyperconnected environment where AI systems know no national boundaries. Nonetheless, integrating transparency, accountability, and bias mitigation into the legislative DNA of AI governance remains the clearest path toward ensuring that these technologies align with the public interest and preserve core constitutional values in the digital era.

4.3.3. INTERDISCIPLINARY COLLABORATION: LAW, ETHICS, AND TECHNOLOGY

In an age defined by rapidly evolving AI and data-driven processes, legal practitioners and policymakers can no longer operate in disciplinary isolation. The challenges posed by emerging technologies—algorithmic bias, data-driven discrimination, privacy invasions, and potential threats to democratic institutions—demand an integrated approach that draws equally on law, ethics, and technological expertise. As a result, interdisciplinary collaboration emerges as a cornerstone of any effective governance model, enabling regulators and stakeholders to address both the normative aspirations of constitutional values and the technical realities of digital systems.

From a legal perspective, statutes and regulations may appear as stable anchors, establishing rights and obligations. Yet the fluid nature of digital innovation highlights the limitations of static legal rules. Machine-learning models can evolve quickly, bypassing the original assumptions that lawmakers relied upon in crafting regulations. By actively engaging with computer scientists and engineers, legal professionals gain insight into the intricacies of algorithmic systems, including their data requirements, training processes, and operational risks. Such expertise is vital for designing flexible statutory language

and enforcement procedures. Without it, regulations are prone to either overreach—by stifling legitimate innovation—or fall short—by allowing harmful practices to persist unchallenged.

Ethical considerations offer another critical layer. While law can impose sanctions and mandate certain disclosure requirements, it seldom provides a thorough normative framework for grappling with the implications of data-driven decisions on human autonomy, social equity, or moral responsibility. Ethicists, philosophers, and social scientists contribute a broader vision of how technology should serve societal well-being rather than undermine it. They are particularly equipped to highlight blind spots in existing regulatory models, such as how big data analytics might amplify inequality or how predictive policing can perpetuate systemic biases. By weaving ethical insights into policymaking, lawmakers can tackle problems at their roots, moving beyond corrective measures after violations occur.

Technologists, for their part, hold the knowledge needed to operationalize the lofty ideals embedded in legal and ethical guidelines. Translating broad regulatory principles—such as bias mitigation, transparency, and accountability—into software development practices or AI deployment protocols is no trivial feat. It often requires new methods for data labeling, the incorporation of fairness metrics, and the creation of explainable AI algorithms. Technologists can propose feasible solutions, such as differential privacy or automated redress mechanisms, and adapt them to align with the legal constraints on data processing. In doing so, they also accelerate the feedback loop between policy goals and their practical realization.

Interdisciplinary bodies, such as ethics committees, AI oversight boards, or specialized judicial panels, exemplify how these collaborations can materialize. While each participant brings a unique vantage point, it is the synthesis of these diverse perspectives that fosters well-rounded solutions. For instance, an ethics committee embedded within a regulatory agency may review proposed AI deployments not just for strict legal compliance but also for broader societal impact. Alternatively, pilot programs can involve collaborative

teams that test new regulatory frameworks on actual data systems. This iterative, real-world approach enables policymakers to refine guidelines based on empirical evidence, bridging the gap between theoretical norms and concrete enforcement.

Nevertheless, interdisciplinary collaboration is not without obstacles. Differing professional vocabularies, institutional cultures, and underlying motivations can complicate collective efforts. Lawyers may prioritize precision and liability concerns, ethicists may stress moral imperatives, and technologists may focus on computational feasibility. Yet these tensions, properly managed, can lead to enriched outcomes. By learning to navigate each other's frameworks, these professionals can co-create norms and technical standards that resonate across disciplinary boundaries, offering more durable and ethically anchored regulatory mechanisms.

The trajectory of digital governance is thus increasingly shaped by the capacity of disparate fields to converge. If data protection, AI regulation, and constitutional law are to remain viable in the face of relentless technological progress, they must be informed by interdisciplinary dialogue. This synergy not only enhances the quality and efficacy of regulatory responses but also legitimizes them, showing the public that the law is neither blind to technological evolutions nor impervious to ethical concerns. Interdisciplinary collaboration ultimately stands as the glue that holds together a holistic ecosystem of digital governance.

4.3.4. LESSONS FROM SPAIN: THE ORGANIC LAW 3/2018 EXPERIENCE

Spain's Organic Law 3/2018, on the Protection of Personal Data and the Guarantee of Digital Rights, represents a noteworthy attempt to adapt national legislation to the European Union's GDPR while also addressing specific domestic concerns. As one of the more comprehensive data protection frameworks in the EU, this legislation sought to strike a balance between robust individual rights and the collective dimensions of digital governance. Examining the Spanish

experience yields several insights into how a national legal system can grapple with the challenges of enforcing advanced data protection norms within a larger multilevel constitutional framework.

First, Organic Law 3/2018 highlights the difficulties of implementing GDPR-inspired principles when local contexts and institutional arrangements diverge from EU-wide assumptions. Spain's Data Protection Agency was entrusted with enforcement, but it soon became evident that regional authorities and sector-specific regulatory bodies also needed clear guidelines to coordinate efforts. The law's recognition of specialized rights, such as the right to digital disconnection in the workplace, underscored the importance of tailoring general European standards to the nuances of national labor policies. However, ensuring the law's uniform application across Spain's autonomous communities remains an ongoing endeavor, reflecting the broader European challenge of reconciling local governance with supranational regulation.

Second, the Spanish legislation took a step toward acknowledging collective interests by including digital rights that go beyond the scope of traditional data protection. Measures such as the right to net neutrality or guarantees against digital harassment demonstrate an awareness that systemic risks often manifest in ways not strictly covered by the GDPR. This expansion resonates with the argument that individual self-determination is insufficient in an era of pervasive data flows and AI-driven decision-making. Yet questions persist about how to enforce these collective-oriented provisions. The law, while ambitious in its scope, does not always specify the procedural tools or institutional capabilities required to ensure meaningful oversight.

Third, Spain's example illustrates the importance of an interdisciplinary approach to data protection enforcement. Collaborations with academia, civil society organizations, and technology firms have proven instrumental in clarifying interpretative ambiguities and piloting practical solutions. For instance, research institutions have engaged with the Data Protection Agency to explore privacy-enhancing technologies, while consumer advocacy groups have launched awareness campaigns

to inform citizens about their data rights. Although these initiatives foster public participation, they also reveal gaps in the law's ability to mandate robust technical standards or align enforcement resources across administrative layers. This underscores a recurring theme: well-intentioned legal frameworks risk underperformance unless they are accompanied by systematic collaboration among lawyers, technologists, and social advocates.

Fourth, the tension between promoting innovation and safeguarding rights surfaces prominently in Spain's push to develop AI applications in public services. Municipal governments have experimented with automated traffic management or predictive policing systems, sparking debates about algorithmic transparency and accountability. Organic Law 3/2018 laid down essential principles regarding data processing, but it did not fully anticipate the complexities inherent in advanced AI deployments. This shortcoming has prompted further legislative proposals in the Spanish Parliament to address emergent concerns such as real-time biometric surveillance and automated administrative decisions—including the paradigmatic and recent proposal of *Anteproyecto de ley para un uso ético, inclusivo y beneficioso de la Inteligencia Artificial*—. The incremental nature of these reforms reflects the broader challenge of regulatory agility in fast-moving technological landscapes.

Finally, Spain's experience accentuates the value of iterative learning in shaping data protection norms. While Organic Law 3/2018 endeavored to align domestic statutes with the GDPR, subsequent legal revisions and judicial interpretations have exposed areas needing refinement. This adaptive process underscores the vital role of continuous legislative monitoring and case-by-case examination in developing a holistic regulatory ecosystem. Rather than viewing the Spanish model as static or definitive, it should be seen as part of a broader experiment in evolving, multilayered governance—one that other nations might emulate or improve upon.

All told, Spain's Organic Law 3/2018 demonstrates both the promise and limitations of a robust legal framework tackling modern

data protection issues. Its successes lie in its expansive approach and attention to national specificities, while its challenges remind us that genuinely holistic governance demands unceasing adaptation, cross-sector collaboration, and an ever-alert awareness of systemic implications.[29]

29. Spain's endeavor to transpose EU regulations into a distinctly national legal architecture underscores the complexity of data governance in federated or decentralized systems. While the Organic Law 3/2018 broadened protections by embracing digital rights beyond the GDPR, its implementation has often depended on the discretionary powers of regional institutions. This multilayered enforcement landscape reveals tensions between legal uniformity and local autonomy, highlighting the fact that achieving coherent data protection across diverse cultural and administrative contexts requires persistent negotiation and adaptive legislative refinement. See Rallo Lombarte, A. (2019). El nuevo derecho de protección de datos. *Revista Española de Derecho Constitucional,* 116, 45–74.

Chapter 5

Über-Rights: From Privacy to Platforms

Over the past two decades, data protection and privacy have been central concepts in digital regulation. Initially, they emerged as rights anchored in liberal legal theories, focusing on individual autonomy and consent. Now, as digital platforms transcend national boundaries and increasingly govern the flow of information, a transformation in legal discourse is taking place: from privacy to platform governance. This shift goes hand-in-hand with a reconceptualization of privacy as one element within a broader constellation of *über-rights*, which incorporate not just individual safeguards but also structural and collective protections in the platform-driven ecosystem.

The concept of über-rights captures a growing understanding that certain digital entitlements—ranging from data portability to algorithmic accountability—are evolving into higher-order rights. These are not confined to the personal sphere; they entail systemic obligations for platforms that shape user engagement and algorithmic curation on a planetary scale. Developments like the EU's Digital Services Act (DSA) and the AI Act exemplify a trend in hyper-regulation, yet they also raise questions about balancing accountability with innovation. Such regulations aim to address the complexities of platform-driven social and economic interactions, making it evident that data protection alone can no longer encapsulate the full spectrum of digital rights.

At the same time, some observers detect a *common law* shift in digital regulation, in which courts, administrative bodies, and multi-

stakeholder forums iteratively build out normative frameworks. The aim is not merely to protect individuals, but to manage digital infrastructures in ways that uphold democracy, fairness, and fundamental freedoms. In so doing, these nascent über-rights blur the lines between private and public law, national sovereignty, and global governance.

This chapter explores the evolution from privacy to platform-based rights, examining data protection as a global digital entitlement, how new regulations like the DSA and AI Act shape a quasi-common-law environment, and whether we are witnessing hyper-regulation or truly forging these über-rights. Throughout, it asks: Is the proliferation of platform rules and oversight bodies truly delivering robust accountability, or are we constructing a labyrinth of regulations that stifles innovation without effectively protecting users?

5.1. DATA PROTECTION AS A GLOBAL DIGITAL RIGHT

Data protection has traditionally been anchored in national legal frameworks, each reflecting domestic concerns and historical experiences. Today, it increasingly functions as a global digital right, partly due to the extraterritorial reach of instruments like the EU'sGDPR and the intensifying cross-border flow of personal data. Yet the globalization of data protection norms has unfolded in a fragmented manner, blending legal positivism with emergent moral claims about human dignity, autonomy, and democratic participation.

One catalyst for this global ascendancy is the perceived legitimacy of data protection as a means of curbing corporate and state overreach.[1]

1. By focusing almost exclusively on individual consent and control, early data protection regimes overlooked the systemic ramifications of pervasive data aggregation. This narrow lens allowed large-scale profiling, algorithmic manipulation, and invasive analytics to slip under the radar, as each user was treated as an isolated data subject. When data flows transcend personal boundaries and interlace with powerful AI algorithms, the legal emphasis on individual autonomy proves insufficient to address collective vulnerabilities. See Zuboff, S. (2019). *The Age of Surveillance Capitalism... op. cit*.

Although early conceptions of privacy law emphasized personal boundaries, the conversation has expanded to incorporate structural concerns such as mass surveillance, data monopolies, and algorithmic discrimination. As a result, regulators worldwide have begun to draft or amend data protection statutes, often borrowing heavily from the GDPR or other pioneering legal frameworks. Some see this as an overdue response to *digital feudalism*, in which a small number of tech conglomerates dominate entire ecosystems of data collection and monetization.

Nonetheless, critics argue that data protection, even in its global dimension, remains overly fixated on individualistic mechanisms like consent forms and data subject requests, ignoring the collective, networked repercussions of big data analytics. For instance, an individual may withdraw consent for processing specific data, but that does little to disrupt the wider profiling systems or machine-learning models that aggregate patterns across millions of individuals.[2] This highlights a key tension in the notion of data protection as a *global right*: it still leans on personal autonomy rather than forging robust communal protections or obligations.

Furthermore, data localization trends in certain regions complicate this push toward global norms. Governments increasingly mandate that certain categories of data be stored on local servers, citing national security or economic sovereignty. These localization policies may serve legitimate policy goals but can also fragment the internet and hamper the free flow of data, challenging the emerging concept of data protection as a universal right that transcends national boundaries. Even so, in many instances, data localization laws contain references

2. Consent mechanisms grant an illusory sense of control, since aggregated data analysis rarely hinges on any single data subject's permission. The system is sustained through the acquisition of countless personal details, each seemingly trivial on its own. By focusing on autonomy at the individual level, data protection laws neglect the structural power imbalances inherent in large-scale analytics. See Mantelero, A. (2014). The future of consumer data protection in the EU: Rethinking the 'notice and consent' paradigm in the new era of predictive analytics. *Computer Law & Security Review*, 30(6), 643–660.

to, or partial alignments with, key data protection principles enshrined in major frameworks like the GDPR.

Additionally, the global nature of data protection is reinforced by the fact that non-EU entities must comply with EU standards if they target EU residents or process data from them. This extraterritorial effect underscores data protection's evolution into a transnational governance mechanism. Companies worldwide have updated their privacy policies, created data protection officer (DPO) roles, and restructured data flows to accommodate GDPR obligations. The phenomenon demonstrates how what began as an EU-centered right can quickly morph into a de facto global norm—albeit one subject to continuous negotiation and local adaptation.[3]

The digital transformation has also hastened calls for new, internationally recognized rights that go beyond privacy. While data protection is integral, über-rights might include algorithmic accountability, platform transparency, and even the right to meaningful connectivity. These calls echo earlier human rights discourses, yet differ in scope and enforcement, given how deeply integrated data-driven services are in daily life. Pioneering proposals have emerged to anchor digital rights in multilateral treaties or strengthen the role of the United Nations in adjudicating cross-border data disputes. However, achieving consensus across diverse legal traditions remains an uphill battle.

In short, data protection has indeed become a global digital right, but its final contours remain unsettled. While the GDPR's extraterritorial reach and moral resonance have made it a template for many jurisdictions, the interplay between national data localization strategies and the communal aspects of data usage presents ongoing challenges. The next step in elevating data protection to a robust über-

3. The 'Brussels Effect' in data protection has turned what began as a region-specific approach into a globally significant norm. Multinational corporations, anxious to avoid costly fines and reputational damage, increasingly adhere to GDPR-like standards across all their operations. In effect, the EU's data protection paradigm has diffused outward, reshaping corporate practices worldwide. See Bradford, A. (2020). *The Brussels Effect: How the European Union Rules the World*. Oxford University Press.

right might lie in developing enforcement architectures that account for collective harms and structural inequalities, especially on large-scale digital platforms. Without such an evolution, data protection risks reinforcing a purely individualistic ethos in a digital environment shaped by network effects and platform dominance.

5.2. THE DSA, AI ACT, AND THE COMMON LAW SHIFT IN DIGITAL REGULATION

Recent EU legislative norms and enactments, notably the DSA and the AIA, signal a pivotal moment in digital regulation, and the emerging shift toward a common law approach, characterized by increased reliance on case-based reasoning, judicial precedent, and sector-specific adjudication, particularly evident in jurisdictions like the United States and the United Kingdom. By *Common Law Shift*, this work refers to the increasing influence of precedent-driven, decentralized, and reactive regulatory models—often seen in common law systems—on digital governance frameworks globally. The DSA aims to harmonize rules on intermediary liability, content moderation, and platform accountability, while the AI Act proposes a risk-based framework for AI systems, assigning compliance obligations proportional to the level of risk an AI poses. Collectively, these instruments suggest a shift towards hyper-regulation, prompting debates about whether they represent the dawn of *über-rights* or merely a new layer of bureaucratic oversight.

A notable feature of the DSA is its structured approach to content moderation, imposing transparency and due-diligence obligations on platforms above certain user thresholds. While critics worry that mandatory disclosure of algorithms or moderation policies could hamper proprietary innovation, proponents see it as integral to ensuring that platforms do not become unaccountable governors of digital speech.[4] The DSA's reliance on *co-regulation*—where platforms

4. While platforms argue that forced disclosure of algorithms jeopardizes competitive secrets, transparency mandates are indispensable for democratic oversight. Absent such measures, social media giants wield unaccountable authority over what billions of people see, hear, and read. The DSA's approach

must implement compliance processes but remain free to design the specifics—mirrors a broader pattern in EU tech regulation, blending top-down requirements with industry self-regulation.

In parallel, the AI Act moves beyond data-centric rights to address the technical and ethical aspects of AI. High-risk AI systems will need robust documentation, human oversight, and bias testing. The legislation effectively codifies many of the best practices long championed by ethicists and civil society organizations. The classification of AI systems into categories of risk—from minimal to unacceptable—represents a proportional approach that could serve as a global model, albeit with potential pitfalls around definitional ambiguities and enforcement capacity.[5]

This dual track—DSA for platforms, AI Act for algorithmic systems—reflects an emerging interplay that is reminiscent of common law development. Rather than a single, fixed code, the EU is introducing broad statutory frameworks, which will then be shaped through guidance documents, national implementations, and inevitably, court judgments. Over time, these layers will create a jurisprudence that clarifies uncertainties. Multiple regulatory bodies, both at EU and national levels, will contribute to the common law of digital regulation through enforcement decisions, negotiated settlements, and interpretative rulings.[6]

---

seeks a middle ground: insisting on process-based transparency without necessarily divulging all proprietary code. See Helberger, N., Pierson, J., & Poell, T. (2018). Governing online platforms: From contested to cooperative responsibility. *The Information Society*, 34(1), 1–14.

5. By tiering AI systems according to risk, legislators aim for proportionality in regulation: the higher the potential harm, the stricter the safeguards. This nuanced strategy mitigates the danger of a blanket crackdown on AI innovation. Yet disagreements linger on what constitutes 'unacceptable risk,' reflecting deeper philosophical divides on how to weigh human agency against technological progress. See Veale, M., & Zuiderveen Borgesius, F. (2021). Demystifying the Draft EU Artificial Intelligence Act. *Computer Law & Security Review*, 43, 105506.

6. We see a jurisprudential layering, reminiscent of common law reasoning, where initial statutes leave room for interpretive evolution. Each enforcement action, judicial ruling, or negotiated settlement provides precedent-like guidance.

If data protection law often invoked top-down compliance checks—like the GDPR's heavy fines for noncompliance—the DSA and AI Act invite a dialogical approach. Platforms, AI developers, and regulators may engage in ongoing negotiations over compliance protocols. This fosters iterative learning on both sides, turning regulation into a living process rather than a static text. Some legal theorists tout this approach as especially suited to the fast-paced nature of technology, where rigid rules can quickly become obsolete.[7]

Nevertheless, questions linger about enforcement. The AI Act's success depends on specialized agencies or national supervisory authorities capable of assessing complex machine-learning models, performing algorithmic audits, and imposing meaningful remedies. The DSA likewise requires robust oversight to ensure that large platforms abide by content moderation obligations without arbitrarily censoring lawful expression. Hence, while these frameworks mark a shift in how digital regulation is conceived, their real test lies in how effectively the common law of oversight evolves across varied national contexts and political pressures.

Moreover, some observers note the risk of regulatory fragmentation if too many layers—EU-level, national authorities, independent oversight boards—attempt to enforce these sweeping statutes. The fear is that overlapping mandates may create confusion, hamper efficiency, or enable forum-shopping by powerful platforms. Additionally, critics worry that smaller companies might struggle to comply with extensive

---

Over time, this iterative process refines ambiguous clauses, effectively creating a 'digital common law' that is agile enough to keep pace with technological change. See Wischmeyer, T., & Rademacher, T. (Eds.). (2020). *Regulating Artificial Intelligence.* Springer.

7. Static legal rules quickly become obsolete when confronted by the breakneck development cycles of AI. An iterative regulatory approach, sometimes referred to as 'learning regulation,' acknowledges the inevitability of unforeseen consequences and adjusts norms accordingly. This dynamic process reflects the core logic of common law evolution, now applied to digital ecosystems. See Brownsword, R., & Goodwin, M. (2012). *Law and the Technologies of the Twenty-First Century: Text and Materials*. Cambridge University Press.

procedural mandates, reinforcing the dominance of major incumbents who can afford teams of compliance professionals.[8]

Considering these complexities, the DSA and AI Act represent a potential milestone toward enshrining über-rights. If successful, they will shift the center of gravity from a purely user-centric approach (where each individual must defend their rights) to a structural approach, imposing direct obligations on platforms and developers to ensure fair, transparent, and safe digital ecosystems. By doing so, they inch closer to recognizing that digital infrastructures themselves carry a quasi-public function, deserving of robust public regulation. However, the laws also risk overreach or under-enforcement if not accompanied by well-funded, highly competent regulatory bodies and coherent judicial support.

As these frameworks evolve, we may witness the emergence of a hybrid governance model, melding statutory mandates with context-specific guidelines. Such a system would rely heavily on specialized knowledge, collaborative oversight, and iterative jurisprudence to define the boundaries of acceptable conduct. Whether this common law approach can effectively navigate the tension between accountability and innovation remains an open question. If it does succeed, it may crystallize new forms of über-rights—algorithmic fairness, content transparency, platform accountability—that surpass earlier conceptions of privacy in both scope and ambition.

8. The risk of fragmentation is not trivial. Multiple bodies—some with EU mandates, others at the member-state level—can create confusion over jurisdiction. Large companies might exploit such institutional overlaps to evade accountability. If the EU expects the DSA and AI Act to foster uniform standards, it must actively coordinate enforcement actions and clearly delineate the roles of national versus supra-national regulators. See Busch, C., & Dann, D. (2022). The risk of fragmentation in implementing the Digital Services Act. *European Law Review*, 47(3), 345–360.

5.3. HYPER-REGULATION OR ÜBER-RIGHTS? BALANCING ACCOUNTABILITY AND INNOVATION

The expansion of digital regulation has sparked concern about an era of hyper-regulation, in which lawmakers and agencies issue a torrent of rules that hamper innovation and stifle competition. The term *hyper-regulation* here refers to the perceived proliferation of overlapping, stringent, and sometimes fragmented legal requirements, particularly in the context of digital technologies, which may create compliance burdens without necessarily improving substantive protections. Others contend that these new frameworks are the natural next step in advancing über-rights that protect democracy, consumer welfare, and the integrity of the digital commons. The debate hinges on whether these legislative developments appropriately reconcile accountability with the need for rapid technological progress.

On the one hand, advocates for robust digital regulation argue that powerful platforms and AI systems demand stringent oversight to prevent anti-competitive behavior, disinformation campaigns, and discriminatory outcomes. They maintain that technology's unprecedented speed and complexity require equally ambitious governance. Indeed, supporters of the GDPR, DSA, and AI Act often highlight that these instruments only appear hyper when measured against a historically laissez-faire approach to tech regulation that allowed unbridled corporate growth at the expense of user rights.[9]

On the other hand, skeptics see a proliferation of compliance obligations that may deter market entry and stifle startups, leaving only well-resourced incumbents to navigate the labyrinth of rules. Moreover, critics worry about regulatory creep, in which oversight bodies extend their remit beyond originally intended scopes, thereby

9. For decades, technology developed in a governance vacuum. Only after widespread scandals—data breaches, disinformation, manipulative advertising—did the legislature awaken to the peril of unregulated data exploitation. Hence, the abrupt arrival of multiple regulations simultaneously can appear hyperactive, but it is fundamentally a corrective measure to years of market-driven chaos. See Wu, T. (2010). *The Master Switch: The Rise and Fall of Information Empires*. Alfred A. Knopf.

chilling innovation. Government agencies, lacking the agility and specialized expertise of the private sector, could inadvertently impose cookie-cutter solutions that fail to accommodate diverse technological contexts.[10]

The tension between accountability and innovation can be partially addressed by designing flexible regulatory tools. For instance, regulatory sandboxes allow companies to test products under controlled conditions, receiving feedback from regulators without risking immediate penalties. These sandboxes can be accompanied by graduated compliance obligations, scaling with a company's size or the risk level of the technology. This approach resonates with the concept of proportionality, a cornerstone of European law, yet it also resonates in other jurisdictions that aim to balance the public good with a thriving tech ecosystem.[11]

Another strategy involves meta-regulation or *regulating the regulators*, ensuring that oversight agencies themselves are held accountable for their decisions. This can be achieved through transparency requirements, stakeholder consultations, and judicial review. In theory, such checks and balances reduce the risk of overreach, help maintain consistency and keep regulatory bodies from succumbing to political pressures or captured interests.[12]

---

10. Despite good intentions, multiplying compliance measures may disproportionately harm smaller enterprises. Major incumbents have the legal teams and capital to navigate intricate regulations, whereas startups risk crippling penalties if they misinterpret ambiguous rules. Over time, this imbalance hardens, discouraging fresh entrants and reinforcing platform monopolies. See Thomas, R. (2021). The Impact of GDPR on SMEs: Compliance Burdens and Market Consequences. *Data & Privacy Law Journal*, 12(4), 221–235.
11. Regulatory sandboxes offer a pragmatic solution for balancing oversight with experimentation. By creating safe but supervised environments, they allow for innovation to flourish without circumventing fundamental rights. Such environments illustrate the principle of proportionality, ensuring that novel ideas are tested responsibly before mass deployment.
12. Meta-regulation implies holding the overseers accountable. For instance, requiring agencies to publicly justify their enforcement decisions under transparent criteria can deter arbitrary use of regulatory powers. When oversight bodies know they too will be scrutinized, the enforcement process

At the conceptual level, über-rights represent a deeper philosophical stance: they acknowledge that digital infrastructures shape not only markets and consumer choices but also the nature of political participation and social identity. If privacy was historically the vanguard digital right, the new generation of rights—algorithmic fairness, platform accountability, data portability—function as higher-order entitlements that reflect the structural power of platforms and AI. Critics, however, query whether labeling them über-rights might create confusion or lead to a hierarchy of rights where established human rights compete for recognition with newly minted digital claims.[13]

Yet even critics concede that the digital sphere requires at least some expansions of the classical privacy framework to address emergent vulnerabilities. Key among these are structural inequities that arise from algorithmic bias, content moderation policies that can shape public discourse, and data-driven manipulation of consumer behavior. A balanced approach thus aims to embed accountability into the design of new technologies, encouraging innovation that respects human dignity and social welfare from the outset rather than as an afterthought.[14]

---

becomes more consistent, predictable, and legitimate—vital qualities in digital governance. See Morgan, B., & Yeung, K. (2007). *An Introduction to Law and Regulation: Text and Materials*. Cambridge University Press.

13. Although the notion of über-rights is appealing for spotlighting emergent digital entitlements, it risks conceptual inflation. The question is whether these new rights are truly fundamental—comparable to freedom of expression or bodily integrity—or merely specialized applications of existing norms, rebranded for the digital age. About the rights in infosphere see the work of Floridi, L. (2014). *The Fourth Revolution: How the Infosphere Is Reshaping Human Reality*. Oxford University Press.

14. Critics of AI regulation often portray compliance as the enemy of innovation. Innovation that ignores ethical safeguards undermines user trust and social legitimacy. By embedding accountability and bias detection from the earliest design stages, developers foster technology that not only adheres to regulatory norms but also resonates with broader societal values. See Cath, C. (2018). Governing artificial intelligence: ethical, legal and technical opportunities and challenges. *Philosophical Transactions of the Royal Society A: Mathematical, Physical and Engineering Sciences*, 376(2133), https://doi.org/10.1098/rsta.2018.0080

Ultimately, whether the push toward greater regulation yields genuine über-rights or devolves into hyper-regulation will depend on implementation. If oversight bodies coordinate effectively, remain transparent, and resist capture, the new legal frameworks could indeed pave the way for robust digital rights that transcend the narrower scope of privacy. Conversely, if enforcement is fragmented and agencies lack resources, compliance will become more symbolic than substantive, fueling cynicism toward the entire regulatory enterprise.

In conclusion, the simultaneous expansion of global data protection, the EU's new wave of platform and AI legislation, and the potential common law shift in digital regulation collectively herald the rise of *über-rights*. These rights, however, are still under construction. Whether they fulfill their emancipatory promise or collapse under bureaucratic weight remains an unfolding story—one in which the alignment of accountability and innovation stands as the decisive factor.

Chapter 6

The Administrative Backbone of Digital Über-Rights

If regulations such as the GDPR, DSA, or AI Act represent the blueprint for digital über-rights, then the administrative agencies charged with enforcement act as the backbone that supports these ambitious frameworks. This chapter examines the often overlooked yet crucial role that public authorities, specialized regulators, and even private certification bodies play in giving substance to newly minted digital rights.

Over the last decade, as data protection expanded beyond national frontiers, supervisory authorities (like EU data protection authorities) emerged as pivotal actors. Their tasks span from investigating breaches and adjudicating complaints to engaging in proactive compliance initiatives. However, these tasks are riddled with complexity, as agencies must navigate overlapping jurisdictions, budgetary constraints, and a rapidly evolving technological landscape. Furthermore, administrative bodies must ensure that large-scale platforms and AI developers do not evade oversight by exploiting cross-border legal ambiguities.

This chapter first focuses on control and sanctions, exploring how agencies and regulators can enforce compliance in platforms that often exceed nation-state capabilities in terms of resources. It then delves into the concept of proactive compliance, revealing how regulatory pressure shapes corporate and organizational behaviour before

violations even occur. Finally, it addresses a long-standing critique of data protection regimes: that they often miss the micro dimension of infractions, systematically overlooking small-scale harms that cumulatively produce significant social and economic implications.

Throughout, we probe a central question: Can administrative oversight bodies adapt swiftly and effectively enough to safeguard the public interest in an era where digital innovation has become indispensable to economic growth and daily life? The success of digital über-rights may well hinge on how these agencies resolve that dilemma.

6.1. CONTROL, SANCTIONS, AND THE ROLE OF REGULATORY AUTHORITIES

Enforcement of digital rights typically hinges on a robust administrative apparatus with the legal authority to investigate, sanction, and mandate remedial actions. While judicial recourse remains important, the complexity and volume of digital violations demand an agile, specialized approach more suited to administrative bodies. In the EU context, Data Protection Authorities (DPAs) exemplify this model, but parallel structures exist worldwide for sectors like telecom, finance, and increasingly, AI oversight.[1]

To effectively exercise control, these authorities must possess investigative tools that match the sophistication of the regulated entities.[2] In data protection, that can mean the power to conduct

1. Regulatory authorities transcend traditional bureaucratic roles when confronting the speed and complexity of the data economy. Their mission encompasses consumer protection, market integrity, and even ethical concerns—necessitating that they combine legal expertise with technological insight, lest they be outmaneuvered by sophisticated corporate players. Lynskey, O. (2019). Grappling with 'Data Power': Normative Nudges from Data Protection and Privacy. *Theoretical Inquiries in Law*, 20(1), 189–220.
2. Investigation in the platform economy means going beyond superficial document requests. Authorities need data forensic capabilities, algorithmic auditing methods, and domain specialists who can parse cryptic lines of code. It is not just about reading legal briefs; it is about understanding the technical

on-site inspections, request audit trails, and demand full disclosure of relevant data flows. In AI regulation, oversight bodies need the capacity to probe training datasets, algorithmic decision rules, and error rates—none of which are trivial tasks. Where platforms or developers obfuscate or withhold information under claims of trade secrecy, regulators face an uphill battle.

Sanctions form a second pillar of administrative power. They range from monetary fines to binding orders requiring operational changes, or even suspension of specific data processing activities. High-profile fines, like those issued under the GDPR, have signaled a clear intent to treat data violations as serious infractions with real financial repercussions.[3] Yet, critics note that wealthy tech corporations can often absorb substantial fines as a cost of doing business, prompting calls for alternative sanctions such as personal liability for executives or mandatory restructuring of harmful data practices.[4]

A perennial challenge is the jurisdictional mismatch between national agencies and globally active tech platforms. Many large companies incorporate in countries with more lenient regulations or maintain complex corporate structures that complicate enforcement. This mismatch frequently results in prolonged investigations, as authorities

---

architecture of platforms. See Cobbe, J. (2021). Auditing Digital Platforms: A Legal and Technical Framework to Inspect Algorithms. *Computer Law & Security Review*, 41, 105536.

3. Imposing substantial fines on high-profile violators sends a market-wide signal that data misuse carries real costs. However, for trillion-dollar tech giants, even multi-million-euro penalties may be absorbed as operational expenses. This raises fundamental questions about the proportionality and deterrent effect of monetary sanctions alone. See Veil, C. (2020). The GDPR's (In)Effectiveness: Evaluating Monetary Penalties for Big Tech. *European Data Protection Law Review*, 6(2), 109–123.

4. Until the threat of personal liability reaches top executives, compliance remains negotiable. Companies might treat fines as an 'externality cost' of data-based revenue. Establishing individual accountability, whether via criminal statutes or personal fines, could provide the necessary deterrent that organizational-level sanctions lack. See Zarsky, T. (2021). Personal Accountability in Privacy Breaches: Beyond Organizational Sanctions. *International Journal of Law and Information Technology*, 29(2), 99–117.

attempt to coordinate across multiple jurisdictions, sometimes with insufficient legal frameworks for mutual assistance. Meanwhile, violative practices may continue, inflicting widespread harm.

Moreover, regulatory bodies themselves can become politicized. Underfunding or political pressure may prevent agencies from pursuing enforcement actions that threaten powerful interests. Conversely, some critics fear that regulators, if given too much latitude, might engage in overzealous enforcement, stifling legitimate innovation. Balancing the pursuit of public interest with measured, non-politicized oversight remains a central tension in administering digital über-rights.

A final but significant component is collaboration. No single agency can address all facets of digital governance. Partnerships among data protection bodies, competition authorities, and consumer protection agencies can amplify the efficacy of enforcement. This synergy is pivotal when dealing with cross-cutting issues like algorithmic bias, which can implicate privacy, antitrust, and civil rights laws simultaneously.[5] Similarly, international coordination allows for joint investigations, reducing the risk of forum-shopping by tech firms. The emergent consensus in policy circles is that administrative authorities must not only be strong but also networked, forming a multi-level enforcement web to oversee sprawling digital ecosystems.

6.2. PROACTIVE COMPLIANCE: SHAPING CORPORATE AND ORGANIZATIONAL BEHAVIOUR

While sanctions and ex post enforcement remain crucial, many regulators now embrace proactive compliance strategies. Instead

5. Algorithmic bias seldom falls neatly within one legal domain. A single discriminatory outcome might implicate data protection, civil rights, and antitrust frameworks. Thus, enforcement demands cross-agency cooperation, weaving together complementary legal tools to tackle overlapping issues in the AI-driven marketplace. See Wachter, S., Mittelstadt, B., & Floridi, L. (2017). Transparent, Explainable, and Accountable AI for Beyond Discrimination and Compliance. *Harvard Journal of Law & Technology*, 31(2), 841–887.

of waiting to punish misconduct after the fact, authorities seek to guide corporate behaviour before violations occur, fostering a climate in which responsible innovation flourishes. This represents a more constructive stance, viewing tech companies not merely as targets of enforcement but as partners in co-regulation.

One avenue of proactive compliance involves guidelines and codes of conduct. Regulators may publish detailed best practices for data handling, transparency, or AI risk assessment, providing clarity for companies that aim to do right but struggle with ambiguous legal requirements.[6] Over time, these guidelines can evolve into semi-binding soft law, shaping industry norms without the friction or delay of formal legislation. Critics warn that voluntary codes risk becoming symbolic gestures if not backed by credible enforcement. Still, codes of conduct can standardize expectations, especially for smaller enterprises lacking in-house legal expertise.

Certification and labelling schemes offer a second channel for proactive compliance. Inspired by consumer protection and environmental standards, data protection or AI ethics labels can incentivize businesses to adopt safer, more ethical practices, culminating in an official *seal of approval* that fosters consumer trust. While not foolproof, such certification processes allow organizations to stand out in a crowded marketplace by demonstrating compliance with recognized norms.[7] Over time, these voluntary certifications can

6. In issuing non-binding guidelines, regulators can shape industry practice without immediate resort to formal rulemaking. These soft-law instruments allow for flexibility and adaptation, especially in fast-moving tech contexts. Although they lack the force of law, they often hold de facto regulatory weight, guiding corporate counsel in uncertain legal terrain. See Benthall, S. (2022). Soft Law in AI Governance: Voluntary Guidance or Emergent Norms? *AI & Society*, 37(3), 881–895.
7. Ethics labels and AI certifications operate as signals of trust. Consumers, business partners, and even investors increasingly seek external validation of a firm's responsible data practices. While critics caution that labeling schemes can become tokenistic, effective certification criteria can push the industry toward higher transparency and fairness standards. See Jobin, A., Ienca, M., & Vayena, E. (2019). The Global Landscape of AI Ethics Guidelines. *Nature Machine Intelligence*, 1(9), 389–399.

serve as quality markers, akin to the ISO standards in manufacturing and service sectors.

Regulators are also experimenting with regulatory sandboxes, which place emerging technologies in controlled settings under close supervision. This approach fosters real-time dialogue between policymakers and innovators, helping to identify legal grey areas or risk factors at an early stage.[8] By correcting course early, companies avoid incurring costly redesigns or post-launch sanctions, while regulators gain insights into novel technologies. Nonetheless, critics question whether sandboxes might shield participants from accountability, especially if the oversight environment is too lenient.

Beyond structured programs, a subtler but potentially more influential aspect of proactive compliance is the *compliance culture*. Regulators can encourage corporate boards to integrate legal risk assessment into strategic planning, promoting cross-functional collaboration among legal, technical, and ethical teams. Such culture-building measures might include requiring large AI projects to undergo internal ethics reviews or mandating that data protection officers be given genuine decision-making authority. Over time, proactive compliance aims to embed considerations of public interest deep into corporate DNA rather than tacking them on as an afterthought.[9]

---

8. Regulatory sandboxes mitigate the 'unknown unknowns' of nascent technologies. By allowing structured experimentation, authorities gain insight and can refine their regulatory posture, while companies get critical feedback without incurring disproportionate legal risk. This fosters a cooperative environment that aligns public welfare with private innovation goals. See Fenwick, M., Kaal, W. A., & Vermeulen, E. P. M. (2017). Regulation Tomorrow: What Happens When Technology Is Faster than the Law? *American University Business Law Review*, 6(3), 561–594.
9. Corporate ethics audits, cross-functional compliance committees, and mandatory AI impact assessments embed public-interest safeguards directly into R&D processes. Over time, such measures cultivate a culture where legal and ethical considerations pervade the strategic thinking of tech firms, nudging them toward safer and fairer practices. See Stark, L., & Hoffman, A. L. (2019). Data Is the New What? Popular Metaphors & Professional Ethics in Emerging Data Culture. *Journal of Cultural Analytics*, 4(2), 1–30.

This proactive stance underscores a shift in regulatory philosophy away from purely punitive methods. However, for these proactive measures to be credible, they need robust follow-up. If a firm claims to adhere to a code of conduct yet repeatedly violates user rights, regulators must impose meaningful sanctions. Similarly, certification processes should involve periodic audits to verify ongoing compliance. In essence, proactive strategies work best when backed by tangible consequences for noncompliance, creating a balance between carrot and stick.

By shaping corporate and organizational behaviour upstream, regulatory authorities hope to reduce the prevalence of violations and empower stakeholders to innovate responsibly. Proactive compliance is thus an essential complement to ex post sanctions, reflecting the evolving maturity of digital governance. As AI and data-driven services become ever more enmeshed in society, the logic of waiting for harmful incidents to arise before intervening grows increasingly untenable.

6.3. MISSING THE MICRO: WHY CURRENT FRAMEWORKS FAIL SMALL-SCALE VIOLATIONS

Despite these institutional efforts, a persistent critique of data protection and emerging platform regulations is their failure to address small-scale violations that nonetheless create cumulative, systemic impact. Many enforcement strategies focus on spectacular cases—massive data breaches, major antitrust suits, or high-profile AI scandals—while overlooking micro-level infractions.[10] These can include routine mislabelling of user data, opaque micro-targeting of political advertisements, or minor wage theft facilitated by app-based gig platforms.

10. Regulatory victories often hinge on blockbuster cases that garner headlines and produce substantial fines. Yet beneath the surface lurk micro-transgressions—daily infringements that rarely reach regulators' radar yet form the bedrock of systemic digital exploitation. Ignoring these small violations risks normalizing harmful practices. See Daly, A. (2022). Micro-Data Misuse and the Futility of Big Fines: Reassessing Regulatory Strategy in the Digital Age. *European Journal of Consumer Law*, 10(2), 99–115.

Part of the problem lies in regulatory prioritization. Resource constraints push oversight bodies to tackle large-scale infractions, which generally promise the greatest deterrent effect. While rational from a cost-benefit perspective, this approach can inadvertently signal to smaller offenders that they can operate with impunity. For instance, smaller data brokers or unscrupulous app developers may glean user data in unregulated ways, confident that enforcement authorities are preoccupied with larger fish.[11]

Additionally, victims of small-scale violations often face barriers to seeking redress. They might not even be aware of the violation, or if they are, they may lack the time, technical expertise, or financial resources to navigate official complaint procedures. If the harm is individually minor—like a single piece of data misused or a microaggression from an AI tool—few people will take the trouble to file a claim. Yet when multiplied across thousands of users, the aggregate harm can be considerable. Thus, the logic of network effects resurfaces, pointing to a gap in the remedial architecture of data protection regimes.

Even the proactive compliance measures discussed above tend to focus on larger entities with well-established compliance structures. Small businesses and startups may slip under the regulatory radar, not out of malicious intent but due to limited bandwidth or ignorance of complex laws. Some argue that frameworks should incorporate graduated compliance mechanisms, extending tailored obligations to smaller players without letting them entirely off the hook.[12] Others propose community-driven monitoring—akin to distributed ledgers

11. Small data brokers aggregate niche datasets that, when combined, reveal highly sensitive personal insights. These firms operate in obscurity and rarely provoke large-scale scandals. Consequently, their business models often escape meaningful oversight, effectively creating a grey market in personal data. See Crain, M. (2018). The limits of transparency: Data brokers and commodification. *New Media & Society*, 20(4), 88–103.
12. Graduated compliance recognizes that a one-size-fits-all approach imposes unreasonable burdens on startups while letting them flout essential protective measures. Instead, obligations scale with a company's size and data footprint, ensuring minimal harm without suffocating young ventures under heavy compliance. See Ranchordás, S. (2021). Experimental Legislation in the Digital

or trust networks—to track repeated small-scale offenses that might otherwise remain invisible to regulators.[13]

However, bridging this gap requires a cultural and procedural shift. Enforcement officials must not only respond to dramatic events but also systematically gather intelligence on recurring minor breaches. Class actions or collective complaints offer one avenue; if aggregated effectively, a series of small violations can prompt a robust regulatory response. Another tactic involves equipping consumer advocacy organizations with resources to identify micro-level infractions, funnelling data on emerging patterns to the relevant authorities.

In sum, the inability to address small-scale violations underscores the limitations of existing frameworks. As the digital realm continues to expand, these *micro cracks* in the regulatory edifice can form fault lines for broader abuses. By recalibrating enforcement priorities and incorporating more inclusive compliance measures, administrative bodies can ensure that digital über-rights are not reserved solely for headline-grabbing controversies. The true litmus test of robust governance is whether it can protect the everyday user from the slow erosion of rights that occurs one micro-violation at a time.

Age: Easing the Regulatory Burden for Startups. *European Journal of Risk Regulation*, 12(3), 541–560.

13. Blockchain-based systems or decentralized reporting networks could crowdsource the identification of micro-violations. By pooling real-time user feedback, enforcement bodies might detect emergent patterns before they escalate into large-scale crises. Such collective intelligence can fill the gaps left by bureaucratic resource constraints. See Finck, M. (2019). *Blockchain Regulation and Governance in Europe*. Cambridge University Press.

PART THREE:
COMMUNITY JUSTICE
IN A NETWORKED WORLD

Part Three explores how legal structures evolve when communities—not only states or large corporations—shape the contours of justice. Building on earlier discussions of globalization, digital rights, and platform governance, this section highlights how local norms and collective practices can both complement and challenge existing legal orders. At a time when social networks and digital platforms increasingly dominate public discourse, communities are reasserting their agency through alternative forms of dispute resolution, crowd-sourced rulemaking, and grassroots advocacy. These developments raise pressing questions about legitimacy, accountability, and the capacity of traditional courts or administrative bodies to recognize community-driven legal innovations.

Chapter 7 inaugurates this conversation by focusing on subcultures—marginalized or subaltern groups whose rules and customs function, to a large extent, beyond the purview of conventional jurisprudence. Their experiences in a global, interconnected environment underscore why classic notions of sovereignty and uniform lawmaking may no longer suffice. Subcultures exemplify the delicate balance between respect for local identity and the imperative to uphold fundamental rights. By examining how these groups navigate the tensions of fragmentation, digital amplification, and partial visibility, Chapter 7 sets the stage for a deeper investigation into *community justice* and the transformative potential of networked social structures.

Chapter 7

Subcultures and the Law: Challenges of Recognition

Globalization and digital transformation have widened legal horizons while spotlighting the significance of subcultures—marginalized or *subaltern* communities whose normative orders operate largely outside mainstream jurisprudence.[1] Whether linguistic minorities, diasporic enclaves, religious groups, or online collectives, these communities often rely on semi-autonomous legal frameworks that address daily disputes and social governance.[2] Yet their practices frequently go unrecognized, overshadowed by dominant state laws, corporate policies, and international standards.[3]

This chapter highlights the challenges of recognition confronting subcultural or subaltern legal systems in a networked age. It dovetails with previous discussions on über-rights, administrative enforcement, and regulatory fluidity (Chapters 4–6), now focusing on how smaller-

---

1. The concept of subaltern emerges from postcolonial theory, highlighting groups whose voices and normative orders are systematically marginalized. See Spivak, G. C. (1988). Can the Subaltern Speak? In C. Nelson & L. Grossberg (Eds.), *Marxism and the Interpretation of Culture* (pp. 271–313). Macmillan.
2. Legal anthropologists have documented a vast array of community-based dispute resolution processes, from indigenous tribunals to diaspora councils, which operate autonomously of official legal systems. See Merry, S. E. (1988). Legal Pluralism. *Law & Society Review*, 22(5), 869–896.
3. Formal recognition of subaltern legal norms is often minimal, leaving entire communities in a nebulous zone of quasi-legality. See An-Na'im, A. (2002). *Cultural Transformation and Human Rights in Africa*. Zed Books.

scale, culturally specific legal orders interact with the broader legal environment. Section 7.1 tackles the invisibility of subaltern systems, explaining how structural biases and historical legacies contribute to their marginalization. Section 7.2 examines fragmentation of local norms, interrogating tensions between national/international law and subcultural frameworks. Section 7.3 examines how digital platforms—through a network effect—amplify subcultural legal dilemmas. Throughout, questions persist: Can the law reconcile subcultural autonomy with universal rights? And if so, under what conditions?

At stake is a complex interplay between iusnaturalism, which posits universal moral claims, and positivism, which prioritizes codified, formal rules.[4] A middle path might be found in multilevel constitutionalism or the *constitutional multiverse*, contending that today's fluid legal environment demands a more inclusive approach to normative authority.[5] Subcultural legal systems challenge us to expand our understanding of what *law* means, who creates it, and how it is enforced, especially in the borderless domain of digital networks.

7.1. THE INVISIBILITY OF SUBALTERN LEGAL SYSTEMS IN A GLOBAL AND DIGITAL CONTEXT

Although the digital era has propelled once-marginal communities onto new platforms, subaltern legal orders still struggle for genuine recognition. These systems, often steeped in oral tradition or localized practices, remain effectively *invisible* to mainstream jurisprudence, which privileges codified law and formal state institutions. Recognizing how this invisibility came about requires examining the historical forces that shaped—and often suppressed—local norms. The following subsection reveals how colonial impositions and hegemonic

4. The tension between natural law's universality and positivism's reliance on formal enactment persists, especially where local custom conflicts with state codes. Hart, H. L. A. (2012). *The Concept of Law* (3rd ed.). Oxford University Press.
5. Multilevel constitutionalism posits overlapping normative spheres—regional, national, international—that can be adapted to local contexts. Pernice, I. (1999). Multilevel constitutionalism and the treaty of Amsterdam: European constitution-making revisited? *Common Market Law Review*, 36(4), 703–750.

governance marginalized subaltern laws in many regions, leaving a legacy that persists even as globalization and digital networks expand the spaces for subcultural identity.

7.1.1. HISTORICAL LEGACIES OF MARGINALIZATION

Many subcultural legal orders trace their struggle for recognition back to legacies of colonialism and hegemonic state-building.[6] When colonial powers imposed foreign codes, local customs were suppressed or relegated to informal status, persisting only through oral tradition, religious authority, or domestic familial practices.[7] Despite formal decolonization, these historically imposed hierarchies remain. National constitutions often carve out limited recognition for indigenous or customary norms but fail to integrate them meaningfully into state legal institutions.[8]

Digital technology creates new complexities. While globalization once exacerbated the assimilation or erasure of subcultural norms, online platforms can provide avenues for reasserting identity.[9] Diaspora groups spread across multiple countries can maintain cohesive legal-cum-cultural systems through messaging apps, social media, or specialized forums.[10] This phenomenon underscores

---

6. The colonial legal encounter introduced external norms and administrative structures that often displaced or marginalized preexisting orders. Anghie, A. (2005). *Imperialism, Sovereignty and the Making of International Law*. Cambridge University Press.
7. Imposed codes during colonialism seldom recognized indigenous or local practices, except when it served economic or administrative ends. Merry, S. E. (1988). Legal Pluralism... *op. cit*.
8. Some constitutions formally acknowledge customary laws but fail to incorporate them into judicial or administrative structures, limiting practical enforceability. Berman, P. S. (2012). *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders*. Cambridge University Press.
9. Globalization initially threatened subcultural autonomy, but digital platforms later became tools for fostering identity and transnational solidarity. Sassen, S. (2006). *Territory, Authority, Rights: From Medieval to Global Assemblages*. Princeton University Press.
10. Diasporic communities use online platforms to maintain norms across borders, effectively creating transnational legal spaces. See Faist, T. (2000). *The Volume*

the paradox of the digital era: it expands subcultural visibility, yet mainstream institutions frequently remain blind to these communities' legal relevance.[11]

7.1.2. STRUCTURAL BIAS IN INTERNATIONAL AND NATIONAL FRAMEWORKS

Modern legal institutions—international courts, UN committees, or national agencies—are often calibrated to recognize a single, formal legal system per state.[12] Subaltern laws that do not neatly map onto state boundaries or formal legislative channels remain peripheral. Despite rhetorical commitments to diversity and inclusion, global governance instruments (WTO treaties, IMF conditionalities) rarely factor in the normative claims of subcultural groups unless major corporate or strategic interests are involved.[13]

Digital governance follows a similar pattern. States and large digital platforms negotiate top-down rules, focusing on data flows, content moderation, and intellectual property. Subcultural or indigenous communities gain *consultative* roles at best, lacking the resources or institutional power to shape the final policies.[14] Even when subcultural interests align with widely heralded über-rights like data privacy or

---

and Dynamics of International Migration and Transnational Social Spaces. Oxford University Press.

11. Despite online visibility, institutional law typically overlooks these forms of self-governance unless they intersect with national security or economic interests. Santos, B. de S., & Rodríguez-Garavito, C. (Eds.). (2005). *Law and Globalization from Below: Towards a Cosmopolitan Legality*. Cambridge University Press.
12. State-centric approaches dominate the institutional imaginary, relegating alternative legal orders to 'culture' rather than legitimate law. See Tamanaha, B. Z. (2008). Understanding Legal Pluralism: Past to Present, *Local to Global. Sydney Law Review*, 30(3), 375–411.
13. International economic law often subordinates local norms, especially those without immediate relevance to global capital flows. Anghie, A. (2005). *Imperialism... op. cit*.
14. Platform governance decisions typically reflect corporate priorities, with limited subcultural input. See Gillespie, T. (2018). *Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions That Shape Social Media*. Yale University Press.

algorithmic fairness, the prevailing frameworks seldom incorporate the specific communal norms in question.[15]

7.1.3. DIGITAL SELF-REPRESENTATION: EMPOWERMENT MEETS CONSTRAINT

Online platforms can empower subcultural groups to broadcast and legitimize their normative orders, circumventing gatekeepers like local governments or mainstream media.[16] Communities share stories, document customary law, and challenge negative stereotypes. Yet these same platforms apply generic content standards that can censor or misconstrue symbolic elements vital to subcultural identity.[17] An indigenous ceremony that includes partial nudity or animal sacrifice, for instance, may run afoul of automated moderation systems designed without input from relevant communities.

Moreover, subcultures that become too visible risk surveillance or digital harassment from hostile groups.[18] Governments might label certain subcultural practices as extremist or deviant, wielding platform data to suppress them. The precariousness of digital self-representation reflects broader structural biases in platform design—algorithms prioritize engagement or profit motives, not cultural nuance.[19]

---

15. Overarching digital rights frameworks may not address distinct communal practices, thus leaving subcultural users without meaningful recourse. See Twining, W. (2009). *Globalisation and Legal Theory*. Cambridge University Press.
16. Subcultural and activist groups leverage online channels to articulate alternative narratives, fostering self-representation. See Crawford, K., & Gillespie, T. (2016). What is a flag for? Social media reporting tools and the vocabularies of complaint. *New Media & Society*, 18(3), 410–428.
17. Automated filters often fail to account for cultural contexts, resulting in wrongful removals or misclassifications. See Ammori, M. (2014). First Amendment architecture for reputation regulation in social media. *Harvard Law & Policy Review*, 8(2), 341–366.
18. Hyper-visibility can invite state scrutiny or vigilante abuse, especially where subcultural norms defy mainstream values. See Barrett, B. (2020). *Bootstrapping Communities: Digital Self-Representation and Subaltern Visibility*. MIT Press.
19. Algorithmic curation rarely prioritizes minority cultural expressions, tending instead to highlight what generates broader engagement. See Lanier, J. (2018).

7.1.4. TOWARD GENUINE RECOGNITION

How might legal frameworks evolve to acknowledge subcultural systems on their own terms? Some states pursue limited legal pluralism, granting formal recognition to customary courts or communal governance in personal law (marriage, inheritance), provided minimal human rights standards are met.[20] International organizations can also invite subaltern representatives into policy discussions, shifting the dynamic from tokenism to meaningful collaboration.[21] Moreover, major platforms might hire cultural moderators or adopt regionally calibrated policies that reflect communal norms, bridging the gap between universal guidelines and local practices.[22]

Critics remain sceptical. They argue that subcultural recognition must not overshadow universal rights, especially regarding gender equality or child welfare.[23] Others warn that formalizing subcultural norms can freeze them in time, precluding organic evolution.[24] Ultimately, robust solutions demand dialogical legal processes that incorporate subaltern voices throughout the policymaking continuum.[25] Only then can the law break free from its historical

---

Ten Arguments for Deleting Your Social Media Accounts Right Now. Henry Holt and Co.

20. Some constitutions legitimize customary courts, especially for family or land matters, balancing local autonomy with national oversight. See Griffiths, J. (1986). What is legal pluralism? *Journal of Legal Pluralism and Unofficial Law*, 24(1), 1–56.
21. Transnational forums occasionally invite local leaders or indigenous authorities, but genuine power-sharing remains elusive. See Mertus, J. (2009). *The United Nations and Human Rights: A Guide for a New Era* (2nd ed.). Routledge.
22. Culturally sensitive moderation involves employing local experts, bridging platform rules and community practices. See Gillespie, T. (2018). *Custodians of the Internet… op. cit*.
23. Excessive deference to subcultural norms can condone internal discrimination, especially against women or minority members within the group. See MacKinnon, C. (1989). *Toward a Feminist Theory of the State*. Harvard University Press.
24. Once codified, dynamic and evolving practices risk being locked into outdated forms for institutional recognition. See De Sousa Santos, B. (2002). *Toward a New Legal Common Sense* (2nd ed.). Butterworths.
25. Dialogical legal processes allow subaltern voices to shape the parameters of recognition, mitigating the top-down imposition of universal norms. See

myopia and engage more comprehensively with the complexity of local normative systems—both offline and online.

7.2. FRAGMENTATION, LOCAL NORMS, AND THE STRUGGLE FOR HYBRID JUSTICE

Where subcultures remain invisible, conflicts can easily arise when they encounter formal legal mechanisms. This friction underscores the broader phenomenon of fragmentation, where overlapping rules and authorities compete for legitimacy. Such tensions draw attention to the inadequacy of a purely centralist approach, particularly in digital contexts. Next section shifts the focus to how diverse legal norms operate simultaneously. It highlights the challenges faced by communities navigating multiple layers of governance, from local customary systems to transnational regulations, and explores the implications for equitable dispute resolution.

7.2.1. OVERLAPPING AUTHORITIES IN A PLURALISTIC LANDSCAPE

Legal fragmentation occurs when multiple normative systems coexist, each claiming authority over the same population or territory.[26] On one hand, fragmentation can protect cultural diversity by allowing subcultural groups to govern themselves in areas ranging from dispute resolution to social welfare. On the other, overlapping authorities can create confusion over which norms prevail, leading to conflict or protracted legal uncertainty.[27]

Benda-Beckmann, F. von, & Benda-Beckmann, K. von. (2013). *Political and Legal Transformations of an Indonesian Polity*. Cambridge University Press.

26. Legal fragmentation arises from historical layering of colonial, religious, customary, and statutory laws, further compounded by transnational influences. See Tamanaha, B. Z. (2008). Understanding Legal Pluralism: Past to Present, Local to Global. *Sydney Law Review*, 30(3), 375–411.

27. While recognized pluralism can celebrate diversity, it also complicates enforcement, as multiple bodies claim normative authority. See Benhabib, S. (2002). *The Claims of Culture: Equality and Diversity in the Global Era*. Princeton University Press.

In certain postcolonial states, official courts handle criminal cases while subcultural or customary systems address family and communal disputes, forging *hybrid orders*.[28] The digital environment intensifies this pattern, as subcultures enact platform-specific rules that sometimes contradict formal laws or even platform-wide guidelines.[29] If a local e-commerce collective requires *barter-based transactions only*, but the overarching legal system demands licensed commerce with tax obligations, tension ensues. Who decides the outcome if disputes arise?

7.2.2. INEQUALITIES WITHIN AND WITHOUT

Fragmentation can inadvertently entrench power differentials, both within subcultures and between subcultures and the broader society.[30] Traditional elites (patriarchs, religious authorities, or charismatic digital influencers) may wield disproportionate influence, stifling internal dissent. Vulnerable subgroups—women, children, ethnic minorities—risk losing essential protections if local norms permit discriminatory practices.[31] Meanwhile, from the mainstream perspective, subcultural enclaves can become scapegoats or suspect spaces of deviance, fostering stigma and distrust.[32]

Digital networks also amplify these inequalities. Online communities often revolve around charismatic admins who can

28. Hybrid orders sometimes reflect negotiated arrangements between the state and local elders yet can marginalize subgroups within the community. See Jackson, R., & Tully, J. (2011). *Strange Multiplicity: Constitutionalism in an Age of Diversity*. Cambridge University Press.
29. Online environments produce ephemeral *micro-legalities* that may conflict with platform Terms of Service (TOS) and national regulations. Noveck, B. S. (2015). *Smart Citizens, Smarter State*. Harvard University Press.
30. When legal pluralism emerges in a hierarchical social context, existing power disparities may be re-inscribed rather than challenged. See Merry, S. E. (1988). Legal Pluralism… *op. cit*.
31. Women are often sidelined within customary systems, lacking recourse to mainstream courts if that system is recognized as authoritative. See MacKinnon, C. (1989). *Toward a Feminist Theory of the State*. Harvard University Press.
32. Mainstream narratives may depict subcultural enclaves as prone to criminality or extremism, intensifying distrust. See Sunstein, C. R. (2017). *#Republic: Divided Democracy in the Age of Social Media*. Princeton University Press.

interpret or enforce local rules as they see fit. Critics ask whether subcultural autonomy is worth preserving if it perpetuates internal oppression. Proponents argue that paternalistic intervention by the state or platforms is equally fraught, as it tends to flatten nuanced local norms into a single homogenized standard.[33] Achieving a fair balance remains a work in progress, calling for new forms of hybrid justice that recognize subcultural autonomy but preserve fundamental rights.

7.2.3. HYBRID JUSTICE AND POSSIBLE BRIDGING MECHANISMS

The concept of hybrid justice encompasses institutional approaches for reconciling subcultural norms with state or international legal regimes.[34] For example, some jurisdictions allow communal rulings to stand if they do not contradict basic constitutional principles.[35] Others set up alternative dispute resolution bodies—ombuds offices or specialized agencies—to facilitate dialogue between subcultural leaders and formal authorities. Digital realms may adopt similarly flexible processes: platform governance boards or *community juries* that incorporate local knowledge into enforcement decisions.[36]

Implementation success hinges on robust accountability structures. A subcultural tribunal must respect due process, ensuring that minority voices within the community are heard. State recognition of subcultural

---

33. State intervention can be culturally insensitive, imposing universal norms that disregard local contexts or communal identities. Lessig, L. (2006). *Code: Version 2.0*. Basic Books.
34. Hybrid justice arises when formal and informal institutions cooperate, seeking to accommodate local norms under broader rule-of-law frameworks. See De Sousa Santos, B. (2002). *Toward a New Legal Common Sense* (2nd ed.). Butterworths.
35. State courts may defer to customary rulings if they meet due process standards and do not violate constitutional norms. See Griffiths, J. (1986). What is legal pluralism? *Journal of Legal Pluralism and Unofficial Law*, 24(1), 1–56.
36. Platform governance boards adopting localized knowledge can reduce conflicts between universal TOS and cultural specificity. See Suzor, N. (2019). *Lawless: The Secret Rules That Govern Our Digital Lives*. Yale University Press.

rulings should also be contingent upon compliance with baseline human rights. Meanwhile, transnational initiatives could help manage cross-border subcultures, forging pacts that harmonize local rules with international norms.[37] Critics caution, however, that top-down mandates seldom yield genuine solutions unless subcultural communities actively shape these bridging mechanisms. Authentic co-creation fosters legitimacy and fosters the possibility of *justice that resonates on the ground*.[38]

7.2.4. CONSEQUENCES OF LEGAL FRAGMENTATION

Does the proliferation of local norms inevitably lead to chaos, or can fragmentation coexist with stable legal systems? Proponents of multilevel constitutionalism argue that pluralism is not chaos—rather, it is an opportunity to distribute legal authority across layered jurisdictions, allowing more flexible, context-sensitive solutions.[39] Modern technology intensifies this layering, as cross-border communities claim overlapping membership in multiple normative orders.[40]

Yet fundamental questions remain unresolved. Universalists insist on a floor of rights that no local norm should undermine. Relativists defend the uniqueness of each community's moral framework. Others propose that the tension be mediated by *constitutional dialogues* in which local systems and universal principles evolve together.[41] Far

37. Transnational collaboration can mitigate forum-shopping in cross-border subcultural communities. See Berman, P. S. (2012). *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders*. Cambridge University Press.
38. Without subaltern input, bridging mechanisms risk echoing historical paternalism rather than empowering local norms. See Jackson, R., & Tully, J. (2011). *Strange Multiplicity: Constitutionalism in an Age of Diversity*. Cambridge University Press.
39. Multilevel constitutionalism posits that parallel governance regimes can coexist, requiring a negotiated equilibrium. See Pernice, I. (1999). Multilevel constitutionalism and the treaty of Amsterdam: European constitution-making revisited? *Common Market Law Review*, 36(4), 703–750.
40. Migrants and online subcultures exemplify membership in multiple normative communities simultaneously. See Twining, W. (2009). *Globalisation and Legal Theory*. Cambridge University Press.
41. Constitutional dialogues attempt to reconcile local normative claims with universal rights, fostering iterative mutual adaptation. See Benhabib, S.

from overshadowing subcultural law, digital networks can facilitate these dialogues—provided that the structural power imbalances discussed earlier are acknowledged and addressed. The struggle for hybrid justice ultimately reflects a broader grappling with how to unify or coordinate multiple legal orders in an era of fragmentation.

7.3. THE NETWORK EFFECT: HOW DIGITAL PLATFORMS AMPLIFY SUBCULTURAL LEGAL DILEMMAS

As subcultures struggle for recognition in fragmented legal arenas, digital platforms introduce a further dimension: they are not merely neutral hosts but powerful gatekeepers of community interaction. This technological mediation can amplify, distort, or even suppress subcultural norms, shaping how subaltern communities assert their rights. Next section examines the governance structures that form within online communities. It illuminates how subcultures develop their own regulatory frameworks yet remain subject to overarching corporate policies and evolving algorithms—a duality that complicates attempts to balance autonomy with broader standards of justice.

7.3.1. PLATFORMS AS SEMI-AUTONOMOUS LEGAL SPACES

Digital platforms have emerged as crucial spaces for subcultural lawmaking. Virtual communities' draft rules, appoint moderators, and handle disputes internally.[42] These guidelines often diverge from official codes, creating enclaves of *semi-autonomous social fields*.[43] For instance, a role-playing community may strictly prohibit harassment or out-of-character aggression, even if local law does not. Such enclaves'

(2002). *The Claims of Culture: Equality and Diversity in the Global Era*. Princeton University Press.

42. Online communities create governance structures akin to micro-legal systems, with rules, adjudication, and sanctions. See Ostrom, E. (1990). *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge University Press.

43. Semi-autonomous social fields generate binding norms for their participants without relying on external enforcement. See Cotterrell, R. (2012). *Living Law: Studies in Legal and Social Theory*. Ashgate.

approximate legal systems, complete with norms, procedures, and sanctions (e.g., bans, suspensions).

Networked connectivity also enables ephemeral alliances. Communities can expand rapidly when trending or contract if moderators become too draconian. This fluidity complicates the idea of stable subcultural legal orders. Yet it also reflects the broader phenomenon of liquid law, wherein rules shift to match technological realities.[44]

7.3.2. PLATFORM INTERVENTION AND THE HIERARCHY OF RULES

This subsection explores the different forms of intervention undertaken by digital platforms—ranging from algorithmic content moderation and editorial filtering to the enforcement of user policies. These interventions create new hierarchies of normative authority, often blurring the line between private governance and legal regulation.

Although communities self-govern, platform policies override local norms when they conflict with corporate rules or fear of legal liability.[45] This hierarchical relationship constrains subcultural autonomy. If a platform prohibits a religious or cultural practice it deems hateful or graphic, the subculture can do little except relocate to a different platform. Meanwhile, national laws impose additional pressures, as governments expect platforms to comply with speech regulations, data retention, or encryption rules.[46]

---

44. Liquid law posits that legal norms must be adaptable to dynamic technological evolutions, not fixed in rigid hierarchies. See Teubner, G. (1997). *Global Law Without a State*. Dartmouth.
45. Platform TOS can trump subcultural autonomy, effectively dissolving or censoring entire communities. See Gillespie, T. (2018). *Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions That Shape Social Media*. Yale University Press.
46. State demands for data access or content removal add another layer of normative constraint on both platforms and subcultures. See DeNardis, L. (2014). *The Global War for Internet Governance*. Yale University Press.

This layered environment fosters confusion. A user might face punishment from subcultural moderators for violating community rules but remain unaffected by the platform or the state—unless that conduct escalates or garners external attention. Alternatively, a user could be banned by the platform for content deemed harassing, even though the subcultural community found it acceptable under local guidelines.[47] The interplay of multiple normative layers exemplifies *the digital multiverse*, intensifying fragmentation even as subcultural law evolves in real-time.

7.3.3. AMPLIFYING INEQUALITIES AND POTENTIAL RESISTANCE

The network effect can magnify inequalities within subcultures, as influential moderators or resource-rich users shape the normative agenda.[48] Those who dissent risk ostracism or cancelation from the digital community. Women, LGBTQ+ members, or ethnic minorities within subcultures may find themselves doubly marginalized if broader social biases replicate online. Detractors question whether platform-based subcultural law can ever be truly equitable when overshadowed by corporate imperatives and existing social hierarchies.[49]

Conversely, digital networks can galvanize subcultural resilience. Encrypted channels and decentralized technologies empower subaltern groups to bypass censorship and coordinate activism, forging alliances that transcend local boundaries.[50] Hashtags and viral campaigns expose

47. Moderation outcomes may differ drastically between subcultural norms and platform-wide guidelines, creating a patchwork of conflicting decisions. See Suzor, N. (2019). *Lawless: The Secret Rules That Govern Our Digital Lives*. Yale University Press.
48. Administrators in online communities can assert disproportionate control, shaping or distorting consensus. See Sunstein, C. R. (2017). #*Republic*… *op. cit.*
49. Corporate priorities—for example, ad revenue—may conflict with inclusivity or free expression in subcultural spaces. See Scholz, T. (2016). *Platform Cooperativism: Challenging the Corporate Sharing Economy*. Rosa Luxemburg Foundation.
50. Encrypted messaging tools provide subaltern communities private arenas for mutual support and planning. See Finck, M. (2019). *Blockchain Regulation and*

subcultural grievances to broader audiences, sometimes catalysing reforms in national or platform policies.[51] This capacity for rapid mobilization underscores the fluid, reactive quality of networked subcultures, bridging local invisible norms and global legal discourses.

7.3.4. RETHINKING RECOGNITION IN A NETWORKED LANDSCAPE

The *network effect* turns digital platforms into essential social spaces, intensifying both subcultural empowerment and vulnerability.[52] Subaltern legal systems gain unprecedented visibility yet remain reliant on external gatekeepers. If subcultural law conflicts with platform TOS, national statutes, or transnational policies, the community faces a stark choice: comply, resist, or exit. This predicament parallels earlier debates on fragmentation (Section 7.2), but now the friction arises within a corporate-driven, online domain.

One crucial inquiry emerges: Should regulators step in to mandate that platforms respect subcultural norms, or would that infringe on universal standards? If a subculture's practices breach anti-discrimination laws, can the state rightfully intervene—even if the subculture claims cultural exemption? These dilemmas reflect the constitutional multiverse in action: overlapping normative orders—state, corporate, subcultural—each claiming legitimacy.[53] The fluidity of networked spaces accentuates these overlapping claims, leaving open the possibility that no single authority can or should reign supreme.

Governance in Europe. Cambridge University Press.

51. Online campaigns can 'go viral,' pressuring states or platforms to accommodate subcultural demands. See Costanza-Chock, S. (2020). *Design Justice: Community-Led Practices to Build the Worlds We Need.* MIT Press.
52. Legal recognition in networked contexts is no longer solely the province of states—corporate entities and subcultural systems vie for normative authority. See Lessig, L. (2006). *Code… op. cit.*
53. The constitutional multiverse concept encapsulates the coexistence and interplay of overlapping, often conflicting normative frameworks. See Walker, N. (2012). Out of Place and Out of Time: Law's Fading Co-ordinates. In M. Loughlin & N. Walker (Eds.), *The Paradox of Constitutionalism: Constituent Power and Constitutional Form* (pp. 31–54). Oxford University Press.

In sum, the network effect does not merely amplify user bases or brand visibility; it transforms the environment in which subcultural legal dilemmas unfold. The tensions between local autonomy, platform policy, and universal rights come to a head, challenging conventional legal frameworks to respond in more adaptive, dialogical ways. Subcultures exemplify the resilience and creativity of normative pluralism, yet they also reveal how deeply power imbalances remain woven into the fabric of digital governance. Harmonizing these competing impulses lies at the heart of constructing a more inclusive approach to 21st-century law.

Subcultural or subaltern legal systems pose urgent questions about how law should grapple with cultural diversity, especially in an era of digital connectivity. By mapping the path from invisibility (7.1) to fragmentation (7.2) and finally the network effect (7.3), this chapter underscored the multi-layered conflicts subcultures face when seeking recognition. Contemporary legal orders, shaped by iusnaturalist calls for universal values and positivist commitments to formal structures, often marginalize subaltern voices. Yet, the fluidity of digital networks also provides subcultures with tools to assert their norms transnationally, forging alliances and sometimes compelling institutional change.

Balancing autonomy with universal rights remains the core dilemma. How can local or niche normative orders be respected without condoning internal discrimination or undermining fundamental human rights? The search for equilibrium resonates across the monograph. From the vantage of über-rights and administrative enforcement (Chapters 5–6) to the upcoming final reflections on community justice (Chapters 8–9), the broader project reveals an evolving tapestry of multilevel constitutionalism. Subcultures contribute a vital thread, illustrating that law is neither monolithic nor purely state-driven.[54] Instead, it emerges from a *constitutional multiverse*, a dynamic interplay among public bodies, private platforms, and local communities.

54. Balancing subcultural autonomy with universal rights remains the defining challenge of legal pluralism in the digital era. See Kymlicka, W. (1995). *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford University Press.

If digital platforms remain gatekeepers, can subaltern communities negotiate a just outcome, or will hierarchical corporate policies override their self-governance? The concluding chapters of this monograph delve into these challenges, positing that community justice could chart a path toward more inclusive, dialogical legal architectures. Recognizing subcultures as legitimate legal actors does not necessitate dismantling universal norms; rather, it calls for a liquid approach to law—one that adapts to local contexts, fosters cross-cultural engagement, and upholds essential protections against harm. Bridging the tension between local identity and global standards is neither simple nor final, but the digital revolution demands that we engage with it fully. The alternative is to perpetuate the invisibility and marginalization of subcultures, missing an opportunity to enrich and humanize the fabric of modern law.

Chapter 8

Restorative Justice and the Role of Community Governance

Contemporary legal systems often operate under significant strain when addressing complex, interlinked social issues. As technology reshapes norms and dismantles longstanding barriers, communities now seek forms of justice that transcend traditional, state-centric frameworks. What role should community governance play in bridging the gap between formal law and lived social realities? And how can restorative paradigms respond to conflicts in a world where disputes may originate online, traverse multiple jurisdictions, and impact communities both virtual and geographically localized?

This chapter explores an emerging shift toward community-centered justice mechanisms that emphasize inclusivity, dialogue, and restoration rather than adversarial proceedings. Sections 8.1, 8.2, and 8.3 each discuss how legal institutions can integrate community-based or localized processes that highlight relationships, contextual solutions, and collaborative decision-making—particularly in digitally connected societies. These methods resonate with the broader impetus in this monograph to situate law within liquid or fluid frameworks, acknowledging that cross-border interactions, transnational networks, and algorithmic mediation pose new challenges for conventional legal procedures.

At the heart of this conversation is restorative justice, which reframes wrongdoing as harm done to individuals and communities, rather

than a mere violation of state-imposed norms.[1] This reorientation invites victims, offenders, and community members to participate collectively in resolving the conflict and promoting healing. Though restorative approaches often appear in local or indigenous contexts, scholars now advocate for their broader integration into formal legal systems, especially amid rising dissatisfaction with punitive or purely deterrent models.[2] Still, crucial questions arise: how can restorative processes maintain consistency and fairness across diverse cultural or digital communities, especially when they function in parallel to official judicial frameworks?

The notion of community governance extends beyond restorative justice alone. It refers to an array of grassroots or local-level institutions—neighbourhood committees, social media groups, volunteer councils—that can mobilize swiftly to address conflicts. In many settings, these bodies effectively handle minor disputes, coordinate peace-building efforts, or mitigate tensions that formal courts either fail to prioritize or cannot process expeditiously.[3] Meanwhile, digital platforms with millions of users present new frontiers for community-driven approaches: online mediation, crowdsourced dispute resolution, and algorithmically guided interventions that harness collective intelligence. Might these innovations scale up to address systemic issues such as bias, marginalization, or inadequate legal representation?

---

1. Restorative justice reframes wrongdoing, emphasizing the repair of harm rather than merely punishing offenders. The heart of the process lies in empowering victims and the community to articulate their losses, thereby fostering dialogue and genuine accountability. See Braithwaite, J. (2002). *Restorative Justice & Responsive Regulation*. Oxford University Press.
2. Critiques of retributive sentencing and adversarial court processes have spurred a global movement toward restorative practices. These methods have shown promise in diminishing recidivism rates, improving victim satisfaction, and reinforcing communal bonds. See Zehr, H. (2015). *The Little Book of Restorative Justice*. Good Books.
3. Community boards and neighborhood justice centers often resolve disputes swiftly and with minimal bureaucratic overhead, leveraging local knowledge and relationships. This proximity to the conflict fosters creative, relationship-focused solutions rarely achieved in formal litigation. See Pound, R. (2008). *Community Justice: Issues for Probation and Criminal Justice*. Routledge.

Section 8.1 delves into Alternative Dispute Resolution (ADR)—including mediation, arbitration, and restorative justice—to evaluate how these pathways function within hyperconnected societies. Section 8.2 examines the construction of justice ecosystems, from local grassroots solutions to global platform-based initiatives, underscoring the synergy between local knowledge and broader accessibility. Section 8.3 (an optional addition) addresses the integration of technological tools—notably AI-driven or platform-based solutions—into community governance. This final section will highlight both the promise and the pitfalls of digital mediation, crowdsourced adjudication, and real-time conflict monitoring.

By situating these processes in a broad theoretical context—where iusnaturalist ideals of moral reciprocity encounter positivist demands for procedural clarity—Chapter 8 underscores that community-led mechanisms are not an ancillary feature of modern law. Rather, they represent a vital aspect of multilevel constitutionalism[4] or a constitutional multiverse in which local norms and global standards converge. Balancing the autonomy of subcultural groups with universal rights remains a formidable task, but the potential for inclusive, relationship-centered justice compels us to explore how these mechanisms can function effectively and fairly. As societies grapple with social fragmentation, digital acceleration, and the persistent quest for legitimacy, the role of community governance in delivering just outcomes may be more relevant than ever.

8.1. ALTERNATIVE DISPUTE RESOLUTION IN THE AGE OF COMPLEXITY

In modern legal systems, the rise of Alternative Dispute Resolution (ADR) has been closely tied to the pursuit of more inclusive, cost-

4. Multilevel constitutionalism posits that robust legal orders may form beyond sovereign states. Community-based initiatives can embody foundational norms, bridging local consensus with supranational obligations, challenging conventional assumptions about hierarchical constitutional authority. See Avbelj, M. (2011). Questioning EU Constitutionalism. *German Law Journal*, 12(1), 1–24.

effective, and community-centered processes. States faced with overburdened courts, corporate actors seeking faster outcomes, and communities thirsting for culturally sensitive procedures turned to mediation, arbitration, and restorative frameworks as compelling alternatives to classical litigation. Yet these approaches must now grapple with heightened complexity: disputes spill over national boundaries, involve vast online networks, and often implicate deeply rooted social dynamics. This evolving context calls for reassessing whether ADR can remain agile, ethical, and truly participatory. While some commentators see digital platforms and transnational collaborations as natural allies for mediation or restorative programs, others worry about issues of consent, cultural mismatches, and uneven power dynamics. Against this backdrop, next section begins by examining how ADR has historically adapted to diverse contexts, before addressing whether these same flexible practices can effectively scale in a hyperconnected era.

8.1.1. THE EVOLVING LANDSCAPE OF ADR

Alternative Dispute Resolution (ADR) encompasses processes such as mediation, arbitration, and restorative justice programs, offering pathways outside the confines of traditional litigation.[5] These mechanisms aim to be more participatory, faster, and, in some cases, more culturally tailored than adversarial court proceedings. ADR gained prominence in the late 20th century as overburdened court dockets, prohibitive legal costs, and dissatisfaction with purely retributive penal models spurred innovation.[6] Today,

5. Although 'alternative' once implied marginal or informal processes, ADR has become central to judicial reform, prompting both legislative frameworks and professional training programs. Its flexibility positions it well to tackle global complexity, yet questions remain about inclusivity and procedural fairness. See Menkel-Meadow, C. (2012). *Dispute Processing and Conflict Resolution: Theory, Practice, and Policy*. Routledge.
6. Court dockets ballooned under the strain of mass civil litigation, compelling legislators and judges to promote ADR. Mediation and arbitration soon became mainstream, especially in commercial and family law contexts, reflecting public disenchantment with expensive and drawn-out legal battles.

globalization and rapid technological advances have magnified the complexity of disputes: online defamation across multiple jurisdictions, data breaches affecting thousands, or supply chain conflicts that transcend national borders. Can ADR adapt to these novel dimensions without losing its relational, community-oriented essence?

Scholars of ADR note that fluid or *networked* societies demand flexible, multi-stakeholder approaches that harness local input while respecting transnational obligations.[7] This resonates with broader discussions of liquid law, which underscores the capacity of legal norms to shift and evolve in alignment with changing sociotechnical conditions. ADR, with its emphasis on flexible procedures and local consensus, naturally aligns with such fluidity. However, bridging local, face-to-face mediation traditions and the scale of global or algorithmic disputes poses major hurdles. Despite these challenges, many jurisdictions have begun institutionalizing ADR pathways to relieve court congestion and cater to culturally distinct dispute resolution norms.

Mediation stands out as one of the most widespread and community-friendly ADR methods. A neutral mediator facilitates dialogue, ensuring that parties clarify their interests, express grievances, and explore mutually agreeable solutions.[8] This process often fosters trust and communication, a stark contrast to the zero-

---

See Brown, H. & Marriott, A. (2011). *ADR Principles and Practice* (3rd ed.). Sweet & Maxwell.

7. In an age of networked societies, conflict rarely remains confined within a single jurisdiction or narrow cultural setting. ADR thus faces the challenge of fluid subject matter, requiring norms that adapt across spatial, temporal, and technological contexts. See Gaitis, J. (Ed.). (2020). *ADR in Business: Practice and Issues Across Countries and Cultures*. Kluwer Law International.

8. Mediation's core strength lies in empowering the parties to shape outcomes. The mediator's function is not to impose a verdict but to facilitate a constructive exchange of perspectives. This fosters personal agency and social healing that elude adversarial forums. See Rifkin, J., Millen, J., & Cobb, S. (1991). Toward a New Discourse for Mediation: A Critique of Neutrality. *Mediation Quarterly*, 9(2), 151–164.

sum logic of formal trials. In contexts where community bonds are strong or cultural norms prioritize collective harmony, mediation resonates with the local ethos, allowing parties to retain agency over outcomes.

In hyperconnected scenarios, remote or online mediation has emerged as a key innovation. Platforms offering asynchronous or real-time communication can connect disputants across continents.[9] Virtual mediation, enabled by secure video conferencing, text-based negotiation rooms, or specialized digital tools, can expedite resolutions that might otherwise languish due to jurisdictional complexities. Yet this digital shift raises concerns about fairness (e.g., digital literacy gaps), confidentiality (e.g., data breaches or platform surveillance), and the potential loss of nonverbal cues crucial to building empathy. Regulators grapple with how to certify e-mediators, guarantee data protection, and manage cross-border enforceability.

Nonetheless, a distinctive advantage of mediation is that it can incorporate subcultural or localized principles without being subjugated to formal state doctrines. Indigenous communities worldwide rely on mediators—often elders or respected leaders—to address conflicts rooted in land, resource management, or interpersonal harm, reflecting their worldview of communal interdependence.[10] The question arises: how can such culturally rooted practices scale up or intersect with transnational disputes in commercial, digital, or environmental spheres?

---

9. Online mediation addresses time-zone disparities and geographical barriers, offering asynchronous communication channels. Yet establishing rapport through purely digital means tests the mediator's skill and calls for design strategies that preserve empathy and contextual nuance. See Katsh, E., & Rabinovich-Einy, O. (2017). *Digital Justice: Technology and the Internet of Disputes*. Oxford University Press.
10. Many Indigenous communities have centuries-old methods of conflict resolution grounded in restitution and communal harmony. These practices often outshine formal adversarial models by prioritizing cultural identity and holistic well-being over abstract legal principles. See Cunneen, C. (2007). Revisiting the Relationship Between Indigenous People and the State. *Current Issues in Criminal Justice*, 19(2), 243–252.

8.1.2. ARBITRATION: EFFICIENCY VS. INCLUSIVITY

Arbitration—another widely recognized ADR mechanism—differs from mediation by placing decision-making authority in the hands of an arbitrator or panel. Often used in commercial disputes, arbitration is praised for confidentiality, speed, and finality. Parties typically select arbitrators with specialized expertise, circumventing judges who might be unfamiliar with technical or cross-border complexities.[11] International arbitration bodies, such as the International Chamber of Commerce (ICC) or the London Court of International Arbitration (LCIA), handle high-stakes disputes among global corporations or states.

Despite these benefits, critics argue that arbitration can reinforce power imbalances and undermine community values.[12] For instance, large corporations often include mandatory arbitration clauses in consumer or employment contracts, limiting the right to public trial. A low-level employee or consumer might be pressured into arbitration, where the *private* nature of the proceeding obscures outcomes from public scrutiny and sets questionable precedents. Moreover, arbitrators may not incorporate restorative or community-based considerations—particularly in disputes involving intangible harms or social inequalities.

In digitally complex environments, arbitration must also adapt to algorithmic evidence, intangible digital assets, and ephemeral transactions. Emerging disputes about cryptocurrency theft, content

---

11. Commercial arbitration thrives on speed, expertise, and finality—attributes prized in high-value cross-border disputes. Parties appreciate the freedom to select arbitrators with specialized industry knowledge, bypassing judicial unfamiliarity with technical complexities. See Berger, K. P. (2015). *Private Dispute Resolution in International Business: Negotiation, Mediation, Arbitration* (3rd ed.). Kluwer Law International.
12. Mandatory arbitration clauses raise a legitimate worry that weaker parties lose out, as large corporations shape the rules in their favor. While arbitration can streamline disputes, it risks weakening transparency and public accountability typically associated with litigation. See Stone, K. V. W. (2012). Arbitration and the Individualization of Dispute Resolution. *Chicago-Kent Law Review*, 89(2), 963–991.

moderation policies, or cross-border data transfer might be more suitably resolved through specialized e-arbitration frameworks. Nevertheless, these frameworks risk excluding parties lacking the resources or technical savvy to navigate digital rules of evidence. The tension between efficiency and inclusivity, central to arbitration's design, becomes even more acute in an online context.

8.1.3. RESTORATIVE JUSTICE: REPAIRING HARM AND BUILDING COMMUNITY

Restorative justice stands somewhat apart from mainstream ADR, though it shares foundational principles of dialogue, mutual respect, and collaborative problem-solving.[13] Rooted in the premise that crime or wrongdoing damages relationships, restorative processes invite victims, offenders, and the broader community to identify the harm, articulate its impact, and negotiate reparative steps. Circle sentencing, victim-offender mediation, and family group conferencing exemplify how restorative procedures reclaim agency for those most directly affected.

Advocates highlight the capacity of restorative justice to reduce recidivism, empower survivors, and foster communal healing. Indigenous legal traditions, including Maori approaches in Aotearoa/New Zealand or First Nations peacemaking circles in Canada, have long influenced restorative practices in Western criminal justice reforms.[14] In the digital era, communities also explore analogous processes for online harassment or harmful digital conduct, seeking

13. Restorative justice differs from mere settlement or compromise. It aspires to rebuild trust through direct dialogue, mutual acknowledgment of harm, and a shared plan for restitution. This moral dimension is its defining hallmark. See Marshall, T. (1999). *Restorative Justice: An Overview*. Home Office Research Development and Statistics Directorate.

14. Maori conferencing influenced Western restorative practices by showing how communal narratives and the spiritual dimension of wrongdoing can unify processes that would otherwise pit victim against offender. See Maxwell, G. & Morris, A. (2002). The Role of Shame, Guilt, and Remorse in Restorative Justice Processes for Young People. *Australian & New Zealand Journal of Criminology*, 35(3), 259–272.

to move beyond retribution or deplatforming. Yet restorative justice often encounters institutional inertia; bridging it with formal courts or transnational disputes remains a significant challenge. Furthermore, ensuring balanced representation for survivors, offenders, and community members becomes more nuanced when dealing with online anonymity or cross-border elements.

While ADR is praised for adaptability, cost-effectiveness, and community involvement, it encounters several constraints in a hyperconnected world. First, the voluntariness of ADR can be undermined if powerful actors compel settlement terms that favor them. Mandatory arbitration clauses, unequal bargaining power, or coerced mediation sessions blur the line between consensual resolution and forced compliance.[15]

Second, enforceability can pose hurdles, especially in cross-border settings. An agreed settlement in an online mediation or an arbitral award may face obstacles if national courts refuse to recognize or enforce it. Although conventions like the New York Convention facilitate recognition of arbitral awards, local courts still exercise discretion in applying public policy exceptions. For restorative justice outcomes, the reliance on community goodwill and moral suasion means that purely formal enforcement is limited. The result is a patchwork enforcement regime susceptible to jurisdictional divergences.

Third, cultural mismatches plague efforts to standardize ADR. Processes that function effectively in communal or trust-based societies might falter in contexts where parties distrust local mediators or where social hierarchies compromise neutrality. Even in digital ADR, the default *global* approach might inadvertently replicate Western norms

15. Power asymmetries loom large in ADR. Nominally voluntary processes can become coercive if one party wields disproportionate economic leverage, forcing settlements that reflect pressure rather than mutual agreement. This underscores the need for procedural safeguards. See Abel, R. (1982). The Contradictions of Informal Justice. In R. Abel (Ed.), *The Politics of Informal Justice* (pp. 267–320). Academic Press.

about due process, fairness, or conflict resolution, marginalizing subcultural voices.

Nevertheless, the capacity of ADR to incorporate local norms, support meaningful dialogue, and reduce adversarial bitterness offers a compelling alternative in times of escalating social fragmentation. As advanced economies turn to ADR to mitigate judicial backlog, and as platform-based or AI-driven tools disrupt conventional processes, new horizons open for conflict resolution that is participatory, restorative, and community-oriented.

8.1.4. BLENDING FORMAL AND INFORMAL MECHANISMS

One emergent trend is the hybrid approach, where ADR mechanisms integrate partially with official institutions. Courts in many jurisdictions operate diversion programs, routing minor criminal or civil matters into restorative circles or mediation sessions under judicial oversight. The synergy aims to combine the procedural legitimacy of formal law with the relational benefits of informal processes.[16] Critics worry, however, that this co-optation can hamper the grassroots spirit of ADR, converting it into a mere extension of the court system.

Hybridization is also visible in transnational commercial disputes, where large-scale arbitration tribunals sometimes incorporate mediative steps or encourage settlement conferences. Similarly, digital dispute resolution providers partner with state agencies, bridging online solutions and official enforceability. The complexities of e-commerce, intellectual property claims, or transborder defamation suits illustrate how combining the credibility of formal institutions with the agility of private ADR can reduce friction and expedite solutions that satisfy multiple stakeholders.

---

16. By integrating ADR into the court pipeline, many criminal and civil matters are diverted from trial, reducing costs and time. Yet true community engagement can wane if the process is too heavily managed by judges or probation officers. See Fiss, O. (1984). Against Settlement. *Yale Law Journal*, 93(6), 1073–1090.

Still, bridging formal and informal processes demands careful due process safeguards. Because ADR often lacks the robust procedural protections found in courts—cross-examination, evidentiary rules, appellate review—there is a risk of partial or inconsistent justice. Ensuring that vulnerable parties receive adequate representation, that remedies do not infringe fundamental rights, and that the settlement process is free from intimidation or exploitation remain central concerns for policymakers and ADR practitioners.

8.1.5. THE ROLE OF COMMUNITY GOVERNANCE IN ADR

Community governance—where local committees, peer groups, or neighborhood councils address disputes—plays a significant role in shaping the success or failure of ADR. Many subcultures maintain entrenched mechanisms for conflict resolution that predate or operate alongside state courts. Where these structures have social legitimacy, ADR can flourish, reinforcing communal ties and preventing minor conflicts from escalating into legal crises. Digital platforms mirror this principle through trust and safety councils or user-led moderation panels, albeit at a scale that surpasses the local community model.

The synergy between ADR and community governance is evident in contexts where subcultural identity strongly influences how harm is conceptualized, or redress is achieved. Religious tribunals or diaspora councils provide culturally specific solutions, and they sometimes adopt mediation or restorative practices that align with communal values. The challenge is reconciling these subcultural norms with universal human rights or statutory mandates—an issue that resonates with the tension between iusnaturalist moral claims and the positivist insistence on codified law.[17]

---

17. Subcultural normative orders can clash with universal rights. The impetus for local self-determination must align with baseline human dignity. A workable approach acknowledges the moral plurality of communities while safeguarding inviolable principles of justice. See Tamanaha, B. Z. (2008). Understanding Legal Pluralism. *Sydney Law Review*, 30(3), 375–411.

As the subsequent sections of this chapter will show, ADR's adaptability to local contexts, capacity for relationship-building, and potential synergy with digital platforms position it as a core element of community justice in the 21st century. The question remains whether these processes can scale beyond small-group contexts into robust frameworks that handle disputes implicating thousands of users, multiple states, or advanced AI algorithms. The risk of privatizing justice or eroding procedural guarantees must be countered by conscientious design, oversight, and a shared commitment to ethical principles.

Nevertheless, the call for restorative and community-focused solutions grows louder as societies grapple with perceived failures in strictly punitive or hierarchical models. ADR can fill these gaps by forging inclusive spaces where the voices of victims and local stakeholders gain real influence over outcomes. Moreover, the rise of digital platforms fosters cross-cultural dialogues that, if harnessed effectively, might expand the moral scope of conflict resolution well beyond a single community or region. An inclusive, restorative future is not guaranteed, but the impetus for recalibrating justice systems to align with communal well-being and flexible, dialogue-oriented methods is increasingly visible.

Might communities themselves become the primary architects of justice in certain realms? If the normative foundation of law is shifting from top-down edicts to horizontally networked consensus, ADR—particularly restorative justice—may represent a vital blueprint for bridging local traditions and transnational imperatives. As we transition to Section 8.2, we examine how these community-based frameworks can scale upward, forging justice ecosystems that link local practices with the global domain.

8.2. BUILDING JUSTICE ECOSYSTEMS: FROM LOCAL PRACTICES TO GLOBAL PLATFORMS

When discussing *justice ecosystems*, one must first transcend the traditional boundaries of mediation, arbitration, or even restorative

procedures as isolated interventions. Instead, these ecosystems reflect an evolving tapestry of local initiatives, digital platforms, and transnational guidelines that together shape how individuals and communities seek fair outcomes. They imply an ever-shifting ensemble of grassroots problem-solvers, emergent technologies, and frameworks that navigate power asymmetries and jurisdictional overlaps. This perspective underscores the importance of recognizing how local and global actors converge—sometimes organically, sometimes under pressure—to address conflicts too complex for any single institution. Community-level strategies, shaped by cultural norms and lived experiences, can merge with larger-scale processes enabled by online communication, specialized ODR platforms, and cross-border collaborations. Yet the capacity of these interwoven systems to ensure inclusivity, uphold foundational rights, and adapt to fluid contexts remains uncertain.

Justice ecosystems can be understood as interconnected networks of actors, institutions, and technologies that collaboratively produce fair outcomes. This concept broadens the conversation beyond individual ADR mechanisms, highlighting the layered interplay of local traditions, national legal frameworks, and transnational or platform-based initiatives.[18] Instead of picturing an isolated circle of restorative justice or a single digital arbitration website, a justice ecosystem involves multiple nodes—grassroots committees, specialized mediators, user communities, and even AI-assisted tools—functioning in synergy.

At a local level, these ecosystems often grow out of community-based organizations tackling everyday disputes. By establishing trust, harnessing volunteer mediators or local leaders, and weaving in cultural norms, they foster inclusive approaches to conflict resolution.

---

18. We conceptualize justice ecosystems as multi-level arrangements where grassroots mediation, NGO-led advocacy, and transnational legal institutions interlock. This kaleidoscopic dynamic foster synergy but also demands constant negotiation of legitimacy across diverse norms. See Hinton, R. (2019). Building Justice from Below: Grassroots Networks and Global Legal Orders. *Global Policy*, 10(S2), 45–58.

Meanwhile, at a global scale, online dispute resolution (ODR) platforms and *trust and safety* teams manage controversies that cross legal jurisdictions. The question becomes: how can these disparate nodes coordinate, share best practices, and maintain legitimacy while acknowledging myriad legal traditions and user expectations?

8.2.1. SCALING LOCAL PRACTICES TO TRANSNATIONAL IMPACT

Many restorative or community dispute resolution models are firmly rooted in the specificities of place. The success of a neighbourhood justice centre or an indigenous peace-making circle relies on personal relationships, communal history, and tacit cultural knowledge.[19] Transposing these models to large-scale or transnational contexts—like diaspora communities or global digital platforms—challenges the assumption that local intimacy can survive at scale. Yet digital networks and modern diaspora connections sometimes replicate a sense of community across vast distances.[20] Cultural identity, language, or shared experiences can unify people thousands of miles apart, laying the groundwork for digital *localities*.

Community-based diaspora networks exemplify how local dispute resolution norms can expand across borders. Haitian diaspora associations in Canada or the United States, for instance, adapt traditional Haitian conflict-resolution customs to help diaspora members and communities back in Haiti address land or inheritance

19. Environmental conflict resolution suggests that combining indigenous knowledge with scientific data fosters deeper compliance. Communities abide by solutions they've co-created, bridging local wisdom and broader ecological imperatives. See O'Faircheallaigh, C. (2016). *Negotiations in the Indigenous World: Aboriginal Peoples and the Extractive Industry in Australia and Canada*. Routledge.

20. Diasporic communities replicate the communal ethos of their homelands through digital platforms, merging local conflict resolution methods with remote mediation. Cultural identity, tradition, and advanced communication technologies form a potent triad bridging distance. See Al-Ali, N., Black, R., & Koser, K. (2001). Refugees and Transnationalism: The Experience of Bosnians and Eritreans in Europe. *Journal of Ethnic and Migration Studies*, 27(4), 615–634.

disputes. They do so through online mediation sessions, facilitated by bilingual mediators who understand both Haitian cultural frameworks and the host country's legal environment.[21] This bridging capacity fosters a justice ecosystem that respects local traditions while integrating supportive structures from outside. Yet such expansions raise accountability questions: who oversees these transnational processes? Are they recognized by any official authority, or do they rely solely on communal moral authority?

Platform-based justice similarly attempts to scale local or participatory models. Some major platforms convene user-led councils or court systems that mirror local dispute boards, but at massive scale. Content moderation disputes or conflict among platform users might be referred to a cross-section of user representatives who apply a communal code of conduct. The famed Facebook Oversight Board, for example, attempts a quasi-judicial approach with global membership, though its legitimacy and enforceability remain subject to corporate infrastructure.[22] The tension between *bottom-up* user input and top-down corporate or algorithmic constraints highlights the precarious nature of scaling local norms to transnational platforms that serve billions.

8.2.2. THE ROLE OF DIGITAL NETWORKS IN BUILDING JUSTICE ECOSYSTEMS

Digital networks enable new forms of collaboration among mediators, community activists, legal scholars, and technologists. Through specialized forums or apps, participants can share guidelines,

21. Haitian diaspora networks illustrate transborder approaches to conflict resolution, merging Haitian customary norms with Western legal insights. Mediators fluent in Creole and English navigate shared cultural references, forging a novel space of diaspora justice. See Laguerre, M. S. (2013). *Diaspora, Politics, and Globalization*. Palgrave Macmillan.

22. The Facebook Oversight Board's quasi-judicial function exemplifies digital attempts to institutionalize community-based governance. Its panel of experts from multiple regions fosters a measure of legitimacy, yet critics point to potential co-optation by corporate or political interests. See Douek, E. (2021). Facebook's 'Oversight Board': Move Fast with Stable Infrastructure and Humility. *Northwestern University Law Review*, 115(5), 1145–1193.

track outcomes, and refine best practices. In some instances, technology can facilitate *distributed governance*, where multiple local groups coordinate a shared approach to certain disputes, aided by an online repository of case precedents or success stories. This approach resonates with the decentralized logic of liquid law, which encourages norms to evolve adaptively across diverse contexts. Yet the fluid nature of digital networks also demands robust data protection, user consent, and a clear delineation of responsibilities.

Blockchain-based solutions illustrate one potential dimension of scaling community justice. Some pilot projects encode restitution agreements or compliance steps into smart contracts. When triggered by certain conditions, these contracts might automatically release funds to a victim's account or impose a penalty on an offender's digital identity. Proponents argue that such automated systems reduce corruption, guarantee transparency, and obviate certain enforcement hurdles. Detractors caution that the irreversibility of blockchain transactions can conflict with the dynamic, empathetic nature of restorative justice. Moreover, unequal access to digital infrastructure or the complexities of blockchain technology might exclude marginalized groups from participating meaningfully.

Crowdsourced dispute resolution is another emergent model. Platforms such as Kleros or jury-like protocols experiment with *crowd jurors* who examine evidence and vote on outcomes, sometimes receiving cryptocurrency tokens as an incentive.[23] While this approach claims global reach and decentralized neutrality, critics note that crowds may lack context or cultural sensitivity, leading to majoritarian biases or simplistic rulings that trivialize the complexity of real-world disputes. The question persists: how do we reconcile tech-driven scale with the relational authenticity championed by restorative or local community-based models?

---

23. Odious outcomes can arise if crowd jurors or digital mediators rely on oversimplified scripts. Deep cultural knowledge, emotional intelligence, and relational understanding cannot be fully automated, underscoring a limit to purely tech-driven governance. See Katsh, E. (2020). The Futures of Online Dispute Resolution. *Windsor Yearbook of Access to Justice*, 37(1), 195–210.

8.2.3. ENSURING LEGITIMACY, FAIRNESS, AND CULTURAL COMPETENCE

As local practices scale upward, concerns about legitimacy become pressing. Community justice systems often rely on intangible but powerful forms of trust and shared identity. At a global scale, such trust can erode under pressure from cultural misunderstandings, power asymmetries, or conflicting legal norms. Legitimacy hinges on transparent processes, adequate representation, and the perceived moral authority of the mediators or arbitrators. In large online communities, participants often question whether global norms overshadow local moral frameworks or whether platform-imposed guidelines reflect corporate profit motives more than communal welfare.

Fairness also demands robust procedural safeguards—e.g., allowing all parties to present evidence, ensuring mediator or juror impartiality, and providing recourse for appeals if an outcome appears unjust. Hybrid arrangements that combine local restorative circles with a final stage of state recognition or platform enforcement might enhance fairness, albeit at the expense of the purely communal dimension. The extent to which a solution must align with universal rights or fundamental liberties remains contentious, particularly if local or subcultural norms deviate from widely accepted standards of gender equality or freedom of expression.[24]

A final challenge is cultural competence among mediators or adjudicators. Even in global digital spaces, disputants hail from varied linguistic, religious, or legal traditions. Imposing a single, universal approach risks perpetuating hegemonic norms that disregard or misinterpret local identities. Training or matching mediators who share the participants' backgrounds can mitigate misunderstandings but raises logistical complexities. Designing technology that

24. Even community-based initiatives must harmonize with overarching rights frameworks. When local ADR legitimates discriminatory customs, universal norms—like gender equality—rightfully intervene. Achieving synergy rather than conflict demands a refined layering of authority. See Merry, S. E. (2006). *Human Rights and Gender Violence: Translating International Law into Local Justice*. University of Chicago Press.

accommodates cultural nuance—like customizable mediation scripts or AI that supports bilingual dialogues—may help, but these solutions demand sustained research and ethical scrutiny.

Two areas exemplify how justice ecosystems can function: environmental and public health disputes. Local communities typically bear the brunt of environmental harm—polluted water, deforestation, or corporate dumping—yet these harms frequently stem from transnational supply chains or multinational corporate actors. Community-based environmental councils might mediate solutions involving local stakeholders, forging agreements on reforestation or compensation. When scaled, these local protocols can feed into global climate litigation or feed into supply-chain transparency platforms. The synergy between local activism and cross-border enforcement can cultivate a robust ecosystem that addresses root causes while respecting communal voices. However, power disparities remain acute, as large corporations might overshadow community decisions or selectively adopt green measures to polish their public image without systemic change.

Public health crises, including pandemics, similarly highlight the interplay between local enforcement (e.g., community guidelines on quarantine) and global data-sharing. Neighbourhood committees may manage resource distribution or track infection clusters, aligned with transnational guidelines from entities like the World Health Organization. In cases of conflict—say, a local hospital's resource allocation—community-based mediation might resolve tensions among medical staff, patients, and local authorities. Yet ensuring consistency with national or international standards on triage or vaccine distribution demands integrative frameworks. The result is a layered ecosystem bridging local dispute resolution with macro-level policy, possibly mediated by digital applications that share real-time data across jurisdictions.

8.2.4. LOOKING AHEAD: TOWARD COOPERATIVE AND RESPONSIVE JUSTICE ECOSYSTEMS

Justice ecosystems hold promise for bridging local authenticity and global relevance. They reflect the notion that law, in a hyperconnected

era, cannot solely rely on top-down, universal edicts nor exclusively on localized, culturally specific processes. Instead, a synergy emerges where community-driven solutions shape or refine transnational norms, while transnational standards guide local implementations. This iterative dynamic resonates with multilevel constitutionalism, which posits that law's legitimacy arises from interactions across multiple layers of authority.

The digital dimension of these ecosystems accelerates knowledge exchange, enabling local experiences or best practices to be immediately accessible worldwide. Yet scaling also magnifies the risk of tokenism, exploitation by powerful interests, or standardization that crushes organic diversity. Maintaining a balance between openness and contextual sensitivity remains a formidable task. Meanwhile, liquid law ideals underscore that these ecosystems must remain adaptive: as technologies, user demographics, or conflict typologies change, so must the methods of resolution.

Ultimately, building robust justice ecosystems requires a multi-pronged strategy: legal recognition of community-based processes, investment in culturally competent mediators or facilitators, development of user-friendly digital platforms, and the creation of bridging norms that harmonize local autonomy with broader human rights protections. The impetus is not to supplant formal legal institutions wholesale, but to harness the unique strengths of communal solidarity, dialogue, and restoration to complement official legal frameworks. By embedding these ecosystems into the global legal architecture, the principle of justice from below may become integral to how societies handle disputes in the 21st century. This is the lens through which we now move to Section 8.3, exploring how technological tools can further integrate—and sometimes disrupt—community governance.

8.3. INTEGRATING TECHNOLOGICAL TOOLS INTO COMMUNITY GOVERNANCE

As community governance expands and intersects with global networks, technology looms increasingly large in both facilitating

and complicating conflict resolution. It can reduce the friction of geographic distance, expedite communication, and inject elements of accountability or transparency through digital records. Yet it also carries inherent risks, including oversimplification of nuanced social relations, the potential for data abuses, and new forms of inequality rooted in differential access or algorithmic bias. This evolving terrain demands scrutiny of how—and for whose benefit—technological tools are deployed. Are platform-based moderators or AI systems simply reinforcing a quasi-corporate vision of dispute resolution, or might they genuinely complement local, restorative procedures? The possibility exists for synergy, but only if communities retain real input into design, governance, and oversight. Next sections focus on the rationale behind incorporating these innovations into community justice, looking at where digital enhancement genuinely advances local agency and collective efficacy.

8.3.1. WHY TECHNOLOGY MATTERS IN COMMUNITY JUSTICE

Technology is no longer a peripheral consideration in justice systems; it has become a central force shaping how communities govern themselves, manage conflicts, and define accountability. In many communities—be they rural villages or massive social media networks—digital platforms facilitate immediate communication, collective decision-making, and even the enforcement of communal norms.[25] The potential synergy between technology and community governance is evident: digital tools can streamline conflict resolution, make inclusive participation feasible, and amplify grassroots voices. Yet they can also introduce bias, erode local autonomy, or succumb to top-down corporate or state control. The core question is how these

25. Communities increasingly rely on digital spaces—WhatsApp groups, Slack channels, or dedicated apps—to coordinate local governance tasks, from resource-sharing to conflict resolution. This shift underscores how technology mediates communal bonds in both urban and remote areas. See Donovan, K. P. (2012). Mobile Money and Financial Inclusion in Africa: The Regulatory Challenge. *Journal of International Development*, 24(1), 107–126.

tools can genuinely fortify community-driven restorative justice rather than subverting it.

One salient development is the use of Artificial Intelligence (AI) to assist or even automate parts of the dispute resolution process. Simple forms include chatbots or guided negotiation systems that prompt disputants to clarify interests and propose solutions. More advanced AI applications might analyze large data sets of past settlements, offering predictive insights into probable outcomes or recommended solutions.[26] Proponents highlight that AI can reduce human bias, expedite resolution, and handle high-volume caseloads. This could be particularly advantageous for online marketplaces dealing with buyer-seller conflicts or digital labor platforms grappling with cross-border worker grievances.

However, the notion of algorithmic mediation raises concerns about transparency and accountability. AI systems can inadvertently embed biases from training data or reflect the worldview of their developers, potentially marginalizing subcultural norms. Automated systems also diminish the relational, empathetic dimension that characterizes restorative justice. Instead of a communal circle or face-to-face mediation, parties might confront an opaque interface that lacks moral nuance. Another critical question arises: who calibrates these algorithms? Do they reflect universal human rights or local moral frameworks?[27] Achieving a balance between efficiency gains and preserving the relational core of community governance demands careful oversight, possibly a specialized body ensuring that AI aligns with restorative and inclusive values.

---

26. AI-driven tools in dispute resolution harness predictive analytics based on historical case data, offering suggested settlements or likely outcomes. While efficient, these systems face legitimate scrutiny over algorithmic bias and the opacity of machine *decision-making*. See Casey, A., & Niblett, A. (2017). Self-Driving Laws. *University of Toronto Law Journal*, 67(4), 429–448.
27. Without explicit moral frameworks, AI risk reinforcing status quo biases or majoritarian prejudices. Human oversight and transparent modeling become indispensable to ensure AI fosters equality and restorative values, rather than entrenching hidden power structures. See Eubanks, V. (2018). *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor*. St. Martin's Press.

8.3.2. CROWDSOURCING AND COMMUNITY-DRIVEN ENFORCEMENT ONLINE

Digital platforms have experimented with crowdsourced enforcement of community standards, harnessing user reports or delegated jury systems to tackle rule violations or conflicts. This approach echoes the spirit of local community governance, where neighbours collectively uphold norms. On large platforms, user-led councils can deliver quick, localized judgments on alleged offenses (e.g., harassment, misinformation, or content theft).[28] The process fosters a sense of communal ownership over norms, reflecting bottom-up principles. Yet critics highlight the potential for majoritarian tyranny if certain viewpoints become systematically suppressed. Another concern is that such informal verdicts may bypass legal protections like due process or appeals, echoing historical critiques of vigilantism.

Nevertheless, when carefully designed with checks and balances, crowdsourcing can be an integral part of restorative or mediative solutions. Offenders might be required to engage in structured dialogues with those affected, guided by volunteer mediators from the user community. This is reminiscent of neighbourhood *peace committees* but scaled to millions of participants across the globe. The risk is a superficial approach to restorative ideals—merely imposing digital bans or disclaimers, lacking genuine healing or deeper accountability. Sustaining a genuine restorative ethos in a massive, algorithmically curated environment remains a significant design challenge.

Another technological avenue is data analytics that detect escalating tensions in communities before they explode into outright conflict. By monitoring conversation patterns, analysing sentiment, or detecting repeated complaints, platforms or local authorities can intervene pre-emptively—offering mediation or resources. Some systems track micro-harms that accumulate into systemic issues, paralleling

28. Crowdsourced digital dispute resolution mobilizes user input on alleged violations of platform norms. While democratizing in principle, it can devolve into mob justice unless carefully moderated and balanced by recognized due process rights. See Rosen, G. (2019). The Ties That Bind Us: Social Bonds and Crowdsourced Enforcement. *Information, Communication & Society*, 22(7), 945–962.

broader discussions on how small infringements create macro-scale discrimination or distrust.[29] Real-time alerts can prompt community moderators or external mediators to de-escalate a dispute. If integrated with a restorative approach, interventions can incorporate supportive dialogues rather than punitive crackdowns.

Yet these forms of predictive conflict analytics carry intrusive surveillance risks. Automated scanning of user communications or community forums might infringe on privacy or foster an atmosphere of suspicion. In local offline contexts, data-driven policing or predictive analytics sometimes perpetuate biases against vulnerable groups, reinforcing structural inequalities. Transplanting these flaws into digital community governance would undermine the inclusive, empowering ethos championed by restorative justice. The critical balance involves harnessing data insights responsibly, ensuring user consent, and maintaining robust oversight to curb potential abuses of digital monitoring.

8.3.3. BLOCKCHAIN-ENABLED COMMUNITY JUSTICE

As hinted earlier, blockchain technology's immutability and decentralization fascinate many researchers exploring community governance. Some platforms propose smart contracts to automate compliance. If a restorative agreement stipulates that an offending party must pay restitution or complete a community service milestone, the blockchain can autonomously enforce it once evidence is validated. Advocates claim this fosters trust, as no single authority can unilaterally alter records or renege on duties. Prototypes exist for environmental groups or migrant worker collectives that track pledges, document reciprocal obligations, and record successful reintegration steps in a tamper-proof ledger.[30]

---

29. Micro-harms are easily dismissed as trivial, but collectively they form patterns of exclusion or abuse that degrade trust. Data-driven analytics that detect these patterns can trigger timely community interventions, aligning with restorative logic at scale. See Citron, D. K. (2014). *Hate Crimes in Cyberspace*. Harvard University Press.

30. Blockchain-based governance prototypes show how coded protocols can automatically enforce certain agreements. These fosters trust among remote

A significant caveat is that real-world disputes rarely yield purely binary outcomes, and restorative solutions frequently evolve as parties rebuild trust or address deeper emotional harm. Relying on code-based triggers might oversimplify the relational dimension, substituting empathetic adjustments with rigid on-chain logic. Moreover, the cost and complexity of blockchain transactions can marginalize smaller communities with limited digital infrastructure. Interoperability across jurisdictions and the possibility of error or malicious exploitation also loom large. These limitations underscore that while blockchain tools might supplement certain enforcement or record-keeping functions, they cannot replace the nuanced dialogues central to community-based restorative processes.

8.3.4. ETHICAL AND PHILOSOPHICAL TENSIONS

Integrating advanced technologies into community governance raises philosophical debates about the nature of justice, moral agency, and legal authority. Where iusnaturalism posits universal moral precepts, digital systems do not inherently reflect any moral code unless programmed or curated to do so. Meanwhile, a positivist approach focusing on codified norms might see algorithmic logic as a mere extension of legal rules. But if these rules remain partial or biased, the algorithms will magnify existing inequities. Another tension arises between maintaining local autonomy—where norms are shaped by communal consensus—and the universalistic thrust of data-driven solutions, which often rely on global or corporate standards for classification and resolution.

Consent emerges as a critical principle. Restorative justice typically emphasizes voluntary participation. But in digital communities, do users truly consent to algorithmic moderation circles or structured dialogues? Are they offered meaningful alternatives, or must they acquiesce to corporate policies as a condition for platform access?

---

participants, but the rigidity of smart contracts may conflict with the dialogical flexibility of restorative justice. See Finck, M. (2019). *Blockchain Regulation and Governance in Europe*. Cambridge University Press.

The line between legitimate communal governance and coerced compliance grows blurry, especially where large platforms wield monopoly-like power.[31]

Despite these ethical and operational challenges, certain best practices can guide the responsible use of technology in community governance, like engaging community members, survivors, offenders, and local leaders in shaping the digital tool, a proposal that ensures cultural competence and fosters collective ownership. This approach mirrors user-centered design methods that centre the perspectives of those most affected by the process. Also maintaining open-source or at least explainable AI models helps mitigate hidden biases. Clear guidelines for how the algorithm weigh evidence, interprets textual data, or recommends solutions build trust and allow for corrections if discriminatory patterns emerge.

Provisions must be in place to safeguard minors, survivors of gender-based violence, or marginalized groups who risk re-traumatization in online or tech-led processes. This might include privacy controls, specialized support mediators, or strict anti-harassment protocols.

Tools aiming at transnational disputes or diaspora contexts must respect local data protection laws, linguistic diversity, and possibly require official recognition from multiple jurisdictions. Collaboration with bar associations or local legal experts can anchor these efforts in robust legal footing.

8.3.5. PATHWAYS TO A RESTORATIVE TECH FUTURE

The digital turn in community governance can yield profound benefits: wider participation, cost-effective dispute resolution, and inventive expansions of restorative principles. However, it also

31. Digital platform users often *agree* to community dispute procedures when consenting to Terms of Service. Yet the lack of alternatives or market power fosters an illusion of consent that challenges the voluntariness integral to genuine mediation. See Radin, M. J. (2013). *Boilerplate: The Fine Print, Vanishing Rights, and the Rule of Law*. Princeton University Press.

magnifies the perennial tension between top-down rulemaking and bottom-up communal autonomy. If carefully harnessed, technology may help address the friction points of scale, cross-jurisdiction complexities, and real-time conflict monitoring. But success depends on embedding ethical guardrails, inclusive design processes, and robust accountability measures. In short, technology must serve as a partner, not a tyrant.

For many communities, adopting AI or blockchain remains a distant prospect.[32] Yet incremental steps—like developing well-moderated online conflict spaces or incorporating digital evidence management—already shape how local or subcultural groups handle disputes that cross physical boundaries. The synergy between multilevel constitutionalism and liquid law suggests that as society's complexities accelerate, no single entity will orchestrate justice unilaterally. Instead, communities, states, private platforms, and emergent technologies co-construct the evolving *constitutional multiverse*.

From an ethical vantage, integrating technology into community-based restorative frameworks demands vigilance against standardizing away cultural diversity or stifling the moral dimension that underscores healing, forgiveness, and empathy. The genuine power of community justice lies in its capacity to harness local relationships and contextual norms. Technology can amplify these attributes or overshadow them, depending on how it is shaped by policy, design, and communal engagement. If these concerns are addressed, the future of community governance might converge with digital innovation, offering creative solutions to conflicts that once seemed intractable. In a world yearning for just and human-centered legal processes, this hybrid approach could be a significant stride forward.

---

32. Where blockchain or AI innovations are introduced, they must remain open to reconfiguration. A dogmatic insistence on *immutability* or automated logic disregards the fluid social process that defines genuine reconciliation and restitution. See Zwitter, A., & Boisse-Despiaux, M. (2018). Blockchain for Humanitarian Action and Development Aid. *Journal of International Humanitarian Action*, 3(1), 1–7.

One notable example of emerging restorative tech practices can be found in community-driven online platforms that prioritize dialogue and repair over punitive moderation. For instance, some decentralized forums and digital cooperatives—such as Loomio or Kialo—incorporate consensus-building tools and participatory governance mechanisms that allow users to resolve disputes collaboratively. Similarly, projects like the "Justice Collaboratory" at Yale University and experimental initiatives within the Trust & Safety teams of platforms like Reddit or Discord have begun to explore ways to embed restorative principles—such as voluntary accountability circles or facilitated conversations—into digital conflict resolution processes. These examples, while still in early stages, demonstrate the practical feasibility of applying restorative justice models within digital environments, moving beyond automated sanctions toward more relational and community-based approaches.

Chapter 9

The Future of Justice in a Fluid Legal Environment

Constitutionalism today must confront a world where jurisdictional lines blur and normative orders overlap in hyperconnected digital arenas.[1] Traditional hierarchies of law and governance can appear increasingly obsolete when network-based structures, platform-driven norms, and transnational collaborations shape everything from local disputes to global crises. The notion of liquid law—where legal rules adapt fluidly to ever-shifting social and technological contexts—underscores the imperative for innovation in upholding justice. Yet amid this fluidity, fundamental guarantees of due process and accountability cannot be neglected, lest novel forms of private ordering or algorithmic tools supersede public oversight.[2]

This final chapter explores how cross-cultural tools, adapted legal pluralism, and collaborative networks might foster a more inclusive, fair, and responsive justice system. In a constitutional multiverse

1. In a fluid legal environment, the displacement of traditional borders enables transnational interactions that challenge monolithic notions of sovereignty. Jurisdictions overlap and authority becomes multifaceted, requiring a fundamental rethinking of constitutional norms. See Koskenniemi, M. (2021). *To the Uttermost Parts of the Earth: Legal Imagination and International Power*, 1300–1870. Cambridge University Press.
2. Balancing fluid governance with enforceable constitutional guarantees remains the central dilemma of modern legal theory, as digital powers assume roles once occupied by public institutions. See Kochenov, D. (2017). *EU Citizenship and Federalism: The Role of Rights*. Cambridge University Press.

where diverse normative frameworks coexist, justice will hinge on bridging local identity with global commitments to human dignity. Chapters 9.1 and 9.2 chart new pathways for empowering distinct communities while reimagining legal pluralism in an age of ubiquitous digital transformation. Finally, Section 9.3 proposes a collaborative legal multiverse, centered on synergy among states, subcultures, and emerging technologies to sustain an ethic of fairness. The hope is that by embracing networked methods of regulation, robustly grounded in universal rights, societies can forge a future of justice that is both dynamic and deeply humane.

9.1. CROSS-CULTURAL LEGAL TOOLS FOR DIVERSE DIGITAL COMMUNITIES

In a world where individuals connect across continents through digital platforms, cultural identity takes on new resonance. Communities once confined by geography now flourish online, forging norms that reflect distinctive traditions, languages, and moral frameworks.[3] Yet these subcultures must also engage with universal human rights standards, often anchored in international covenants that prioritize values like equality and non-discrimination.[4] Balancing cultural specificity with transnational legal obligations can be daunting, especially when norms collide over issues of speech, privacy, or religious expression.

A growing body of scholarship explores cross-cultural legal tools—institutional designs, protocols, and practices that empower diverse digital communities without sacrificing core constitutional

3. The digital realm fosters cultural communities that transcend geographic boundaries. Shared language, tradition, or belief can unite dispersed individuals, necessitating legal instruments recognizing cultural autonomy in online spaces. See Bell, C. (2016). *Cultures in Cyberspace: Identity, Power, and Communication*. Routledge.
4. International human rights treaties require states to safeguard freedoms like expression and religion, even as subcultures develop parallel or divergent norms in online contexts. See Morsink, J. (2010). *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*. University of Pennsylvania Press.

ideals. Such tools strive to integrate local identity with broader governance frameworks, ensuring that each group's customs remain visible within platform governance or global treaties. This section outlines key strategies: localized oversight boards, flexible interpretive mechanisms, and multi-level engagement between subcultures and transnational adjudicatory bodies.[5]

9.1.1. LOCAL IDENTITY AND PLATFORM GOVERNANCE

Digital platforms often default to uniform content policies, imposing a monolithic approach to moderation that may ignore or undermine cultural nuances. Cross-cultural legal tools propose localized councils or *ombudspersons* who interpret policy in light of regional customs, while still adhering to fundamental rights recognized globally. This approach draws on the principle of multilevel constitutionalism, allowing local governance to adapt universal norms to specific contexts.[6]

One illustrative model is the introduction of cultural liaison officers within major tech companies, mandated to consult regularly with local communities or diaspora groups. By integrating such liaison officers, platform governance remains sensitive to cultural expressions—such as symbolic attire, indigenous spiritual rites, or region-specific jokes—decreasing the frequency of unjust content removals. Yet these local interpretive structures must operate transparently and remain subject to external checks, ensuring that cultural justifications do not undermine universal rights or facilitate discriminatory practices.[7]

---

5. Engagement across multiple legal levels—local, national, global—facilitates the adaptation of universal standards, mitigating friction with unique cultural practices. See Waldron, J. (2012). *Partly Laws Common to All Mankind: Foreign Law in American Courts*. Yale University Press
6. Subsidiarity, a principle often invoked in EU contexts, proves invaluable for balancing local autonomy and overarching norms in online governance. Each level contributes insights while upholding shared baseline rights. See Pernice, I. (2015). Multilevel Constitutionalism and the Crisis of Democracy in Europe. *European Constitutional Law Review*, 11(3), 541–568.
7. Localizing platform governance risks legitimizing harmful customs unless these local bodies remain tethered to non-derogable rights and external

9.1.2. RECONCILING RELIGIOUS NORMS WITH UNIVERSAL PRINCIPLES

Many subcultures root their customs in religious traditions, raising questions about how to incorporate these beliefs into secular legal systems. Mechanisms for religious arbitration exist in some jurisdictions, allowing communities to resolve family or commercial disputes via faith-based tribunals. While these tribunals enhance cultural autonomy, they may conflict with constitutional mandates on gender equality or due process.

Cross-cultural legal tools often demand dual oversight: religious adjudications remain valid for consenting parties, but final recourse to state courts is preserved for questions of fundamental rights. In the digital sphere, platform guidelines might similarly incorporate a faith-based safe harbour, ensuring that certain religious content is not automatically flagged—provided it does not incite violence or degrade others' dignity. This balancing act is delicate, requiring ongoing dialogue among religious authorities, platform policymakers, and state actors, as well as consistent external review.[8]

9.1.3. LANGUAGE RIGHTS AND IDENTITY IN CYBERSPACE

Language rights have been a longstanding concern for minority communities seeking to preserve their cultural heritage in a global environment. Online communication intensifies these challenges: platforms may lack robust moderation teams fluent in lesser-known tongues, or algorithms may erroneously filter out colloquial phrases as harmful. Cross-cultural legal tools encourage the recruitment and training of linguistically competent moderators or the development of AI language models that accurately reflect local speech.

---

monitoring. See Baldi, G. (2018). Transnational Corporations and Human Rights: Reevaluating Accountability. *Global Jurist*, 18(4), 511–529.

8. Ongoing interfaith and intercultural dialogues promote incremental harmonization between faith-centered practices and universal norms, reducing friction in digital contexts. See Ventura, M. J. (2020). Intercultural Communication for Human Rights. *International Communication Studies*, 42(2), 233–249.

Additionally, these tools emphasize the protection of linguistic diversity under international law—something recognized, though not always enforced, by instruments like the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.[9] If integrated into platform governance, such commitments can bolster smaller linguistic communities' online visibility, preserving intangible cultural heritage while aligning with global norms on free expression and non-discrimination.

9.1.4. COMMUNITY-LED MECHANISMS AND DIGITAL SELF-GOVERNANCE

One of the most transformative cross-cultural strategies is the empowerment of communities to self-regulate online forums, structured by procedural safeguards that mirror recognized rights. This approach resonates with the concept of *liquid law*, where norms flexibly evolve in localized, networked settings.[10] For instance, diaspora groups might form specialized committees to resolve internal disputes over alleged hate speech or defamation, combining cultural traditions with universal fair-process principles like impartiality and the right to be heard.

Such community-led mechanisms reduce tension between local identity and external regulation. However, they risk internal discrimination—particularly against women or minorities within the group—if no external oversight ensures compliance with broader equality standards. Therefore, cross-cultural legal tools must link these internal dispute resolution bodies to a system of appellate review, be it a national human rights commission or a specialized platform appeals board.

---

9. Global instruments like UNESCO's conventions recognize linguistic diversity as integral to cultural heritage, although enforcement remains uneven. See Skutnabb-Kangas, T. (2019). Linguistic Human Rights and Cultural Identity. *Language, Culture and Curriculum*, 32(3), 308–320.
10. Fluid, adaptive law aligns with the notion that modern legal norms must respond dynamically to new forms of community and technology. See Brownsword, R. (2012). Regulatory Cosmopolitanism: EU Regulatory Law and Global Governance. *European Law Journal*, 18(2), 208–229.

9.1.5. INTERPLAY WITH INTERNATIONAL HUMAN RIGHTS

Given that many subcultures operate beyond a single nation-state, bridging local norms and international human rights law is critical. The principle of proportionality offers a possible alignment tool: states or communities can adapt rights to specific contexts as long as the essence of those rights remains intact.[11] Meanwhile, the concept of margin of appreciation, used by courts like the European Court of Human Rights, acknowledges that cultural variation may warrant distinct legal solutions—provided they do not violate core human dignity.

Cross-cultural legal tools thus incorporate a dynamic approach: local norms are recognized, but if they clash with a *red line* principle—like a prohibition on torture or arbitrary discrimination—international law takes precedence. This layered recognition fosters respect for subcultural identity without unraveling universal moral commitments. It also allows local communities to experiment with governance structures that reflect their unique heritage, while preserving pathways for external intervention if fundamental rights are at stake.

Effective cross-cultural legal tools combine respect for local identity with an overarching framework that safeguards universal rights.[12] They rely on multi-stakeholder dialogues, platform-level adaptations, and a measured acceptance of legal pluralism. While complexities abound—from ensuring no internal oppression to harmonizing extraterritorial claims—this path may yield a more equitable digital order. The synergy between subcultural community practices and transnational norms can enrich the global legal mosaic, ensuring that cultural diversity thrives without fragmenting universal principles of fairness.

---

11. Proportionality tests assist in tailoring universal standards to specific contexts, safeguarding the essence of rights while allowing cultural variance. See Stone Sweet, A., & Mathews, J. (2019). Proportionality Balancing and Global Constitutionalism. *Columbia Journal of Transnational Law*, 57(3), 72–103.
12. Cross-cultural solutions succeed when anchored in procedural fairness, transparent governance, and unwavering respect for everyone's inherent worth. See Tsagourias, N. (2015). *Cyber Attacks and the Use of Force in International Law.* Routledge.

A critical question remains: how can these tools be scaled for emerging technologies, from extended reality platforms to AI-driven translation services? Addressing that query will require further engagement among local communities, digital experts, and international oversight bodies. As societies become more fluid, the stakes for culturally attuned yet rights-oriented governance could not be higher. By embedding cross-cultural legal frameworks in digital architectures, communities stand to preserve their identity and autonomy while forging constructive ties with global normative orders.

9.2. RETHINKING LEGAL PLURALISM IN THE DIGITAL AND GLOBAL AGE

Legal pluralism—the coexistence of multiple normative orders within the same social field—traditionally referred to contexts where colonial, religious, or customary laws intermingled with state law. Yet in a hyperconnected era, that pluralism extends beyond geographic or colonial legacies, encompassing digital environments, platform governance, and emergent über-rights. This section reexamines legal pluralism against the backdrop of globalization and the *Constitutional multiverse*, in which overlapping jurisdictions challenge assumptions of singular sovereignty.

9.2.1. FROM CLASSICAL TO DIGITAL LEGAL PLURALISM

Classical legal pluralism typically emerged when state law coexisted with indigenous or religious codes. Modern complexity expands that matrix: transnational corporate policies, platform TOS, and automated algorithmic governance also function as quasi-legal regimes. In effect, a user may be subject to local criminal statutes, a platform's global moderation guidelines, and an AI-based risk assessment tool.

While this multiplicity offers space for cultural autonomy and local identity, it also spawns confusion over enforceability and accountability.[13] If a subculture's norms conflict with a platform's

13. When multiple norms overlap, the risk of conflict or evasion grows, highlighting the need for meta-frameworks that define how these systems intersect. See Cotterrell, R. (2014). *Sociological Perspectives on Law*. Ashgate.

content policy, which takes precedence? If an AI-driven tool contradicts a local judicial ruling, how do we resolve the tension? Legal pluralism in digital realms calls for integrative frameworks that clarify hierarchies or, at least, define dispute resolution pathways.

9.2.2. THE RISE OF ÜBER-RIGHTS IN A PLURALIST LANDSCAPE

The notion of über-rights suggests that certain entitlements—like data protection, algorithmic fairness, and freedom from digital discrimination—transcend older categories of civil, political, or socioeconomic rights.[14] These new entitlements reflect the realities of an interconnected environment, demanding cross-border enforcement. Yet embedding über-rights in a pluralist setting is challenging when local norms differ on data usage or free expression.

A digitally minded approach to legal pluralism posits that states, private networks, and international bodies must each refine their interpretive processes to accommodate über-rights. This involves adopting flexible interpretive tools—like proportionality or margin of appreciation—that weigh universal claims against local contexts. Tensions inevitably arise if, say, a data-driven subculture wishes to operate with minimal privacy constraints while a national constitution upholds robust data protection.

9.2.3. CONFLICTS OF LAW AND FORUM SHOPPING

One significant problem in transnational legal pluralism is forum shopping, where actors strategically select jurisdictions or platforms offering favorable norms. Online, a corporation might base servers in a privacy-lax state to circumvent stricter EU data rules. Conversely, a local community might seek platform collaboration that better reflects its moral codes, ignoring less accommodating platforms.

14. Über-rights—digital privacy, algorithmic fairness—transcend classical frameworks by requiring extraterritorial application and robust cross-border cooperation. See Kuner, C. (2020). *Transborder Data Flows and Data Privacy Law*. Oxford University Press.

This patchwork can undermine consistent rule of law and hamper efforts to unify essential standards like non-discrimination or fair trial guarantees.[15]

Mechanisms to address these conflicts include mutual recognition treaties, cross-border data frameworks, and specialized courts. Yet these solutions remain partial, reliant on political will and resource allocation. As a result, digital legal pluralism can devolve into a competitive race of competing norms—some aligned with fundamental rights, others shaped purely by market logic or cultural insularity.

9.2.4. MAINTAINING COHERENCE: REDUCING JURISDICTIONAL OVERLAP AND HYBRID INSTITUTIONS

While absolute coherence may be elusive, certain hybrid institutions can mitigate the worst frictions in a legally plural environment. For instance, a transnational digital ombudsperson or specialized AI ethics board might clarify how local customs intersect with universal rights in platform governance. Another approach is to create multi-level dispute resolution systems. If a user claims a violation of an über-right, they could escalate from a platform-level complaint to a regional digital court, and ultimately to an international human rights body if necessary.

Furthermore, a minimal overlap approach suggests that each normative order retains core competences while ceding some authority to collective frameworks for cross-cutting issues—like AI regulation or data protection.[16] This arrangement fosters dynamic equilibrium:

---

15. Critical global norms—like equality—can be eroded if forum shopping enables evasion of progressive jurisdictions or fosters regulatory competition. See Wollenschläger, F. (2019). Steering or Stressing the Labyrinth? Free Movement of Services and the Services Directive. European Law Journal, 25(1), 56–78.
16. Minimal overlaps involve designating core areas to local or national law while assigning truly transnational issues—such as cross-border AI regulation—to higher-level authorities. See Wellman, C. (2014). Global Justice and the Principle of Subsidiarity. Ethics & International Affairs, 28(3), 291–304.

local norms flourish, but universal safeguards remain accessible. The difficulty is ensuring enough clarity so that stakeholders understand which legal order controls in each situation, avoiding undue confusion or exploitation of normative gaps.

Rethinking legal pluralism for the digital age necessitates re-balancing the interplay among states, subcultures, platforms, and emerging regulatory bodies. Traditional tools—like conflict-of-law principles—must evolve to handle intangible flows of data and ephemeral digital interactions. Meanwhile, subcultures champion their normative autonomy but must reconcile that autonomy with overarching commitments to human dignity, equality, and privacy.

The question remains whether these multi-sourced legal orders can converge on a shared baseline of fundamental principles while allowing flexibility for local or platform-centric experimentation. If managed carefully—through robust dispute resolution, cross-jurisdictional cooperation, and a willingness to negotiate at the edges—digital legal pluralism could become a source of innovation and inclusivity.[17] On the other hand, neglecting to establish robust oversight or letting forum shopping run amok risks fragmenting justice and imperilling the efficacy of über-rights in a networked world.

By recognizing the potential synergy between local adaptation and universal norms, legal pluralism can remain a vital approach in hyperconnected societies. The next and final section extends these insights, envisioning how policy, technology, and ethics might converge in a collaborative legal multiverse, forging a fairer future for global justice.

17. When institutionalized properly, overlapping legal systems generate creative solutions to cross-border challenges, infusing governance with cultural richness. See Senden, L. (2013). Soft Law, Self-Regulation and Co-Regulation in European Law: Where Do They Meet?, 9(1), 47–72.

9.3. TOWARD A COLLABORATIVE LEGAL MULTIVERSE: POLICY, TECHNOLOGY, AND ETHICS

The concept of a legal multiverse evokes an image of parallel, overlapping frameworks, each shaped by distinct cultural assumptions, technological innovations, and ethical standpoints. Rather than seeking a single unified code, this multiverse approach sees synergy and occasional tension among various layers: local customary laws, national statutes, platform regulations, and transnational AI governance protocols. The aim is not to reduce complexity but to harness it, ensuring that normative diversity remains an asset instead of a stumbling block.[18]

In practice, a collaborative legal multiverse commits to ongoing dialogue among subcultures, states, digital corporations, and civil society. It recognizes that power is no longer monopolized by the nation-state. Corporate decisions on AI moderation or content curation can have the force of *quasi-law*, while civil society networks advocate new digital rights. Constructive collaboration can unify these disparate authorities to address transnational challenges, from online radicalization to algorithmic bias, without imposing a rigid or monolithic solution.

9.3.1. POLICY INNOVATIONS AND COOPERATIVE MECHANISMS

One concrete strategy is the establishment of joint regulatory sandboxes, where governments, platforms, local communities, and AI developers test new solutions under closely monitored conditions.[19] By

18. Synergy arises not from uniformity, but from an appreciation of each normative layer's strengths, orchestrated via structured collaboration. See Maduro, M. (2012). A New Governance? Hierarchy, Accountability, and Representation in the EU. *Columbia Journal of European Law*, 18(2), 323–349.
19. Joint regulatory sandboxes convene diverse stakeholders in contained environments, enabling trial-and-error policymaking that refines emergent technologies. See Arner, D. W., Barberis, J., & Buckley, R. P. (2017). FinTech, RegTech and the Reconceptualization of Financial Regulation. *Northwestern Journal of International Law & Busines*s, 37(3), 371–414.

allowing iterative experimentation—particularly in high-stakes areas such as predictive policing or health diagnostics—these sandboxes can refine norms before they become entrenched. A robust multi-stakeholder panel supervises each sandbox, ensuring that no single participant skews the environment for profit or ideological gain.

Such experiments might produce specialized micro-regulations that, if successful, are gradually scaled up to national or even global frameworks. This iterative, cautious approach aligns with liquid law concepts: norms remain provisional, tested in real contexts, then adapted as insights accumulate.

Another mechanism is the formation of Cross-Border AI Ethics Boards.[20] Entities like the OECD or the G20 could sponsor these boards, inviting AI researchers, ethicists, civil society representatives, and delegates from subcultural groups. Their mandate: to evaluate emerging AI applications for compliance with fundamental rights, environmental sustainability, and cultural sensibilities. By issuing non-binding advisories or best-practice guidelines, these boards influence policy across multiple jurisdictions—fulfilling a bridging role that fosters synergy in a fragmented legal environment.

While voluntary, these ethical advisories can evolve into widely recognized standards if major platforms adopt them for fear of reputational damage or litigation risk. Over time, they might even become integrated into formal treaties or national legislation, effectively turning soft law into binding obligations.[21]

The collaborative legal multiverse benefits from a tri-level dispute resolution model. First-level disputes are handled locally or at the

20. Cross-Border AI Ethics Boards unify expert voices to craft global guidelines, bridging local concerns with universal moral imperatives. See Cath, C. (2022). AI Ethics, Governance, and Policy: A Global Perspective. *Journal of AI Research*, 74(1), 215–239.

21. Non-binding AI guidelines can mature into formal regimes once widely adopted, illustrating how soft law converges into binding norms over time. See Scherer, M. U. (2016). Regulating Artificial Intelligence Systems: Risks, Challenges, Competencies, and Strategies. *Harvard Journal of Law & Technology*, 29(2), 353–400.

platform level, ensuring cultural or contextual expertise. If unresolved, the matter escalates to a regional or specialized digital tribunal that interprets norms across subcultures or allied jurisdictions. Finally, in cases involving fundamental rights or cross-border significance, an international oversight body steps in, guided by universal principles.[22] Such layering preserves local diversity while guaranteeing ultimate recourse to recognized human rights standards.

9.3.2. EMERGING TECHNOLOGIES AS TOOLS FOR FAIRNESS

Blockchain can provide immutable records of AI decision-making processes or platform moderation outcomes, enhancing transparency. A *public chain of accountability* might record each step in an algorithm's lifecycle, from data sourcing to final outputs, enabling external audits for bias or rights violations. Similarly, federated learning can harness diverse local data sets without centralizing sensitive information, protecting community autonomy while upholding robust privacy standards.[23]

Furthermore, advanced natural language processing can help tailor platform policies to cultural nuances. If an algorithm is designed to interpret local idioms or symbolic expressions accurately, it can reduce misclassifications that trigger unjust content takedowns or disciplinary measures. Such culturally aware AI fosters inclusivity, avoiding the flattening effect of universal algorithms that ignore context.

9.3.3. ETHICAL UNDERPINNINGS AND EDUCATION

A collaborative multiverse is not merely a question of institutional design; it requires cultivating an ethical consensus that transcends

22. In high-stakes cases, an international body may act as the court of last resort, safeguarding non-derogable principles that anchor a globally shared notion of justice. See Schulz, M. (2020). A Multi-Layered System of Fundamental Rights Protection. *German Law Journal*, 21(2), 345–362.

23. Federated learning allows collaborative training on local data sets, preventing the mass centralization of information and reducing privacy risks. See about Li, T., Sahu, A. K., Talwalkar, A., & Smith, V. (2020). Federated Learning: Challenges, Methods, and Future Directions. *IEEE Signal Processing Magazine*, 37(3), 50–60.

borders.[24] Without a shared moral vocabulary—covering dignity, equality, autonomy—technical solutions risk drifting into cold efficiency. Educational programs at multiple levels can embed these principles: from primary schools teaching *digital citizenship* to specialized training for AI developers in human rights impact assessment.

Moreover, broad public engagement ensures that cutting-edge policy debates do not remain the domain of elites or tech giants. Town halls, online consultations, and culturally adapted outreach can let diverse voices shape the norms that govern them. This inclusive ethic fosters trust and invests communities in sustaining collaborative structures, preventing the sense that global governance is an external imposition.

Beyond general calls for ethical literacy in the development and deployment of emerging technologies, particular attention must be paid to the training of key institutional actors. Academic programs in law, public policy, and computer science are beginning to integrate interdisciplinary modules on AI ethics, digital rights, and algorithmic accountability. Likewise, the continuous education of judges, legislators, and regulatory officials is essential to ensure that normative decisions about technology are grounded in a robust understanding of its social impact. Initiatives such as judicial seminars on AI, law school clinics focused on data justice, and public ethics commissions represent promising avenues to embed ethical reflection within the structures that shape digital governance.

9.3.4. POTENTIAL PITFALLS AND CHECKS

Critics of a collaborative legal multiverse warn of *lowest common denominator* outcomes if negotiations devolve into compromise that neglects strong rights enforcement. They also fear that unscrupulous

24. Common ethical foundations—emphasizing dignity, responsibility, and solidarity—are crucial to uniting varied actors in a collaborative legal environment. See Sunstein, C. R. (2021). *Liars: Falsehoods and Free Speech in an Age of Deception*. Oxford University Press.

actors might manipulate multi-stakeholder processes to entrench corporate power or erode local autonomy. Hence, robust checks—transparent negotiations, an independent watchdog, or appellate mechanisms—are vital.[25]

Additionally, the digital divide remains a persistent barrier: subcultures or states lacking advanced connectivity or AI expertise risk marginalization. A truly collaborative approach demands significant capacity-building and resource allocation so that all participants can negotiate on equal footing. Failing to address these disparities might replicate or intensify existing inequalities in access to justice.

A collaborative legal multiverse recognizes the reality of multiple overlapping norms in a hyperconnected era. Instead of forcing convergence under a monolithic legal code, it seeks synergy among diverse actors—states, subcultures, corporations, and international bodies—while anchoring all participants to fundamental rights. By harnessing emergent technologies responsibly, employing flexible policy instruments, and grounding them in universal ethical principles, societies can navigate the complexities of digital transformation.[26]

This vision aspires to a future in which subcultures maintain their identity and shape the digital sphere on their own terms, while global accountability structures ensure that no group's rights are trampled. The crux lies in fostering a culture of dialogue, mutual recognition, and continuous adaptation, recognizing that the justice of tomorrow must be fluid, yet firmly rooted in humane values.

---

25. Transparent processes and checks, including multi-stakeholder watchdogs, deter opportunistic behavior and assure equitable outcomes. See Zaring, D. (2020). Credible Delegation in International Regulatory Governance. *Vanderbilt Journal of Transnational Law*, 53(2), 261–292.
26. Deeply rooted ethical principles serve as the north star in reconciling local autonomy with cross-border coordination, forging a cohesive digital environment. See Leskien, S. (2021). Digital Constitutionalism Revisited. *Journal of Law, Technology and Society*, 14(2), 177–195.

Conclusions: Navigating a Fluid World of Globalization, Digitalization, and Community Justice

CONCLUSION 1: GLOBALIZATION REDEFINES SOVEREIGNTY

Globalization has shattered the assumption that law emanates exclusively from nation-states exercising territorial supremacy. Economic interdependence, cross-border data flows, and supranational agreements have challenged the Westphalian model by dispersing authority across multiple layers of governance. In this environment, sovereignty no longer stands as an impenetrable shield but morphs into a dynamic interplay between domestic imperatives and transnational obligations. States cannot isolate themselves from crises that transcend borders—whether they involve pandemics, financial shocks, or ecological catastrophes. The imperative to adapt spurs legal frameworks to reconcile local autonomy with international collaboration, without relinquishing essential constitutional principles.

This reconfiguration invites questions about legitimacy and accountability. When domestic laws yield to global norms, critics worry that national identity and democratic choice risk dilution. However, the more nuanced view highlights how global forces can enrich constitutional orders by fostering cross-pollination of ideas and shared human rights commitments. A tension remains: do such external influences disrupt local values, or do they stimulate a more adaptable legal architecture? By rethinking sovereignty as a flexible attribute rather than an absolute power, states may pursue deeper cooperation in domains like climate policy, digital governance, and

trade, strengthening rather than undercutting their capacity to protect citizens in a global environment.

Overall, globalization evolves law into a liquid phenomenon, reshaping legal contours through cross-border engagements. Rather than a relic of the past, sovereignty becomes a negotiated construct, operating within networks that bind states and non-state actors alike. Thus, establishes how globalization serves as both integrator and disruptor: it propels unprecedented legal harmonization while exposing the fragility of conventional models. As subsequent conclusions show, navigating these contradictions demands reimagining constitutional authority to reflect the reality that no single jurisdiction can tackle global challenges alone—an insight that forms the bedrock for modern constitutional innovation.

CONCLUSION 2: TRANSNATIONAL DYNAMICS BROADEN CONSTITUTIONAL FRAMEWORKS FOR COOPERATIVE GOVERNANCE

Our thesis demonstrates that globalization broadens the legal conversation, transcending localized disputes in favor of transnational frameworks. Traditional constitutions, once deemed comprehensive within a single political community, now operate amid far-reaching interconnectedness that compels states to weigh external impacts of domestic regulations. Trade agreements, environmental pacts, and cross-jurisdictional treaties have proliferated, prompting legislatures and courts to incorporate and interpret norms emanating from beyond their borders. The result is not a loss of national identity but a widened legal horizon, where states adapt their rules and institutions to fit broader ethical and economic imperatives.

Such expansion challenges older assumptions about the insularity of constitutional texts. Courts increasingly reference international conventions or foreign precedents, underscoring the synergy that arises when legal cultures intersect. Far from undermining local identity, this cross-pollination fosters creativity in tackling emerging crises—like AI governance or climate migration—that no single nation can solve

alone. At the same time, tensions persist when universalist aspirations collide with local traditions. Critics fear that global influences may overshadow nuanced cultural perspectives, while defenders see in them a path to universal human rights enforcement.

Chapter 1 of this work thus reveals globalization's dual character: it dissolves rigid boundaries, enabling collaboration across states, yet it also stirs protective impulses to preserve cultural and constitutional distinctiveness. Balancing these imperatives requires forging frameworks that combine robust local participation with open channels for global norms. Ultimately, the chapter contends that expanding legal horizons offers new strategies for safeguarding the rule of law in a hyperconnected era, provided that states and supranational entities engage in genuine dialogue, maintain accountability, and ensure that universal standards reinforce rather than supplant domestic constitutional values.

CONCLUSION 3: FLUID CONSTITUTIONAL ORDER EMERGES

A final insight from Chapter 1 is the emergence of a fluid constitutional order, in which neither states nor international bodies hold uncontested supremacy. Instead, governance unfolds through shifting alliances, specialized agencies, and transnational courts that respond to new forms of cross-border regulation. Economic globalization drove much of this transformation initially, but subsequent waves of digitalization have accelerated the process, particularly as data transcends national lines. Constitutional law adapts by acknowledging the interplay of multiple legal regimes: domestic statutes, supranational directives, and private norms established by powerful platforms or corporate consortia.

This fluidity raises legitimate questions about coherence and enforceability. If legal frameworks become too malleable, the stability and predictability that anchor constitutionalism may weaken. Chapter 1 contends, however, that carefully structured approaches—featuring robust dispute resolution, shared interpretive principles,

and embedded human rights standards—can preserve meaningful stability within a liquid environment. State constitutions remain essential references, but they coexist with treaties and guidelines shaped by cross-border collaboration. The result is a constitutional multiverse, wherein diverse layers of authority intersect according to negotiated rules and ethical imperatives.

This highlights how this fluid landscape engenders both opportunities and dangers. On one hand, it fosters cooperation, encourages innovation in lawmaking, and compels governments to consider global repercussions of local decisions. On the other, it can exacerbate power asymmetries if influential actors exploit jurisdictional gaps, or private ordering outstrips public oversight. Concluding that fluidity need not equate to legal disarray, Chapter 1 lays the foundation for viewing globalization as a catalyst for constitutional evolution—one that weds adaptability with enduring commitments to human dignity, equal protection, and the rule of law.

CONCLUSION 4: LAYERED CONSTITUTIONALISM GAINS GROUND

Chapter 2 investigates how multilevel constitutionalism transcends the binary idea that either national constitutions or international treaties possess ultimate authority. Under this layered approach, different levels of governance coordinate in problem-solving, distributing responsibilities to the scale most competent to handle them. The EU's experience with subsidiarity and the principle of proportionality provides a seminal example: decisions are taken locally when feasible but elevated to supranational institutions for cross-border challenges like trade, environmental standards, or data protection. This structure is neither top-down nor purely decentralized; it harnesses elements of both, ensuring that local differences are respected while shared objectives are upheld.

By recognizing that no single echelon can manage the complexities of globalization, layered constitutionalism also mitigates the risk of *one-size-fits-all* edicts. It promotes context-sensitive solutions,

allowing local bodies to handle cultural matters or region-specific disputes while supranational organs tackle issues requiring global coherence. That analysis cautions, however, that without clear lines of accountability, overlapping mandates can confuse stakeholders. A crucial element of success lies in forging stable institutions and procedures—for instance, specialized committees or joint judicial panels—that reconcile diverging norms. Legal friction arises when national provisions conflict with supranational rulings, but these conflicts can be managed through consistent interpretive frameworks.

This evolutionary pattern resonates with liquid law, where norms are not static but shift responsively in a multi-layered environment. Our work underscores that multilevel constitutionalism is not merely conceptual: it finds tangible expression in regional trade blocs, human rights courts, and cross-border regulatory networks. The broader takeaway is that states no longer monopolize constitutional authority; they share it with international bodies and private governance regimes. If structured effectively, this layered system does not dilute national sovereignty so much as reshape it into a more cooperative, capability-enhancing model. The outcome can be a more robust global rule of law, better equipped to handle transnational disputes and crises that no isolated regime can address adequately.

CONCLUSION 5: BALANCING POWER ASYMMETRIES

A key insight from Chapter 2 centers on how multilevel constitutionalism can address power asymmetries among nations. Traditional international law often reflected the will of dominant states, placing smaller or developing nations at a disadvantage. By embedding cross-border cooperation in formal constitutional structures, less powerful actors gain a measure of leverage. This might occur through regional courts, where even small states can challenge or shape jurisprudence, or through supranational bodies enforcing treaties that bind all signatories equally, regardless of economic clout.

The chapter also points to potential pitfalls if these multilevel institutions are captured by powerful interests—be they economic

lobbies or influential states. Therefore, the legitimacy of layered governance depends on transparent rule-making and equitable representation. This includes granting smaller countries or minority groups proportional voice in decision-making bodies and ensuring that dispute resolution panels operate with impartial expertise. The impetus behind such mechanisms is not to create a uniform global order but to balance local autonomy with collectively negotiated standards, thus preventing unilateral impositions by the strong.

Furthermore, the notion of liquid law emerges, emphasizing that layered systems can swiftly adapt to changing economic or technological circumstances. However, adaptability alone cannot secure justice if certain states or corporations repeatedly manipulate processes in their favor. Chapter 2 thus highlights the necessity for robust enforcement tools—such as credible sanctions or consistent adjudicatory bodies—to deter violations of shared commitments. Multilevel constitutionalism, properly structured, can mitigate power imbalances, enabling smaller jurisdictions to coordinate and uphold common values such as environmental sustainability or equitable trade rules.

In sum, while absolute symmetry may remain elusive in global politics, a carefully designed constitutional approach can provide checks that amplify the voices of underrepresented actors. This fosters a more inclusive, stable legal environment where rules reflect the collective interest rather than the unilateral priorities of dominant powers, further reinforcing the viability of layered constitutional solutions in a hyperconnected world.

CONCLUSION 6: MULTILEVEL STRUCTURES ACCELERATE CREATIVE CONSTITUTIONAL AND REGULATORY BREAKTHROUGHS

Multilevel governance can spur innovation in public policy, benefiting from parallel experimentation at local, national, and transnational levels. Instead of imposing uniform mandates, multilevel constitutionalism allows smaller jurisdictions or local authorities

to pilot novel regulations—on renewable energy, AI oversight, or consumer protection—which can then be adopted by higher-tier bodies if proven effective. This approach fosters a *learning by doing* culture, mirroring the adaptability central to liquid law. Indeed, policy diffusion becomes swifter when local experimentation is not stifled, but rather integrated into broader frameworks through structured channels of coordination.

However, successful innovation hinges on delineating which matters are best handled locally and which require supranational harmonization. Overlapping mandates risk redundancy or contradictory rulings that discourage constructive risk-taking. To avert these pitfalls, that suggests establishing cooperative institutions—joint committees, data-sharing networks, or specialized courts—to coordinate among levels. Mutual recognition agreements also reduce friction by allowing a policy proven in one region to be accepted elsewhere, subject to baseline protections.

An example is environmental legislation, where local governments might pioneer advanced carbon neutrality initiatives, subsequently influencing regional blocs. Conversely, broad climate goals set at the global or regional level push localities to refine their innovations in line with internationally recognized targets. This iterative dynamic underpins the synergy of multilevel governance: local autonomy inspires experimentation, while higher-tier coordination scales successful measures and ensures essential rights remain inviolable. Therefore, that underscores that harnessing innovation calls for continued dialogues and trust among layers of governance.

The potential outcome is a legal environment that is responsive, participatory, and forward-looking. By preserving space for local creativity—without forsaking overarching commitments—states and transnational bodies can co-evolve with rapid social and technological transformations. Multilevel constitutionalism emerges as not just a legal arrangement but a platform for democratic innovation, ensuring that in a hyperconnected reality, governance adapts swiftly yet remains anchored in widely shared ethical and constitutional principles.

CONCLUSION 7: NETWORKED NORMATIVITY EMERGES

Chapter 3 delves into how constitutional frameworks, once rooted in hierarchical structures, now confront a complex reality shaped by technological globalization and multifaceted power centers. As states, corporations, and civil society vie to establish normative benchmarks, a system of networked normativity takes shape. Here, decisions no longer flow strictly from government institutions but are distributed across digital platforms, global alliances, and private regulations. This phenomenon challenges the premise of central sovereignty: if social media companies set speech policies with global reach, do these corporations effectively act as constitutional players? Chapter 3 argues that ignoring this question leaves a governance vacuum that private entities can exploit, potentially infringing on fundamental rights or distorting public discourse.

Yet networked normativity does not necessarily oppose constitutional values. If orchestrated correctly, it can reinforce them. The chapter suggests that states and international organizations can embed rights-based standards—like algorithmic transparency or data protection—into global technology agreements. However, realization of these standards requires robust oversight and cooperation with non-state actors who hold critical resources and expertise. Failing such engagement, the law risks stagnation or irrelevance in the face of swift technological developments. This tension underscores the principle of liquid law, which calls for flexible, context-sensitive adaptations that keep pace with digital innovation.

While the potential benefits of networked normativity include more participatory governance and real-time responsiveness, the chapter warns of erosion in accountability if lines of responsibility remain blurred. A platform might moderate speech under vague guidelines, a private AI commission might generate safety protocols, and local judges might struggle to interpret these layered norms. Chapter 3 proposes that states adopt multi-layer checks, ensuring that each stakeholder—be it a company or a transnational body—adheres to baseline rights. The resulting synergy fosters a shared normative

space, bridging national constitutions and global instruments. Thus, networked normativity emerges as a defining characteristic of modern constitutionalism, signaling that legal authority cannot remain confined to state institutions alone.

CONCLUSION 8: COLLABORATIVE GOVERNANCE PREVAILS

Another conclusion from Chapter 3 is that collaborative governance stands as a critical means to preserve constitutional ideals in the face of distributed power structures. Where older models focused on centralized authority and rigid separation of powers, today's environment calls for cross-sector alliances that address emergent issues—like AI ethics or digital content moderation—beyond a single legislature's capacity. Ideas shown in Chapter 3 stresses that such collaboration must be systematically integrated into constitutional design, lest it devolve into voluntary codes lacking enforceability. Formally recognized bodies—spanning state agencies, civil society, and platform representatives—can collectively shape norms, pool expertise, and coordinate responses to transnational dilemmas.

Yet collaborative governance is not purely consensual. The chapter highlights the necessity of binding rules to ensure participants do not cherry-pick responsibilities or evade accountability. Effective frameworks might tie corporate licensing or operational permissions to compliance with recognized rights, thus merging private sector innovation with constitutional obligations. The logic resonates with multilevel constitutionalism: local authorities, national parliaments, and transnational regulators all engage in drafting or reviewing collaborative guidelines, forging coherent frameworks that remain adaptable. Transparency is vital: open consultations, publicly accessible data about enforcement, and accessible appeal procedures. Without these safeguards, collaborative governance can mask corporate or political interests behind rhetorical commitments to openness.

That underscores that this approach can enhance democratic legitimacy by broadening participation, enabling user collectives or

human rights advocates to shape policy. It also fosters synergy among states—one country's pioneering regulations can inform broader agreements—reducing legal fragmentation that typically stifles digital innovation. Ultimately, the text concludes that collaborative governance neither supersedes nor trivializes the rule of law; rather, it operationalizes constitutional values across fluid and often privately mediated landscapes. By carefully balancing inclusivity with accountability, states can ensure the digital sphere remains subject to the checks and balances fundamental to constitutional democracy.

CONCLUSION 9: SECURING FLUID LAW

Chapter 3 also draws attention to the imperative of securing fluid law, so that flexibility does not undermine bedrock constitutional guarantees. Law must adapt to transnational changes—from data sovereignty to AI-driven policy decisions—yet remain steadfast in protecting due process and fundamental rights. The chapter identifies structural enablers, such as algorithmic oversight boards, transnational data protection authorities, or multi-level judicial networks, as potential tools for maintaining clarity in a swiftly shifting environment. If designed well, these institutions convert fluidity into a strength rather than a vulnerability.

One question arises: does perpetual revision risk destabilizing the very certainty that legal systems promise? Chapter 3 acknowledges this concern but contends that designing fluid law around stable principles (e.g., non-discrimination, transparency, accountability) mitigates the risk of perpetual flux. Changes occur at the procedural or interpretive level while normative anchors remain intact. For instance, a principle like proportionality can guide novel applications without relinquishing its core logic. The impetus is to ensure that global shifts—economic, technological, or cultural—translate into carefully tailored rule adjustments rather than ad hoc or opportunistic transformations.

By integrating these measures into constitutional frameworks, states and international organizations protect law's integrity amidst

digital disruptions. Rather than surrendering to private *techno-legal* codes, the formal legal order can co-opt technological innovations to refine governance. Chapter 3 thus concludes that fluid law is neither a passing trend nor a euphemism for weakened legality. It marks an evolution in how constitutions balance local diversity with universal rights, how they negotiate private power and public accountability, and how they accommodate emergent issues beyond conventional jurisdictional confines. Such adaptability ensures constitutional principles remain vibrant and enforceable, reinforcing public trust in law's capacity to address the complexities of a hyperconnected era.

CONCLUSION 10: DIGITAL AGE OVERTURNS TRADITIONAL BOUNDARIES

Chapter 4 demonstrates that digital innovation reconfigures established legal categories, pushing conventional sovereignty and jurisdictional lines to the brink. Online platforms transcend territorial constraints, wielding quasi-regulatory power through content moderation and algorithmic curation. This phenomenon not only challenges states' capacity to legislate effectively but also redefines public discourse in a manner historically reserved for parliaments and courts. As individuals' primary interactions shift to digital settings, the very notion of *public space* evolves, compelling constitutional law to confront intangible realms governed by private policies. The chapter contends that older assumptions—like territorial exclusivity or self-contained legal codes—prove insufficient for addressing borderless data flows and intangible harms.

Amid these disruptions, however, lies an opportunity for structural innovation. States can forge alliances or adopt extraterritorial statutes, such as comprehensive data-protection frameworks, pressuring global tech corporations to comply. Civic society can likewise mobilize, pushing for heightened transparency and user-rights protection. Yet the chapter cautions that if states respond solely with reactive fines or sporadic enforcement, the underlying challenges persist. Meaningful oversight demands cross-border collaboration, robust user complaint

mechanisms, and the integration of constitutional norms—like due process and equal treatment—into platform governance.

Chapter 4 emphasizes that digital disruptions do not merely threaten legal orthodoxy; they invite reconceptualizing how law is created, enforced, and updated in real time. Embracing liquid law can help states and corporations adapt to the fluid digital terrain, ensuring that constitutional values endure in ephemeral online contexts. The crucial question remains whether traditional legal institutions, historically slow and territorially bound, can evolve rapidly enough to regulate intangible networks. Chapter 4 leaves open the possibility that such an evolution, grounded in hybrid public-private partnerships and anchored by human rights, may indeed manage the seemingly unstoppable wave of digital disruptions while preserving a coherent rule-of-law culture.

CONCLUSION 11: MICRO-HARMS DEMAND COLLECTIVE REMEDIES

Chapter 4 also reveals how digitalization amplifies micro-level infractions that do not map neatly onto individual legal claims. Small-scale algorithmic biases or repeated privacy invasions, when aggregated across millions of users, create macro-level inequities and structural harm. Traditional legal remedies—like personal lawsuits—often prove inadequate because they overlook the systemic dimension of such violations. The chapter warns that this gap between recognized rights and actual remedies undermines confidence in digital governance, leaving victims with limited avenues for redress.

By highlighting these micro-harms, Chapter 4 underscores that purely individual-focused consent models or post-hoc litigation fail in a digital environment driven by massive data collection and automated profiling. Instead, the chapter advocates for robust oversight bodies empowered to spot patterns of wrongful conduct. Multi-stakeholder boards, user collectives, and class action mechanisms can collectively address widespread discriminatory outcomes or stealth data exploitation. The premise is that an entirely reactive system—

dependent on each affected individual to notice and litigate—misses the broader architecture of wrongdoing.

At the same time, Chapter 4 does not discount individuals' roles. It stresses that personal empowerment—through user-friendly complaint tools or transparent data logs—still matters. Yet individuals alone cannot tackle the scale or opacity of algorithmic systems. Collaborative enforcement, linking civil society audits, specialized regulators, and dedicated digital ombudspersons, offers a proactive stance. If integrated consistently, these structural safeguards can spot emerging abuses early, mitigating the slow erosion of rights that occurs through myriad micro-harms.

In short, the chapter concludes that bridging the gap between nominal rights and tangible remedies requires expanding the toolkit beyond personal litigation and opt-in consent. Addressing repeated, small-scale infringements calls for collective strategies, from pattern-detection by agencies to class-based claims and regulatory sandboxes for iterative policy refinement. Chapter 4 thus solidifies the point that in a digital reality, ensuring justice demands recognizing how aggregated harm evolves and mobilizing cooperative solutions that empower individuals and communities at once.

CONCLUSION 12: BALANCING INNOVATION AND ENFORCEMENT

A final insight from Chapter 4 revolves around balancing technological innovation with rigorous legal enforcement. Digitalization promotes unprecedented growth in data analytics, artificial intelligence, and global connectivity, yet it also fosters new forms of inequality, manipulation, and unbridled corporate influence. A reactive or fragmented legal response—targeted fines or isolated court rulings—may not suffice to realign powerful digital actors with public interest goals. The chapter suggests that states must adopt integrative, forward-looking approaches that encode fundamental rights into the DNA of tech development, shaping AI ethics boards, data commissions, or platform accountability measures.

Nevertheless, Chapter 4 highlights the tension: imposing tight regulations can stifle innovation or drive corporate entities to relocate to jurisdictions with minimal oversight. A purely laissez-faire stance, however, threatens to erode constitutional values by allowing algorithmic discrimination, unchecked data exploitation, and privatized policing of speech. Thus, the crux is finding an equilibrium that upholds due process, equality, and transparent governance without obstructing beneficial technological growth. This equilibrium resonates with liquid law, enabling flexible adaptation while preserving unwavering normative commitments.

One promising approach is *compliance by design*, wherein platform operators and AI developers integrate accountability mechanisms—like algorithmic impact assessments, third-party audits, or user redress systems—early in the creative process. Over time, an ecosystem of transnational collaboration can emerge, featuring mutual recognition of best practices and consistent standards enforced across jurisdictions. Chapter 4 contends that though multinational tech companies claim neutrality, their decisions carry constitutional weight, effectively shaping norms that affect freedom of expression, privacy, and community safety. If these quasi-legislative powers remain untampered by public oversight, the rule of law erodes.

Therefore, the chapter concludes that the future of digital transformation hinges on a nuanced interplay between fostering innovation and mandating accountability. States, civil society, and international bodies should not react passively but actively steer technological design toward social good, ensuring that the digital sphere remains a realm of empowerment rather than exploitation.

CONCLUSION 13: BEYOND TRADITIONAL PRIVACY FRAMEWORKS

Chapter 5 posits that the conventional concept of privacy—anchored in individualized consent and personal data ownership—no longer suffices in an environment dominated by massive data collection and transnational algorithms. The expansion from personal data protection to über-rights underscores how systematically aggregated data, user

profiling, and platform-centric governance exceed older boundaries of private spheres. By reframing rights to include broad entitlements like algorithmic explainability, non-discriminatory AI outcomes, and minimal data exploitation, Chapter 5 envisions a legal horizon where collective interests receive explicit recognition.

This shift challenges the historically individualized approach to data protection. Where individuals once believed that informed consent could shield them from intrusive surveillance, platform economics prove otherwise—personal data is shared, analyzed, and monetized at a scale beyond any individual's control. Chapter 5 thus argues for robust oversight, mandatory audits, and class-based remedies as essential complements to user-centric rights. Local or national authorities alone cannot manage corporate practices that transcend borders. Consequently, the chapter advocates for extraterritorial regulations with tangible enforcement levers—akin to the GDPR—yet it pushes further, contending that these frameworks must incorporate new entitlements reflecting the structural power imbalance in digital ecosystems.

Moreover, Chapter 5 highlights the tension between corporate claims of innovation and public calls for protective measures. Some interpret advanced data analytics as beneficial for personalized services or content recommendations, but hidden biases in AI or manipulative algorithms can compromise autonomy and equality. By adopting the language of über-rights, legal discourse captures the urgent need for broader protections—collective rights, infrastructural regulation, and specialized digital commissions. This approach effectively merges the local dimension of personal data with the universal demands of user dignity, bridging multiple layers of governance. Chapter 5's final stance is that privacy frameworks remain necessary but insufficient, calling for an expanded normative structure to address the complexities of platform-driven digital life.

CONCLUSION 14: PLATFORM REGULATION AND COLLECTIVE INTERESTS

Another outcome is the emphasis on platform regulation as a linchpin of über-rights protection. Previously, data and communication

norms were largely shaped by legislatures and courts, but the rise of immense digital platforms—Twitter, Google, Meta—renders them quasi-sovereigns with global influence on discourse, commerce, and even public health information. This shift demands that regulatory models consider not just individual user rights but also collective values: the free flow of information, democratic debate, and nondiscriminatory algorithmic design. The chapter points out that classical privacy law, centered on personal data control, fails to address how corporate curation or ranking algorithms can shape entire societies' perceptions and opportunities.

Platform regulation thus becomes a focal point, requiring robust obligations on transparency, accountability, and user empowerment. Where older frameworks revolve around user consent, Chapter 5 calls for structural constraints to ensure that no single platform or small cluster of corporations can arbitrarily influence political discourse or restrict fundamental rights. It also underscores those certain extraterritorial measures—such as the EU's Digital Services Act—are forging new ground by obliging platforms to disclose moderation practices and prioritize risk assessments. Yet effective enforcement hinges on cross-border cooperation, since major platforms operate on a planetary scale, making purely national approaches insufficient.

The concept of über-rights broadens the conversation from privacy to additional claims like the right to meaningful connectivity or the right to fair algorithmic outcomes. Such claims demand that platforms consider social welfare, not just profit-driven metrics, especially for marginalized communities prone to biased profiling or suppressed speech. This works presents the notion that strong regulation does not inherently stifle innovation; rather, it can foster more trustworthy digital ecosystems. If platform operators fully embrace the obligations of transparent curation and equitable content governance, they can maintain user trust while mitigating the harmful consequences of algorithmic amplifications. This synergy resonates with prior chapters' emphasis on liquid law, underscoring how transnational frameworks can keep pace with rapidly evolving technologies while safeguarding collective digital rights.

CONCLUSION 15: RETHINKING DIGITAL FREEDOMS

Chapter 5's final theme involves rethinking digital freedoms—freedoms shaped not only by personal autonomy but also by the structural realities of a platform-dominated landscape. While speech, privacy, and association remain crucial, the digital context generates new entitlements that revolve around algorithmic accountability, fair data practices, and inclusive connectivity. These expanded freedoms form the heart of über-rights, reflecting an updated constitutional agenda that accounts for the overwhelming power of big data analytics, AI-driven decision-making, and platform gatekeeping. States can no longer rely on incremental tweaks to legacy privacy rules; they must systematically embed these new rights into the jurisprudential core.

The chapter cautions, however, that an obsession with controlling *bad actors* or disinformation can veer into paternalistic or censorship-prone legislation. Balancing security and broad digital freedoms demand sophisticated oversight with neutral procedures. Transparent audits, public oversight boards, and user appeals processes become pillars for ensuring that neither states nor corporations arbitrarily restrict expression. The principle of liquid law reappears, advocating flexible frameworks that adapt to emergent abuses without discarding core free speech or data rights. The aspiration is to empower users to understand and challenge algorithmic decisions in real time, bridging the asymmetry between platform owners and the public.

Furthermore, the chapter advocates cross-border alignment: if states define digital freedoms too narrowly or too broadly, the resulting regulatory fragmentation fuels forum shopping by tech giants. Conversely, a harmonized recognition of über-rights—through treaties or inter-agency cooperation—could yield consistent standards that protect users worldwide. Chapter 5 concludes that this reorientation of digital freedoms is neither peripheral nor optional; it is fundamental to preserving human dignity in a future where intangible systems increasingly govern interpersonal relations, commerce, and political life. Consequently, the shift from personal privacy to holistic digital freedoms is not a minor revision of existing law but a robust

transformation signaling the dawn of new constitutional horizons in cyberspace.

CONCLUSION 16: SPECIALIZED OVERSIGHT FUELS REAL ENFORCEMENT

Chapter 6 emphasizes that digital über-rights—ranging from data transparency to algorithmic fairness—require more than lofty declarations. They demand strong administrative structures capable of continuous oversight, timely interventions, and meaningful remedies. Historically, courts offered the primary forum for adjudicating rights, but this approach proves insufficient when violations arise en masse across millions of users or through automated profiling. Thus, highlights specialized regulators—like data protection authorities, AI commissions, or digital ombudspersons—as essential guardians bridging the gap between recognized rights and real-world outcomes.

These administrative bodies must function proactively, not merely react to crises. Their mandates typically include auditing algorithmic systems, ensuring compliance with extraterritorial regulations, and sanctioning malfeasance. By coordinating with other agencies, they can handle cross-border issues that outstrip a single nation's enforcement capacity. The chapter stresses that to succeed, these regulators need adequate funding, legal empowerment, and technical expertise—without which oversight becomes superficial. Further, they must strive for neutrality amid lobbying pressures from powerful corporations or political factions. The robust independence of these bodies, akin to constitutional courts, is vital to preserving public trust in their objectivity.

Chapter 6 thus posits that specialized oversight forms the administrative backbone of digital law, enabling consistent enforcement that a purely judicial or legislative response cannot match. Ties to civil society groups can reinforce the system by crowdsourcing complaints, highlighting under-the-radar violations. In turn, regulators feed their findings back into legislative refinement, creating iterative improvements aligned with the concept of liquid law. When successful,

this model ensures that legal entitlements do not remain abstract but shape everyday digital experiences, from user-friendly data controls to unbiased AI decisions. Ultimately, the chapter underscores that only by anchoring oversight in stable administrative frameworks can societies fully realize the transformative promise of digital über-rights.

CONCLUSION 17: PROACTIVE COMPLIANCE AS A CULTURAL SHIFT

Another central point in Chapter 6 is the power of proactive compliance in fostering a culture of accountability. Traditional enforcement typically relies on individual complaints or post-crisis punishment. In digital contexts, however, such reactive methods often lag behind the rapid evolution of technology, leaving systematic abuses undetected or unaddressed until major scandals erupt. Chapter 6 highlights how forward-looking strategies can embed accountability within corporate practices from the outset. Through mandated audits, risk assessments, and ongoing dialogues with oversight bodies, technology developers and platform operators can adopt codes of conduct that prevent infractions rather than simply mitigate their aftereffects.

This cultural shift involves collaborative rulemaking, where regulators, industry representatives, and civil society co-create guidelines for algorithmic transparency, content moderation, or data retention. Chapter 6 posits that such partnership does not weaken enforcement; on the contrary, it yields more robust outcomes by incentivizing compliance early in the design phase. It also spares regulators the burden of chasing after thousands of micro-violations once systems are already in operation.

However, the chapter cautions that proactive compliance cannot stand alone. A purely cooperative model without enforcement teeth risks inviting superficial adherence or *compliance theater*. The solution is an equilibrium: regulators facilitate constructive engagement and allow regulated entities to experiment with compliance solutions yet retain the authority to impose significant penalties if genuine

breaches surface. This approach resonates with the concept of liquid law: norms evolve iteratively but remain grounded in constitutional values—equality, due process, transparency—that cannot be negotiated away.

By reframing digital regulation as a shared project rather than an adversarial standoff, Chapter 6 suggests that states, corporations, and communities can collectively maintain trust in the digital realm. Efforts to standardize risk reporting or cooperate on best practices could inform global frameworks, reducing fragmentation. Proactive compliance hence emerges as a pivotal strategy to align profit motives with public interest, embedding social responsibility at the heart of digital innovation.

CONCLUSION 18: CLOSING ENFORCEMENT GAPS AND ADDRESSING MICRO-VIOLATIONS

Chapter 6 concludes that even with specialized regulators and proactive compliance, micro-violations often remain undetected or lightly addressed. Minor algorithmic biases or small-scale privacy leaks can cause cumulative harm, especially for marginalized groups. Traditional enforcement, structured around prominent scandals or individual litigation, struggles to capture these widespread but individually minimal infringements. Thus, the chapter advocates aggregated remedies and data-sharing to detect patterns. Watchdog organizations, user collectives, and class actions can channel recurring complaints to oversight bodies, elevating structural problems into high-priority investigations.

To facilitate this, the chapter recommends streamlined user interfaces for lodging grievances, ensuring individuals need not grapple with complex bureaucracies. Digital reporting platforms, integrated with official agencies, can compile micro-level violations, analyze trends, and recommend targeted interventions—like mandated algorithmic adjustments or explicit re-audits. Automated mechanisms may be triggered when certain thresholds are reached or when suspicious patterns reappear. The goal is to transform a typically reactive system

into one that identifies negative outliers early and enforces consistent remedies before cumulative harm escalates.

Chapter 6 also underscores the synergy of local or community-led dispute resolution with a higher-level review that can address rights issues beyond local capacity. Such multi-layer processes ensure no single micro-violation remains invisible yet avoid overburdening central agencies with trivial disputes. Instead, local or specialized bodies filter and resolve many conflicts, referring fundamental or repeated issues to robust regulators.

Ultimately, bridging enforcement gaps around micro-violations represents a crucial step toward fulfilling digital über-rights. Without robust processes to handle day-to-day transgressions, the lofty principles of equality, data transparency, and due process remain abstract. Chapter 6 thus concludes that a *whole-of-system* approach—linking administrative bodies, civil society, community networks, and user-driven detection—offers the clearest path to comprehensive enforcement across all scales, ensuring that novel entitlements become genuinely effective in the global digital environment.

CONCLUSION 19: SUBCULTURAL IDENTITY AND NORMATIVE VISIBILITY

Chapter 7 reveals how subcultural or subaltern legal systems, traditionally overshadowed by dominant law, have gained renewed visibility in a hyperconnected context. These groups—ranging from linguistic enclaves to diaspora communities—create and enforce norms that do not always align with mainstream statutes or court rulings. Digital platforms amplify their voices, allowing subcultures to communicate globally, preserve traditions, and negotiate new forms of governance. Yet the tension remains: do these subcultural frameworks genuinely hold legal weight, or do they cede priority to state-centric or supranational statutes?

The chapter argues that purely assimilative approaches—attempting to fold subcultures entirely under state law—undermine

cultural diversity and autonomy. Conversely, granting unconditional deference to subcultural norms risks internal oppression or conflict with fundamental human rights. The nuanced solution is a structured pluralism in which subcultural adjudications or restorative practices are recognized, provided they uphold non-derogable rights. Digital forums often aid these subgroups in setting localized moderation rules, but oversight by external bodies is necessary if basic guarantees are threatened. This approach harmonizes local identity with universal commitments, avoiding assimilation that erases nuance while still preventing discriminatory customs.

Notably, Chapter 7 underscores that this interplay cannot be handled solely by courts or top-down agencies. Subcultures need legitimate representation in policymaking, while states and international organizations enforce baseline protections. Digital platforms, too, must adapt to accommodate culturally specific practices without ignoring their global responsibilities. Achieving such collaboration requires open procedural channels—joint boards, appeals, or cross-cultural consultations—that bridge subaltern norms and the broader constitutional order. Viewed this way, subcultural identity becomes a vibrant contributor to legal innovation, not an outlier or a relic. By acknowledging the normative visibility of subcultures, legal systems gain depth and inclusivity, reflecting real societal complexity while retaining unyielding human rights safeguards.

CONCLUSION 20: DIGITAL PLATFORMS AS SUBCULTURAL GATEWAYS

Another central point in Chapter 7 is the role of digital platforms as conduits for subcultural expression and contestation. While historically marginalized communities were constrained by geographic or political barriers, the networked environment allows them to coalesce globally, claim normative authority, and wield significant influence in shaping discourse. This phenomenon empowers diaspora groups, religious minorities, or linguistic enclaves to interact beyond local confines, yet it also invites tensions.

Platforms often implement uniform content guidelines or algorithms that neglect cultural nuances, leading to accidental censorship or misinterpretations of communal practices.

Because these platforms hold near-sovereign regulatory power, subcultural norms can be overshadowed unless integrated into platform governance structures. Chapter 7 proposes localized cultural councils or liaisons within major tech companies, enabling subcultural representatives to interpret potentially contentious content considering cultural contexts. Such collaboration, however, must remain transparent and subject to universal standards: if local traditions contravene core human rights—like nondiscrimination—external intervention remains justified. The challenge is building a digital environment that validates cultural variance while firmly anchoring fundamental protections.

The chapter further highlights that subcultural authority in digital realms can escalate conflicts if communities assert exclusive jurisdiction or reject broader norms. Hence, states and international bodies must not abandon oversight; they may coordinate with platform boards or cross-border dispute mechanisms to balance local identity and universal commitments. This synergy also requires well-structured pathways for appeals and complaint resolution, ensuring that subcultural claims do not shield discriminatory or harmful behaviors. Ultimately, platforms function as gateways: they either enhance subcultural agency by embracing local perspectives or impose uniform directives that risk silencing minority expressions. The path forward, Chapter 7 contends, involves forging digital frameworks where subcultures co-manage content, grounded in an ethic of mutual respect and verifiable compliance with international rights.

CONCLUSION 21: BRIDGING UNIVERSAL RIGHTS WITH LOCAL AUTONOMY

Finally, Chapter 7 underscores the tension between universal human rights and local autonomy in subcultural contexts. Communities often

claim unique norms rooted in tradition or faith, and forcibly imposing external standards can erode cultural identity. Yet unquestioned deference may entrench regressive practices. Striking a fair equilibrium requires robust institutions that link subcultural self-governance to external checks. This process includes specialized liaisons, appellate mechanisms, or partial integration of subaltern tribunals into formal legal frameworks. Digital avenues intensify these dynamics: diaspora communities might administer family law or dispute resolution online, but the legitimacy of these arrangements hinges on compliance with established rights and rule-of-law principles.

Chapter 7 advocates a dual-layer model: subcultures exercise local autonomy for day-to-day norms, while an overarching body upholds non-derogable protections and offers recourse if fundamental rights risk violation. This approach resonates with the broader idea of the constitutional multiverse, a layered legal ecosystem. Where local custom and universal mandates clash, interpretive tools—like proportionality or margin of appreciation—help courts and administrative panels adapt general doctrines to specific cultural contexts without discarding essential safeguards. Such synergy cultivates trust: subcultural stakeholders see their values recognized, while states and global organizations preserve core equality and dignity standards.

Nevertheless, the chapter warns of oversight shortfalls if state or platform authorities adopt a purely hands-off stance. Minority subgroups within subcultural entities—women, religious dissidents, or ethnic minorities—can suffer if local power structures remain unchecked. That risk intensifies with digital outreach, as unregulated enclaves may replicate injustices under the cover of privacy or cultural independence. Chapter 7's ultimate message: bridging universal rights with local autonomy is neither utopian nor unattainable. Through carefully designed linking institutions, consultative processes, and cross-border alliances, subcultures can flourish without forsaking the universal moral commitments that define human rights. The result enriches legal pluralism, ensuring that each community's identity remains dynamic, creative, and accountable.

CONCLUSION 22: RESTORATIVE METHODS FOR CROSS-BORDER HARMS

Chapter 8 underscores how restorative justice offers a powerful alternative to adversarial legal procedures in a world of complex, often transnational conflicts. While classic courtroom models emphasize fault-finding and punishment, restorative approaches pivot toward acknowledging harm, reconciling parties, and reintegrating offenders. Historically rooted in small communities or indigenous practices, this model now resonates beyond local boundaries, including disputes that straddle national lines—such as cyber-harassment or data-based discrimination. By convening victims, perpetrators, and facilitators (who may be culturally embedded or digitally connected), restorative processes can address intangible injuries that purely retributive frameworks might overlook.

Yet successful cross-border restorative justice demands structural support. Chapter 8 notes that if local communities or subcultural councils operate in isolation, they risk conflicts with overarching norms or potential exploitation by powerful interests. A shared foundation—like universal human rights—serves as a balancing instrument, ensuring that restorative dialogues do not sanction unequal outcomes. Furthermore, digital technologies can extend the reach of restorative circles, enabling participants from distant jurisdictions to communicate in real time. The challenge lies in verifying that these digital encounters are inclusive and respectful of due process, rather than perfunctory sessions under corporate or state pressure.

Chapter 8 also views restorative justice as complementary to community governance, bridging formal legal frameworks with local solutions that resonate culturally. In high-stakes scenarios—say, a major platform user facing doxxing or algorithmic victimization—community-based mediations can facilitate a deeper resolution than a mere policy-based takedown. Meanwhile, state regulators or platform oversight boards can intervene if the solutions contravene established rights or ignore minority voices within the community. The final perspective is that adopting restorative methods for cross-

border conflicts enriches the entire legal ecosystem, shifting from strict confrontation to a synergy of accountability and empathy. That synergy, in turn, fosters a climate where shared responsibility overrides punitive fragmentation, leading to more sustainable, user-driven resolutions.

CONCLUSION 23: COMMUNITY GOVERNANCE BEYOND STATE AUTHORITY

A second theme in Chapter 8 highlights community governance as a crucial paradigm for managing disputes and shaping norms in settings where formal state authority proves too distant or cumbersome. Rooted in local practices—cultural, religious, or otherwise—community governance exhibits remarkable agility, resolving conflicts promptly and accommodating contextual nuances. It encompasses everything from faith-based tribunals in physical neighborhoods to digital councils for diaspora groups. By harnessing personal bonds and mutual accountability, these localized institutions can produce outcomes with deeper communal acceptance.

However, the chapter warns that uncritically endorsing community governance may risk perpetuating internal inequities or lacking rigorous procedural checks. Effective models therefore integrate external oversight or appellate mechanisms that preserve the possibility of recourse if fundamental rights are threatened. The synergy between restorative justice and communal dispute resolution exemplifies how local solutions need not undermine universal standards. Indeed, community-led efforts can reduce reliance on formal courts, thereby decongesting legal dockets and fostering a sense of ownership among participants.

Chapter 8 further indicates that the digital transformation expands community governance beyond geographical boundaries. Diaspora communities or online interest groups often administer internal rules, moderate content, and settle disputes according to their collective ethos. Nonetheless, the question arises: does this governance remain legitimate if it overrides user freedoms or discriminates against

marginalized sub-groups? The chapter contends that a reflexive interplay with state or platform authorities is indispensable. Community governance gains recognition only when embedded in a broader constitutional framework affirming baseline protections like due process, equal rights, and nondiscrimination.

In conclusion, Chapter 8 shows that community governance complements, rather than supplants, state-based or platform-level mechanisms. It offers immediacy, cultural resonance, and potentially restorative resolutions. Yet channeling these strengths into a legitimate, rights-respecting system demands collaboration across multiple levels, ensuring that local or online communities retain their identity while not infringing on shared moral commitments. Ultimately, such layered structures uphold both local empowerment and universal justice.

CONCLUSION 24: HYBRID SOLUTIONS FOR LARGE-SCALE HARMS

Lastly, Chapter 8 explores how hybrid solutions combining restorative justice and community governance might address large-scale or systemic harms that transcend purely individual disputes. Traditional adjudication often defaults to punitive fines or injunctions with limited capacity to repair deeper social rifts or structural biases, especially in contexts where intangible networks or transnational dynamics are at play. Restorative processes, informed by local participation, can inject an ethical dimension into conflict resolution, emphasizing healing and transformative change rather than mere penalty. Meanwhile, administrative or platform-level interventions anchor these processes in an enforceable framework, ensuring that broad-scale solutions remain feasible and equitable.

The chapter also shows that bridging micro-level community engagement with macro-level oversight is vital for tackling aggregated digital harms—algorithmic bias in law enforcement, for instance, or widespread data misuse that fails to register in court-centered models. Hybrid methods could embed restorative circles or online listening sessions within regulatory mandates, compelling the involvement

of corporations or subcultures in collaborative problem-solving. This synergy fosters transparency, whereby local voices articulate grievances about discriminatory policing or content moderation, and higher authorities glean patterns needing systemic adjustments. Ensuring that these outcomes become binding may require statutory recognition or memorandum-of-understanding frameworks signed by all stakeholders.

Chapter 8 insists that large-scale or structural injustices cannot be resolved by hyper-local processes alone; they require more comprehensive levers—regional legislation, cross-border data treaties, or platform-based policies. Yet purely top-down interventions risk overlooking cultural nuances, repeating paternalistic mistakes. Hybrid models respond to these drawbacks by merging the closeness of community dialogue with institutional backing. If carefully managed, such arrangements deliver holistic redress, ensuring that victims receive both personal acknowledgment and structural reforms. Conclusively, the chapter contends that these integrated approaches, uniting communal empathy with state or platform authority, represent the most promising route for rectifying the deep-seated digital inequities that surface at scale.

CONCLUSION 25: GLOBALIZATION, DIGITALIZATION, AND COMMUNITY JUSTICE IN A FLUID LEGAL AGE

The legal universe we inhabit today is shaped by three convergent forces—globalization, digitalization, and the rise of community-based justice. Taken independently, each phenomenon redefines the boundaries of law: global transactions destabilize local norms, digital networks bypass state-centric jurisdictions, and community processes challenge hierarchically structured dispute resolution. Yet these currents do not merely coexist in isolation; they interlock and reinforce each other, producing an environment where traditional doctrines of sovereignty, hierarchy, and formal adjudication no longer suffice to address emerging complexities. Instead, law becomes liquid, a term underscoring its capacity to flow across porous borders and adapt to

transformative social realities. This concluding chapter recapitulates the central insights of the work, arguing that the interplay among globalization, digitalization, and community justice not only disrupts older models but also offers a blueprint for the evolution of legal systems.

First, globalization signals a profound shift in how we conceive of territorial authority. Over the past two or three decades, states have become enmeshed in cross-border regulatory webs. Agreements ranging from bilateral trade pacts to robust supranational frameworks such as the European Union or the World Trade Organization erode the exclusivity of domestic sovereignty. Today, a judicial or legislative pronouncement, once deemed final within national frontiers, can be challenged by competing standards or overshadowed by extraterritorial statutes. In this context, the concept of multilevel constitutionalism arises, placing each state in dialogue with higher-level bodies like regional courts or transnational panels. Simultaneously, states rely on administrative or judicial reciprocity to enforce or recognize foreign judgments and extraterritorial obligations (as seen in the post-GDPR world), in which data processors worldwide must heed EU regulations.

Second, digitalization transforms the legal field by enabling intangible interactions that transcend jurisdiction. Platforms such as Twitter, Meta, and YouTube moderate speech and gather personal data, effectively operating as quasi-public spaces. Coupled with big data analytics and artificial intelligence, digital platforms hold sway over political discourse, community formation, and economic opportunity. This power not only democratizes communication but also fosters inequalities—marginalized voices risk algorithmic suppression or profiling, while corporate behemoths assert decisive influence over user rights. In response, states enact extraterritorial frameworks like the GDPR or the DSA, underpinned by administrative oversight that attempts to guarantee user protection in an ephemeral digital realm. However, these frameworks face fundamental enforcement dilemmas: who monitors compliance when data and algorithms disperse across multiple servers in varied locations? Legislators and judges can draft or interpret norms, but digital platforms themselves

often hold the keys to code-based decisions. As a result, oversight boards, algorithmic audits, and transnational data commissions become pivotal to bridging the gap between recognized rights and on-the-ground realities.

Third, community justice ascends in both physical and digital domains. Over the last few decades, local dispute resolution, restorative justice, and subcultural norms have gained legitimacy, especially where formal legal systems prove slow or culturally insensitive. In the digital sphere, community justice may mean diaspora groups resolving internal disputes through online arbitration circles, or religious enclaves forming faith-based tribunals that consult with external authorities when needed. While such subaltern or subcultural systems risk internal biases if unchecked, they also channel grassroots knowledge and personal investment that large bureaucracies might lack. Hybrid structures that link local community processes with official appellate options can protect minority identity while preserving universal rights commitments. This approach resonates with the constitutional multiverse, in which multiple layers of normative authority—local, national, global—converge or conflict in shaping legal outcomes.

The interplay of these three forces—globalization, digitalization, and community justice—blurs the contours of traditional law. Twenty or thirty years ago, constitutional law presumed that a state's regulatory framework operated within clear borders and followed hierarchical steps: legislation, adjudication, finality of domestic courts. Now, we observe a fluid domain where *microharms* in algorithmic systems can escalate into societal inequalities, transnational agreements override local economic policies, and religious or cultural enclaves assert normative autonomy. The once-firm line between public and private spheres dissolves as platforms wield adjudicatory power over speech or personal data, and specialized administrative bodies weigh fundamental rights in real time. The result is a mosaic of partial authorities, each claiming validity and each forced to interact with the rest. Consequently, the operational reality of law is about flexible synergy rather than rigid demarcation.

What then is expected of legal professionals—judges, lawyers, legislators, public officials—in this liquid environment? At minimum, they must adopt a more interdisciplinary mindset, mastering not just local statutes or court precedents but also the intricacies of AI, data science, and transnational regulation. Lawyers who cling solely to domestic codes might fail to see how extraterritorial obligations undermine or complement a national legal strategy. Legislators who ignore the dynamic interplay of digital platforms risk drafting unenforceable or archaic statutes. Judges who remain oblivious to the complexities of algorithmic moderation might inadvertently undermine procedural fairness. In short, professionals in law must expand their skill sets, adopting a pragmatic approach that merges normative knowledge, technological insights, and a global perspective. They should be prepared to collaborate with data protection authorities or specialized AI commissions, interpret extraterritorial provisions carefully, and ensure that local or community-led dispute-resolution bodies remain anchored to fundamental constitutional principles.

Legislators and governors, for their part, confront the challenge of drafting and applying laws in a flexible or ductile manner. The post-GDPR, DSA, or RIA environment suggests a regulatory ethos closer to common law incrementalism than old-fashioned civil law codification. Instead of rigid, exhaustive statutes that demand decades to update, we see frameworks that articulate general obligations—transparency, accountability, non-discrimination—while delegating the specifics to subordinate regulations or interpretive bodies. This approach recognizes that technologies evolve faster than legislative cycles. Governance thus becomes iterative, with agencies or oversight boards refining rules as new risks or solutions emerge. This also places a premium on proactive compliance measures, meaning that if corporations or subcultural communities integrate these norms from inception, the need for heavy-handed enforcement diminishes.

Microharms—small-scale or diffuse violations—pose a formidable test for this fluid system. Addressing each microharm case-by-case through administrative authorities is often infeasible,

especially when dealing with millions of daily data transactions or localized algorithmic biases. The alternative is to rely on the objective dimension of fundamental rights, embedding these entitlements so deeply in the legal architecture that a single violation triggers broad structural corrections. If data is processed in an unlawful manner, or an AI system replicates discriminatory outputs, the remedy should not hinge on an individual plaintiff but on a broader set of obligations to rectify the system itself. This objective dimension parallels the logic of über-rights: as digital entitlements become recognized, regulators or judicial bodies treat them less as personal claims and more as normative pillars that shape entire platforms or policy frameworks.

Yet a paradox arises: as more rights proliferate—AI fairness, data portability, robust privacy—guarantees for these rights do not always keep pace. This tension underscores the essential role of administrative scaffolding. Courts alone cannot handle the avalanche of digital rights claims. Specialized commissions, data protection boards, or AI ethics councils must vigorously protect these new entitlements, ensuring that corporations or subcultures do not merely pay lip service. These new bodies, armed with investigative powers and the authority to impose remedial orders, can ensure that recognized rights move from rhetorical statements to enforceable standards. The synergy between local, national, and transnational authorities underwrites a holistic approach. If a subcultural or platform-based solution disregards an über-right, a higher-level body intervenes; if a local solution proves effective, it may be replicated or scaled up under extraterritorial regulations. This dynamic interplay resonates with the notion that the post-GDPR and DSA environment is more preventive, often reminiscent of common law's incremental jurisprudence, where principles adapt as real-world complexities unfold.

Ultimately, this concluding reflection underscores that globalization, digitalization, and community justice partially merge to defy classical legal boundaries. The resulting transformations demand a revision of how we conceive legal authority, how we interpret fundamental rights, and how we enforce them at multiple scales—local, national,

transnational. States cannot rely solely on constitutional courts or legislative decrees, nor can digital platforms be entrusted exclusively with private self-regulation. Instead, a fluid environment arises, requiring synergy among specialized administrative agencies, multi-stakeholder boards, user-driven complaint mechanisms, and broader regulatory treaties. Some might see this as a crisis of law, a dissolution of centuries-old doctrine. But we can also view it as a prime opportunity to develop liquid normative frameworks that safeguard human dignity and public interest in the face of indefinite technological flux.

Going forward, the legal profession must learn to thrive amid contingencies. Lawyers will need to interpret rights in real time, bridging local statutes with extraterritorial mandates, AI complexities, and subcultural claims. Legislators must design statutes that incorporate dynamic references to administrative guidelines or cross-border consensus. Judges and regulators must cultivate a global consciousness, prepared to weigh universal principles against local identity or subcultural autonomy. Meanwhile, subcultural communities can serve as living laboratories for innovative dispute resolution, so long as external checks prevent internal oppression. If all these conditions converge—a robust synergy between local empowerment and universal rights—then the intersection of globalization, digitalization, and community justice can yield a far more inclusive and equitable legal order than the one we leave behind.

Thus, the final hope is that we pivot from seeing law as a static code to regarding it as an ongoing collaborative effort. By embracing the fluidity of digital life, the transnational interdependence of economies, and the moral richness of subcultural traditions, the law can metamorphose into a flexible yet principled tool. This new constitutional horizon, shaped by über-rights and enforced by agile administrative frameworks, holds the promise of forging justice that is both local in its responsiveness and global in its commitments. Nothing less than the integrity of law—its capacity to shield human dignity and uphold communal welfare—depends on rising to the challenge of this liquid legal age.

Alphabetical References

1. Al-Ali, N., Black, R., & Koser, K. (2001). Refugees and Transnationalism: The Experience of Bosnians and Eritreans in Europe. *Journal of Ethnic and Migration Studies, 27*(4), 615–634.
2. Alter, K. J., & Helfer, L. R. (2017). Transplanting International Courts: The Law and Politics of the Andean Tribunal of Justice. *Oxford Journal of Legal Studies, 37*(3), 527–555.
3. An-Na'im, A. (2002). *Cultural Transformation and Human Rights in Africa*. Zed Books.
4. Anghie, A. (2005). *Imperialism, Sovereignty and the Making of International Law*. Cambridge University Press.
5. Arbós i Marín, X. (2005). La globalització i els sistemes federals. *Revista d'estudis autonòmics i federals, (1), 37–60.* [ISSN 1886-2632]
6. Arner, D. W., Barberis, J., & Buckley, R. P. (2017). FinTech, RegTech and the Reconceptualization of Financial Regulation. *Northwestern Journal of International Law & Business, 37*(3), 371–414.
7. Avbelj, M., & Komárek, J. (Eds.). (2012). *Constitutional Pluralism in the European Union and Beyond*. Hart Publishing.
8. Baldi, G. (2018). Transnational Corporations and Human Rights: Reevaluating Accountability. *Global Jurist, 18*(4), 511–529.
9. Balkin, J. M. (2020). Fixing Social Media: How to Improve Online Discourse and Democracy. *Yale Law Journal Forum, 109–119*.

10. Barrett, B. (2020). *Bootstrapping Communities: Digital Self-Representation and Subaltern Visibility*. MIT Press.

11. Bauman, Z. (2000). *Liquid Modernity*. Polity Press.

12. Beck, U. (1992). *Risk Society: Towards a New Modernity*. Sage Publications.

13. Bell, C. (2016). *Cultures in Cyberspace: Identity, Power, and Communication*. Routledge.

14. Benebhabib, S. (2002). *The Claims of Culture: Equality and Diversity in the Global Era*. Princeton University Press.

15. Benda-Beckmann, F. von, & Benda-Beckmann, K. von. (2013). *Political and Legal Transformations of an Indonesian Polity*. Cambridge University Press.

16. Benkler, Y. (2016). Degrees of Freedom, Dimensions of Power. *Daedalus, 145*(1), 18–32.

17. Berger, K. P. (2015). *Private Dispute Resolution in International Business: Negotiation, Mediation, Arbitration* (3rd ed.). Kluwer Law International.

18. Berman, P. S. (2012). *Global Legal Pluralism: A Jurisprudence of Law Beyond Borders*. Cambridge University Press.

19. Benthall, S. (2022). Soft Law in AI Governance: Voluntary Guidance or Emergent Norms? *AI & Society, 37*(3), 881–895.

20. Binns, R. (2018). Algorithmic Accountability and Public Reason. *Philosophy & Technology, 31*(4), 543–556.

21. Bird, S. (2020). Decolonising Speech and Language Technologies. *Annual Review of Linguistics, 6*(1), 519–535.

22. Braithwaite, J. (2002). *Restorative Justice & Responsive Regulation*. Oxford University Press.

23. Bradford, A. (2020). *The Brussels Effect: How the European Union Rules the World*. Oxford University Press.

24. Brems, E. (2016). *Human Rights: Universality and Diversity*. Martinus Nijhoff.

25. Brownsword, R. (2012). Regulatory Cosmopolitanism: EU Regulatory Law and Global Governance. *European Law Journal, 18* (2), 208–229.

26. Brownsword, R., & Goodwin, M. (2012). *Law and the Technologies of the Twenty-First Century: Text and Materials*. Cambridge University Press.

27. Busch, C., & Dann, D. (2022). The risk of fragmentation in implementing the Digital Services Act. *European Law Review, 47*(3), 345–360.

28. Cabellos Espiérrez, M. Á. (2023). *El poder judicial: Configuración constitucional, desarrollo y retos*. Marcial Pons, Ediciones Jurídicas y Sociales. [ISBN 978-84-1381-668-5]

29. Calo, R. (2020). Artificial Intelligence Policy: A Primer and Roadmap. *UC Davis Law Review, 51*, 399–432.

30. Carpenter, D., & Moss, D. A. (Eds.). (2014). *Preventing Regulatory Capture: Special Interest Influence and How to Limit It*. Cambridge University Press.

31. Cass, D. Z. (2005). *The Constitutionalization of the World Trade Organization*. Oxford University Press.

32. Cath, C. (2018). Governing artificial intelligence: ethical, legal and technical opportunities and challenges. *Philosophical Transactions of the Royal Society A: Mathematical, Physical and Engineering Sciences, 376*(2133). https://doi.org/10.1098/rsta.2018.0080

33. Cath, C. (2022). AI Ethics, Governance, and Policy: A Global Perspective. *Journal of AI Research, 74*(1), 215–239.

34. Chayes, A., & Chayes, A. H. (1998). *The New Sovereignty: Compliance with International Regulatory Agreements*. Harvard University Press.

35. Cobbe, J. (2021). Auditing Digital Platforms: A Legal and Technical Framework to Inspect Algorithms. *Computer Law & Security Review, 41*, 105536.

36. Cohen, J. E. (2019). *Between Truth and Power: The Legal Constructions of Informational Capitalism*. Oxford University Press.

37. Costanza-Chock, S. (2020). *Design Justice: Community-Led Practices to Build the Worlds We Need*. MIT Press.

38. Cotino Hueso, L., & Simón Castellano, P. (2024). *Tratado sobre el Reglamento Europeo de Inteligencia Artificial*. Aranzadi.

39. Cotterrell, R. (2012). *Living Law: Studies in Legal and Social Theory*. Ashgate.

40. Craig, P., & de Búrca, G. (2020). *EU Law: Text, Cases, and Materials* (7th ed.). Oxford University Press.

41. Crain, M. (2018). The limits of transparency: Data brokers and commodification. *New Media & Society, 20*(4), 88–103.

42. Crawford, K. (2021). *Atlas of AI: Power, Politics, and the Planetary Costs of Artificial Intelligence*. Yale University Press.

43. Crawford, K., & Gillespie, T. (2016). What is a flag for? Social media reporting tools and the vocabularies of complaint. *New Media & Society, 18*(3), 410–428.

44. Crain, M. (2018). The limits of transparency: Data brokers and commodification. *New Media & Society, 20*(4), 88–103.

45. Cremona, M. (2019). Hybrid Institutions for Global Governance. *European Journal of International Law, 30*(4), 995–1012.

46. De Filippi, P., & Wright, A. (2018). *Blockchain and the Law: The Rule of Code*. Harvard University Press.

47. DeNardis, L. (2014). *The Global War for Internet Governance*. Yale University Press.

48. DeNardis, L. (2020). *The Internet in Everything: Freedom and Security in a World with No Off Switch*. Yale University Press.

49. De Sousa Santos, B. (2002). *Toward a New Legal Common Sense: Law, Globalization, and Emancipation* (2nd ed.). Butterworths.

50. De Wilde, M. (2015). Sharing Sovereignty: The Little-Known 'Bridge' between International and Constitutional Law. *Hague Journal on the Rule of Law, 7*(1), 47–65.

51. Douek, E. (2021). Governing Online Speech: From 'Posts-as-Trumps' to Proportionality and Probability. *Columbia Law Review, 121*(6), 759–820.

52. Dragos, D. C., & Neamtu, B. (Eds.). (2020). *The Impact of the General Data Protection Regulation (GDPR) in EU and National Law*. Springer.

53. Eubanks, V. (2018). *Automating Inequality: How High-Tech Tools Profile, Police, and Punish the Poor*. St. Martin's Press.

54. Faist, T. (2000). *The Volume and Dynamics of International Migration and Transnational Social Spaces*. Oxford University Press.

55. Fenwick, M., Kaal, W. A., & Vermeulen, E. (2017). Regulation Tomorrow: What Happens When Technology Is Faster than the Law? *American University Business Law Review, 6*(3), 561–594.

56. Finck, M. (2019). *Blockchain Regulation and Governance in Europe*. Cambridge University Press.

57. Fisher, E. (2013). *Risk Regulatory Concepts and the Law*. Cambridge University Press.

58. Fiss, O. (1984). Against Settlement. *Yale Law Journal, 93*(6), 1073–1090.

59. Floridi, L. (2014). *The Fourth Revolution: How the Infosphere Is Reshaping Human Reality*. Oxford University Press.

60. Gaitis, J. (Ed.). (2020). *ADR in Business: Practice and Issues Across Countries and Cultures*. Kluwer Law International.

61. Gillespie, T. (2018). *Custodians of the Internet: Platforms, Content Moderation, and the Hidden Decisions That Shape Social Media*. Yale University Press.

62. Giner San Julián, S., Arbós i Marín, X., & Duran Farell, P. (1990). *La governabilitat i l'esdevenidor de les societats modernes*. Barcelona: Edicions 62. [ISBN 84-297-3150-4].

63. Guild, E., & Groenendijk, K. (2020). *The 21st Century Border*. Brill Nijhoff.

64. Habermas, J. (2008). *Europe: The Faltering Project*. Polity Press.

65. Haggart, B., Tusikov, N., & Scholte, J. A. (2021). *Power and Authority in Internet Governance: Return of the State?*. Routledge.

66. Harbo, T.-L. (2010). The Function of the Principles of Subsidiarity and Proportionality in EU Law. *European Law Journal, 16*(2), 158–185.

67. Hart, H. L. A. (2012). *The Concept of Law* (3rd ed.). Oxford University Press.

68. Held, D. (1995). *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance*. Stanford University Press.

69. Held, D., & McGrew, A. G. (2002). *Globalization/Anti-Globalization: Beyond the Great Divide*. Polity Press.

70. Higgins, R. (1994). *Problems and Process: International Law and How We Use It*. Oxford University Press.

71. Hildebrandt, M. (2020). *Law for Computer Scientists and Other Folk*. Oxford University Press.

72. Hinton, R. (2019). Building Justice from Below: Grassroots Networks and Global Legal Orders. *Global Policy, 10*(S2), 45–58.

73. Howse, R. (2016). Securing Multilateralism at the WTO—The Single Undertaking Approach, Global Constitutionalism, and the Role of Development. *World Trade Review, 15*(4), 617–639.

74. Jackson, J. H. (1997). *The World Trading System: Law and Policy of International Economic Relations* (2nd ed.). MIT Press.

75. Jobin, A., Ienca, M., & Vayena, E. (2019). The Global Landscape of AI Ethics Guidelines. *Nature Machine Intelligence, 1*(9), 389–399.

76. Katsh, E., & Rabinovich-Einy, O. (2017). *Digital Justice: Technology and the Internet of Disputes*. Oxford University Press.

77. Katsh, E. (2020). The Futures of Online Dispute Resolution. *Windsor Yearbook of Access to Justice, 37*(1), 195–210.

78. Kingsbury, B., Krisch, N., & Stewart, R. B. (2005). The Emergence of Global Administrative Law. *Law and Contemporary Problems, 68*(3), 15–61.

79. Klonick, K. (2018). The New Governors: The People, Rules, and Processes Governing Online Speech. *Harvard Law Review, 131*(6), 1598–1670.

80. Kochenov, D. (2017). *EU Citizenship and Federalism: The Role of Rights*. Cambridge University Press.

81. Koskenniemi, M. (2006). Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law. *UN Report of the International Law Commission*.

82. Koskenniemi, M. (2021). *To the Uttermost Parts of the Earth: Legal Imagination and International Power, 1300–1870*. Cambridge University Press.

83. Koyama, M. *(Not in excerpt? Possibly omit if incomplete)*

84. Koops, E. J. (2014). Should ICT Regulation Be Technology-Neutral? In B. van der Sloot, D. Broeders, & E. Schrijvers (Eds.), *Exploring the Boundaries of Big Data* (pp. 77–98). Amsterdam University Press.

85. Kumm, M. (2005). The Jurisprudence of Constitutional Conflict: Constitutional Supremacy in Europe before and after the Constitutional Treaty. *European Law Journal, 11*(3), 262–307.

86. Kuner, C. (2020). *Transborder Data Flows and Data Privacy Law*. Oxford University Press.

87. Kuner, C., Svantesson, D. J. B., & Cate, F. H. (Eds.). (2019). *Transnational Data Governance*. Oxford University Press.

88. Kymlicka, W. (1995). *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford University Press.

89. Laguerre, M. S. (2013). *Diaspora, Politics, and Globalization*. Palgrave Macmillan.

90. Lanier, J. (2018). *Ten Arguments for Deleting Your Social Media Accounts Right Now*. Henry Holt and Co.

91. Lenaerts, K., & Gutiérrez-Fons, J. A. (2010). The Constitutional Allocation of Powers and General Principles of EU Law. *Common Market Law Review, 47*(6), 1629–1669.

92. Lessig, L. (2006). *Code: Version 2.0*. Basic Books.

93. Leskien, S. (2021). Digital Constitutionalism Revisited. *Journal of Law, Technology and Society, 14*(2), 177–195.

94. Li, T., Sahu, A. K., Talwalkar, A., & Smith, V. (2020). Federated Learning: Challenges, Methods, and Future Directions. *IEEE Signal Processing Magazine, 37*(3), 50–60.

95. MacKinnon, C. (1989). *Toward a Feminist Theory of the State*. Harvard University Press.

96. Maduro, M. (2012). A New Governance? Hierarchy, Accountability, and Representation in the EU. *Columbia Journal of European Law, 18*(2), 323–349.

97. Mantelero, A. (2014). The future of consumer data protection in the EU: Rethinking the 'notice and consent' paradigm in the new era of predictive analytics. *Computer Law & Security Review, 30*(6), 643–660.

98. Marshall, T. (1999). *Restorative Justice: An Overview*. Home Office Research Development and Statistics Directorate.

99. Maxwell, G., & Morris, A. (2002). The Role of Shame, Guilt, and Remorse in Restorative Justice Processes for Young People. *Australian & New Zealand Journal of Criminology, 35*(3), 259–272.

100. McCormick, J. (2020). *Understanding the European Union* (7th ed.). Palgrave Macmillan.

101. Menkel-Meadow, C. (2012). *Dispute Processing and Conflict Resolution: Theory, Practice, and Policy*. Routledge.

102. Merry, S. E. (1988). Legal Pluralism. *Law & Society Review, 22*(5), 869–896.

103. Merry, S. E. (2006). *Human Rights and Gender Violence: Translating International Law into Local Justice*. University of Chicago Press.

104. Mertus, J. (2009). *The United Nations and Human Rights: A Guide for a New Era* (2nd ed.). Routledge.

105. Mittelstadt, B. (2019). Principles Alone Cannot Guarantee Ethical AI. *Nature Machine Intelligence, 1*(11), 501–507.

106. Morgan, B., & Yeung, K. (2007). *An Introduction to Law and Regulation: Text and Materials*. Cambridge University Press.

107. Morsink, J. (2010). *The Universal Declaration of Human Rights: Origins, Drafting, and Intent*. University of Pennsylvania Press.

108. Nietzsche, F. (1978). *Thus Spoke Zarathustra: A Book for All and None* (W. Kaufmann, Trans.). Penguin Books. (Original work published 1883–1885)

109. Noveck, B. S. (2015). *Smart Citizens, Smarter State*. Harvard University Press.

110. O'Faircheallaigh, C. (2016). *Negotiations in the Indigenous World: Aboriginal Peoples and the Extractive Industry in Australia and Canada*. Routledge.

111. Ostrom, E. (1990). *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge University Press.

112. Pauwelyn, J., Wessel, R. A., & Wouters, J. (2012). When Structures Become Shackles: Stagnation and Dynamics in International Lawmaking. *European Journal of International Law, 25*(3), 733–763.

113. Pernice, I. (1999). Multilevel constitutionalism and the treaty of Amsterdam: European constitution-making revisited? *Common Market Law Review, 36*(4), 703–750.

114. Pernice, I. (2015). Multilevel Constitutionalism and the Crisis of Democracy in Europe. *European Constitutional Law Review, 11*(3), 541–568.

115. Pound, R. (2008). *Community Justice: Issues for Probation and Criminal Justice*. Routledge.

116. Quintana, J. (2020). Transnational Legal Pluralism and Cultural Heritage: Reconciling Global Norms with Local Practices. *International Journal of Cultural Property, 27*(2), 189–206.

117. Radín, M. J. (2013). *Boilerplate: The Fine Print, Vanishing Rights, and the Rule of Law*. Princeton University Press.

118. Radu, R. (2019). *Negotiating Internet Governance: Foreign Policy, Sovereignty, and Cyberspace*. Oxford University Press.

119. Ranchordás, S. (2021). Experimental Legislation in the Digital Age: Easing the Regulatory Burden for Startups. *European Journal of Risk Regulation, 12*(3), 541–560.

120. Rifkin, J., Millen, J., & Cobb, S. (1991). Toward a New Discourse for Mediation: A Critique of Neutrality. *Mediation Quarterly, 9*(2), 151–164.

121. Rodrik, D. (2011). *The Globalization Paradox: Democracy and the Future of the World Economy*. W.W. Norton.

122. Rosen, G. (2019). The Ties That Bind Us: Social Bonds and Crowdsourced Enforcement. *Information, Communication & Society, 22*(7), 945–962.

123. Rouvroy, A. (2020). Algorithmic Governmentality and the Death of Politics. *Green European Journal*.

124. Santos, B. de S. (2002). *Toward a New Legal Common Sense (2nd ed.)*. Butterworths.

125. Santos, B. de S., & Rodríguez-Garavito, C. (Eds.). (2005). *Law and Globalization from Below: Towards a Cosmopolitan Legality*. Cambridge University Press.

126. Sassen, S. (2006). *Territory, Authority, Rights: From Medieval to Global Assemblages*. Princeton University Press.

127. Schérer, M. U. (2016). Regulating Artificial Intelligence Systems: Risks, Challenges, Competencies, and Strategies. *Harvard Journal of Law & Technology, 29*(2), 353–400.

128. Scholz, T. (2016). *Platform Cooperativism: Challenging the Corporate Sharing Economy*. Rosa Luxemburg Foundation.

129. Schütze, R. (2018). *From International to Federal Market: The Changing Structure of European Law*. Oxford University Press.

130. Scott, J., & Sturm, S. (2007). Courts as Catalysts: Rethinking the Judicial Role in New Governance. *Columbia Journal of European Law, 13*(3), 565–594.

131. Sell, S. K. (2011). TRIPS and the Access to Medicines Campaign. *Wisconsin International Law Journal, 25*(3), 481–522.

132. Simón Castellano, P. (2023). *La evaluación de impacto algorítmico en los derechos fundamentales*. Aranzadi.

133. Simón Castellano, P. (2023). Taxonomía de las garantías jurídicas en el empleo de los sistemas de inteligencia artificial. *Revista de Derecho Político*, (117), 153–196. [ISSN 0211-979X].

134. Slaughter, A.-M. (2004). *A New World Order*. Princeton University Press.

135. Spivak, G. C. (1988). Can the Subaltern Speak? In C. Nelson & L. Grossberg (Eds.), *Marxism and the Interpretation of Culture* (pp. 271–313). Macmillan.

136. Stark, L., & Hoffman, A. L. (2019). Data Is the New What? Popular Metaphors & Professional Ethics in Emerging Data Culture. *Journal of Cultural Analytics, 4*(2), 1–30.

137. Stiglitz, J. E. (2002). *Globalization and Its Discontents*. W.W. Norton & Company.

138. Stiglitz, J. E. (2007). *Making Globalization Work*. W.W. Norton & Company.

139. Stone Sweet, A., & Mathews, J. (2019). Proportionality Balancing and Global Constitutionalism. *Columbia Journal of Transnational Law, 57*(3), 72–103.

140. Sunstein, C. R. (2017). *#Republic: Divided Democracy in the Age of Social Media*. Princeton University Press.

141. Sunstein, C. R. (2021). *Liars: Falsehoods and Free Speech in an Age of Deception*. Oxford University Press.

142. Suzor, N. (2019). *Lawless: The Secret Rules That Govern Our Digital Lives*. Yale University Press.

143. Tamanaha, B. Z. (2008). Understanding Legal Pluralism: Past to Present, Local to Global. *Sydney Law Review, 30*(3), 375–411.

144. Teubner, G. (1997). *Global Law Without a State*. Dartmouth.

145. Teubner, G. (2012). *Constitutional Fragments: Societal Constitutionalism and Globalization*. Oxford University Press.

146. Thomas, R. (2021). The Impact of GDPR on SMEs: Compliance Burdens and Market Consequences. *Data & Privacy Law Journal, 12*(4), 221–235.

147. Timmer, A. (2015). Strategic Litigation and Equality in Europe. *European Equality Law Review, 2*, 9–18.

148. Tushnet, M. (2018). *Advanced Introduction to Comparative Constitutional Law*. Edward Elgar.

149. Twining, W. (2009). *Globalisation and Legal Theory*. Cambridge University Press.

150. Van Calster, G., & Reins, L. (2017). *EU Environmental Law*. Routledge.

151. Walker, N. (2002). The Idea of Constitutional Pluralism. *Modern Law Review, 65*(3), 317–359.

152. Walker, N. (2012). Out of Place and Out of Time: Law's Fading Co-ordinates. In M. Loughlin & N. Walker (Eds.), *The Paradox of Constitutionalism: Constituent Power and Constitutional Form* (pp. 31–54). Oxford University Press.

153. Walker, N. (2018). *Intimations of Global Law*. Cambridge University Press.

154. Weatherill, S. (2016). *Law and Values in the European Union*. Oxford University Press.

155. Weber, M. *(Not in excerpt? Possibly omitted)*

156. Weiler, J. H. H. (1999). *The Constitution of Europe: "Do the New Clothes Have an Emperor?" and Other Essays on European Integration*. Cambridge University Press.

157. Wellman, C. (2014). Global Justice and the Principle of Subsidiarity. *Ethics & International Affairs, 28*(3), 291–304.

158. Wheatley, S. (2010). *The Democratic Legitimacy of International Law*. Hart Publishing.

159. Wischmeyer, T., & Rademacher, T. (Eds.). (2020). *Regulating Artificial Intelligence*. Springer.

160. Wollenschläger, F. (2019). Steering or Stressing the Labyrinth? Free Movement of Services and the Services Directive. *European Law Journal, 25*(1), 56–78.

161. Wu, T. (2010). *The Master Switch: The Rise and Fall of Information Empires*. Alfred A. Knopf.

162. Yeung, K. (2018). Algorithmic Regulation: Critical Capabilities, Tools, and Theoretical Perspectives. *Regulation & Governance, 12*(4), 505–519.

163. Zagrebelsky, G. (2017). *El derecho dúctil: Ley, derechos, justicia* (5th ed.). Editorial Trotta.

164. Zarsky, T. (2021). Personal Accountability in Privacy Breaches: Beyond Organizational Sanctions. *International Journal of Law and Information Technology, 29*(2), 99–117.

165. Zehr, H. (2015). *The Little Book of Restorative Justice*. Good Books.

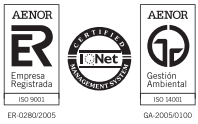
166. Zuboff, S. (2019). *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*. PublicAffairs.

ESTUDIOS

Law in a liquid world defies the neat borders and entrenched hierarchies of the past. Globalization accelerates the fusion and friction of national systems, while digitalization amplifies corporate influence and spawns intangible conflicts that transcend territorial authority. In parallel, community justice movements reclaim local voices, yet pose formidable challenges of integration with universal rights. This book illuminates the intersection of these three transformative forces—mapping how constitutional law adapts, or fails to adapt, in an environment shaped by porous frontiers and algorithmic gatekeepers.

Drawing on concepts such as liquid law, multilevel constitutionalism, and über-rights, the author explains how legal frameworks both expand and fragment, offering novel solutions and revealing critical gaps. Traditional governance structures—built around nation-state exclusivity—confront digital platforms wielding near-sovereign powers, subcultures seeking recognition, and regulatory bodies struggling to harmonize universal entitlements with diverse cultural claims. The result is a dynamic interplay among transnational treaties, specialized agencies, and local dispute resolution, all guided by a vision of constitutional values robust enough to endure relentless technological change. This volume invites a rethinking of what law, sovereignty, and justice can mean in a fluid, global, and interconnected age.

ISBN: 978-84-1162-842-6



ARANZADI