Global Research Review in Business and Economics [GRRBE]
ISSN (Online) 2454-3217, ISSN (Print) 2395-4671
| Open-Access | Volume 12, Issue 03,
Pages 73-125 ||2026||

The Hybrid Global Legal Order: The Tensional Complementarity of Constitutionalization and Fragmentation

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ABSTRACT

Contemporary international legal theory is inclined to read the field's structure through two mutually exclusive narratives: on the one hand, the constitutionalization thesis, which holds that law is evolving toward an integrated global constitution; on the other, the fragmentation–pluralism thesis, which emphasizes that law is dispersing into autonomous functional regimes. This study contends that each narrative grasps only one facet of the contemporary order, and it advances a third analytical position: contemporary international law is neither a completed constitution nor a mere aggregate of disjointed regimes; it is an incomplete yet constitutive hybrid legal order in which constitutionalization and fragmentation operate simultaneously. The analysis constructs this order at the intersection of three axes of transformation—the normative, the institutional, and the governance axes—and operationalizes it through two analytical concepts: the spectrum perspective, which holds that constitutional character emerges with varying intensity across domains, and tensional complementarity, which holds that constitutionalization and pluralism are not mutually exclusive but rather generate simultaneous tension. Treating power asymmetry not as an external defect but as a constitutive variable of the order, the thesis integrates realist and Third World (TWAIL) insights and offers a falsifiable framework tested across seven contemporary cases. The study's original contribution is a three-axis analytical model that synthesizes five theoretical literatures—each of which has developed in isolation from the others—into a single testable research program.

KEYWORDS: hybrid global legal order; global constitutionalization; legal pluralism; fragmentation; tensional complementarity; global governance; TWAIL; jus cogens

1. INTRODUCTİON: THE ANATOMY OF AN INCOMPLETE ORDER

The book takes as its point of departure a shared characteristic of the crises of the twenty-first century: from climatic collapse to pandemics, from mass migration to cyberattacks and to unregulated artificial intelligence, no major problem either originates within the borders of a single state or admits of resolution through the power of a single state. And yet the global legal architecture capable of governing these problems through binding rules has still not been established. This disjuncture between the universalist promise of international law and its actual capacity constitutes the central problem and the analytical starting point of the inquiry. The most acute manifestation of this disjuncture lies not on paper but in the field: the prohibition of genocide enjoys peremptory-norm status, wars of aggression are forbidden, and crimes against humanity are subject to universal jurisdiction; nevertheless, these norms are enforced in geographies such as Palestine, Syria, Yemen, and Sudan in inverse proportion to the power of those who violate them. The source of the problem is not the absence of norms but the structural constitution of the institutional authority that would enforce them. The architecture of permanent membership and the veto within the UN Security Council renders action—even in the face of the most flagrant violations—contingent upon the balance of interests among five states; a body of law claimed to be universal is, in practice, subject to the assent of five capitals.

During the same period, a countervailing development that the classical model cannot account for is also at work: the status of peremptory norms has been consolidated, international courts have acquired a norm-generating authority, and global governance mechanisms have come to shape the domestic regulation of states directly. International law is evolving from a horizontal body of norms securing interstate coordination toward an order incorporating multilayered and hierarchical elements. Contemporary international law thus harbors two realities simultaneously: on one side, institutional consolidation and normative hierarchy; on the other, fragmentation, selective enforcement, and asymmetries of power. Rendering these two realities visible at once upon a single conceptual plane is the unresolved problem of contemporary legal thought, and it is the knot the book sets out to untie.

The solution the book proposes requires moving beyond the two customary positions. International law is neither a global constitution in the process of completion nor merely the aggregate of disconnected regimes. The third position advanced here is not a compromise: the concept of the **hybrid global legal order** theorizes constitutionalization and fragmentation not as two mutually exclusive diagnoses, but as two faces of the same order that dialectically determine one another. Normative consolidation, the generation of institutional authority, governance plurality, and power politics operate simultaneously; this simultaneity is not a malfunction of the order but its constitutive feature. The necessity of the third position arises not from a scarcity of concepts but from the inability of an abundance of concepts to resolve the problem. Both constitutionalism and pluralism are internally coherent frameworks, and each accurately grasps a genuine dimension of the contemporary order; the trouble is the tendency of each to mistake the dimension it grasps for the whole. Constitutionalism perceives normative consolidation but treats fragmentation as a transient malfunction; pluralism perceives fragmentation but treats normative hierarchy as an illusion. The originality of the hybrid concept lies not in its discovery of a third phenomenon, but in its dislodging two familiar phenomena from their posited opposition and repositioning them as two mutually nourishing poles of the same structure. The question thereby ceases to be "which diagnosis is correct?" and becomes "how can both diagnoses be correct at once?"; what truly demands explanation is this simultaneity itself.

1.1 The Exhaustion of the Classical Order and the Historical Rupture

The value of the conceptual intervention is a practical necessity exceeding any abstract theoretical dispute: to regard contemporary law as either a completed constitution or a mere heap of fragments distorts both the diagnosis and the prescription. Those who take it for a constitution, trusting in a wholeness that does not exist, underestimate institutional failures; those who take it for a heap of fragments, by denying genuine normative achievements, weaken the will to defend them. The hybrid concept makes it possible to perceive both the achievements and the failures of the order at the same time. This vantage requires an apprehension of the limits of the classical order. International law has undergone an unprecedented structural transformation over the past three decades: with the end of the Cold War, the number and competences of international organizations expanded, the jurisdiction of courts proliferated, and governance mechanisms intensified. The classical conception, shaped within the Westphalian (1648) order and predicated upon state sovereignty, has under these pressures evolved toward a multilayered and integrated normative structure. A broad swathe of scholarship accepts that the transformation is not a conjunctural shift but a structural rupture, and that state consent can no longer, on its own, serve as the source of normative bindingness.

This historical background encompasses the internal contradiction of the Westphalian model (the tension between the principle of sovereign equality and the de facto hierarchy of power), the demand for regulatory capacity generated by globalization, the emergence of the individual as a subject of international law through the institutionalization of human rights, the institutional constitutionalization and concomitant fragility of trade law, the institutionalization of environmental and criminal law, the birth of normative hierarchy through *jus cogens* and *erga omnes*, the transformation of sovereignty alongside the doctrine of the responsibility to protect, multilevel law arising from the ascendance of non-state actors, and the legitimacy problem occasioned by the expansion of global governance. A defining quality of the transformation is its non-linearity: the constitutional momentum that crested in the 1990s with the international criminal tribunals was slowed by the great-power conflicts of the 2000s, the resurgence of sovereigntist discourse, and the legitimacy crises of multilateral institutions; the 2019 crisis of the WTO Appellate Body is the contemporary evidence of this cyclicality. The transformation is at once real and fragile; this dual quality is a datum that any framework seeking to grasp the contemporary order must take into account.

1.2 The False Dilemma and the Five Theoretical Strands

The exhaustion of the classical order has given rise to an abundance of theoretical responses that attempt to explain it; these responses are largely constructed as a choice between two poles. At one extreme, global constitutionalism contends that normative hierarchy, institutional authority, and judicial efficacy endow international law with constitutional attributes; at the other, the literature of legal pluralism and fragmentation maintains that the order develops not beneath a single constitutional canopy but within a plural architecture of semi-autonomous regimes. According to the book, this construction is misleading, because each of the two positions explains only one half of reality and consigns the half it cannot explain to its rival. The deceptiveness of the dilemma stems from a tacit assumption the two poles share: the assumption that constitutionalization and fragmentation are mutually exclusive, zero-sum processes. Yet contemporary observation shows that, within the same period, peremptory norms have been consolidated even as regimes have multiplied, and the authority of courts has grown even as jurisdictional fields have fragmented. Were the two processes antithetical, this simultaneity would be impossible;

the processes are therefore not antithetical but parallel processes that mutually condition one another, and the phenomenon truly requiring explanation is this very simultaneity.

The dilemma crystallizes in a concrete case: the Security Council veto. Pure constitutionalism can only sidestep the veto by treating it as a transient "defect," whereas the veto is not a defect but the constitutive architecture of the order; pure fragmentation, for its part, cannot explain why peremptory norms cannot be openly repudiated by any state and why the veto can obstruct only the enforcement, not the validity, of a norm. The veto blocks not the existence of the norm but its sanction; this demonstrates that the normative core persists despite fragmentation. The book classifies contemporary theory around five principal strands and subjects each to a test of its explanatory capacity: (1) global constitutionalism (normative hierarchy and institutional authority); (2) legal plurality/fragmentation (regime autonomy and polycentrism); (3) global governance (the diffusion of authority to non-state actors); (4) international courts and judicialization (the rise of judicial authority); and (5) the realist and critical strand—including TWAIL—(power asymmetry and the ideological function of law). Each strand correctly identifies a dimension of reality; the method is not to determine which one is correct but, by displaying the strength and the limit of each, to demonstrate that none suffices on its own and to establish why a hybrid framework capable of grasping the whole is necessary.

1.3 The Conceptual Framework and Foundational Terms

The precondition of this reckoning is the precise definition of concepts; the slippery use of terms is the most widespread weakness of contemporary debate. Constitutionalization, in its narrow sense, denotes the acquisition of formal supremacy by certain norms and the supervision of this supremacy by independent institutions; in its broad sense, it denotes a legal order's assumption, through institutional guarantees, of the functions of legitimacy, accountability, and the protection of fundamental rights. Formal hierarchy and substantive constitutional function do not always coincide; this non-coincidence is the analytical core of the debate. The book clarifies the distinctions: **constitutionalism** names a theoretical-doctrinal approach, whereas **constitutionalization** names an actual historical-institutional process. **Sovereignty** is not an absolute and indivisible competence but a divisible, conditional legal status, continually redefined; within the contemporary order it does not vanish but is transformed by being qualified. **Legitimacy** is analyzed along three dimensions: input legitimacy (fair participation in the process), output legitimacy (effective resolution of the problem), and throughput legitimacy (justification and accountability). **Fragmentation** is the differentiation of law into functional regimes—not a collapse but a consequence of increasing complexity; **plurality** is the coexistence of multiple sources of authority without a definitive hierarchy; **governance** is the conduct of norm production by organizations, networks, and private actors alongside the state; and **public authority** is the capacity of an institution to produce binding decisions on behalf of the international community by becoming relatively independent of state consent. The central concept of the analysis, the **hybrid global legal order**, brings these terms together: it is that incomplete yet constitutive form of order which emerges when constitutional-axis attributes (normative hierarchy, binding judicial authority, supranational institutional competence) and pluralist-axis attributes (regime fragmentation, overlapping authorities, power-sensitive enforcement) are simultaneously and durably present and neither wholly suppresses the other. The concept has two analytical cores: the **spectrum perspective** (constitutional quality is not a binary yes-or-no question but a spectrum appearing in intensities that vary across domains) and **tensional complementarity** (constitutionalization and pluralism are not mutually exclusive but dynamics that operate simultaneously within the same system and generate tension). Finally, the thesis positions constitutionalization not as a **determination** but as a **tendency**: real but fragile, advancing but reversible—this distinction being the threshold at which the analysis parts ways both with optimistic constitutionalism and with pessimistic realism.

1.4 The Three Axes of Transformation and the Six Claims

The emergence of the global constitutionalization debate is bound up with three mutually reinforcing transformations. The **normative axis**: developments in human rights, criminal, and environmental law display an increasingly distinct hierarchy of norms; the supremacy of *jus cogens* and the ICJ's jurisprudential consolidation of the *erga omnes* distinction reveal that the system is departing from the classical logic of equal norms. The **institutional axis**: the UN system, the WTO, the ICC, the ECtHR, and regional supervisory mechanisms assume central roles in the definition, interpretation, application, and enforcement of norms; the ECtHR's individual-application mechanism, the WTO Appellate Body's de facto system of precedent, and the jurisprudence of ITLOS are indicators of institutional autonomization. The **governance axis**: a multilayered system has taken shape in which organizations, regional structures, transnational networks, and non-state actors all participate; the reporting mechanisms of the Paris Climate Agreement, the UN 1267 sanctions regime, and the FATF standards demonstrate that governance is redrawing the boundary between international law and domestic law. The distinctive move of the analysis is to regard these three axes not as separate but as interpenetrating, mutually conditioning autonomous flows: a norm without an institution to interpret it remains on paper; an institution without a superior norm

degenerates into a mere instrument of power; and without the governance network that surrounds the two, the contemporary reality of norm production becomes invisible.

The three axes crystallize in six analytical claims that carry the central thesis. These claims encompass the constitutional quality of normative hierarchy, the generation of authority by courts and organizations, multi-actor governance, and its structural limits; the fifth claim represents the critical perspective by according fragmentation its due weight, while the sixth represents the integrative perspective by defending the long-run constitutional tendency. Holding the two together preserves the analysis from veering either into a one-sided advocacy or into a purely deconstructive repudiation. The thesis positions constitutionalization not as a determination but as a tendency: real but fragile, advancing but reversible.

1.5 The Original Contributions of the Framework

The book contends that the hybrid framework offers a five-dimensional contribution to the literature. First, in contrast to a literature that examines constitutionalization predominantly through either a solely normative or a solely institutional lens and subordinates governance, it takes the three axes as primary analytical categories of equal weight and places their cyclical interactions at the center. Second, it transforms power asymmetry from a critique arriving from outside the analysis into a structural variable embedded within the framework; it thereby integrates the legitimate insight of TWAIL and of realism without denying the reality of normative achievements. Third, it converts an abstract theoretical debate into a framework testable against contemporary cases. Fourth, it incorporates the Global South perspective not as a supplement but as a normative responsibility—by rendering priorities such as the right to development, self-determination, and economic and climate justice constitutive components—since to exclude this perspective would turn the discourse of constitutionalization into a tacit instrument of the very power asymmetry it criticizes. Fifth, there is the methodological character of the framework: the hybrid thesis offers propositions that anticipate the simultaneous and durable presence of constitutional tendencies and structural limits, and that are therefore falsifiable and empirically testable.

1.6 Testing the Hybrid Model Against Contemporary Cases, and the Normative Horizon

A model carries explanatory value only if it is tested against concrete cases. The book tests the model along the most strained frontlines of contemporary international law: the tension in Ukraine between normative consolidation and institutional paralysis; *erga omnes* and selective legality in Gaza and Palestine; judicial authority and enforcement asymmetry at the International Criminal Court; the bottom-up architecture and the judicial wave in climate governance; capacity and inequality in pandemic governance; and the limits of an order still under construction in cyber and artificial-intelligence governance. In each case, neither pure constitutionalism, nor pure fragmentation, nor pure realism offers a sufficient explanation on its own; each case exhibits the simultaneous operation of normative consolidation and power asymmetry. The analysis completes the diagnosis with a normative orientation: the search for legitimate authority and the Security Council problem. The crisis of the veto's legitimacy and of representation, enforcement asymmetry and selective legality, and the legitimacy deficit and the orientation toward institutional reform are addressed along this axis. The book preserves the normative horizon while equipping it with a critical self-awareness: where international law is being called toward is held apart from where it actually stands; otherwise normative hope distorts the empirical diagnosis and the constitutionalization debate degenerates into a wish list. The constitutive condition of this horizon is to position universality not as a given but as a goal attainable only through inclusive deliberation, and to incorporate the normative priorities of the Global South on equal terms.

The INTRODUCTION closes by determining the three possible trajectories of the order (the persistence of the present structure, evolution toward an integrated constitutional order, or full fragmentation) and what the hybrid thesis anticipates among these three; and by setting out the limits, the empirical anchorage, and the architecture of the analysis. The book as a whole is thereby framed as a clear-eyed yet hopeful scholarly intervention that proceeds from the exhaustion of the classical order through the moments of theoretical reckoning, the construction of the hybrid concept, the central thesis, the test of contemporary cases, and the normative horizon.

1.7 The Anatomy of the Gap: The Foundational Texts of the Five Strands and Why None Suffices

The book gives concrete form to the five strands through their foundational works. In the constitutionalism strand, Tomuschat (1999) reads international law as a societal order organized around binding universal norms; Simma identifies the shift from bilateral relations to community interest; Allott and Falk interpret the UN Charter and human rights instruments as foundational constitutional documents; and Peters's (2009) pluralist constitutionalism establishes the precursor of the hybrid concept. In the pluralism-fragmentation strand are Krisch's (2010) postnational pluralism, Koskenniemi's (2005) analysis of fragmentation, Teubner's (2012) constitutional fragments, Walker's (2002) late sovereignty, Maduro's (2003) constitutional tolerance, and Pauwelyn's (2003)

regime conflicts. In the governance strand are Rosenau's (1992) governance without government, Slaughter's (2004) government networks, the global administrative law of Kingsbury–Krisch–Stewart (2005), and Risse–Börzel's adaptation of it to the Global South; in the courts strand, Alter (2014), Burley–Mattli, Stone Sweet (2004), Hirschl, and Ginsburg; and in the realist-critical strand, Goldsmith–Posner (2005), Drezner, Acharya's (2014) multiplex-world thesis, and Kennedy's (2006) critique of global legal expertise.

The anatomy of the gap is as follows: each strand rests upon a genuine empirical foundation but cannot perceive what its rivals perceive. Constitutionalism sees normative consolidation but not fragmentation; pluralism sees horizontal diversity but not vertical hierarchy; realism sees power but not institutional autonomy; TWAIL sees hegemony but not the normative achievements within hegemony; the critical strand sees indeterminacy but not pattern. The gap arises not from a deficit of knowledge but from the absence of an integrative point of view. The hybrid-order thesis is therefore not an eclecticism but an explanatory necessity: it unites, within a single dialectical framework, all that the five strands see correctly, without rejecting any of it. This also requires a rigorous distinction between the descriptive and the normative registers—what international law actually does must be separated from what it ought ideally to do; otherwise the constitutionalization debate is reduced to the projection of a normative ideal onto empirical reality.

1.8 The Six Claims: Tendency or Determinism?

The most fragile of the six claims carrying the central thesis is the claim that, over the long run, normative and institutional accumulation exhibits a tendency toward a more integrated order; for this is the claim most exposed to the charge of historical determinism. The realist objection rightly asks: is this an optimistic philosophy of history that presupposes an inevitable progression toward a constitutional future? The book's answer is the rigorous preservation of the distinction between tendency and necessity. To observe a tendency is to assert not that it is inevitable but that it is probable under present conditions and may reverse if conditions change. The claim contains no teleology: the 2019 crisis of the WTO Appellate Body, the legitimacy crises of multilateral institutions, and the resurgence of sovereigntist discourse are contemporary evidence that the tendency may be interrupted. The thesis itself counts the forces operating against this tendency—the veto lock, selective enforcement, the North–South asymmetry—as constitutive components of the framework. The sixth claim is therefore not a teleological optimism foreseeing history's progression toward a constitutional terminus, but a tension-laden identification of direction that acknowledges that every achievement encounters a simultaneous resistance. This contingency renders the thesis falsifiable: if, in the coming decades, fragmentation reverses the constitutional accumulation, the sixth claim will have been falsified. The hybrid order promises nothing of the future; it explains the present and acknowledges that the future is open-ended.

1.9 Method: Three Types of Evidence, a Constructivist Conception of Knowledge, and a Lakatosian Research Programme

The analysis rests upon the synthesis of three types of evidence. The **theoretical-doctrinal** evidence comprises the conceptual frameworks of the constitutionalism, pluralism, and governance literatures (Lauterpacht, Verdross–Simma, Henkin (1979), Fassbender (2009), Peters (2009), Krisch (2010), Koskenniemi (2005), Teubner (2012), Alter (2014), Stone Sweet (2004), Zürn (2018), Slaughter (2004), Habermas (1996), Cohen, Brunnée–Toope (2010), Anghie (2004), Chimni (2006)). The **institutional-jurisprudential** evidence comprises *Barcelona Traction* (1970), the Bosnia genocide-responsibility judgment, the ECtHR's living-instrument doctrine, the *Kadi* case, the *US–Shrimp* and *EC–Hormones* jurisprudence, the constitutional line of the Court of Justice of the EU, and the jurisprudence of the ICC. The **empirical-sociological** evidence comprises the compliance behavior of states, the participation of non-state actors, and the functioning of governance mechanisms (Hafner-Burton's compliance research, Slaughter's government networks, Cutler's (2003) transnational commercial law, civil-society data, accountability research).

The conception of knowledge informing the analysis is social-constructivist: international law is viewed neither as a mere system of power relations nor as an idealism in which norms spontaneously generate bindingness; it is grasped as a dynamic equilibrium of the interaction among norms, institutions, actors, and political context. The analysis targets not static structures but processes; a vocabulary that centers the concepts of "tendency," "contribution," and "probability" treats the avoidance of categorical claims, within a normative environment suffused with uncertainty, as an analytical virtue. Lakatos's (1970) framework of research programmes provides the philosophy-of-science foundation of this stance: the core of the programme—the dialectical conjunction of constitutionalization and fragmentation—is shielded from direct testing; what is tested are the auxiliary theses that connect this core to concrete cases. The programme is progressive, because it can explain novel facts ranging from Ukraine to artificial-intelligence governance, in previously unanticipated ways, through a single logic; it is not degenerative, because it does not resort to ad hoc additions to rescue the core in the face of each case. This

framework also preserves the thesis's falsifiability: if contemporary cases consistently exhibited either pure constitutional integration or pure fragmentation, the hybrid thesis would become superfluous; the thesis is contingent upon the condition that reality exhibits simultaneous contradiction, and this condition is empirically testable.

1.10 The Hybrid Model on Trial: Seven Contemporary Cases

A model carries explanatory value only if it is tested against concrete cases. The INTRODUCTION probes the hybrid thesis along the seven most strained frontlines of contemporary international law—cases each selected so as to test one of the three axes at its point of maximum tension. The cases are treated not as instances confirming the theory but as demanding tests at which the rival theories appear strongest; in each case the question posed is singular: can this phenomenon be explained without accounting at once for normative achievement and power asymmetry?

Ukraine is the case in which the normative axis collides with institutional paralysis: the General Assembly's condemnation by an overwhelming majority, the ICJ's provisional measure, and the ICC's arrest warrant against a head of state demonstrate that normative hierarchy and judicial authority are operative, while the Security Council is paralyzed by the veto of a permanent member. When the Council is obstructed, the normative response does not vanish but flows into other channels—the "Uniting for Peace" procedure, debates over universal jurisdiction, the search for a special tribunal for the crime of aggression, and states' diffuse network of sanctions (asset freezes, exclusion from payment systems). This shows that when authority is blocked at a single center, it is redistributed across a polycentric network—the constitutive pattern of the hybrid order—yet none of the diffuse responses substitutes for the Council's coercive competence. The case also lays bare selective legality: the scope and speed of this extraordinary mobilization exhibit a striking asymmetry when compared with the response to other violations—norms are proclaimed universal, but their mobilizations are filtered through a hierarchy of power and proximity.

Gaza and Palestine is the case in which *erga omnes* obligations collide with selective legality. The *erga omnes* character of humanitarian law and of the prohibition of genocide has been affirmed at the judicial level: the ICJ's 2004 *Wall* Advisory Opinion established that the obligations of self-determination and of humanitarian law concern all states; more recently the Court has issued provisional measures within the framework of genocide allegations, rendered an opinion on the legal status of the occupation, and the ICC prosecutor has sought arrest warrants against senior officials. Yet this normative mobilization cannot translate into a binding institutional outcome: the Council is paralyzed by a permanent member's veto, and the Court's measures remain bereft of an enforcement mechanism. The case's thesis-testing force lies in the simultaneous observation of the maximal vitality of the normative framework and the maximal paralysis of institutional sanction—a configuration that neither pure constitutionalism nor pure realism can explain. The response asymmetry that emerges in comparison with Ukraine (the difference in intensity and speed of institutional mobilization in the face of violations of the same fundamental norms) directly confirms the thesis of selective legality; and this selectivity is not merely an injustice but a structural threat that, by leaving even the most flagrant violation unanswered, erodes from within the legitimacy of the entire normative order.

The International Criminal Court tests the institutional axis—judicial authority versus enforcement capacity: the Court expands the categories of crime through its jurisprudence (the 2016 *Al-Mahdi* judgment, the foundational ruling that prosecuted the intentional destruction of cultural heritage as a war crime) and transcends sovereign immunity by issuing arrest warrants against sitting heads of state; but the execution of the warrants remains dependent upon state cooperation, and the great powers' remaining outside the Rome Statute produces a permanent asymmetry—judicial authority is real, but enforcement capacity is structurally deficient.

Climate governance exemplifies the governance axis's "production of constitutional function in a non-constitutional form." After the failure of Kyoto's (1997) top-down binding targets to incorporate the major emitters, the Paris Agreement (2015) establishes a bottom-up architecture grounded in nationally determined contributions (NDCs), periodic review, and transparent reporting—a design that generates commitment without touching sovereignty but that perpetuates the adequacy gap. This gap is filled by a rising judicial wave: the jurisprudence extending from *Urgenda* in the Netherlands to the ECtHR's *KlimaSeniorinnen* (2024) and the ITLOS Climate Advisory Opinion (2024) binds soft climate norms to hard judicial obligations on the foundation of human rights and the duty of care. The principle of common but differentiated responsibilities, in turn, places the North–South asymmetry (the chasm between historical responsibility and contemporary exposure) at the heart of the regime—the laboratory in which the three axes (soft but genuine normative consolidation, multi-actor governance, distributive asymmetry) interpenetrate in their purest form.

Pandemic governance exhibits the gap between capacity and legitimacy and the hybrid order's cycle of learning-through-crisis. On one side, the WHO's coordination capacity within the framework of the International Health Regulations and the unprecedented speed of vaccine development demonstrate a genuine output capacity; on the other, vaccine nationalism and the inadequacy of COVAX—wealthy countries stockpiling many times more doses than their populations while low-income countries are deprived of basic access—lay bare distributive injustice (the gap between output legitimacy and input/distributive legitimacy). The post-crisis 2024 IHR amendments and the negotiations over the Pandemic Treaty are the typical hybrid response in which the crisis-driven visibility of the gap triggers institutional consolidation; but the most contested dimension of the negotiation (intellectual property and pathogen–benefit sharing) shows that the learning is not a technical refinement but a distributive arena of struggle.

Cyber and artificial-intelligence governance exemplifies the limits of an order under construction: demand for norms is high, institutional capacity is deficient, and authority is dispersed among states, regional blocs, private actors, and expert communities. The EU's risk-based Artificial Intelligence Act (2024) offers an instance of regional substantive constitutionalization and functions, through market power, as a de facto global standard (the Brussels Effect), while a globally binding architecture does not yet exist. Taken together, the seven cases yield a single conclusion: it cannot be said of any of them that there is no constitutional tendency, nor can it be said of any that constitutionalization is complete; each case exhibits a dialectical configuration in which normative achievement and structural limit operate at once, and only the hybrid model grasps this simultaneity.

1.11 The Normative Orientation, the Legitimacy Deficit, and the Three Possible Trajectories of the Order

The INTRODUCTION also opens the normative orientation of the descriptive analysis: at the center of the search for legitimate authority stands the Security Council problem. The crisis of the veto's legitimacy and of representation points to the contradiction between a structure that freezes the power distribution of 1945 and contemporary principles of legitimacy; enforcement asymmetry and selective legality point to the unequal application of norms; and the legitimacy deficit and the orientation toward institutional reform point to a limited but concrete horizon of reform addressing these problems. The INTRODUCTION emphasizes that the veto obstructs not the validity but only the application of the norm—a distinction that shows reform must target the application gap while preserving the normative core. The section sketches three possible trajectories for the future of the order: (i) the deepening of constitutionalization (the consolidation of normative and institutional achievements); (ii) managed pluralism (the middle path in which the constitutional tendency and fragmentation remain in equilibrium and conflicts are managed through techniques of interpretation); and (iii) fragmentation/realist regression (the renewed dominance of power politics and sovereigntist discourse). Which trajectory will prevail is not predetermined; it is a contingent probability to be shaped by scholarly analysis, institutional design, political struggle, and the Global South's demand for equal participation. This open-endedness is the direct consequence of the sixth claim (tendency, not determinism) and preserves the falsifiability of the thesis.

2. FROM SOVEREİGNTY TO THE HYBRİD ORDER: A HİSTORİCAL-STRUCTURAL GENEALOGY

This first chapter seeks the roots of the contemporary hybrid order in a four-century legal-political evolution, thereby divesting the hybrid-order thesis of any character of abstract construction and grounding it instead as an observable historical product. The chapter's pivotal contention is that this evolution constitutes not a linear progression but a cyclical interplay between continuity and rupture, between constitutional inclination and dissolutive forces.

2.1 The Foundation and Fracture of the Sovereignty-Based Architecture

The narrative commences from the pre-Westphalian ground—from *jus gentium* and Scholastic natural law (Vitoria (1991), Suárez). The Scholastic tradition of *jus gentium* harbours the first integral theory of universal norms independent of state consent: for Vitoria (*Relectio de Indis*, 1539) and Suárez (*De Legibus*, 1612), the foundation of international law lies not in the will of states but in the principles of rational-natural law that bind the whole of humanity—this being the remote yet direct theoretical ancestor of the contemporary doctrine of *jus cogens*. Yet this tradition carries a constitutive ambivalence: while Vitoria recognises the natural rights of indigenous peoples (property, self-governance), he simultaneously furnishes the legal justification for conquest by asserting the Spaniards' rights of free movement, commerce, and evangelisation; he thereby harbours, at one and the same time, the origin both of universal rights and of their hegemonic instrumentalisation. Anghie's (2004) critique demonstrates that the universalist claim of classical international law was, from its very inception, constructed upon the distinction between "civilised nations / uncivilised peoples" and that it legitimated colonial

practice—the contemporary order's power asymmetry and problem of representation being the historical prolongation of this five-century-old constitutive contradiction. The philosophical construction of sovereignty is erected along the Bodin–Hobbes–Grotius line: Bodin defines sovereignty through three elements (absoluteness, perpetuity, indivisibility), Hobbes regards it as the constitutive condition of internal order, while Grotius (*De Jure Belli ac Pacis*, 1625; *Mare Liberum*, 1609), by advancing through the *etiamsi daremus* formula the proposition that natural law may be grounded independently of divine will, establishes the secular-rationalist foundation of law, the codification of the law of war (*jus ad bellum* / *jus in bello*), and the horizontal-egalitarian structure. Classical doctrine attains maturity with Pufendorf, Wolff, and Vattel (2008); Vattel's conception of sovereign equality is the kernel of the horizontal structure and proves influential in the Federalist Papers and in early American jurisprudence. The line extending from Pufendorf to Vattel represents the gradual shift from natural law to positive law—yet no stage wholly expels the natural-law element; this unresolved tension is the three-century antecedent of the contemporary dialectic between value and consent.

In the nineteenth century and the early twentieth, doctrine shifts from natural law to legal positivism. Triepel's *Völkerrecht und Landesrecht* (1899) develops the dualist framework—the proposition that national and international law are separate, autonomous orders and that incorporation into domestic law requires a distinct act of transformation. Kelsen's *Reine Rechtslehre* (1934) establishes the opposing position, the monist approach: the two orders are strata of a single integrated system that derives its validity from a hypothetical basic norm (*Grundnorm*). Austin's theory, grounded in the command of the sovereign, regards international law—since it lacks a central authority—as mere "positive international morality"; Oppenheim's *International Law* (1905), as the most accomplished expression of classical positivism, holds law to rest upon the reciprocal consent of states and excludes the individual from the status of legal subject. Two refined critiques are directed at this line: Hart submits that international law is an order rich in primary rules (obligation) but deficient in secondary rules (recognition, change, adjudication)—the constitutionalization thesis containing precisely a claim of maturation along this dimension of secondary rules (peremptory norms being legible as the kernel of a rule of recognition, courts as adjudicative capacity, and codification as a mechanism of change); Dworkin (1986), with an interpretivist conception of law grounded in principles, attempts to transcend the tension between positivism and natural law. The monism–dualism debate is the harbinger of the contemporary vertical circulation of norms and of constitutional pluralism (the conditional-deliberative interaction exemplified in the *Solange* jurisprudence).

The most integral expression of the effort to transcend the limits of classical positivism is Verdross and Simma's *Universelles Völkerrecht* (1984): it establishes a synthesising position between the classical consent-based structure and natural law's emphasis on universal principle, and it secures three gains—the documentation of the thesis of a transition from bilateral relations to communal interest, the conceptualisation of *jus cogens* as a refined category reducible neither to mere positive consent nor to abstract natural law, and the grounding of the proposition that law may be analysed as an integrated structure; Lauterpacht and Higgins complete this synthesis. The internal contradiction of the classical discourse is laid bare by Koskenniemi (2005), Kennedy (2006), and Buchanan; Koskenniemi's thesis concerning the structural indeterminacy of international law as oscillating "between apology and utopia" is central. Complementary philosophical strands—Allott's vision of *eunomia* (the antecedent of constitutionalism's utopian horizon), Schmitt's analysis of *nomos* (the particular ordering of power lying behind every claim to universality; the philosophical foundation of realist and TWAIL critique), Bingham's account of the rule of law, and Reus-Smit's thesis of rights-based transformation—establish the philosophical coordinates of the contemporary debate.

The structural limits of the classical architecture converge in three inadequacies arising from three assumptions (that states are the sole subjects, that the source of law is consent alone, and that sovereignty is absolute and indivisible): an incapacity to protect individual rights, an incapacity to resolve common (transboundary) problems, and an incapacity to establish normative hierarchy. These inadequacies correspond to four structural deficiencies (the absence of centralised enforcement, the exclusion of the individual from the ambit of law, the chasm between formal equality and material asymmetry, and the inability to govern transboundary problems), each of which gives rise to an axis of the subsequent transformation: peremptory norms are the historical answer to the third inadequacy, the human rights regime to the first, and global governance to the second. The classical architecture bequeaths three enduring legacies—the unsurpassed principle of sovereign equality (the reason why the hybrid order has not metamorphosed into a single-centred global state), the unresolved Koskenniemian (2005) tension between consent and value, and the universality–exclusion contradiction extending from Vitoria (1991) to the Berlin Conference (the historical source of power asymmetry and of TWAIL critique). This "semi-transcendence"—the qualification rather than erasure of the logic of sovereignty, the strengthening yet non-completion of integration by constitutional tendencies—is the constitutive characteristic of the hybrid order.

2.2 Institutional Expansion: From the Nineteenth Century to the Interwar Period

The second cross-section traces the gradual loosening of the classical sovereignty architecture through institutional instruments. The point of departure is the Concert of Europe established by the Congress of Vienna of 1814–15: a governance of order resting upon the coordination of five great powers, possessing neither a written constitution nor a permanent organisation, and deriving its force from a perception of common interest. The 1815 Vienna Regulation on Diplomatic Relations lays the foundation of modern diplomatic law; the 1856 Treaty of Paris incorporates the Ottoman Empire into the system and, with the Danube Commission, inaugurates the multilateral institutional governance of a transboundary resource. The chapter underscores the structural parallel between the Concert of Europe and the contemporary Security Council: both delegate the responsibility for order, notwithstanding a discourse of formal equality, to the coordination of a handful of great powers—an informal precedence in the Concert, a privilege formalised through the veto in the Council. The difference, too, is instructive: whereas the Concert bore no universal normative claim, the Council operates within a universal framework (the prohibition of force, collective security, human rights)—which demonstrates that great-power privilege in the contemporary order is not a naked balance of power but a privilege held in tension with universal norms.

Functional governance is born in the second half of the nineteenth century with the administrative unions (the International Telegraph Union of 1865, the General Postal Union of 1874): with their permanent secretariats and capacity to generate technical standards, these are the first enduring international bureaucracies to produce binding common rules on the basis of technical necessity without impinging upon sovereignty—the historical embryo of contemporary technical standard-setting bodies (Basel, FATF, ICANN). Modern humanitarian law is born with the 1864 Geneva Convention (the institutionalisation of the idea that sovereignty may be limited in the face of humanitarian values). The Berlin Conference (1884–85) is the exemplar of colonial international law—of exclusionary practice beneath a discourse of universality; the Hague Conferences (1899, 1907) and the Drago–Porter Doctrine advance the limitation of force and codification; Versailles, the League of Nations, and the Kellogg–Briand Pact constitute the experiments in self-determination and collective security, while the ILO's (1919) tripartite structure of representation (government–employer–worker) establishes the first model in which non-state actors participate directly in norm production—the antecedent of contemporary multi-actor governance.

The chapter elaborates the colonial dimension of the Berlin Conference: in this negotiation, at which no African party was present at the table, the European powers situated colonial expansion within a legal framework through the doctrines of "effective occupation," protectorate, and *terra nullius* (land belonging to no one). Anghie's (2004) analysis demonstrates that the foundational concepts of international law—sovereignty, recognition, the standard of civilisation—were shaped within the colonial encounter, upon a hierarchy that did not regard non-European peoples as full subjects of law; the doctrine of recognition makes the determination of which political unit shall be deemed sovereign contingent upon the discretion of the European powers, and sovereignty is graduated through the "civilised / uncivilised" distinction. This structural inequality persists even after formal decolonisation (the conflicts generated by arbitrary borders, resource dependency, conditional recognition, good-governance criteria, the regulation of resource access by investment regimes)—the contribution of TWAIL being its reading of contemporary power asymmetry not as a relic of the past but as a structure engraved into the order's constitutive categories and continuously reproduced. The Hague Conferences, convening also the non-European states through the Russian Tsar's call for disarmament, codify the law of war (*jus in bello*), extend the principles of humanity to uncodified situations through the Martens Clause, and, in 1899, establish the Permanent Court of Arbitration (PCA)—the institutional ancestor of contemporary international adjudication. The balance-sheet of the interwar cross-section comprises three observations: the inter-state discourse has been eroded in institutional practice (the people, the individual, and the non-state actor have entered the stage), the limitation of the use of force has pierced the absoluteness of sovereignty, yet this institutionalisation has remained fragile in the absence of enforcement capacity and great-power commitment—the failure of the League of Nations being the most evident proof thereof. The cross-section closes by installing, with the UN Charter and the veto, a constitutive asymmetry: the San Francisco Conference (1945), while establishing the most powerful institutional authority, subjects it through the very same instrument to the privilege of five great powers. The veto engenders four structural defects—a legitimacy deficit (the institutional suspension of equality before the law), a crisis of representation (the absence of any permanent member from Africa, Latin America, and South Asia), an asymmetry of application (the production of differing outcomes for the same violation according to the violator's relationship with the permanent members), and selective legality (the subordination of the law's operation to geopolitical calculation rather than to a normative criterion). The chapter's lesson is twofold: functional necessity renders multilateral institutions inevitable, yet the absence of great-power commitment and of enforcement capacity leaves institutional designs fragile. The central paradox of the hybrid order—that constitutional gain and power asymmetry are born not at separate times but in the same constitutive moment, within the same instrument—finds its historical source here.

2.3 The Normative Revolution: The Post-Second World War Transformation

The two world wars trigger the moral collapse of positivism and the design of a new order. The UN Charter is built upon four constitutive normative elements: the prohibition of the use and threat of force (Art. 2(4); with only the exceptions of self-defence (Art. 51) and Council authorisation—one of the contemporary peremptory norms), the Chapter VII collective-security mechanism of the Security Council, sovereign equality and non-intervention in internal affairs (Arts. 2(1), 2(7)—the preserved kernel of the classical architecture), and the promotion of respect for human rights (the seed of the transformation that brings the individual onto the normative stage). The Charter's constitutive tension lies in its harbouring, within a single instrument, the logics of two orders side by side—universalist-constitutional elements (Art. 2(4), human rights, self-determination) alongside elements that institutionalise classical power politics (the P5 veto, non-intervention); this contradiction is the direct source of the contemporary hybrid order's structure, which contains constitutionalization and power asymmetry simultaneously. The UN's six-organ architecture (General Assembly, Security Council, ICJ, ECOSOC, Trusteeship Council, Secretariat) is the first comprehensive institutional hierarchy erected upon the classical horizontal structure, and it harbours the embryonic differentiation of legislative, executive, and judicial functions. During the Cold War the veto frequently paralyses the Council, and the standing forces envisaged by Art. 43 are never constituted; in the face of this blockage, the General Assembly's Uniting for Peace resolution of 1950 (Resolution 377) is an early instance of institutional impasse displacing decisional capacity onto another organ and the historical antecedent of the contemporary Ukraine case (Hurd (2007): the authority of the Council is nourished not by force alone but by a perception of legitimacy).

The chapter locates the philosophical source of the normative revolution in the moral collapse of positivism: the Nazi regime's cloaking of genocide in a formal legal guise demonstrated that the principle "law is law" (*Gesetz ist Gesetz*) directed obedience even in the face of the gravest injustice. Radbruch's formula of *Gesetzliches Unrecht* (1946) is the expression of this collapse: a law unbearably unjust forfeits its quality of being law—an insight that is the philosophical root of peremptory norms transcending state will and of inalienable individual rights, and the direct motivation of the UDHR (documented by Glendon (2001)). The seeds of the new order are sown during the war years: the 1941 Atlantic Charter (the renunciation of force, self-determination, a world freed from fear and want), the 1944 Dumbarton Oaks (the Council–veto design), and the 1945 San Francisco Conference. The most transformative factor of the period is decolonisation: membership quadruples from fifty-one over the course of decades; Resolution 1514 (XV) of 1960 elevates the right of self-determination from a formal Wilsonian principle to a universal-peremptory norm; the 1955 Bandung Conference (twenty-nine Asian-African states) and the Non-Aligned Movement constitute the first collective expression of a Southern perspective; the 1974 Declaration of a New International Economic Order (NIEO) brings onto the agenda a demand for material economic justice beyond formal sovereignty and establishes the historical-institutional foundation of contemporary TWAIL critique (Anghie (2004), Chimni (2006), Gathii (2011)—the thesis that international law developed through colonialism). The judicial foundations of the normative transformation appear in the ICJ's foundational jurisprudence: Corfu Channel (1949, state responsibility), Reparations (1949, the international legal personality of the UN—the transcendence of the state-monopolist conception of the subject), Reservations (1951, the special character of multilateral human rights treaties subject to the "object and purpose" test), Barcelona Traction (1970, *erga omnes*), and Nicaragua (1986, the customary character of the prohibition of force). These judgments demonstrate that the Court is not merely a settler of disputes but a constitutive actor that shapes the value-foundations of international law.

The emergence of individual criminal responsibility (Nuremberg and Tokyo) radically shakes the classical conception that the state is the sole legitimate subject: within the framework of the 1945 London Charter, the principle that "crimes against international law are committed by men, not by abstract entities," by rejecting the defences of superior orders and the armour of sovereignty, renders the individual a direct subject of international law. In the Tokyo trials, the dissenting opinion of the Indian judge Pal stands, as an early critique directed at the selectivity of victors' justice and at retroactive definitions of crime, as the antecedent of the contemporary debate on selective legality. This dual character—the promise of universal accountability alongside the selectivity of application—is both the foundational basis and the typical tension of the subsequent international criminal law (ICTY, ICTR, ICC). Codification and *erga omnes* obligations develop with the ILC and the Articles on State Responsibility; the chapter clarifies the distinction between *erga omnes* and *jus cogens*: *jus cogens* determines the substantive supremacy of a norm (its non-derogability), while *erga omnes* determines who (the whole international community) may react against a violation—the one establishing a vertical hierarchy, the other a horizontal web of collective responsibility. Yet *erga omnes* recognises standing but does not secure enforcement; the authority of the Council remains dependent upon the veto architecture—the conceptual robustness of the normative hierarchy stands side by side with the fragility of institutional application.

The ICJ's foundational jurisprudence (complementarity, *erga omnes*, Chapter VII) grounds the Court's norm-developing authority historically. The hybrid courts—the Special Court for Sierra Leone (2000), the Extraordinary Chambers in the Courts of Cambodia (2003), the Special Tribunal for Lebanon (2007, the first to bring the crime of terrorism before international adjudication), and the IRMCT (2010)—demonstrate that international criminal justice can assume a third, hybrid institutional form between the purely international model and national adjudication: the pursuit of a dual-directional legitimacy (international impartiality + local connection) is the most evident exemplar of "hybridity" in the domain of criminal justice. The concept of the "common heritage" of the 1959 Antarctic Treaty is a pioneering experiment demonstrating that certain domains may be governed, beyond national sovereignty, for the common benefit of humanity. The chapter, by underscoring the limitations of arms control and the structural limits of the UN system, demonstrates that this normative revolution was fragile from the outset—that while norms consolidated, the mechanism that was to apply them remained dependent upon the balance among the great powers.

2.4 Normative Intensification and the Institutionalisation of Universality

The fourth cross-section traces the institutionalisation of human rights and of universality. The foundational text is the 1948 Universal Declaration of Human Rights: although not a binding treaty, it proclaims that rights rest not upon the beneficence of the state but upon human dignity, and in time many of its provisions acquire the status of custom. The chapter frames the philosophical constitution of the Declaration through Maritain's observation: the parties could not agree on why rights ought to be recognised, but they could agree on which rights these were—this "agreement without a justification" explains both the regime's strength (the convergence of differing traditions upon a common minimum) and its fragility (the absence of a common philosophical foundation), as well as the contemporary debate between universality and relativity. The 1948 Genocide Convention (Lemkin's concept; the obligation of prevention and punishment + its *erga omnes* character; the source of the Bosnia jurisprudence), the 1949 Geneva Conventions (+ their 1977 Additional Protocols; the comprehensive codification of humanitarian law), and the 1966 Twin Covenants (Civil-Political and Economic-Social-Cultural Rights; two clusters of rights reflecting the Cold War division yet deemed indivisible) transform the moral proclamation of the Declaration into traceable legal obligations.

The structural kernel of the normative intensification is the codification of peremptory norms (*jus cogens*): Article 53 of the VCLT defines *jus cogens* as a rule accepted as non-derogable by the international community as a whole and modifiable only by a subsequent norm of the same character, and it renders contrary treaties void; Article 64 provides that a peremptory norm emerging subsequently shall terminate existing treaties. This is the theoretical rupture that places an overt limit upon the autonomy of the state's will and that transcends the horizontal structure towards a vertical hierarchy. Yet the Convention deliberately refrains from specifying which norms are peremptory (the problem of demonstration being structural); a broad consensus exists upon the prohibitions of genocide, slavery, torture, aggression, and racial discrimination, and the 2022 ILC draft systematises the method of identification—peremptory norms being at once the most powerful constitutional gain and, owing to disagreement over scope, the most fragile link. The regional systems (European, Inter-American, African) deepen protection through mechanisms of individual application; the rise of advocacy networks and of civil society institutionalises non-state participation in norm production.

The chapter treats the normative transformation of sovereignty through R2P and the institutionalisation of international criminal law (ICTY 1993, ICTR 1994, ICC/Rome Statute 1998–2002): both transcend the absoluteness of classical sovereignty (R2P transforms sovereignty into a conditional responsibility, criminal adjudication confirms that the veil of sovereignty cannot shield the individual in the face of the gravest crimes), yet both are encircled by structural limits (R2P's third tier is dependent upon the impasse of the veto, criminal adjudication upon the great powers' remaining outside the Rome Statute). The efficacy of the human rights regime is also examined empirically: Hafner-Burton demonstrates that becoming party to a treaty does not, of itself, halt violations but that, when conjoined with domestic legal mechanisms and the pressure of civil society, it produces genuine effect; the Ruggie (2011) Principles (2011) exemplify the bearing of obligation by non-state actors. The balance-sheet of normative intensification is three-dimensional (the numerical increase of norms, the emergence of a hierarchy among them, and the formation of a kernel that renders the individual its subject); yet application carries a structural asymmetry—the same norms produce differing outcomes according to the violator's position of power, which furnishes the concrete foundation of selective legality and of TWAIL critique. The regime bears a character not constitutional but "constitution-like": norm hierarchy, judicial protection, and the vertical circulation of norms are realised in institutional practice, yet without a central constituent authority and consistent application—an incomplete but constitutive gain.

2.5 The Redistribution of Authority: Globalisation and Polycentric Law

The fifth cross-section analyses globalisation's dispersal of authority from a single centre into a polycentric network. Interdependence engenders the concrete mechanisms of global governance. The *Kadi* jurisprudence (CJEU 2008), by confirming that even the implementation in EU law of the UN Security Council's 1267 terrorism-sanctions regime (the freezing of assets and travel bans without judicial process) is subject to effective judicial protection and the right of defence, demonstrates that global institutional authority cannot be immune from judicial review and reveals the conflictual nature of the vertical circulation of norms. The FATF standards, with the anti-money-laundering and counter-terrorism-financing rules they have developed without resting upon any binding treaty, and with their grey-list and black-list capacity, exemplify how soft law can produce hard consequences. The 2015 Paris Agreement, following the failure of Kyoto's top-down imposed binding targets, establishes a bottom-up architecture resting upon nationally determined contributions, periodic review, and transparent reporting; it attempts, without centralised enforcement, to produce compliance through peer pressure and transparency. These three mechanisms represent three distinct legitimacy strategies of contemporary governance (judicial review, technical expertise, participatory transparency); each, while strengthening one dimension, leaves a gap in another—demonstrating that the legitimacy of institutional authority is a continuously negotiated problem.

Economic constitutionalization finds its most developed exemplar in the WTO: the Dispute Settlement Body becomes an authority that adjudicates state conduct by normative criteria and whose decisions are effectively binding (the US–Shrimp and EC–Hormones jurisprudence). Whereas Petersmann (2009) reads economic constitutionalism as the constitutional status of individual economic freedoms, Cass appraises it more cautiously, and Howse's critique underscores the risk that the constitutionalisation of market freedoms may narrow the sphere of democratic regulation, while TWAIL emphasises that this presents the interests of the developed countries in the guise of universal principle. The 2019 Appellate Body crisis demonstrates, paradoxically, that this asymmetry too is fragile: the most powerful institution of economic constitutionalization could be paralysed when it ran counter to the interests of the very great power that had established it. Investment law and ISDS exemplify the privatisation of authority: private arbitral panels review state regulation (Philip Morris v. Uruguay). Regime conflicts and forum selectivity (the South China Sea Arbitration of 2016, PCA—a great power's rejection of a judicial decision) lay bare the power asymmetry of fragmentation; yet the principle of systemic integration of Article 31(3)(c) of the VCLT and Abbott's concept of orchestration demonstrate that conflict paradoxically triggers an integrative jurisprudence.

The redistribution of authority brings new types of actor to the centre: Slaughter's (2004) disaggregated state and transgovernmental networks (the direct coordination, outside diplomatic channels, of ministries, regulatory agencies, and judges), Stone Sweet's (2004) judicial construction, and Halliday and Shaffer's transnational legal orders (normative authority arising not from a single sovereign source but from polycentric ecosystems at which states, organisations, professional communities, and civil society intersect). The cartography of fragmentation is drawn by Pauwelyn's (2003) regime conflicts and the 2006 ILC Fragmentation Report (Koskenniemi (2005)); the report regards fragmentation not as a collapse but as the inevitable yet, through systemic interpretation, governable consequence of law's increasing complexity. Trachtman's "managed fragmentation" and Hurrell's (2007) "managed pluralism" are the theoretical source of the order's second possible trajectory. Ikenberry's (2011) thesis of the liberal Leviathan and institutional lock-in, together with Krasner's (1999) organised hypocrisy, demonstrate that the institutional order predominantly reflects great-power preferences yet, once established, becomes relatively autonomous. Each of these theoretical frameworks, taken alone, strikes an explanatory limit—pure fragmentation cannot explain integrative tendencies, managed pluralism cannot explain the distortion of power, liberal institutionalism cannot explain the 2019 crisis, realism cannot explain the genuine force of peremptory norms—and these reciprocal lacunae prove the necessity of the hybrid model.

2.6 Synthesis: From the Historical Ground to the Hybrid Order

The chapter draws the structural balance-sheet of globalisation by employing Peters's (2009) distinction between formal and material constitutionalization and Kumm's framework of universal constitutionalism. Peters demonstrates that, even in the absence of a formal global constitution, constitutional functions—norm hierarchy, judicial review, protection of fundamental rights, limitation of competence—are materially realised in institutional practices; constitutionalization is not a single constituent document but the sum of dispersed yet mutually reinforcing functions. Kumm, for his part, contends that constitutional principles—proportionality, justification, the protection of rights—generate a universal discourse that cuts across the national and international levels. The two frameworks together demonstrate why the multi-layered structure can be read neither as pure constitutionalization nor as pure fragmentation.

The chapter's fundamental finding is that the redistribution of authority produces four features simultaneously: the consolidation of peremptory norms and of material constitutional functions (the constitutionalization dimension), the disaggregation of functional regimes into autonomous parts (the pluralism dimension), the diffusion of authority to non-state and supra-state actors (the governance dimension), and the subjection of all these to great-power interest and to North–South inequality (the power-asymmetry dimension). These four dimensions are not mutually exclusive alternatives but simultaneous and mutually conditioning realities; the concept of the hybrid order is necessary because it unites them within a single framework—not because it is conciliatory but because it is explanatory.

The chapter also underscores the methodological value of this historical reading: had the three-century evolution demonstrated that constitutional tendencies strengthen uninterruptedly and irreversibly, it would have confirmed pure constitutionalization; had it demonstrated that no enduring gain accumulated, it would have confirmed pure realism/fragmentation. The historical record confirms neither: constitutional gains are genuine and cumulative (the catalogue of peremptory norms has expanded, the authority of courts has consolidated, individual criminal responsibility has been institutionalised), but they are not linear—they are encircled by cyclical resistances, backlashes, and power asymmetries. The constitutional momentum that reached its zenith with the international criminal tribunals of the 1990s slowed with the great-power conflicts of the 2000s and the 2019 WTO crisis. This dual pattern—cumulative gain alongside cyclical resistance—is the historical corroboration of the hybrid-order thesis.

The chapter finally opens the normative horizon of the historical transformation: the trajectory extending from the classical architecture to the contemporary hybrid order carries a discontinuous, cyclical, and incomplete orientation towards the values of the rule of law, sovereign equality, and just representation. This orientation is not a conception of a single-centred global state but a search for a multi-level architecture that preserves the sovereign equality of states, adheres to universal principles, and rests upon more just representation. The veto asymmetry of the Security Council, the inequality in the application of the human rights regime, and the inability of the Western-centred design to represent the Global South adequately are the historically entrenched obstacles before this horizon. Three centuries of history demonstrate that this transformation is neither inevitable nor impossible—that it is a cyclical, contested, and open-ended process; the contemporary order has arrived, at the close of a four-century evolution, at an incomplete but constitutive hybrid legal order that harbours both gain and limit within the same structure.

3. THE EXPLANATORY POWER AND LİMİTS OF FİVE THEORETİCAL STRANDS

The second chapter approaches contemporary international legal theory not as a "catalogue of opinions" but as five principal strands, classified and set against one another according to their explanatory capacities. The method is not a passive synopsis but the subjection of each strand to the trial of contemporary reality: each strand discloses its own limit when confronted with the phenomenon it cannot explain. The chapter's aim is to establish that no single strand is sufficient on its own, and that a multidimensional model apprehending three axes simultaneously is, for this reason, indispensable.

3.1 The Genesis of the Idea of Constitutionalization

The chapter sets out the intellectual roots of reading international law in a "constitutional" idiom. The post–Cold War institutional expansion, the crystallization of normative hierarchy, and the courts' acquisition of authority gave rise to a tendency to read law as an order evolving from an instrument of inter-state coordination into an autonomous source of authority. The chapter underscores that the concept of constitutionalization possesses no single, fixed meaning; it is, rather, a multilayered and contested concept organized around such features as normative hierarchy, the superior status of certain norms, the interpretive authority of courts, and the independent regulatory capacity of institutions.

The chapter demonstrates—through three classical strands—that the idea's origins reach back to a century-long accumulation rather than constituting "a new fashion": **Verdross's** (1923) 1923 work *Die Einheit des rechtlichen Weltbildes* (positing that international law is not mere horizontal consent but an integrated normative structure deriving from the collective conscience of the international community), **Mosler's** (1974) 1974 Hague Lectures (*the international community as a legal community*), and **Tomuschat's** (1999) 1999 Hague Lectures (the first contemporary systematic analysis to render it possible to speak of a "constitution" of the international community). The modern turning points are **Habermas's** (1996) "postnational constellation" and his deliberative constitutionalism (the adaptation of Kant's legacy of *ius cosmopoliticum* to global governance), and **Fassbender's** (2009) reading of the UN Charter as the constitutive founding document of the international community. The synthesis is furnished by **Klabbers–Peters–Ulfstein's** (2009) 2009 work *The Constitutionalization of*

International Law: three claims—the formation of normative hierarchy (jus cogens, erga omnes, Art. 103), the autonomous norm-generating capacity of institutions, and the evolving judicial authority of courts—are structural indicators of an order of constitutional character.

The chapter shows that the discourse of constitutionalization is not uniform but bifurcates across five theoretical strands: normative constitutionalism (Verdross–Simma, Mosler (1974), Tomuschat (1999), Fassbender (2009), Orakhelashvili (2006), Cassese), institutional constitutionalism (Klabbers–Peters–Ulfstein (2009), Alvarez (2005), Barnett–Finnemore (2004)), judicial constitutionalism (Alter (2014), Stone Sweet (2004), Helfer–Slaughter), economic constitutionalism (Petersmann (2009), Cass—the constitutionalization of the WTO), and deliberative-philosophical constitutionalism (Habermas (1996), Ferrajoli (2007), Allott's *Eunomia*, Held (1995)). As a conceptual-philosophical antecedent, Bellamy's (2007) political constitutionalism—the contention that legitimacy must be rooted not in judicial review but in political deliberation and democratic self-governance—converges with Habermas's deliberative line and furnishes the ground for transcending classical legal-judicial constitutionalism.

3.2 Global Constitutionalism and the Normative-Hierarchy Thesis

Constitutionalism is the most systematic framework advancing the proposition that international law is acquiring constitutional features. Its fundamental claim is that three deep-seated transformations—the formation of normative hierarchy, the consolidation of institutional authority, and the deepening of judicial efficacy—together propel international law from its classical horizontal structure toward a constitutional order.

The literature's founding text is Bardo Fassbender's (2009) thesis reading the UN Charter as "the constitution of the international community." Fassbender grounds the contention that the Charter exhibits the attributes borne by a constitution through seven achievements: (1) the Charter's opening with the phrase "We the Peoples of the United Nations" is an indicator of a constituent moment paralleling the "We the People" logic of the American Constitution—a departure from the classical "High Contracting Parties" idiom; (2) the requirement in Articles 108 and 109 of a two-thirds majority of the General Assembly together with the ratification of all permanent members (the P5) for amendment reflects the rigidity characteristic of constitutional amendment mechanisms; (3) Article 2(6), by providing for the application of UN principles to non-member states as well, transcends the pacta tertiis principle; (4) Article 103, by registering the supremacy of Charter obligations over all other treaty obligations, transcends the idiom of "the equality of all treaties"; (5) the Security Council's Chapter VII powers manifest the international community's constitutional capacity for collective action; (6) the norm-generating capacity of UN organs transcends the classical treaty logic; (7) the Charter sets forth the constitutional foundation for transcending the post-Westphalian architecture. Fassbender's thesis is at once constitutionalism's most systematic grounding and the site where its limits become most visible: notwithstanding the Charter's universal membership, the constituent people (demos) that a constitutional document presupposes is absent, and the veto mechanism plainly contradicts equal legal bindingness. The Charter bears constitutional elements yet cannot transform into a full constitution; the hybrid-order thesis aims precisely to apprehend this condition of semi-constitutionality.

The literature's second turning point is Anne Peters's (2009) framework of "compensatory constitutionalism": the claim that the constitutional guarantees eroding at the nation-state level (rights protection, the limitation of competences, accountability) ought to be compensated at the international level binds constitutionalization not to a single founding document but to dispersed yet mutually reinforcing functions. Alec Stone Sweet (2004) lays bare the mechanism of judicial constitutionalization: the Court of Justice of the EU—developing through case law, despite their absence from the express text of the founding treaties, direct effect via Van Gend en Loos (1963) and the doctrine of supremacy via Costa v. ENEL (1964)—transformed an inter-state regime into a constitutional order. Stone Sweet's emphasis is that constitutionalization is likewise possible without a central constituent will, through the cycle whereby cases are brought before the court, decisions establish precedent, and national courts adopt them. Yet this model is contingent upon the EU's distinctive conditions—dense institutional integration, relatively symmetrical power relations, a common ground of values, effective enforcement—conditions that seldom coincide at the global level. The EU is thus at once the most developed exemplar of judicial constitutionalization and the proof that it cannot be directly generalized to the global scale; the global order exhibits a more asymmetrical and incomplete juridification.

Constitutionalism's empirical laboratory is EU integration, read through Weiler's framework of "constitutional tolerance": the CJEU's three founding precedents constitute the kernel of judicial constitutionalization—Van Gend en Loos (1963, "the Community constitutes a new legal order; its subjects comprise not states alone but also individuals" → direct effect), Costa v. ENEL (1964, the supremacy/*primauté* of EU law over national law), and

Internationale Handelsgesellschaft (1970, the registration of fundamental rights as a constitutive component of EU law). For Weiler, the relationship between EU law and national constitutional orders is not the imposition of absolute supremacy but a "constitutional tolerance" grounded in mutual respect. Two sub-strands of the literature broaden the framework: Ferrajoli's (2007) *Principia Iuris* carries integrated democratic constitutionalism (the binding of rights to positive guarantees and the limitation of public authority) onto the global plane, while Petersmann's (2009) economic constitutionalism interprets the WTO system as a constitutional structure safeguarding individual economic freedoms—a reading that, as an endeavour to articulate trade law with human rights, is at once influential and contested.

The literature's further founding texts are likewise set out: Dinah Shelton's (2006) analysis of normative hierarchy (that superior norms carry not merely technical validity but a dimension of normative authority and legitimacy), Alexander Orakhelashvili's (2006) grounding of jus cogens as a category of constitutional character that crystallizes the international community's shared value system, and Martin Loughlin's (2010) articulation of classical public law to the discourse of "global public law." The chapter distinguishes constitutionalism's five sub-strands—normative, institutional, judicial, economic, and deliberative constitutionalism—each of which reads the same phenomenon through a different aperture yet shares a common infirmity: the propensity to take the dimension it apprehends for the whole.

Constitutionalism's explanatory power and its limit emerge in one and the same gesture. Its power lies in theoretically naming an undeniable phenomenon of contemporary law—the consolidation of normative hierarchy, institutional authority, and judicial efficacy. What it cannot explain is why these acquisitions are unequally distributed and why they have not attained an integrated structure: it detects hierarchy but does not structurally account for how that hierarchy is selectively applied through the veto; it extols institutional authority but does not structurally account for how it is conditioned by power asymmetry. This lacuna issues from the strand's implicit teleological assumption—that constitutionalization advances toward completion, such that durable asymmetries are deemed transient deviations. The phenomena the strand explains constitute evidence for the hybrid thesis's normative and institutional axes; the gaps it cannot explain demonstrate why a framework is required that will articulate it with pluralism, governance, and critical objections.

3.3 Legal Pluralism and the Fragmentation Thesis

The second theoretical strand is global legal pluralism. The chapter first establishes that this tradition stems not from international law but from legal anthropology and sociology. Griffiths's (1986) article "What is Legal Pluralism?" (1986) is its founding text: "legal centralism"—the discourse that regards law solely as the monopolistic product of state authority—is both ideologically and empirically erroneous; in every society, alongside state law, religious, customary, professional, and community-based normative orders operate concurrently. Merry's (1988) article "Legal Pluralism" (1988) divides pluralism into a "classical" strand (the colonial-era comparative variety) and a "new" strand (the plural orders operating within the nation-state). Santos's (2002) concept of "interlegality" (2002) grounds, at the philosophical level and from a Global South perspective, global law as multilayered structures that are plural, hybrid, overlapping, and mutually transformative.

The chapter connects this classical heritage to the contemporary literature on global pluralism. Tamanaha (2008), by distinguishing six discrete manifestations of pluralism (colonial-era, intra-nation-state minority, contemporary global, transnational commercial, indigenous peoples, and religious-cultural), proposes that "law" be redefined as an expanded category beyond the state-monopoly discourse of classical positivism, and thereby enters into theoretical tension with Hart's "rule of recognition." Twining's (2009) global jurisprudence (global jurisprudence, 2000/2009) critiques the Western-centrism inherent in legal theory's implicit reliance on the nation-state model as its ground, and calls for its opening to a multilevel, plural legal reality. Berman's (2012) global legal pluralism (2012) regards overlapping jurisdictional spheres not as a condition to be resolved but as a permanent state to be managed, and proposes hybrid procedural mechanisms (rules of mutual recognition, deference, and dialogue)—a direct contribution to the hybrid order's conception of "managed plurality."

The chapter deepens the most systematic grounding of pluralism through several frameworks. Krisch's (2010) *Beyond Constitutionalism* (2010) makes the radical move: plurality is not an unfinished phase of constitutionalism but a form of order in principle superior to it—whereas the constitutional canopy produces hierarchical closure by binding authority to a single ultimate point, in the postnational order the relationship is more flexible and more legitimate when governed not by a rule of supremacy but by a search for mutual accommodation and ongoing negotiation (heterarchy). Krisch's distinction between "strong pluralism" (the categorical rejection of inter-order hierarchy) and "weak pluralism" (relative coordination and dialogue) is a constructive contribution that compels the pluralist critique not to refute constitutionalism but to define its scope more precisely; its jurisprudential

indicators are Nada/Al-Jedda (the curtailment of UNSC sanctions by the ECtHR), Bosphorus equivalent protection, and Kadi. MacCormick's (1999) post-sovereignty (*Questioning Sovereignty*, 1999) shows that sovereignty does not vanish but, ceasing to be absolute and indivisible, is dispersed across overlapping, negotiated, plural layers of authority; yet this model's specificity to the European context (high institutionalization, relatively symmetrical power) is limited at the global scale—the relationship between the Global South and the great powers is, more often than not, asymmetrical rather than negotiated. Walker's (2002) "late sovereignty" and Maduro's (2003) "contrapunctual law"—the view that the relationship between EU law and national constitutional orders is not a top-down hierarchy but a deliberative dialogue—complete this line. Teubner's (2012) societal constitutionalism (*Constitutional Fragments*, 2012) sets forth that global law is the coexistence of the autonomous constitutional orders of functionally differentiated social systems (the economy, science, health, internet governance), and that what exists is not a single global constitution but multiple "constitutional fragments." The chapter further incorporates the post-constitutionalist debate in Dobner–Loughlin's edited volume *The Twilight of Constitutionalism?*. The chapter's assessment: these frameworks powerfully evidence the reality of plurality but tend to underestimate its shared normative kernel and integrative pull—the hybrid thesis embraces pluralism's descriptive force while counterbalancing it with the vertical kernel of the normative axis.

3.4 The Global Governance Approach: A Multi-Actor Architecture of Authority

Where constitutionalism seeks vertical hierarchy and pluralism seeks horizontal plurality, global governance traces a third line: an architecture of authority that is neither horizontal nor vertical but multilayered, multi-actor, and network-based. Its origins extend to Keohane–Nye's (1977) framework of "complex interdependence" (the operation of international relations across numerous channels—not merely military but economic, environmental, and technological); it acquires its systematic identity through Rosenau–Czempiel's framework of "governance without government": even in the absence of a central world government, order and coordination arise through relations of authority dispersed among states, organizations, civil society, corporations, expert communities, and regulatory networks. Rosenau's (1992) observations regarding "glocalization" and "the erosion of the boundaries of authority" demonstrate that the production of law cannot be confined to the classical treaty mechanisms grounded in state consent. Held's (1995) cosmopolitan democracy adds a normative objective: while democratic decision-making is confined to the nation-state, the effects of decisions transcend borders; this decoupling of authority from effect necessitates the transposition of democratic principles onto a multilayered architecture spanning the local, national, regional, and global. Slaughter's (2004) framework of the "disaggregated state" shows that the state is not a single integrated sovereign but a structure in which its components (the executive, the judiciary, regulatory agencies, central banks) network directly with their international counterparts.

The chapter also sets out governance's instruments of legitimacy-repair and its tensions. Global Administrative Law (GAL), through five institutional manifestations (the internal administration of international institutions; their steering of state administration; transnational regulatory networks; public-private hybrid bodies; private regulators—ISO, credit rating), partially closes the legitimacy deficit by means of administrative procedural guarantees (transparency, reason-giving, participation, review). Benvenisti's framework of "sovereigns as trustees of humanity" contends that sovereignty has evolved into an attribute bearing fiduciary responsibility on behalf of the global community as a whole. Auby's comparative critique demonstrates that GAL's administrative principles (transparency, reason-giving, participation) are not universal and neutral but derive from the Anglo-American and continental European traditions; this converges with TWAIL—ostensibly technical procedural principles may harbour the global diffusion of particular legal traditions. Büthe–Mattli's (2011) framework of "the privatization of regulation" shows that a significant portion of the standards in the global economy (accounting, product safety, environmental sustainability) is produced not by states but by private bodies (ISO, IASB, IEC), and that these standards acquire de facto bindingness once they become conditions of market access. The governance strand's power lies in its apprehension of the multi-actor reality; its limit lies in its insufficient resolution of the democratic legitimacy deficit and of the persistence of power asymmetry within the networks.

The chapter adds two synthesizing frameworks from the governance literature. Zürn's (2018) three-dimensional theory of global governance (*A Theory of Global Governance*, 2018) reads global governance not as a mere story of cooperation but as a tension-laden structure of authority that generates its own politicization: as international institutions acquire genuine "reflexive authority" (the expansion of authority), this authority—because it does not coincide with classical democratic representation—engenders a legitimacy deficit, and this deficit triggers political contestation (anti-globalization movements, populism, the reform demands of the South)—the triad of authority, legitimacy, and contestation jointly explains why global governance has both deepened and become increasingly contested. Hurrell's (2007) framework of "managed pluralism" (*On Global Order*, 2007), proceeding from the English School's tradition of "international society," is a direct antecedent of the hybrid thesis: it adopts neither the optimistic pluralism that presumes plurality tends spontaneously toward harmony nor the

constitutionalism that envisages integration under a single central authority; it maintains that plurality is real yet not wholly unmanaged, but rather is partially managed through shared institutions and common norms. Hurrell reads the contemporary order as the resultant of three normative institutions: pluralist international society (sovereignty, non-intervention), solidarist international society (human rights, democracy, the rule of law), and the architecture of global governance; but by leaving open the question "managed by whom and in the name of which values," he nourishes the power-asymmetry axis. On the dimension of norm diffusion, Risse–Ropp–Sikkink's (1999) five-phase "spiral of socialization" (repression → tactical concession → discursive entrenchment → entrenchment in institutional practice → rule-consistent behaviour) and Börzel–Risse's framework of Europeanization demonstrate that the internalization of international norms at the national plane is a long and complex process.

3.5 Judicial Constitutionalization and Multilevel Constitutional Dialogue

The fourth theoretical strand is the proliferation of international courts and their capacity to generate legal authority (judicial constitutionalization). In the post–Cold War period, the number of international judicial organs rose from a handful (ICJ 1945, ECtHR 1959, CJEU 1952) to an architecture exceeding fifty ("the proliferation of tribunals"—Romano, Alter (2014), Shany); this is built upon an institutional accumulation stretching from the 1794 Jay Treaty through the Hague Conferences and the PCIJ. The chapter analyses the courts' effectiveness through Helfer–Slaughter's three-dimensional framework (composition: independent judges; structure: compulsory jurisdiction, individual application, bindingness; jurisdiction: norm clarity, interpretive methodology, supranational effect—with the highest scores accruing to the CJEU and the ECtHR) and through Alter's fourfold typology (administrative, constitutional, enforcement/sanction, and dispute-resolution functions).

The chapter's distinctive contribution is its concretization of judicial constitutionalization through the jurisprudence of multilevel constitutional dialogue. Alongside the classical examples (Tadić 1995—Kompetenz-Kompetenz and the applicability of humanitarian law to internal conflicts; LaGrand 2001 and Avena 2004—the recognition of the individual as a direct subject of rights), the purest indicators of dialogue across multiple levels are set out: Kadi I (2008) and Kadi II (2013)—the CJEU's rejection of the unlimited supremacy of UNSC sanctions decisions and its assertion of review for conformity with the EU's fundamental-rights order; Solange I (1974) and Solange II (1986)—the German Federal Constitutional Court's establishment of constitutional review of EU law not in a hierarchical but in a conditional-dialogical form ("so long as"), a condition of post-sovereignty in MacCormick's (1999) phrase; the Bosphorus (2005) equivalent-protection doctrine, Matthews (1999), Nada (2012), and Al-Jedda (2011)—the reciprocal curtailment among the ECHR order and the EU and UNSC regimes. This jurisprudence is evidence of a hybrid institutional logic that transcends the classical discourse of "the unlimited supremacy of international law over the nation-state," wherein authority operates not at a single ultimate point but in an ongoing dialogue across levels.

3.6 Realist-Critical Objections and Epistemological Frameworks

The realist and critical objections (2.6) gather three distinct critical strands directed against constitutionalism. The first is the neorealist–rational-choice strand: Goldsmith–Posner's (2005) *The Limits of International Law* (2005) contends that international law is not an autonomous normative order but the aggregate of states' rational interest calculations, and that compliance can be explained by four mechanisms (coincidental convergence, coordination, cooperation, coercion); Posner's *The Perils of Global Legalism* (2009) holds that the capacity of international institutions is not equivalent to that of national institutions; Krasner's (1999) "organized hypocrisy" emphasizes that the sovereignty discourse is an indicator not of its transcendence but of its strategic deployment; Guzman's (2008) rational-choice theory binds bindingness to three mechanisms (sanction, reciprocity, reputation). The second is the deconstructive-critical strand: Koskenniemi's (2005) *From Apology to Utopia* (1989/2005) shows that the discourse of international law oscillates between the poles of "apology" (submission to state will) and "utopia" (universal ideals independent of will), and that the logical irreconcilability of these two poles confers structural indeterminacy upon the discourse; Marks's (2000) *The Riddle of All Constitutions* (2000) offers an ideology critique holding that constitutionalism's discourses of "democracy/rule of law/human rights" are the universalization of liberal-capitalist positions; Kennedy's (2006) *Of War and Law* exposes the problematic character of the assumption of neutrality; and Orford's (2011) reading of R2P as a contemporary manifestation of the colonial "civilizing mission" completes this strand. De Búrca's critique of Kadi tests the idealized "mutual respect" narrative of constitutional pluralism: in protecting fundamental rights, the Court prioritized the EU order over UN law; the relationship among plural levels is not a neutral dialogue but also encompasses a struggle over power and priority. The third is the Third World Approaches to International Law (TWAIL) strand (Anghie (2004), Chimni (2006), Mutua (2001), Gathii (2011), Pahuja—treated in detail in Chapter Seven): the colonial origins of international law's claim to universality and its structural asymmetry to the detriment of the Global South. These are accompanied by Ikenberry's (2011) *Liberal Leviathan*, which binds the liberal order to American

hegemony, and Hurrell's (2007) "managed pluralism." The chapter does not reject these objections but incorporates them into the hybrid thesis—power asymmetry is a constitutive dimension of the hybrid order, not an extrinsic flaw; yet the thesis parts ways with the tendency of certain versions of the TWAIL and deconstructive strands to treat normative achievements as wholly a hegemonic mask.

The epistemological and methodological frameworks (2.7) address the question of how constitutionalization is to be observed and tested, and clarify the false antinomies arising from the slippery use of terms (the deployment of the constitution-metaphor in different senses by different authors). Brunnée–Toope's (2010) "interactional" analysis of legitimacy (the derivation of legitimacy not from formal consent but from processes of interaction) and Habermas's (1996) interpretation of the EU's democratic deficit nourish this framework; Trachtman's three-scenario analysis (constitutional integration, institutional pluralism, normative fragmentation), in turn, demonstrates that the global order bears neither the character of pure hierarchical integration nor that of pure fragmentation—this prepares the epistemological ground for the spectrum perspective and for tensional complementarity.

3.7 The Need for a Multidimensional Model

The chapter closes with the conclusion that each of the five strands accurately apprehends one face of contemporary reality but cedes the face it cannot explain to another. Constitutionalism correctly detects normative hierarchy, pluralism fragmentation, governance the plurality of actors, judicialization the authority of courts, and the critical strand power asymmetry; yet none can, on its own, apprehend the simultaneous coexistence of achievement and limit.

The chapter concretizes the rationale for the three-dimensional model in six analytical gaps within the literature. The first is the limitation of the single-dimensional analytical framework: studies foreground either normative developments (jus cogens, erga omnes, hierarchy) or institutional transformations, rarely conjoining the two in an integrated perspective—whereas the normative order is constructed not spontaneously but through institutional practices and multi-actor governance. The second is the unanalysed comparative role of international institutions: how the ICJ, the ECtHR, the ICC, the CJEU, and the WTO Appellate Body interact with one another, and whether this constitutes a holistic constitutional authority or overlapping jurisdictional spheres, has been little examined; the question of whether organizations are "constitutional agents" or mere instruments remains unclarified (Alvarez (2005), Barnett–Finnemore (2004)). The third is the disconnect between the global governance and international law literatures: governance concepts such as the production of legitimacy and accountability are not integrated into the constitutionalization debate—whereas a norm's acquisition of constitutional supremacy depends not on its textual existence but on the authority of the institutions interpreting it, the capacity of the mechanisms applying it, and the breadth of the network of actors that accept its legitimacy. The fourth is the Eurocentric tendency: the neglect of the experiences of the Asia-Pacific, Africa (the African Union), and Latin America (Mercosur, ASEAN), while the EU legal order is taken as the dominant referent, engenders a geographical blind spot and a latent geopolitical bias. The fifth is the theoretical-empirical imbalance: while the debate is concentrated at the theoretical level, empirical testing remains limited, which carries the risk of claims devolving into speculative propositions that fail to satisfy the criterion of falsifiability—the remedy being three methodological instruments: quantitative data on norm compliance, systematic jurisprudential analyses, and comparative institutional assessments. The sixth is the gap concerning non-state actors and accountability: civil society's advocacy function and multinational corporations' de facto capacity to generate norms through investment treaties have not been incorporated into the constitutionalization debate as two non-state dynamics that operate beyond democratic oversight and conflict with one another. For this reason, an integrated model is required that treats constitutionalization, fragmentation, governance, and power asymmetry as primary analytical categories of equal weight—the diagnosis of these six gaps is the direct rationale for the three-dimensional analytical model of the third chapter.

4. THE THREE-DİMENSİONAL ANALYTİCAL MODEL AND THE CONSTİTUTİON OF THE HYBRİD POSİTİON

The third chapter erects the analytical architecture of the hybrid-order thesis in order to fill the theoretical lacuna laid bare by the second chapter. The chapter opens with a systematic examination of the theories of international law (3.1) and proceeds to diagnose the impasses of global constitutionalization (3.2): the absence of a formal global constitution, the dispersion of constitutional functions, the asymmetry of enforcement, and the legitimacy deficit together render it impossible to adopt the metaphor of "constitution" as it stands.

4.1 A systematic comparison of the theories of international law

The chapter locates the fundamental analytical axis distinguishing the various theories from one another in the question of the foundation upon which legitimacy is grounded: is it the express consent of states, universal moral principles, or the institutional authority generated by the mechanisms of global governance? This question establishes the axis along which the rival theoretical strands are systematically compared. The classical natural-law strand—Grotius (2005), *De Jure Belli ac Pacis* (1625); the Spanish scholastics Vitoria (1991), *De Indis* (1539), and Suárez, *De Legibus* (1612)—anchors legitimacy in a universal normative core that lies beyond the will of the state and constitutes the common product of human reason; Grotius's formula emancipating law from its theological premise, "even if there were no God" (*etiamsi daremus*), and Vitoria's conception of a "universal community of humankind" are the philosophical roots of contemporary human rights and peremptory norms (Anghie's (2004) critique exposes the double-edged function of this universalist discourse, which simultaneously transformed indigenous peoples into objects of Western norms). The strand of legal positivism (Vattel (2008), *Le Droit des Gens* (1758); Oppenheim, *International Law* (1905); Brownlie), by contrast, derives legitimacy not from moral content but from the actual will and practice of states—from treaty and custom; its strength lies in objectivity and predictability, while its limitation is the risk of subordinating law to the will of the powerful. The enduring tension between these two strands—the dialectic of the positive rule and the peremptory principle—persists precisely along the normative axis of the hybrid order. By appending the contemporary approaches (global constitutionalism, pluralism–fragmentation, governance, judicialization, and the critical–TWAIL perspective) to these classical strands, the chapter demonstrates that each captures but a single facet of the contemporary order; this partial-truth character of the rival theories furnishes the analytical justification for the three-axis synthetic model—since no single theory can grasp the whole, an integrative framework that renders visible the articulation among the axes becomes indispensable.

4.2 The impasses of global constitutionalization and the spectrum perspective

The first source of the impasse is the problem of conceptual transposition: the central concepts of constitutionalism (constituent power / *pouvoir constituant*, the people / *demos*, the separation of powers, judicial review) acquired their meaning within the context of the nation-state and find no clear correlate at the global level (Loughlin (2010)). This is concretized in Grimm's (2010) problematic of the "constitution without a people" (*Verfassung ohne Volk*): there exists neither a global constituent moment, nor a global people, nor a global separation of powers. This deficiency invites two mistaken paths—either imposing the concepts as they are and treating the deficiencies as defects (which disregards the genuine gains achieved), or proclaiming the absence of any constitutional element and rejecting constitutionalization altogether (which denies the constitutional functions that are in fact operative). The model escapes both traps by means of the "spectrum perspective": constitutional quality is not a binary yes-or-no question but a spectrum that emerges in varying intensities and different combinations (Walker's (2002) concept of "the other constitutionalism" is the origin of this perspective; whereas in the domain of human rights an advanced constitutional moment is discernible around the ECtHR/ICC, in investment arbitration regime competition and accountability deficits exhibit a partial and tension-laden appearance). The analytical core of the model is the concept of "tensional complementarity": constitutionalization and pluralism are not mutually exclusive but dynamics that operate simultaneously within the same system while generating tension—this is the third position that transcends the dilemma of "constitutionalization or fragmentation?" The model is guarded against a teleological narrative by principal-agent theory and path dependency: states delegate competence to the institutions they establish, yet institutions over time acquire an autonomous norm-interpreting capacity that surpasses the original will (Barnett–Finnemore (2004)); path dependency entrenches institutional choices (Pierson (2004))—and yet, as Ginsburg–Huq's (2018) analysis of democratic backsliding demonstrates, constitutional tendencies may also regress as conditions change. The model therefore possesses the capacity to explain not merely integrative tendencies but also the constraining dynamics that operate against them; the criterion of falsifiability (Popper (1959); Goldsmith–Posner's (2005) interest-centred critique in *The Limits of International Law* serving as a constant reference point of testing), abductive inference, and conceptual economy complete this framework.

4.3 The constitution of the three-dimensional analytical model

The model conceptualizes global constitutionalization not as a one-dimensional or linear narrative of progress, but as a dynamic transformation shaped at the intersection of three axes that establish institutional bonds with one another. The axis of the normative order asks which rules exist and what hierarchy obtains among them; the axis of institutional structure traces who interprets and applies these rules and how authority is produced; and the axis of global governance analyses the diffusion of norm production beyond the monopoly of the state into a multi-actor field. Taken in isolation, each of the three axes remains incomplete: a norm without an institution to interpret it remains on paper, an institution without a superior norm upon which to rely degenerates into an instrument of power, and contemporary norm production cannot be apprehended without perceiving the governance network that envelops the two. The strength of the model lies in its rendering visible the articulation that binds these three

dimensions together; what distinguishes the contemporary order from the classical model of sovereignty is that these three processes no longer converge in a single sovereign centre but have been transformed into autonomous flows that operate according to their own logics while mutually conditioning one another.

The model takes its inspiration from Klabbers–Peters–Ulfstein's (2009) three-layered (normative, institutional, judicial) framework of constitutionalization, but diverges from it on two points. First, it situates the judicial layer within a broader axis of global governance; judicialization is thereby treated not merely as an institutional matter but as a component of the governance architecture (a position reinforced by Held–McGrew's (2002) theory of global transformation). Second, it conceives the three axes not as independent layers but as simultaneous dynamics that, in reciprocal interaction, both reinforce and constrain one another: the development of the normative axis is bounded by institutional capacity, institutional effectiveness remains contingent upon governance's capacity to generate legitimacy, and the inclusiveness of governance is shaped by the values framed by the normative axis. This logic of reciprocal interaction is the distinctive analytical core of the analysis and serves as a bridge linking together three otherwise disjointed bodies of literature—constitutionalism, pluralism/fragmentation, and governance.

The epistemological stance of the model rests neither on pure positivism nor on pure normative idealism; it is positioned on a structuralist–interpretivist middle ground that holds transformations to be produced by both structural conditions and the practices of actors. This stance draws support from constructivist international relations theory: norms are the social product not merely of interest calculations but of shared identities and values (Wendt (1999)). Finnemore–Sikkink's (1998) norm life cycle—the placing of a norm on the agenda by norm entrepreneurs, its adoption by states (the "norm cascade"), and its internalization—is articulated into the model as the principal instrument for explaining the institutionalization of norms of constitutional quality; it proves its yield in the development of jus cogens and the core of human rights. Franck's (1990) analysis, according to which legitimacy arises from the internal quality of norms (determinacy, coherence, hierarchical congruence), and Peters's (2009) perspective, according to which constitutional quality must be measured not solely by institutional capacity but also by indicators of legitimacy and procedural justice, are integrated into it.

The empirical testability of the model is established explicitly. The constitutional quality of the normative order is measured by three functional indicators: (i) whether a norm acquires priority in the event of a conflict; (ii) whether the norm sustains its existence independently of the express consent of states; and (iii) whether its violation gives rise to an obligation of accountability towards the international system as a whole. The institutional axis is measured by organizational capacity, the production of jurisprudence, and the intensity of regional integration; the governance axis by multi-actor norm production, the institutionalization of civil society, and the efficacy of soft law. The model thus offers not an abstract claim but a scaffold for comparative empirical research. The two distinctive analytical strands of the model—the spectrum perspective and tensional complementarity defined in 3.2—reside at the core of this construction: the first conceives constitutional quality as a spectrum of domain-varying intensity that transcends the tension between Fassbender's (2009) holistic constitutional reading and Krisch's (2010) pluralist rejection (international law being a heterogeneous whole that exhibits constitutional concentration in certain domains while preserving a pluralist structure in others); the second views constitutionalization and pluralism not as mutually exclusive but as dynamics that operate simultaneously and complement one another, and constitutes the analytical essence of the hybrid global legal order thesis as the third position that transcends the dilemma of "constitutionalization or fragmentation?"

4.4 The three axes in detail: the normative order, institutional structure, governance

The **axis of the normative order** traces the surpassing of the classical horizontal system (in which all norms—a fisheries treaty no less than the prohibition of genocide—were deemed equivalent and modifiable by consent). In the contemporary order, jus cogens constitutes an unalterable upper stratum, erga omnes extends normative concern from the bilateral relationship to the community as a whole, and the human-rights core penetrates directly into the domain of sovereignty. The empirical documentation of this verticalization is the codification of peremptory norms in Articles 53 and 64 of the VCLT (Schwelb, Sinclair: the deliberate vagueness of the definition grants autonomy to judicial jurisprudence); peremptory norms not only control the validity of treaties but also assume a guiding function akin to "living constitutionalism" in the interpretation of other rules (Lauterpacht). The empirical analysis of the axis proceeds through three indicators: the de facto acceptance of the supremacy of jus cogens, the collective enforcement of erga omnes obligations (Tams (2005)—normative pressure independent of the threat of sanction, such as diplomatic protest, participation in sanctions, and support for investigations), and the manner in which the tensions established between the human-rights core and trade, investment, and security are resolved. And yet the hierarchy remains incomplete—which norms are peremptory is contested, enforcement

stumbles upon the asymmetry of power, and the horizontal-consent logic persists; the axis presents the tension-laden coexistence of a vertical value-core and a horizontal ground of consent.

The **axis of institutional structure** examines the institutional architecture of the production, interpretation, and application of norms, together with the qualitative transformation of that architecture. The critical rupture is not numerical proliferation but the acquisition by institutions of norm-producing authority: a court does not merely settle a dispute but, through its interpretation, determines the content of the norm and produces jurisprudence binding upon future conduct; an organization, through its own bureaucratic logic, generates normative consequences unforeseen by states (Barnett–Finnemore (2004), Alvarez (2005)). The empirical analysis of the axis proceeds on four planes: the constitutional role of the UN system (the function of the Charter, the normative capacity of the Council, the norm production of the General Assembly), the normative authority of international courts (Stone Sweet (2004) on institutional construction, Helfer–Slaughter on effectiveness, Bryde (2001) on judicial constitutionalization—the paradigmatic example being the ECtHR's *Loizidou* (1995) and the doctrine of state control), the constitutional features of regional integration (the CJEU's principles of direct effect and supremacy), and positioning within the integration–fragmentation tension. This multi-level institutionality renders sovereignty inexplicable within the classical framework and gives rise to the conceptualizations of "shared / multi-layered sovereignty" (Slaughter (2004), Walker (2002), Held–McGrew (2002)).

The **axis of global governance** analyses the diffusion of norm production beyond the monopoly of the state into a multi-actor field; it is measured by the indicators of multi-actor norm production, the institutionalization of civil society, and the efficacy of soft law. The three axes both reinforce and constrain one another: a norm without an institution to interpret it remains on paper, an institution without a superior norm upon which to rely degenerates into an instrument of power, and contemporary norm production cannot be apprehended without perceiving the enveloping governance network—this reciprocal conditioning is the distinctive analytical core of the model.

4.5 The digital–technological transformation and the testing of the model

The model also encompasses the reverberations of the digital and technological transformation across the three axes. On the institutional plane, digital regulatory institutions (the European Data Protection Board, the EU AI Office), transnational structures of cyber cooperation (EC3, INTERPOL, FIRST), public–private internet-governance institutions (ICANN, IETF, W3C), and the judicial jurisprudence concerning algorithmic decision-making and mass surveillance (the ECtHR's judgments in *Big Brother Watch v. UK* (2021) and *Centrum för Rättvisa v. Sweden* (2021)) are examined. On the governance plane, the multi-actor internet-governance model (NETmundial 2014, the IGF, the Tunis Agenda), digital public goods (the UN panels, the DPGA), the governance responsibility of technology companies (the UN Guiding Principles on Business and Human Rights 2011), and the digital ethics–law interface (the UNESCO Recommendation on the Ethics of Artificial Intelligence 2021, the EU DSA and DMA 2022) are addressed. The digital domain emerges as a new and acute testing ground for the simultaneous operation of the three axes.

On the normative plane, an emergent core of digital rights becomes discernible: the literature of "digital constitutionalism" (Celeste (2022), De Gregorio (2022)) analyses the transposition of fundamental rights—privacy, freedom of expression, data protection, procedural safeguards against algorithmic decision—into the digital domain and the assumption by private platforms of public–constitutional obligations; the four risk-based categories of the EU Artificial Intelligence Act (2024) (unacceptable, high, limited, and minimal risk) represent the most concrete institutional crystallization of this normative tendency. This same domain is a front upon which three rival regulatory models collide: the EU's rights-based model (the dissemination of the GDPR to more than 130 countries through Bradford's (2020) "Brussels Effect"), China's model of "cyber sovereignty" (the 2021 Data Security Law, data localization), and the United States' market-centred model—this competition being the clearest manifestation of governance pluralism and fragmentation in the digital domain. At a deeper level, the digital transformation also generates a conceptual rupture: Lessig's (2006) insight that "code is law" demonstrates that technical architecture carries an implicit regulatory power, while Bratton's (2015) analysis of "the stack" demonstrates that the classical land-sea-air-based model of territorial sovereignty has lost its function in the age of digital infrastructure. The digital domain thus constitutes not merely a new field of application for the model but a laboratory in which all three axes—normative rights production, institutional authority, and governance pluralism—are tested in their most rapid and most tension-laden form, and which compels the conceptual instruments themselves to renew themselves.

4.6 The multi-level legal system: the framework of constitutional pluralism

The chapter theorizes the most conspicuous transformation of contemporary law—its acquisition of a multi-level character—within the analytical framework of constitutional pluralism. The multi-level legal order denotes a

network in which national, regional, and global normative structures operate in continual interaction and mutual interdependence, being neither fully hierarchical nor fully autonomous. The genesis of the concept lies in the recognition of the inadequacy of the two classical models—dualism (which deems national and international law to be two closed orders) and monism (which deems them to be parts of a single hierarchical whole): dualism cannot account for the intense jurisprudential interpenetration among the levels, while monism cannot account for the absence of a strict hierarchy. The chapter emphasizes that this is the direct antecedent of the hybrid thesis: the transcendence of the monism–dualism dilemma and the transcendence of the constitutionalism–pluralism dilemma are two scales of the same dialectical move—in both, instead of choosing between two extremes, a third position is developed that unites what each of the two perceives. The roots of the concept reach back to Verdross–Simma's quest for a normative structure grounded in common values and to Lauterpacht's conception of the international community.

The legal system of the European Union is the most comprehensive laboratory of the multi-level order: a legal order born of an international treaty has been transformed, through the doctrines of direct effect and supremacy, into an autonomous constitutional order that penetrates directly into the domestic law of the member states. Weiler's classic analysis distinguishes two dimensions: the integration of law (the integration deepened through the supremacy and direct effect of norms) and the integration of politics (the control of the member states over decision-making processes); legal integration has more often outrun the political, and this asymmetry gives rise to the EU's enduring tension of legitimacy. The EU demonstrates how national and supranational authorities can coexist in the absence of an ultimate rule of supremacy; yet, as Scharpf and Moravcsik observe, the conditions specific to Europe render the direct transposition of this model to the global scale difficult—the EU exemplifies, at one and the same time, both its potential and the limit of its universalization. The chapter articulates the multi-level system with three bodies of literature—global constitutionalism (Fassbender (2009)), legal pluralism (Krisch (2010), Koskenniemi (2005), Pauwelyn (2003)), and governance; Teubner's (2012) concept of "constitutional fragments" (the notion that contemporary law is neither an integrated constitution nor mere fragmentation, but the coexistence of partial and sectoral constitutional processes) provides a robust foundation for this synthesis. The framework of constitutional pluralism is elaborated through Walker (2002), MacCormick (1999), and Maduro (2003): the proposition that plural constitutional orders can operate together, in the absence of a strict hierarchy, according to the principles of mutual respect and accommodation.

The chapter finds the richest empirical laboratory of constitutional pluralism in the chain of jurisprudence of the German Federal Constitutional Court (BVerfG) concerning EU law. Following the *Solange I* (1974, "so long as the guarantee of fundamental rights at the Union level is not adequate, the power of review is reserved") and *Solange II* (1986, "so long as it is adequate, the power of review will not be exercised") judgments, the chain expands in four stages: the *Maastricht-Urteil* (1993) characterizes the EU as an "association of states" (*Staatenverbund*), safeguards the democratic right of sovereignty of the German people (Art. 38 GG), and consolidates the power of ultra vires review; the *Lissabon-Urteil* (2009) rejects the "constitutional" character of the EU and registers the doctrine of "constitutional identity review" (*Identitätskontrolle*) and the "inviolable core" (*Ewigkeitsklausel*) of Art. 79(3) GG as a structural shield against EU law; the *OMT-Vorlage/Urteil* (2014–2016) demonstrates the institutionalization of judicial dialogue through the BVerfG's lodging, for the first time, of a request for a preliminary ruling before the CJEU within the framework of Art. 267 TFEU; and the *PSPP-Urteil* (2020) lays bare the conflict potential of pluralism through the BVerfG's declaring, for the first time, an interpretation of the CJEU (C-493/17 *Weiss*) to be "ultra vires." The Maastricht–Lisbon–OMT–PSPP chain reveals the empirical–practical limits of the constitutional-pluralism approach and constitutes the most powerful testing point for the question "does pluralism truly work?": dialogue among the levels is real, yet the absence of an ultimate rule of supremacy may also turn into open institutional conflict, as was seen in *PSPP*—this being proof of both the workability and the fragility of the hybrid order's structure of "plural authority without a strict hierarchy."

4.7 The classical genealogy of constitutionalism and its transposition to the global plane

The chapter binds the debate on constitutionalism to its classical genealogy. Constitutionalism, in its most general sense, is the structuring of political–legal power through superior norms, institutional limitations, and principles of legitimacy; its roots extend from the Magna Carta (1215) to the English Bill of Rights (1689) and the American (1776) and French (1789) declarations, and it is grounded in three classical founding texts (Locke's theory of natural rights, Montesquieu's separation of powers, and Rousseau's popular sovereignty). At the national level, constitutionalism is defined by three elements: the existence of superior norms, the legal limitation of public authority, and the guarantee of fundamental rights. Post-1990 globalization, by demonstrating that constitutionalism could not remain confined to the national level alone, carried the debate to the global plane—

"global constitutionalism" became a central heading of international-law theory; the acceptance of jus cogens as superior norms and erga omnes obligations are the strongest normative foundations of this thesis.

The chapter elaborates the debate on the constitutional character of the UN Charter along the Fassbender–Hurd axis: Fassbender (2009) reads the Charter as a formal constitutional document (a constituent moment, the proclamation of fundamental values, the distribution of competence among organs, the supremacy rule of Art. 103), whereas Hurd (2007) seeks legitimacy less in the formal structure than in actors' internalization of the Charter. The two positions are not mutually exclusive; they illuminate both the formal and the social–psychological dimension of constitutionalization; and yet the Charter is bereft of a constituent people, and the veto conflicts with equal legal bindingness—the Charter remains a quasi-constitutional document, which is precisely the threshold position that the hybrid order aims to apprehend. The chapter concretizes judicial constitutionalization through the *Loizidou v. Turkey* (1995) jurisprudence (the doctrine of effective control, the character of the ECHR as the "constitutional instrument of European public order," the invalidity of the reservation, the living instrument) and analyses multi-level governance through the Hooghe–Marks (2003) model (Type I: federal–constitutional levels; Type II: functional–specialized units); Hafner-Burton's empirical framework demonstrates that human-rights compliance derives from institutional mechanisms. In 3.1 the chapter systematically examines the five theoretical strands (constitutionalism, pluralism–fragmentation, governance, judicialization, realist–critical), and in 3.2 it diagnoses the impasses of global constitutionalization (the absence of a formal constitution, the dispersion of functions, the asymmetry of enforcement, the legitimacy deficit), thereby preparing the foundational justification for the model.

4.8 The comparative analytical approach and the methodology of the model

Having bound constitutionalism and global constitutionalism from the classical genealogy to the contemporary debate (3.5), the chapter reinforces the model with a three-tiered comparative approach (3.6). The regional comparison demonstrates that constitutional tendencies manifest themselves in varying intensities in the EU legal order (the most intense), in the European human-rights system, and in the inter-American and African systems; the TWAIL dimension (Anghie (2004), Chimni (2006)) relates the question of why these tendencies have developed more intensely in the North Atlantic than in the South to asymmetries of power. The sectoral comparison measures the domain-varying intensity of constitutional tendencies through Goldstein's three dimensions of legalization (obligation, precision, delegation) and instances the WTO–environment and investment–human-rights tensions; Vranes argues the inadequacy of the three interpretive principles (lex specialis/posterior/superior), while Trachtman argues that the solution lies not in central authority but in developing "meta-norms" and coordination mechanisms—thereby reinforcing the ground of tensional complementarity. The historical comparison reveals that constitutionalization has followed a wave-like rather than a linear pattern: post-1945 institutionalization, the Cold War pause, the acceleration of the 1990s, the systemic tensions of the 2000s, and the uncertainty of the 2020s (Ikenberry's (2011) "liberal leviathan"). Roberts's (2017) concept of "comparative international lawyers" demonstrates that international law is not a single universal trajectory but the interaction of national, regional, and sectoral trajectories.

The chapter sets out the methodological architecture of the model explicitly (3.7). The analysis integrates critical discourse analysis (Koskenniemi (2005), Kennedy (2006)—the power relations underlying legal texts) with interpretive legal scholarship (Dworkin (1986), "law as integrity"); it operates by the principles of analytical reflexivity (the researcher's transparent acknowledgment of his own position), rival-hypothesis testing (subjecting the theses of constitutionalization, pluralism, and fragmentation to the same analytical process), causal process tracing, analytical generalizability (theoretical rather than statistical inference—Yin), and epistemic diversity (according place to the literature of non-Western scholars—Chimni (2006), Anghie (2004)). The dimension of legitimacy is reinforced by Buchanan–Keohane's (2006) multidimensional legitimacy and by Barnett–Duvall's analysis of power operating through norms, institutions, and discourses; scientific soundness is secured by the criteria of internal/external validity and reliability. The chapter closes by candidly signalling the open ends of the model—the new normative lacunae brought by digitalization, the need for normative reconstruction, and the avenues for analytical extension. The conclusion is that the hybrid position is not a conciliatory middle ground but an analytical position that unites the insights of constitutionalism and pluralism within a single testable, empirically grounded, and critically self-conscious framework; this framework is elaborated in detail across the three ensuing chapters (the normative, institutional, and governance axes).

5. THE NORMATİVE AXİS: THE CONSTİTUTİONAL CHARACTER OF HİERARCHY AND ITS LİMİTS

The fourth chapter elaborates, in depth, the first of the three axes — the normative axis. Its question is unambiguous: is the normative architecture of international law evolving toward a constitutional character, or is this an illusion? The chapter's answer is twofold: normative hierarchy is real and observable, yet its enforcement capacity is structurally circumscribed; this simultaneity constitutes the hybrid character of the normative axis.

5.1 The Reconfiguration of Normative Authority

The chapter opens its analysis of the normative axis with the reconfiguration of normative authority. The first strand is the expansion of soft law: declarations, resolutions, guiding principles, codes of conduct, and expert reports — though generating no legal obligation — nonetheless steer state behavior through concerns of legitimacy, reciprocity, and reputation. The theoretical significance of this lies in the fact that bindingness ceases to be a binary matter (either binding or extra-legal) and is transformed into a graduated spectrum, opening a broad grey zone between hard law and the non-legal (Shelton (2006); Boyle–Chinkin (2007): soft law as a third normative source alongside treaty and custom). Soft law frequently prepares the ground for hard law (gradual hardening): in environmental law, the principles of the Stockholm 1972, Rio 1992, Johannesburg 2002, and Rio+20 2012 declarations acquire customary status over time; the transformation of the UDHR of 1948 from soft status into custom is the most compelling example. In the financial regime, the Basel I–IV standards and the FATF's 40+9 Recommendations; in the digital domain, the OECD Artificial Intelligence Principles (2019/2024), the UNESCO Recommendation on the Ethics of AI (2021), and the G7 Hiroshima Process (2023) demonstrate that soft law, even absent a binding treaty, effectively shapes both national legislation and private-sector practice. The chapter also addresses the multi-actor transformation of norm production.

The second and more deeply rooted strand is the structural transformation of the consent model. In the classical conception, the sole legitimate source of bindingness was state consent (an extension of sovereign equality); within the contemporary order this logic is eroded along multiple dimensions: peremptory norms bind independently of consent (the persistent objector doctrine is inoperative in the face of jus cogens), organizational decisions do not require separate consent for each resolution, and judicial organs impose, through case law, interpretations that were not anticipated in advance. The chapter insists that this transformation be grasped in a manner that forestalls a frequently committed misreading: consent does not disappear, it is qualified — it remains an important source of legitimacy but is no longer the sole source. The sources of bindingness pluralize across five planes: express consent (treaties), tacit/presumed consent (custom, opinio juris), consent-independent bindingness (jus cogens), institutional authority (the UNSC's Article 25 and Article 103 resolutions, the decisions of courts), and transnational societal authority (soft law, private standards, advocacy networks). This multiplicity of sources — the simultaneous operation of consent-based treaty law and consent-transcending peremptory norms — is the very essence of the hybrid character of the normative axis. This consent-transcending stratum of bindingness is theoretically completed by two contemporary frameworks elaborated under the governance axis in the Sixth Chapter: Brunnée–Toope's (2010) "interactional law" (bindingness arising not from a formal source but from shared understandings and a sustained practice of legality) and Koh's "transnational legal process" (norms acquiring operative force through their internalization into domestic institutions) — both demonstrating why the normative axis cannot be apprehended through a purely formal analysis of sources.

The chapter establishes the historical-theoretical background of this transformation through the dualism–monism genealogy: Triepel's dualist framework (source, subject, hierarchical independence, the requirement of transformation — four planes), the classical versions of Anzilotti and Oppenheim, and Kelsen's monist Stufentheorie (the hierarchical strata of a single legal order). The classical dualism–monism debate is resolved within the contemporary doctrine of constitutional pluralism (Walker (2002), Maduro (2003)) — a third way that, situated between the closure of dualism and the hierarchism of monism, proposes mutual recognition and dialogue among plural legal orders; this heralds the contemporary multi-level architecture of the normative axis.

5.2 The Structural Framework of Jus Cogens, Erga Omnes, and State Responsibility

The core of the chapter is the doctrine of peremptory norms. The historical maturation of jus cogens unfolds across three planes: the classical natural-law tradition (Grotius's (2005) *De Jure Belli ac Pacis*, Vattel's (2008) *Le Droit des Gens* — the idea of the bindingness of certain norms independent of state will); synthesis (Verdross's (1923) 1937 article "Forbidden Treaties" — the contingency of the validity of treaties upon fundamental moral-legal principles; Verdross–Simma); and institutional codification (Article 53 of the 1969 Vienna Convention on the Law of Treaties — the definition of a peremptory norm as one "accepted by the international community of States as a whole, from which no derogation is permitted"; Article 64 — a subsequently emerging peremptory norm rendering void any earlier treaty in conflict with it). The chapter underscores that the rule of dynamic invalidity introduced by Article 64 adds a temporal dimension to normative hierarchy: the category of jus cogens is not closed; the prohibitions of slavery, racial discrimination, and apartheid exemplify how practices once deemed

acceptable are transformed over time into peremptory prohibitions. The analyses of Schwelb, Sinclair (the deliberate open-endedness of Articles 53 and 64), Christenson, and Danilenko complete the historical-jurisprudential foundation of this codification.

The institutional achievement of the chapter is the ILC's 2022 jus cogens report and its list of eight peremptory norms (4.2.2). Each norm is anchored to a specific foundational instrument and constitutive jurisprudence: (1) the prohibition of aggression (UN Charter Art. 2(4); ICJ *Nicaragua v. United States* 1986, the dual treaty- and custom-based character of the prohibition); (2) the prohibition of genocide (1948 Genocide Convention; ICJ *Bosnia v. Serbia* 2007, erga omnes partes); (3) the prohibition of crimes against humanity (Rome Statute Art. 7; ICTY *Tadić* 1995 and subsequent jurisprudence); (4) the fundamental rules of international humanitarian law (the 1949 Geneva Conventions and their 1977 Additional Protocols; ICJ *Nuclear Weapons* 1996, the "intransgressible principles of humanitarian law"); (5) the prohibition of racial discrimination and apartheid (the 1965 ICERD, the 1973 Apartheid Convention; ICJ *Namibia* 1971 and the 2024 Advisory Opinion on the Occupation of Palestine); (6) the prohibition of slavery (the 1926 Slavery Convention, the 1956 Supplementary Convention; the judicial extension to modern forms of slavery — human trafficking, forced labor — through the ECtHR's *Siliadin v. France* 2005 and *Rantsev v. Cyprus and Russia* 2010); (7) the prohibition of torture (the 1984 Convention against Torture/CAT; ICTY *Furundžija* 1998, the constitutive judicial affirmation of the prohibition's jus cogens character); and (8) the right to self-determination (UN Charter Art. 1(2) and the common Article 1 of the twin Covenants; the jurisprudential chain ICJ *Namibia* 1971 → *Western Sahara* 1975 → *Palestinian Wall* 2004 → *Chagos Islands* 2019). The institutional-jurisprudential developmental chain of erga omnes obligations (4.2.3) and the structural framework of state responsibility — Article 26 of ARSIWA 2001 (no circumstance precluding wrongfulness, including necessity, can render lawful an act in breach of a peremptory norm), Articles 40–41 (the consequences of a serious breach: non-recognition as lawful of the situation created by the breach, the rendering of no aid in maintaining the breach, cooperation to bring the breach to an end), and Article 48 (the capacity even of States not directly injured to invoke responsibility) — are set out (4.2.4); these three articles demonstrate that peremptory norms have moved beyond an abstract declaration of supremacy to acquire an aggravated regime of responsibility productive of concrete legal consequences.

The erga omnes jurisprudential chain attests to a profound expansion of the concept of legal interest. The constitutive marker is paragraphs 33–34 of the ICJ's *Barcelona Traction* (1970) judgment: certain obligations, by their very nature, concern all States, and the entire international community holds a legal interest in their protection (the prohibitions of aggression, genocide, slavery, and racial discrimination). The chain expands through subsequent jurisprudence: *East Timor* (1995, the erga omnes character of the right to self-determination), the *Palestinian Wall* Advisory Opinion (2004, humanitarian-law obligations), *DRC v. Rwanda* (2006, the jus cogens character of the prohibition of genocide), *Bosnian Genocide* (2007, the limits of collective enforcement), *Belgium v. Senegal* (2012, the erga omnes partes character of the prohibition of torture), *Germany v. Italy* (2012, the tension between erga omnes and state immunity), and *Gambia v. Myanmar* (2020–, the capacity of a State that is not a direct victim to bring suit on behalf of all parties to the Genocide Convention). The most recent link in this chain is *South Africa v. Israel* (2024–, the case instituted on allegations of genocide concerning Gaza and the ICJ's January 2024 provisional-measures order), together with the ICJ's July 2024 Advisory Opinion on the Legal Consequences of the Occupation in Palestine — a contemporary confirmation of both the erga omnes partes mechanism and the erga omnes character of humanitarian-law obligations; yet the great-power resistance to the implementation of these decisions displays, in current form, the constitutive hybridity between the normative core and the implementation deficit. Tams (2005) analyzes the five channels of collective enforcement of erga omnes obligations (diplomatic protest, participation in sanctions regimes, support for investigations, recourse to courts, universal jurisdiction). ARSIWA's obligation of non-recognition acquires a concrete function in cases of occupation/annexation, but its efficacy depends upon unity of posture among the great powers; Paulus's analysis of "jus cogens in an age of hegemony and fragmentation" names this paradox — the norm is formulated as universal and absolute, yet its application is selective and asymmetric. This is the most concrete evidence in positive law of the constitutive hybridity of the normative axis.

The chapter deepens this structure through two historically rooted frameworks (4.2.5). Reus-Smit demonstrates that individual rights do not merely supplement the international system but transform it in a constitutive manner: each era's conception of sovereignty is bound to that era's "moral purpose," and in the contemporary era the legitimacy of sovereignty has come increasingly to depend upon the protection of the individual. Cassese documents that peremptory norms and erga omnes obligations represent the juridification of the concept of the international community, and in *Realizing Utopia* he carries this onto a normative horizon. The shared insight of the two frameworks is that normative constitutionalization is not an ideal imposed from without but the product of the system's own internal dynamic; yet both tend to subordinate the conditioning of normative evolution by

power asymmetry, and the hybrid thesis completes these insights by counterbalancing them with the reality of unequal application.

The analytical key of the chapter is Peters's (2009) distinction between formal and material constitutionalization (4.2.6). Formal constitutionalization requires a written global constitution, a central constituent power, and a homogeneous hierarchy; on this plane the contemporary order is manifestly deficient. Material constitutionalization, by contrast, is the de facto fulfillment of constitutional functions — the recognition of superior norms, the limitation of public authority, the protection of fundamental rights, the recognition of common values — without a formal document; on this plane the contemporary order has advanced to a surprising degree. Peters's five indicators of material constitutionalization (the codification of superior norms, the consolidation of institutional authority, the development of public-interest-oriented norms, the recognition of the individual as a subject of law, the judicial entrenchment of value-based interpretive practices) and the concept of "humanity's law" — the shift of international law's center of gravity from the state to the individual — complete this framework. The value of the distinction lies in its reconciliation of the apparently contradictory tableau of the contemporary order: the order may be formally deficient yet materially advanced. The hybrid thesis grasps precisely this simultaneity of formal deficiency and material progress.

5.3 Human Rights, Universality, and the Transformation of Sovereignty

The chapter locates the value-core of normative constitutionalization in the meta-principle of human dignity. Dignity is not, in the classical sense, a preambular provision but the constitutive meta-principle of modern human-rights norms: the Universal Declaration of Human Rights grounds rights not as a grant of the state but as an expression of the innate dignity each human being bears solely by virtue of being human; this rests upon Kant's principle of "always treating humanity as an end" (the categorical imperative). Waldron (*Dignity, Rank, and Rights*, 2012) conceptualizes dignity as a constitutive component of positive law — a meta-standard invoked in the interpretation of numerous rights; Donnelly analyzes human rights along three dimensions (moral, legal, political). The absolute, exceptionless character of the prohibition of torture — which no war, state of emergency, or terrorist threat can suspend — derives directly from this principle and is the strongest expression of normative hierarchy. The jurisprudential operationalization of the principle is traced across four judicial domains: the German Federal Constitutional Court (Grundgesetz Art. 1(1), "the inviolability of human dignity"; the 2006 Aviation Security Act judgment), the ECtHR (*Pretty v. UK*), the Inter-American Court of Human Rights (*Velásquez Rodríguez* 1988, enforced disappearance), and the ICC (*Lubanga*, *Bemba*).

The chapter analyzes the normative authority of international courts through Bryde's (2001) framework of judicial constitutionalization across three planes: interpretive authority (the wresting of the monopoly of interpretation from states), law-generating capacity (the development of norms through case law), and the function of constitutional review (the review of state acts, and even of the decisions of international organizations, within the framework of constitutional norms) — its strongest evidence being the CJEU's *Kadi I* (2008) and *Kadi II* (2013) judgments. The transformative effect of the hierarchy of norms upon sovereignty operates through three mechanisms: peremptory norms place a limit upon the autonomy of state will, erga omnes obligations render the state accountable to the entire international community, and human-rights norms open a state's treatment of its own citizens to external review — this transforms sovereignty from an inviolable fortress into a conditional status, but does not abolish it. Krasner's (1999) four dimensions of sovereignty (domestic, interdependence, international legal, Westphalian) reveal how this transformation affects in particular the Westphalian dimension.

The chapter renders the transformation concrete across five jurisprudential domains: the doctrine of humanitarian intervention (Somalia, Bosnia, Rwanda, Kosovo), the Responsibility to Protect (R2P) doctrine (the 2001 ICISS Report → the 2005 World Summit Outcome Document, paras. 138–139 → the 2009 Secretary-General's Report → the 2011 Libya Resolution 1973; Orford (2011): sovereignty is no longer a mere right but a category contingent upon the conditions of responsibility), international criminal jurisdiction (the arrest warrants for al-Bashir 2009 and Putin 2023 — the limits of sovereign immunity), human-rights monitoring mechanisms (the UPR, the individual-complaint systems of the treaty bodies), and universal jurisdiction (*Pinochet* 1998, the Belgian and Spanish statutes, the *Anwar R.* judgment of 2021 in which Germany prosecuted a Syrian war criminal). R2P's three pillars (the state's responsibility to protect, the international community's obligation to build capacity, the responsibility to intervene in case of failure) constitute the normative expression of sovereignty's transformation into a responsibility-based function; yet the veto mechanism severely constrains the third pillar in particular — the cases of Syria (the Russian–Chinese vetoes), Myanmar, Yemen, and Ukraine (in which Russia occupies the position of aggressor) demonstrate how fragile a constitutional normative transformation can remain in the absence of an institutional mechanism. This is the constitutive hybridity of the normative axis: the value-core is real and powerful, its application structurally deficient.

The chapter deepens each of these jurisprudential domains with worked detail. The genealogy of R2P reaches back to Deng–Cohen's studies of displaced persons and Annan's conception of intervention; the 2000 Brahimi Report, by candidly identifying the capacity limits of UN peace operations, prepared the doctrine's rationale, the Canadian-supported 2001 ICISS Report established the framework of "sovereignty as responsibility," the 2005 World Summit (A/RES/60/1, §§138–139) formally adopted the doctrine, and Ban Ki-moon's 2009 report (A/63/677) formulated the three pillars. The doctrine's jurisprudential development is traced through five empirical cases: Libya (2011, the NATO intervention under Resolution 1973 — the first operational application, but its drift toward regime change eroded its legitimacy), Syria (2011–, rendered inoperable by the successive Russian–Chinese vetoes), Myanmar–Rohingya (2017, the inadequacy of the response to genocidal violations), Yemen (2015–, selective application), and Ukraine (2022–, the case in which a permanent member is itself the aggressor) — the Libya–Syria contrast strikingly demonstrating that the normative force of R2P remains dependent, for its institutional operability, upon the will of the Council. The constitutive jurisprudence of universal jurisdiction is *Pinochet III* (1999): the last of the House of Lords' three successive judgments affirmed that former heads of state cannot benefit from functional immunity in respect of international crimes such as torture. The principle's broadest statutory application was the 1993 Belgian statute; yet, owing to the diplomatic crises occasioned by complaints directed at great-power leaders, its scope was severely narrowed in 2003 — historical evidence of the principle's fragility in the face of power asymmetry. The critique of the ICC's selectivity deepens along two strands: Schabas (2011) on how the failure of a significant portion of the Council's permanent members (the United States, China, Russia) to ratify the Rome Statute weakens the Court's claim to universal jurisdiction; Bosco, for his part, documents the disproportionate weight of its practice upon the African continent and the political selectivity of the Council referral mechanism. Tams (2005) systematizes the operative logic of erga omnes obligations into five channels: diplomatic protests, participation in sanctions regimes, support for international investigations, recourse to international courts, and the exercise of universal jurisdiction before national courts.

The chapter deepens the normative transformation further through two jurisprudential-theoretical frameworks. Meron's thesis of the "humanization of humanitarian law" analyzes, across five planes, the adoption by classical, state-centered, "laws of war"-based humanitarian law of a human-rights perspective: the transformation of the normative source (the reinterpretation of the Geneva Conventions within a human-rights framework), the shift of the protective focus from "military necessity" to "individual rights-holding and human dignity," judicial institutionalization (individual criminal responsibility before the ICC, ICTY, ICTR), substantive enrichment of norm content, and a tendency toward universal bindingness (the elevation of certain norms to jus cogens); its empirical evidence comprises the ICJ *Nuclear Weapons* Advisory Opinion (1996), ICTY *Tadić* (1995) and *Furundžija* (1998 — the affirmation of the prohibition of torture as a peremptory norm), ICC *Lubanga* (2012), and the ECtHR's *Al-Skeini* (2011). Stone Sweet–Brunell's model of "judicial integration," by contrast, demonstrates through three mechanisms that international courts are not passive dispute-resolvers but constitutive actors that reshape the systemic normative structure through their case law: the institutionalization of third-party dispute-resolution mechanisms (the ICJ's compulsory jurisdiction under Art. 36(2), the CJEU's preliminary-reference procedure under Art. 267 TFEU, the ECtHR's individual application under Art. 34), jurisprudential norm production and its continuity, and judicial–legislative–executive interaction (the reconfiguration of the separation of powers at the transnational level). These two frameworks empirically ground both the substantive transformation of judicial constitutionalization in the field of humanitarian law and the constitutive-authority capacity of the courts.

5.4 Normative Coherence or Normative Conflict?

The chapter addresses the tension between the verticalization of normative hierarchy and the fragmentation of specialized regimes. The constitutionalist view holds that peremptory norms and general principles furnish the system with a unifying backbone; the pluralist view maintains that specialized regimes operate with relative autonomy and that their conflicts are a permanent feature of the order. The tension is practical: when an environmental norm conflicts with a trade rule, there is no superior authority to determine priority. The ILC's 2006 fragmentation report, directed by Koskenniemi (2005), examines in detail the principles of lex specialis (the special provision), lex posterior (the later provision), and lex superior (the superior provision) for managing conflicts of norms; yet it candidly concedes that these principles cannot in every case yield a determinate outcome — this being the strongest institutional counter-argument to the claim of constitutional integration. Pauwelyn's (2003) analysis, by contrast, proposes a middle way by showing that the system already possesses the interpretive instruments to resolve such conflicts.

The chapter illustrates the concrete domains of conflict produced by fragmentation: trade versus environment (the WTO's *US–Shrimp* and *EC–Hormones* cases — the capacity of trade logic to prevail over environmental and

health values) and investment law versus public policy (*Philip Morris v. Uruguay* — the carrying of tobacco-packaging regulations into investment arbitration; the investment regime's narrowing of the state's legitimate public-policy space). Yet the chapter counts the rendering of fragmentation governable among contemporary law's quietest achievements: inter-court dialogue, the principle of systemic integration, and recourse to general principles of law (Alter (2014), Nollkaemper) produce a coherence even in the absence of a central authority — when each actor attends to the broader whole within its own jurisdiction, the system functions without disintegrating. This is the constitutive paradox of the hybrid order.

The EU model is elaborated as an "anatomy of a judicial revolution": its evolution, through the doctrines of direct effect and supremacy, into a supranational constitutional order is the most advanced example of normative constitutionalization. The constitutive jurisprudence of the revolution comprises three links: *Van Gend en Loos* (1963) — Community law conferring rights directly not only upon states but upon individuals, who may invoke these rights before national courts (direct effect); *Costa v. ENEL* (1964) — the supremacy of Community law over national law; and *Internationale Handelsgesellschaft* (1970) — the validity of this supremacy even as against national constitutional rights provisions. Stein's analysis in "Lawyers, Judges, and the Making of a Transnational Constitution" (1981) reads this jurisprudential chain as the judicial affirmation of constituent constitutional choices transcending the will of the member states, while Weiler's concept of "constitutional tolerance" (*The Transformation of Europe*, 1991) locates the secret of the EU's success in the member states' sustaining of compliance not through legal coercion but on the basis of voluntary self-restraint and mutual respect — proof that normative hierarchy can be established through voluntary adherence as well as through coercion. Yet the limits of this architecture become evident in rule-of-law crises: although the erosion of judicial independence in Poland and Hungary has prompted the EU to invoke the Article 7 mechanism and the CJEU's judgments on judicial independence, it demonstrates the testing of the Union's constitutional architecture by political resistance. This revolution rests upon an unparalleled institutional concentration, a common court, and the relative homogeneity of the member states; the four regional laboratories in which these conditions are absent — the Inter-American system (the IACtHR and "control de convencionalidad"), the African Union (the Banjul Charter), ASEAN (the non-interference of the "ASEAN Way"), and MERCOSUR/Andean — remain limited by comparison with the EU. The comparison shows that normative constitutionalization is realized not through the mere proclamation of a norm but through the institutional infrastructure, judicial capacity, and political commitment that bring it to life; the singularity of the EU experience precludes its generalization as a global model.

The chapter's synthesizing concept, "incomplete constitutionalization," is the articulation of three contributions: Krisch's (2010) thesis of a pluralist structure (constitutionalization is not a hierarchical integration but the interaction of plural normative systems), Dunoff–Trachtman's thesis of sectoral-asymmetric constitutionalization, and Walker's (2002) functional-contextual framework (constitutional qualities are institutionalized at differing intensities across different domains). The concept is tested in five sectoral laboratories: human-rights law (the strongest — the ECtHR, IACtHR, ICC), international criminal law (strong — the ICC, ICTY, ICTR, hybrid tribunals), environmental law (moderate — the Paris Agreement), investment law (weak — contractual logic dominant in ICSID/UNCITRAL arbitration), and sovereignty/security regimes (the weakest — the UNSC veto, great-power dynamics). The variable explaining this sectoral inequality is which interests the domains serve and who shapes their norms: whereas in human rights there is civil-society and individual-centered pressure, in investment law the interests of private capital are determinative; for this reason, in the latter, constitutionalization is shaped around market logic rather than the public interest.

5.5 The Limits of Normative Constitutionalization and the Hybrid Synthesis

The chapter closes with enforcement mechanisms and compliance dynamics (4.5.1), a comparative assessment of the findings regarding normative structure (4.5.2), and the general synthesis — the thesis of the hybrid global legal order (4.5.3). The empirical tableau reveals a persistent, systematic shift, reinforced by institutional practices, from the classical order's horizontal, consent-based architecture toward a vertical, value-based architecture; yet this shift has not reached the threshold of a complete global constitutional order. The conclusion is twofold: normative hierarchy is real (jus cogens, erga omnes, and the superior norms of ARSIWA operate observably), but enforcement capacity is structurally circumscribed — application remains dependent upon power and consent, the veto is the institutional knot of this dependence, and compliance rests far more often upon internalization and socialization than upon fear of sanction. The chapter addresses the problem of compliance (4.5.1) through the literature's four constitutive frameworks: Henkin's (1979) thesis that "almost all nations observe almost all of their obligations almost all of the time" (*How Nations Behave*, 1979) represents the optimistic classical stance; against it, Chayes–Chayes's (1995) "managerial" model (*The New Sovereignty*, 1995) contends that non-compliance arises for the most part not from a deliberate strategic decision but from a lack of capacity, ambiguity, and institutional gaps, locating the remedy in capacity-building and transparency; Downs–Rocke–Barsoom's (1996) "strategic

compliance" (enforcement) model (1996) grounds compliance in cost-benefit calculation and argues that the effect of treaties often remains limited to recording what states were already inclined to do; while Risse–Ropp–Sikkink's (1999) "spiral model" (*The Power of Human Rights*, 1999) models compliance with human-rights norms as a five-stage socialization process — repression, denial, tactical concessions, prescriptive status, and rule-consistent behavior. Franck's (1990) framework of legitimacy and fair process bridges these strands: states comply with a norm to the extent of its substantive legitimacy and procedural fairness. This simultaneous reality — a strong normative core alongside weak enforcement — is the hybrid character of the normative axis. By establishing the analytical transition from normative structure to institutional structure (4.5.4), the chapter prepares the fifth chapter.

6. THE INSTİTUTİONAL AXİS: AUTHORİTY-GENERATİNG COURTS AND ORGANİZATİONS

The fifth chapter takes up the second of the three axes — institutional authority — and analyzes the transformation of international institutions from mere instruments of state consent into norm-generating, autonomous authorities. The chapter's synthesis is that the institutional axis, too, is hybrid: institutions generate a genuine and autonomous authority, yet this authority is unevenly distributed, susceptible to backlash, and structurally circumscribed by great-power privilege — most conspicuously by the architecture of the veto.

6.1 The Ascent of Institutional Authority: Theoretical Frameworks

The chapter opens its analysis of the institutional axis by framing the ascent of institutional authority at the theoretical level. Two foundational frameworks are juxtaposed: liberal institutional theory (Keohane–Nye (1977)) regards institutions as coordinating mechanisms that realize states' interests and reduce transaction costs; sociological institutional theory, by contrast, maintains that institutions are autonomous social actors that shape legitimacy, identity, and normative expectations (March–Olsen's (1998) "logic of appropriateness" — the proposition that institutions are shaped not by sheer interest-calculation alone but also by shared normative expectations). This tension mirrors the positivist–normative cleavage within the constitutionalization debate. Barnett–Finnemore (2004) demonstrate on empirical grounds that international organizations, by virtue of their bureaucratic authority and rule-making capacity, cease to be mere reflections of state preferences and become autonomous actors — generating a distinctive institutional logic that develops beyond states' original intentions; this stands among the strongest conceptual supports for the constitutionalization thesis. Stone Sweet's (2004) model of "triadic law" reveals that the institutionalization of third-party dispute resolution is the principal motive force by which the dyadic-horizontal structure is transcended and evolves toward a hierarchical-constitutional form; Milewicz, for her part, documents that institutional intensification follows not a linear but a threshold-based and discontinuous pattern. The comparative analysis of institutional architecture is furnished by Koremenos–Lipson–Snidal's (2001) "rational design" framework: the form of international organizations is not accidental but a deliberate structural response by states to particular cooperation problems (uncertainty, enforcement difficulty, distributional conflict), and it is decomposed across five design dimensions — membership (the confinement of permanent UNSC membership to five, alongside the selectivity of the EU's Copenhagen criteria), scope (the UNSC's jurisdictional reach as it expands into terrorism, climate, health, and cyber), centralization (the quasi-executive capacity of the European Commission, the epidemic-response role of the WHO Secretariat), control (the UNSC veto, IMF weighted voting, WTO consensus), and flexibility (the amendment procedures of TEU Art. 48 and UN Charter Arts. 108–109). The EU's evolution from Rome (1957) to Lisbon (2009) exhibits a pattern of expansion across all five dimensions. Abbott–Snidal's (2000) framework of legalization, in turn, measures institutional arrangements along three dimensions — obligation (the degree to which a rule is legally binding), precision (the degree of a rule's determinacy), and delegation (the extent to which the authority to interpret and apply is conferred upon third parties) — and, by situating the "graduated spectrum" between hard law and soft law along these three axes, analyzes the question of degree in institutional constitutionalization.

The most comprehensive component of institutional authority is the UN system: Article 25 of the Charter (member states' obligation to implement Council decisions) bears the character of vertical authority beyond mere horizontal coordination, while Article 103 (the primacy of UN obligations over other treaties) effectively elevates the Charter to a constitutional standing. The Security Council's legislation-like function becomes salient in its counter-terrorism resolutions (Resolutions 1267 and 1373 — generally binding obligations upon states) and is construed as the Council's functioning, in effect, as an international legislative organ (Alvarez (2005) "international institutional law" — the autonomous norm-generating capacity of organizations; Sarooshi, Wood). Although the General Assembly's resolutions are non-binding, they generate normative contributions that crystallize into custom (the "from declaration to treaty" evolution of norms — the UDHR being the paradigmatic case). The UN's human-rights architecture (the Human Rights Council, the treaty bodies, the special procedures, the UPR), even absent any sanctioning power, produces compliance through public opinion and international scrutiny.

The chapter is counterbalanced by criticism directed at the institutional-constitutionalization thesis: Goldsmith–Posner's (2005) realist critique (institutions largely reflect states' pre-existing interests, and states may withdraw from institutions that run counter to their interests) interrogates the claims of empirical support; to this, Brunnée–Toope's (2010) interactional theory of law furnishes a rejoinder (bindingness is not a mere reflection of interest but a legitimacy-grounded commitment constructed through the ongoing discursive interaction between states and institutional actors). Hurd's (2007) "normative pull" shows that institutions, even without sanctions, produce compliance through a concern for legitimacy, while Zürn's (2018) relational-authority framework shows that institutionalization is not merely structural but a relational process through which authority and legitimacy are produced. The chapter further locates authority within theoretical traditions: the New Haven School (the policy-oriented approach that reads law as an authoritative decision-making process), Abbott–Snidal (the dimensions of hardness–softness and delegation), and the four traditions of international relations (realism, liberalism, constructivism, critical theory) — thereby establishing the theoretical ground for the simultaneously genuine and limited, hybrid character of institutional authority.

The shared empirical inference of these two design frameworks — Koremenos–Lipson–Snidal's (2001) rational design and Abbott–Snidal's (2000) legalization — is that institutional constitutionalization exhibits an observable tendency toward "hardening": the accretion of EU law from Rome (1957) to Lisbon (2009), of ECtHR jurisprudence from 1959 to the present, and of the ICC Rome Statute from 1998 to 2024 constitutes a consistent intensification along the axes of obligation, precision, and delegation. Yet the logic of the spectrum likewise shows that this hardening operates not uniformly but at intensities that vary by field — the theoretical proof of institutional authority's genuine yet uneven, hybrid character.

6.2 International Courts and Judicial Authority

The chapter takes up — across a broad cartography of case law — the transformation of courts into authorities that not merely resolve disputes but generate norms and exercise review through their jurisprudence, namely judicialization (Romano–Nollkaemper–Kleffner). The expanding domains of ICJ jurisprudence trace the transition from the sovereignty-centered paradigm of the PCIJ's 1927 *Lotus* judgment (whatever is not expressly prohibited is permitted) to a constitutionally inflected paradigm; the early links run from *Reparations* (1949, implied powers) and the *Genocide Reservations* opinion (1951, the object-and-purpose test) to *Barcelona Traction* (1970, *erga omnes*) and *Nicaragua* (1986, the dual sourcing of the prohibition on the use of force). *Lockerbie* (1992), while affirming the Article 103 primacy of Council decisions, lays bare the limits of judicial review; *LaGrand* (2001) and *Avena* (2004) establish that Article 36 of the Vienna Convention on Consular Relations likewise confers rights upon the individual, yet the U.S. Supreme Court's decision in *Medellín v. Texas* (2008), by denying direct effect in domestic law, lays bare the domestic-law limit of judicial constitutionalization; *Pulp Mills* (2010) attests to the customary character of environmental impact assessment, the *Kosovo* advisory opinion (2010) delineates the limits pertaining to a unilateral declaration of independence, and the *Marshall Islands* cases (2016) reveal — in applications brought against great powers — a pattern of structural failure exhibiting continuity with *South West Africa* (1966) and *Nicaragua*.

Regional human-rights jurisprudence extends from the ECtHR's extension, in *Soering* (1989), of the "death-row phenomenon" and the principle of non-refoulement to Article 3 (the chain *Tyrer* 1978 → *Soering* → *Loizidou* 1995 → *Al-Skeini* 2011), through the Inter-American Court's doctrine of conventionality review (*control de convencionalidad*) (*Barrios Altos* 2001, *Gomes Lund* 2010, *Gelman* 2011 — the incompatibility of dictatorship-era amnesty laws with the Convention), to the CJEU's effects-based jurisdiction in the digital domain (*Schrems I* 2015 and *Schrems II* 2020 — the invalidation of Safe Harbor and the Privacy Shield). The ECtHR's architecture crystallizes in four constitutional doctrines: subsidiarity (Protocol No. 15), proportionality, the margin of appreciation (*Handyside* 1976, *Lautsi* 2011), and the living instrument. The chapter also addresses the limits of judicial authority: Helfer's (2002) "backlash" framework (states' resistance to court authority), Voeten's compliance dynamics, the Pauwelyn–Elsig jurisprudential dialogue, Nollkaemper and Benvenisti–Downs's (2007) account of national courts' practice of selective adoption, Carozza–Crema's normative dialogue, and CJEU *Achmea* (2018, a limit upon intra-EU investment arbitration).

The institutional architecture of international criminal justice is traced through successive stages: Nuremberg (1945–46, individual criminal responsibility, the rejection of the superior-orders defense) → Tokyo → the ICTY (1993–2017; Milošević, Karadžić, Mladić) → the ICTR (1994–2015; *Akayesu* 1998, the prosecution of sexual violence within the ambit of genocide) → the ICC (from 2002; one hundred and twenty-four states parties as of 2024; the Rome Statute's four categories of crime; the crime of aggression adopted at Kampala in 2010; concrete cases — Lubanga, Bemba, Katanga, *Al-Mahdi* 2016 [cultural heritage], Ongwen; the 2023 arrest warrant against

Putin and the 2024 warrants against Netanyahu–Gallant). Hybrid courts (Sierra Leone — Taylor's fifty-year sentence, the surmounting of head-of-state immunity; Cambodia; Lebanon — the Hariri assassination, the first judicial treatment of terrorism as customary in character; the IRMCT) extend this architecture; Cançado Trindade's (2010) thesis of the "humanization of international law" serves as a theoretical-jurisprudential complement from a Latin American perspective. The WTO Appellate Body (*US–Shrimp*, *EC–Hormones*), while exemplifying judicial constitutionalization in the economic domain, exposes its limit in the crisis of 2019–2024. The chapter's synthesis: courts have acquired, through their jurisprudence, a genuine norm-generating authority, yet this authority remains subject to backlash, to the limits of domestic law, and to great-power resistance — the judicial axis, too, is hybrid.

The chapter grounds this authority in concrete jurisprudential holdings. ICC cases evince the jurisprudential expansion of the categories of crime: *Lubanga* (2012, the first conviction — the use of child soldiers), *Bemba* (2016 conviction / 2018 acquittal — the doctrine of "command responsibility" and the supervisory capacity of the Appeals Chamber), *Katanga* (Rome Statute Art. 25(3)(d), "contribution to a common purpose"), *Al-Mahdi* (2016 — the establishment of an attack upon cultural heritage as a war crime), and *Ongwen* (2021 — the establishment of "forced marriage" as a crime). The ECtHR's jurisdictional jurisprudence displays the tension between the "universal" claim and "regional-sovereign" practice across the chain *Loizidou* (1995, effective control) → *Banković* (2001, the "essentially regional" narrowing of jurisdiction) → *Al-Skeini* (2011, a partial loosening) → *Hassan* (2014, articulation with humanitarian law). The WTO Appellate Body exemplifies the articulation of non-trade values through *US–Shrimp* (1998, the "evolutionary interpretation" of GATT Art. XX(g)) and *EC–Hormones* (1998, the circumscription of the precautionary principle). CJEU *Achmea* (2018), by deeming the arbitration clauses in intra-EU bilateral investment treaties incompatible with the autonomy of EU law, renders some two hundred treaties inoperative (extended to the Energy Charter by *Komstroy* 2021); investment arbitration's capacity to constrain sovereignty becomes visible in the *Yukos* (PCA 2014, an award of ~50 billion dollars) and *Chevron v. Ecuador* (the neutralization of the Lago Agrio litigation, the "chilling effect") cases, together with Schill's comparative public law and Van Harten's critique of ISDS. The judicial institutionalization of *jus cogens* is traced through three lines of case law: *Furundžija* (1998 — the *jus cogens* character of the prohibition of torture and its four legal consequences), *Germany v. Italy* (2012 — the holding that state immunity is preserved even in the face of peremptory-norm violations, that hierarchy operates on the substantive plane; the Italian Constitutional Court's resistance in Judgment 238/2014, a conflict of constitutional pluralism), and *Belgium v. Senegal* (2012 — "extradite or prosecute" / *aut dedere aut judicare*; the conviction of Habré). Venzke's (2012) critique, for its part, emphasizes that judicial interpretation is not a neutral technique but a process that constructs authority through "semantic change" and "normative bending," and that constitutional orders must remain open to interpretive pluralism.

6.3 Functional Institutionalization and Regime Structures

The chapter treats the UN system within the framework of constitutional authority on three planes: the Charter's function as a constitutional instrument (Fassbender (2009); the Article 103 primacy rule), the UNSC's quasi-legislative capacity (its binding Chapter VII resolutions — Resolution 1373 (2001) on counter-terrorism, Resolution 1540 (2004) on the proliferation of weapons of mass destruction, Resolution 1973 (2011) on R2P in Libya), and the UN General Assembly's norm-generating capacity (the UDHR by 217(III) in 1948, decolonization by 1514(XV) in 1960, the principles of friendly relations by 2625(XXV) in 1970, R2P by 60/1 in 2005). The UN, by virtue of its universal membership and the primacy rule of Article 103, is the text that most closely approximates the constitutional instrument of the international community; yet, through the veto it accords to the five permanent members, it transgresses within itself the equal juridical commitment that a constitutional order demands — it is a quasi-constitutional institution.

Debates over UNSC reform throw the structural limit into sharp relief: proposals to enlarge permanent membership (the G4 — Germany, Japan, India, Brazil; the Uniting for Consensus group), initiatives to circumscribe the veto (the France–Mexico initiative, the ACT Group, the Liechtenstein Veto Initiative — the restriction of the veto in cases of genocide, war crimes, and crimes against humanity), and obstacles to reform (the requirement under Arts. 108/109 of the permanent members' assent renders reform effectively impossible). The selective exercise of the veto — the United States' more than forty vetoes on the question of Palestine, the Russian–Chinese vetoes on Syria, the paralysis on Yemen — constitutes the deepest legitimacy deficit of institutional constitutionalization and the most concrete institutional manifestation of the hybrid order's power-asymmetry axis: the most powerful institution is at the same time the least representative and the least accountable. The chapter takes up comparative regional integration, Hooghe–Marks's (2003) typology of multilevel governance, and Slaughter's (2004) network of transgovernmental relations (the intergovernmental coordination of regulators, judges, and experts); it counterbalances Slaughter's optimism in presenting her networks as a

democratic "new world order" with the criticism that these networks can be technocratic and remote from accountability (the setting of the Basel standards by a handful of powerful central banks). The typology of UN specialized institutions is laid out in five categories: programmatic institutions (UNDP, UNHCR, UNICEF, UNEP), treaty-based institutions (the WHO — the 2005 International Health Regulations, the power to declare a PHEIC; the ILO — its tripartite structure; UNESCO), the Bretton Woods institutions (the IMF, the World Bank, the WTO), regional economic commissions, and treaty-monitoring bodies (the HRC, CESCR, CEDAW, CRC, CAT). Drezner's politics of standard-setting shows, across four games, that institutions are not neutral technical actors: harmonization (the diffusion of Basel along U.S.–EU preferences), club standards (the GDPR versus the U.S. model), rival standards (the U.S.–China contest over 5G), and sham standards. Petersmann's (2009) framework of economic constitutionalism reads international economic law as a constitutional architecture that safeguards individuals' economic freedoms (individual economic rights, rule-of-law governance, the law of common humanity); yet the TWAIL critique (Anghie (2004), Chimni (2006)) contends that this framework fails adequately to reflect its neoliberal orientation and the North–South asymmetry within WTO dispute settlement. Avant–Finnemore–Sell's *Who Governs the Globe?* (2010) framework analyzes the sources of authority in global governance in five types: institutional authority (competence deriving from constitutive treaties — the UNSC, the WTO Appellate Body, the CJEU, the ECtHR, the IACtHR), expert authority (technical knowledge — the IPCC, the WHO expert panels, the FSB), delegated authority (conferred competence — the ICC Office of the Prosecutor, the UN Secretary-General, the special rapporteurs), principled authority (normative principles — Amnesty International, Human Rights Watch, Médecins Sans Frontières), and capacity-based authority (material-organizational capacity — multinational corporations, global capital, and the media); this distinction shows that the dimensions of constitutionally inflected governance rest not only upon institutional authority but also upon expert, delegated, principled, and capacity-based authority. Biersteker–Hall's "private authority" framework (*The Emergence of Private Authority in Global Governance*, 2002) complements this on three planes: market authority (the credit-rating agencies Moody's–S&P–Fitch, the accounting standard-setter IASB), moral authority (Amnesty International, Transparency International, Greenpeace), and illicit authority (the regulatory effects of international organized-crime and money-laundering networks) — proof that normative authority is generated not only by states and organizations but also by the market, civil society, and even illicit actors; an elaboration of Rosenau–Czempiel's "governance without government" framework. The chapter's synthesis: institutions are genuine authorities that develop norms through their jurisprudence and acquire independent capacity; yet this authority is uneven, susceptible to backlash, and circumscribed in particular by the architecture of the veto — the institutional axis, too, is hybrid.

The chapter shows, through two complementary frameworks, why contemporary authority cannot be reduced to a single source. Avant–Finnemore–Sell's *Who Governs the Globe?* (2010) analysis reveals that the actors of global governance rest upon five distinct types of authority: institutional authority (from constitutive treaties — the UNSC, the CJEU, the ECtHR), expert authority (from technical knowledge — the IPCC, the WHO expert panels, the FSB), delegated authority (from conferred competence — the ICC Office of the Prosecutor, the UN Secretary-General, the Special Rapporteurs), principled authority (from normative principles — Amnesty International, Human Rights Watch, MSF), and capacity-based authority (from material-organizational power — multinational corporations, global capital, the media). These multiple sources most often reinforce one another but at times fall into tension (expert authority may collide with a deficit of democratic delegation). Biersteker–Hall's *The Emergence of Private Authority* (2002) framework shows, on three planes, that normative authority is generated not only by international organizations but also by private actors: market authority (the credit-rating agencies Moody's/S&P/Fitch, the accounting standards body IASB), moral authority (Amnesty, Transparency International, Greenpeace), and illicit authority (organized-crime networks, money laundering). These two frameworks ground — by giving concrete form to Rosenau–Czempiel's intuition of "governance without government" — why the institutional axis of the hybrid order exhibits not a uniform but a multi-sourced and layered structure of authority.

6.4 The Multilevel Institutional Structure and the Institutional Transformation of Sovereignty

The chapter deepens, in a distinct section, the institutional axis's transformative effect upon sovereignty. Barkin–Cronin's analysis shows, across three historical models, that sovereignty bears no fixed essence but is refilled according to each era's conception of legitimacy: state sovereignty in the Westphalian period (1648–1789, *cuius regio eius religio*), national sovereignty in the post-Westphalian period (1789–1945, self-determination), and popular sovereignty after 1945 (democratic legitimacy and human rights as the condition for the attainment of sovereignty) — sovereignty does not vanish; the source of its legitimacy changes. Chayes–Chayes's (1995) theory of "new sovereignty" names the direction of this transformation: in the contemporary world, sovereignty is not insulated autonomy (the right to be excluded) but the capacity for effective participation in international regimes; to remain outside the regimes does not strengthen sovereignty but renders it ineffective — yet this opportunity for

"sovereignty through participation" is unevenly distributed (powerful states participate as rule-makers, weak states as rule-takers). Kumm's cosmopolitan constitutionalism regards the "relativization" of sovereignty not as a loss but as the precondition of a global constitutional order: contemporary sovereignty is a conditional competence whose legitimacy is bound to four principles (the rule of law, individual rights, democratic procedure, and reasonable governance). Philpott's framework of "revolutions in sovereignty" shows that the radical redefinition of sovereignty is effected through the power of ideas: in the wake of the revolutions of Westphalia (1648) and decolonization (1945), the conditions for a possible third revolution in sovereignty — through R2P, international criminal justice, and peremptory norms — are ripening. The critical vein counterbalances this optimism: Simpson's analysis of "legalized hierarchy" shows that, beneath the discourse of formal sovereign equality, great-power privilege (the UNSC veto, the nuclear club) is institutionalized; Moravcsik's "democratic lock-in" thesis shows the strategy by which new democracies, by binding themselves to human-rights treaties, render their internal democratic gains irreversible. Halberstam–Stein read the CJEU's *Kadi* judgment as an empirical testing of constitutional pluralism (the mutual recognition between the UN sanctions regime and the EU fundamental-rights order). Taken together, these frameworks establish, on the institutional axis, that sovereignty neither erodes nor persists unchanged but transforms by being qualified and pluralized — yet that this transformation is conditioned by power asymmetry.

The chapter deepens functional institutionalization with several further frameworks. The framework of global administrative law (Kingsbury–Krisch–Stewart (2005)) shows that international organizations and regulatory networks exercise regulatory competences resembling those of national administrative institutions and derive their legitimacy not only from state consent but also from the principles of transparency, accountability, and participation. Fragmentation is read, at the institutional level, through the concept of "regime complexes" (Raustiala–Victor): the joint operation, within particular fields, of numerous regimes that are mutually independent yet overlapping harbors the dynamics of integration and fragmentation simultaneously and permits institutional plurality to be regarded not as a limitation but as a productive feature (Fischer-Lescano–Teubner's functional differentiation, Pauwelyn's (2003) norm conflict, Young's forum selection). In economic governance, Stiglitz's critique of the IMF and the World Bank documents that conditionality mechanisms erode national economic autonomy and deepen problems of legitimacy; Haas's (1992) epistemic communities show that scientific-technical expertise shapes global policy (the IPCC's decisive role in the Paris Agreement negotiations); and Abbott–Snidal's (2000) framework of hardness and legalization reveals that the balance between institutional flexibility and institutional authority is the most critical analytical problem of international institutional design.

6.5 The Limits of Institutional Constitutionalization and the Synthesis of the Axis

The chapter closes the institutional axis with its own analysis of limits and synthesis. Krisch's (2010) "beyond constitutionalism" framework shows, across four planes of opposition, that the multilevel order is taking shape toward a pluralist rather than a constitutional architecture: hierarchy versus heterarchy (the tension between the EU's primacy doctrine and the protectionism of national constitutional identity / *Verfassungsidentität*), unity versus plurality (the multiple authority among UN organs, the ECtHR, the IACtHR, the AfCHPR, and national courts in the protection of human rights), normative closure versus deliberative openness (the openness among the UNFCCC, the CBD, CITES, and Nagoya in environmental regimes), and constitutional authority versus plural legitimacy (the multiple legitimacy bases of the EU order — the EU Treaties, national constitutions, the ECHR, and international treaties). This pluralist reading conceptualizes the structural limit of institutional constitutionalization.

The chapter synthesizes these limits within a five-dimensional framework of constraints. The first dimension is institutional power asymmetry (the UNSC veto, the United States' de facto veto in the IMF, the WTO consensus that privileges the major actors). The second dimension is the legitimacy deficit (the problem of a global demos, the "constitution without a people" / *Verfassung ohne Volk*, regulatory capture). The third dimension is the want of accountability (the opacity of UNSC and G20 decisions and of private regulators such as Basel, IOSCO, and the IAIS). The fourth dimension is the dynamic of backlash — concrete proof that institutional constitutionalization is not unidirectionally progressive but may operate in reverse: the United Kingdom's Brexit (2020), the withdrawal of Burundi (2017) and the Philippines (2019) from the ICC, Venezuela's exit from the IACtHR (2012), and Russia's expulsion from the ECtHR (2022). The fifth dimension is the positioning of non-state actors beyond democratic oversight (the opacity of ICANN, the *lex mercatoria*, the transboundary authority of multinational corporations — Cutler (2003), Ruggie (2011)). These five dimensions ground the institutional axis's core claim: institutional authority observably generates a capacity that transcends the Westphalian, state-centered architecture, yet it has neither transformed into a fully centralized, homogeneous, and legitimacy-grounded constitutional architecture nor been able to emancipate itself from power asymmetries — institutional constitutionalization remains "incomplete." This dual reality brings the institutional axis into the same hybrid

configuration as the normative and governance axes: the simultaneous presence of genuine institutional gain and structural limit is, likewise, the hybrid character of the institutional axis.

7. THE GOVERNANCE AXİS: MULTİ-ACTOR AUTHORİTY, CİVİL SOCİETY, AND LEGİTİMACY

The sixth chapter elaborates the third of the three axes—governance—namely the overflow of authority beyond the monopoly of the state and its dispersion across organizations, networks, epistemic communities, and private actors, together with the problem of legitimacy that this dispersion engenders. The chapter's synthesis is that the governance axis, too, is hybrid: authority has genuinely become pluralized and the production of norms has acquired channels of democratization, yet this authority remains afflicted by a grave democratic deficit and a paucity of accountability—and, above all, by the North–South asymmetry.

7.1 The multi-actor architecture of global governance

The chapter dissects the transformation, over the past three decades, of authority from a state monopoly into a multi-actor architecture—an epistemic rupture that has rendered imperative the redefinition of the foundational toolkit of the science of international law (sovereignty, bindingness, legitimacy, sanction). Rosenau's (1992) framework of "governance without government" is foundational here: governance and government are distinct concepts—government rests upon formal authority and coercion, whereas governance encompasses systems of rules that function even in the absence of formal authority; authority resides not in a single sovereign center but is distributed across a multiplicity of foci that are continuously negotiated among overlapping spheres of competence. Keohane and Nye's (1977) account of complex interdependence complements this. Mathews's (1997) "Power Shift" (1997) framework demonstrates that power is dispersed in three directions: upward (toward supranational institutions), sideways (toward the market and the private sector), and downward (toward civil society and local actors); the engine of this dispersion is the information revolution, and soft power gains weight relative to hard power.

The chapter establishes the theoretical backdrop of the erosion of sovereignty through classical lineages: Krasner's (1999) organized hypocrisy and his fourfold typology of sovereignty (international legal, Westphalian, domestic, interdependence), Mearsheimer's realist caveat, Bickerton's (2012) framework of "member states" (the metamorphosis of the nation-state within the EU into a form that derives its legitimacy not from its own people but from its relationship with supranational institutions and fellow members—the risk of democratic disconnection), Moravcsik's liberal intergovernmentalism (the counterposition), Buzan's expansion toward "world society," and Schmitt's analysis of the nomos. Cutler's (2003) private authority, Strange's (1996) thesis of power shifting from the state to the market, and Büthe and Mattli's (2011) privatization of regulation demonstrate that global economic standards (ISO, IASB, credit rating) are produced by private actors; Sassen's (2006) account of globalization reshaping structures within the state and Zumbansen's (2010) transnational law deepen this vein. The concrete indices of the multi-actor architecture are ICANN's multi-stakeholder internet governance and the alternative institutional architecture of the rising powers. This architecture becomes salient across four planes: the BRICS Bloc (2009–; Brazil-Russia-India-China-South Africa), which became institutionalized at the 2014 Fortaleza Summit through the New Development Bank (NDB) capitalized at USD 100 billion and the Contingent Reserve Arrangement (CRA) of the same year with a USD 100 billion pool, and which expanded in 2024 into BRICS+ (Egypt, Ethiopia, Iran, the UAE, Saudi Arabia, Indonesia); the Asian Infrastructure Investment Bank (AIIB, 2016–; under Chinese leadership, with 109 member states, USD 100 billion in authorized capital, an alternative infrastructure-financing arrangement to Bretton Woods); the Shanghai Cooperation Organisation (SCO, 2001–; under Sino-Russian leadership, with ten member states—India and Pakistan in 2017, Iran in 2023, Belarus in 2024—serving as a channel of solidarity framed by the "Shanghai Spirit" doctrine grounded in mutual trust, equality, and respect for cultural diversity, and by "opposition to color revolutions"); and the Belt and Road Initiative (BRI, 2013–; the participation of more than 150 countries and over 30 organizations, with an estimated investment of approximately USD 1 trillion, fraught with critiques of "debt-trap diplomacy"). These four planes furnish empirical evidence of the transformation of the contemporary architecture of governance from a unipolar, Western-centric structure into a multipolar one, and they constitute the laboratory of Acharya's (2014) thesis of "the end of the American world order" (*The End of American World Order*, 2014). This polycentric financial-institutional architecture is accompanied by Frug-grounded networks of global cities (C40, ICLEI, UCLG), which emerge as autonomous actors in climate and human rights governance. This architecture demonstrates that the claim to universality advanced in the constitutionalization debate confronts a polycentric reality.

The chapter grounds the plurality of actors in empirical evidence across five planes: the ascent of the number of international organizations from 39 (1945) to thousands of intergovernmental and tens of thousands of civil society organizations; the architecture of multinational corporations (more than 110,000 MNCs, over 1 million affiliates, an inward stock of foreign direct investment of approximately USD 50 trillion, the revenue of the

Fortune Global 500 reaching roughly 30 percent of global GDP); the architecture of civil society (the rise of organizations holding ECOSOC consultative status from 41 in 1948 to thousands; Florini's "third force"); the private regulatory architecture (the more than 24,000 standards of the ISO, the certification of the Forest Stewardship Council and the Marine Stewardship Council); and hybrid public-private arrangements (the Global Fund, the GAVI Alliance, the Kimberley Process, the Green Climate Fund). The most concrete laboratory is ICANN's multi-stakeholder internet governance: the transfer to a multi-stakeholder model with the 2016 IANA transition (the termination of the NTIA contract, the institutionalization of an accountability process) following the period of guardianship by the U.S. Department of Commerce from 1998 to 2016; a structure composed of the Board of Directors, the Governmental Advisory Committee (GAC) in which more than 175 state representatives participate, and the supporting organizations. ICANN's contested constitutional dimensions—its subjection to the law of California and its character as a "globalist-Western model" in the face of the "cyber-sovereignty" thesis of China and Russia—exemplify the legitimacy tension of the governance axis. Zumbansen's (2010) transnational law across three planes (transnational public law, private law/lex mercatoria, hybrid law/ICANN) and Sassen's (2006) global-cities/assemblage framework (the reassembly of the authority-territory-rights triangle, the disaggregation from nationalization) deepen the spatial and the social-sectoral dimensions of this multi-actor architecture.

7.2 The democratization of norm-production and civil society

The chapter addresses the diffusion of norm-production beyond the state monopoly into a multi-actor field—the democratization dimension of the governance axis. Its point of departure is the observation that the classical doctrine of "sources" (the triad of treaties, custom, and general principles in Article 38 of the ICJ Statute) can no longer fully reflect the contemporary reality of multilayered norm-production, and that categories such as "secondary law," "governance norms," and "soft law" have acquired systematic status. This expansion becomes concrete in global regulatory networks: the capital-adequacy standards of the Basel Committee (the development of Basel III after the 2008 crisis, independently of formal treaties yet de facto binding), the anti-money-laundering standards of the FATF, and the product-safety standards of the ISO shape global standards of conduct while bypassing diplomatic channels.

The chapter demonstrates that soft law—declarations, recommendations, guiding principles—can in time evolve into hard law, and that civil society mobilization assumes the role of an incubator accelerating this evolution: the UN Global Compact, the OECD Guidelines for Multinational Enterprises, and Ruggie's (2011) UN Guiding Principles on Business and Human Rights (the tripartite "Protect, Respect, Remedy" framework) are exemplary; yet their want of binding mechanisms gives rise to an "accountability gap." The transformation of the Universal Declaration of Human Rights from its soft status in 1948 into binding law through the 1966 twin Covenants (the ICCPR and the ICESCR) attests to the decades-long historical patience this evolution demands. The decisive role of civil society (Amnesty International, Human Rights Watch, Greenpeace) in norm-production is exemplified through the 1997 Ottawa Treaty banning landmines—signed by virtue of a civil society network transforming the negotiating agenda against the resistance of the great powers; the theory of global civil society is grounded in Cohen and Arato (civil society as a third autonomous sphere), Walzer, and Wapner ("global civic politics"), although it is noted that quantitative growth does not spontaneously translate into qualitative representation (Anheier-Glasius-Kaldor).

The chapter analyzes the democratization of norm-production through three constitutive frameworks. Keck and Sikkink's (1998) "boomerang" framework explains the pattern whereby actors who cannot succeed at the national level exert pressure upon their own states from without through international advocacy networks, and it distinguishes the four political instruments of these networks: information politics, symbolic politics, leverage politics, and accountability politics (the precursor of Risse, Ropp, and Sikkink's (1999) five-stage spiral model). Finnemore and Sikkink's (1998) norm life cycle models the development of norms in three stages—their introduction by norm entrepreneurs, a "norm cascade" beyond a tipping point, and internalization—and accounts for the development of numerous norms from the abolition of slavery to the prohibition of landmines. While adopting this model, the chapter tests it along the axis of power asymmetry: the diffusion of norms is not a neutral and progressive but a selective process—the norm entrepreneurs of the Global North possess a far greater capacity for diffusion, and while certain norms (particular interpretations of human rights) spread rapidly, others (the right to development, economic justice) encounter resistance; this explains why the governance axis harbors both a genuine norm-productivity and a structural inequality. Haas's (1992) framework of epistemic communities demonstrates that, under conditions of scientific-technical uncertainty, expert networks (the IPCC being the most concrete example) shape policy content; Adler and Pouliot's (2011) community of practice, Risse and Deitelhoff's (2020) communicative action, Acharya's (2014) framework of norm localization (the adoption of universal norms through their transformation within local contexts), and Teubner's (2012) societal constitutions complement this

vein. The institutional channels of civil society are exemplified through the Aarhus and Espoo Conventions, the UN treaty bodies, special rapporteurs, and the Universal Periodic Review (UPR).

The chapter elaborates these frameworks. Slaughter and Newman's framework of global regulatory networks demonstrates that a significant portion of contemporary governance proceeds not through formal diplomacy but through the networks that national regulatory agencies (central banks, competition authorities, securities-market supervisors, data-protection authorities) establish directly with their counterparts: the state participates in global governance not as a unitary actor but through its disaggregated agencies (the Basel Committee with 28 member authorities and more than 100 jurisdictions, IOSCO with over 230 members and its MMOU information-sharing, the FATF's 40+9 Recommendations and the sanction of its "non-compliance" list)—which carries the advantage of flexibility and technical expertise yet largely escapes democratic oversight; Newman lays bare the power asymmetries of these networks and the standard-setting privilege of certain regulators. Adler and Pouliot's (2011) framework of communities of practice reveals that norms reside not merely in texts but in the entrenched behavioral patterns of actors—a methodological insight indicating that the hybrid order must be traced not only in treaty texts but also in institutional practices; yet which practices are deemed "competent" is not independent of the distribution of power and status (communities of practice are most often dominated by the institutions of the Global North). Risse and Deitelhoff's (2020) framework of communicative action transposes the Habermasian (1996) discourse ethics into international relations: it distinguishes three types of action (strategic/realist, rule-based/liberal, communicative/Habermasian) and contends that negotiations—especially on human rights and normative matters—cannot be reduced to mere bargaining over interests, and that "the force of the better argument" sets in motion a genuine process of persuasion; the 1998 Rome Statute negotiations constitute the empirical laboratory of this theory. Together, these frameworks reveal why the governance axis functions as a multi-actor, multidirectional, and genuine arena of normative negotiation—yet one also shaped by power asymmetries.

The chapter deepens, through two constitutive frameworks, the manner in which the democratization of norm-production transforms the bindingness of law. Koh's framework of "transnational legal process" demonstrates, in four stages, that norms of international law acquire bindingness not solely through external pressure or consent but through "internalization" into national institutional structures: international interaction → interpretation → internalization → behavioral change; in this process, civil society actors, courts, administrative organs, and "norm entrepreneurs" work in mutual interaction. Risse-Kappen's analysis complements this: the capacity of transnational actors to exert influence varies according to the degree of permeability of national political structures. Brunnée and Toope's (2010) "interactional theory of law," for its part, contends that bindingness derives not merely from state consent or sanction but from the norms' possession of an "internal morality of law" (with reference to Fuller's concept: clarity, consistency, predictability, practicability, congruence with practice) and from the actors' continual reproduction of these norms within an ongoing interactional practice. These two frameworks demonstrate that the participation of civil society, epistemic communities, and regulatory networks in norm-production constitutes not merely a formal expansion but also a qualitative transformation of the very foundation of the bindingness of international law—a conception of bindingness that transcends the limits of the positivist doctrine of sources. The chapter further deepens the democratization of norm-production along the axis of gender: Charlesworth, Chinkin, and Wright's analysis of the male-centered architecture of international law and of the manner in which the "public/private" distinction positions women's spheres of life as "outside international law" reveals that the democratization of global governance must be assessed not only along the state-civil society axis but also along the axis of gender.

7.3 Legitimacy, accountability, and the democratic deficit

The chapter analyzes, through a systematic series of frameworks, the problem of authority and legitimacy engendered by multi-actor governance. Its point of departure: the source of normative authority is no longer mere state consent—Hurd's (2007) "legitimacy-based compliance" (the authority of institutions is nourished not by coercion alone but by shared normative beliefs) and Franck's (1990) "legitimacy pull" (determinacy, symbolic validation, coherence, adherence to a hierarchy of secondary rules) name this transformation. Dahl's "problem of the democratic unit" lays bare the problem of the legitimacy deficit: as institutions enlarge the domain of decision, the capacity of affected communities to participate weakens. Beetham's three-dimensional framework of legitimacy (formal-legality, value congruence, demonstrated consent) divests legitimacy of its all-or-nothing character and transforms it into a graduated and stratified assessment; although governance actors (regulatory networks, expert communities, private standard-setters) lack formal-legal legitimacy, they can produce expertise-based value congruence and demonstrated consent—and it is for this reason that governance pluralism constitutes the most fragile stratum of legitimacy within the hybrid order.

The chapter deepens the theory of legitimacy through numerous lineages: Habermas's (1996) discursive legitimacy (*Faktizität und Geltung*—the dual function in which the citizen is at once addressee and author; the global deficit being the citizens' inability to attain the position of author), Nanz and Steffek's deliberative democracy (access to information, public deliberative arenas; the Aarhus Convention model), Fraser's three-dimensional justice (redistribution, recognition, representation), Bohman's multiple demoi, Beck's cosmopolitan outlook, Sieyès's constituent power (pouvoir constituant—the absence of a global constituent power being the kernel of the legitimacy deficit), Tully's public philosophy (continual negotiation), Goodhart's identity of democracy and human rights, and Forst's right to justification. The structural fragility of legitimacy is demonstrated empirically through Ginsburg and Huq's (2018) constitutional erosion (democratic backsliding/constitutional retrogression—Hungary, Poland, Türkiye, Brazil). The analysis of multilevel legitimacy is complemented by Buchanan and Keohane's (2006) complex legitimacy (minimal moral acceptability, comparative benefit, institutional integrity), Scharpf's input-output legitimacy, Bovens's (2007) architecture of accountability, and Grant and Keohane's (2005) seven types of accountability.

The chapter deepens the theory of accountability across four lineages. Schedler's (1999) horizontal-vertical distinction divides mechanisms along two axes: horizontal accountability (state institutions supervising one another—judicial independence, legislative oversight) and vertical accountability (citizens' supervision through elections, civil society, and the media); the weakness of global institutions along both axes is among the most systematic limits of constitutionalization. Grant and Keohane's (2005) seven mechanisms transform the deficit from a vague grievance into a diagnosis: hierarchical (superior-subordinate), supervisory (authorizer-authorized), fiscal (funder-user), legal (before the courts), market (consumer-investor pressure), peer (peer evaluation), and public-reputational (public opinion-civil society) accountability; these coalesce into two models—the participation model (grounded in the rights of the governed) and the representation/delegation model (grounded in the principal-agent relationship)—and the deficits of the World Bank, the IMF, the UNSC, and the WTO are analyzed within this framework; the strength of the framework lies in its demonstration that global institutions, though devoid of election-based accountability, can nonetheless be held to account through other mechanisms. Bovens's (2007) framework defines accountability as the relationship in which an actor justifies its conduct, a forum poses questions and renders judgment, and the actor faces consequences; with its seven-plane typology (political, legal, administrative, professional, social, public-opinion, market) it develops the doctrine of the "accountability deficit." Mashaw's (2006) six types (electoral, authorization, supervisory, legal, market, deliberative) and Koppell's (2010) five dimensions (transparency, liability, controllability, responsibility, responsiveness) complement this typological analysis.

The chapter also lays out the concrete institutional mechanisms of accountability: the World Bank Inspection Panel, the IFC's Compliance Advisor Ombudsman (CAO), and the AIIB's complaint mechanism demonstrate the institutionalization of the procedural guarantees of global administrative law; the regional human rights courts (the IACtHR, the ACtHPR) and the Venice Commission of the Council of Europe (a mechanism for the export of constitutionalism) extend this architecture. The chapter further addresses the position, on the governance axis, of jus cogens (ILC 2022) and of Peters's (2009) concept of the "law of humanity"; yet the effectiveness of these norms in institutional application is contingent upon the political will of the Council and the selective capacity of criminal justice—governance pluralism affords a genuine norm-productivity but carries a profound deficit of democratic legitimacy; this deficit can be narrowed only through the evolution of governance toward more participatory and accountable forms.

The chapter renders this analysis concrete through empirical evidence. The most striking index of the democratic deficit is that the five permanent members of the UNSC endowed with veto capacity (the United States, the United Kingdom, France, Russia, China) represent only approximately 29 percent of the global population; Held's (1995) cosmopolitan democracy (multilevel institutionalization, the proposal of a global parliament), Marks's (2000) critique of the "ideology of democracy" (the discourse forfeiting its authentic content as it becomes articulated with neoliberal globalization), and Cohen's analysis of globalization and sovereignty are the theoretical lineages of this deficit. The empirical capacity of accountability mechanisms is measurable: the World Bank Inspection Panel's (1993–) more than 175 completed reviews and its transformation in 2020 into an "Accountability Mechanism," the IFC's CAO (1999–) and the AIIB's Project-Affected People's Mechanism (2018–), and the UNSC 1267 Ombudsperson's (2009–) 56 de-listing decisions issued in response to 84 petitions—the institutionalization of individual recourse against targeted sanctions. The hardening of soft law is traced across three laboratories: the Universal Declaration of Human Rights (the non-binding recommendation of 1948 → the binding treaties of the 1966 ICCPR/ICESCR → the jus cogens character of the prohibitions of torture/genocide/slavery); anti-discrimination norms (the 1962 critique of apartheid → the 1965 ICERD → consolidation in the ICJ's jurisprudence on Namibia in 1971, the Palestinian Wall in 2004, and the Occupation of

Palestine in 2024); and environmental norms (Stockholm 1972 → Rio 1992 → the ascent of the precautionary principle to customary status, ITLOS Southern Bluefin Tuna 1999). In the regional architecture, the IACtHR's "conventionality control" (Almonacid Arellano 2006) and the jurisprudence of the ACtHPR complement this hardening at the judicial level.

7.4 The relationship between legal authority and global governance

The chapter illuminates the relationship between legal authority and governance through three distinctive frameworks. Cassese's concept of the "global polity" furnishes the middle term that the hybrid order seeks: the contemporary global order is neither a world state nor a purely anarchic domain; between the two it is a "polity" that is non-state yet organized, without a hierarchical center yet nonetheless functioning. Cassese's administrative-law lens (the Italian school of administrative law—the legacy of Giannini and Romano) renders visible the manner in which this order is structured not in moments of "high politics" but in its ordinary administrative practice—regulatory decisions, procedural standards, institutional interactions; authority is dispersed not in a central sovereign but across a network of interconnected institutional planes, yet this dispersion is not a disorder but a regularity of its own kind. Pauwelyn, Wessel, and Wouters's framework of "informal international lawmaking" (IN-LAW) demonstrates that a substantial portion of contemporary global regulation occurs outside the treaty form, exhibiting informality in three dimensions: process informality (an expert network in lieu of a diplomatic conference), output informality (a soft text/technical standard in lieu of a binding treaty), and actor informality (subject-specific regulatory authorities in lieu of ministries of foreign affairs); the Basel Committee on Banking Supervision, IOSCO, and the FATF are its empirical laboratories—the advantage of flexibility and speed being offset by a deficit of democratic legitimacy and accountability. The G20 and the Financial Stability Board (FSB) constitute the most concrete example of this stratum of "soft constitutionalism": the G20, which after the 2008 crisis acquired the character of "regulator of the global economy" (it represents 85 percent of global GDP, yet the representative capacity of only twenty members generates a democratic deficit), and the Basel-based FSB coordinate global financial stability through structural declarations and standards in the absence of any binding treaty. These three frameworks establish that the governance axis of the hybrid order harbors a stratum of norm-production that lies beyond formal law—flexible and informal yet genuine—and that this stratum, too, carries a problem of legitimacy.

7.5 The governance of the environment, climate, health, and the digital domain

The chapter analyzes the concrete operation of the governance axis across five sectoral laboratories. The environmental regime becomes salient in the half-century continuity of five global summits: Stockholm (1972—the founding of UNEP), Rio (1992—the precautionary principle, the principles of common but differentiated responsibilities and the polluter-pays, the UNFCCC-CBD-UNCCD), Johannesburg (2002), Rio+20 (2012), and the 2015 Sustainable Development Goals (seventeen goals)—the ground of the literature on a "global environmental constitution." The climate regime is the most instructive example of governance incrementally altering its architecture in order to grapple with a problem: the framework structure of the 1992 UNFCCC, the top-down binding targets of the 1997 Kyoto Protocol (constrained by the non-participation of the United States and the absence of sanctions), the bottom-up nationally determined contribution (NDC) architecture of the 2015 Paris Agreement (securing universal participation yet leaving the problem of adequacy open), Glasgow (2021—the first inclusion of the phasedown of fossil fuels in COP documents), and the COP27 Loss and Damage Fund / the COP28 call for transition away from fossil fuels—demonstrating that governance redesigns itself by learning from its failures, yet sustains an effectiveness deficit. The health regime, in the laboratory of the WHO and COVID-19, displays both its capacity (the binding notification framework of the International Health Regulations, early warning, scientific guidance) and its structural infirmities (notification delays, vaccine nationalism, the want of enforcement power, the inequitable distribution of vaccines)—revealing that even a common global threat could not surmount the limit of a sovereignty-dependent governance structure.

The chapter regards the digital and technological domain as the most innovative and the most fragile laboratory of this analysis. Digital and internet governance is the most advanced example of a non-state-centered model of global regulation: the technical infrastructure of the internet (domain names, protocols, standards) is governed by technical bodies such as ICANN (1998; from U.S. oversight to a multi-stakeholder model with the 2016 IANA transition), the IETF, and the W3C; DeNardis's analysis of "infrastructure-based governance" and Lessig's (2006) insight that "code is law" demonstrate that ostensibly purely technical decisions (the design of a protocol, the selection of a standard) constitute an implicit political power that determines privacy, freedom of expression, and access—and this implicitness gives rise to depoliticization and an accountability deficit. While the GDPR (2016) spread to more than one hundred and thirty countries through the "Brussels Effect," the EU's Digital Services/Markets Acts (2022), China's Data Security Law (2021), and the "cyber-sovereignty" thesis display the competition of alternative regulatory models. The governance of artificial intelligence renders visible, in real time,

a regulatory domain in formation: the EU AI Act (2024—the world's first comprehensive, risk-based AI framework; the prohibitions on social scoring and real-time biometric identification), the OECD AI Principles (2019, five principles), the UNESCO Recommendation on the Ethics of AI (2021, 193 states), and the first AI resolution of the UN General Assembly (A/RES/78/265, 2024)—a stratified yet fragmented-competitive architecture extending from regional regulation to a global ethical framework (the literature on "algorithmic constitutionalism"). The common lesson of the five sectoral laboratories is that, as the governance axis extends into new domains, it produces a genuine regulatory capacity, yet in every domain it is conditioned by sovereign resistance, power asymmetry, and a legitimacy deficit—that is, it remains hybrid.

7.6 The limits of governance-based constitutionalization and the synthesis of the axis

The chapter closes the governance axis with its own synthesis and analysis of limits. The whole of the analyses demonstrates that the arrangements of global governance produce constitution-like outcomes—in the absence of a central constitutional authority—through three functional constitutional models: normative integration (organizations and expert bodies determining and disseminating shared standards, cross-references among regimes), normative supervision (the production of jurisprudence by courts and the monitoring capacity of regulatory networks), and normative socialization (institutional learning and the internal transformation of state identities—Risse, Ropp, and Sikkink's (1999) spiral model, the constructivism of Wendt and Checkel). These three functions operate sectorally asymmetrically: whereas in human rights law all three are strengthened simultaneously (the consolidation of jus cogens + the jurisprudence of the ECtHR/IACtHR/ICC + civil society networks), in investment law the weakness of normative integration and the dominance of private capital interests impede the constitutional function—the explanation for why the "incomplete constitutional process" exhibits an asymmetric sectoral distribution.

Set against these gains stand four structural limits: the democratic deficit (the decisions of institutions remaining beyond the supervision of affected communities—Dahl, Held (1995), Beetham), the want of accountability (the position of regulatory networks and expert communities beyond oversight—Bovens (2007), Benvenisti), power asymmetry (the supremacy of developed states, financial institutions, and technical-expertise networks in norm-production—Chimni (2006), Anghie (2004), TWAIL), and the governance void (the as-yet-unestablished binding framework in the digital, AI, and cyber domains, the quasi-sovereign position of technology corporations—Bratton's (2015) "stack," DeNardis). Koskenniemi's (2005) concept of the "translation of politics into law" captures this paradox: governance casts struggles of political power into legal form, yet neither wholly domesticates them nor reduces them to a mere mask; constitutionalization is thus neither a pure narrative of legal progress nor a pure mask of power—it is a contradictory historical process that harbors both at once. Dworkin's (1986) question, "is international law a moral order?", for its part, contends that bindingness shifts from state consent to the shared moral principles of the international community (human dignity, equality, justice); yet this Anglo-American liberal universalism is itself subject to TWAIL's critique of situatedness. The simultaneous presence of three tendencies and four limits reveals the hybrid character of the governance axis—confirming, on a third plane, the same structural logic as the normative and institutional axes: governance pluralism harbors, together, genuine gain and structural limit, pluralist richness and a legitimacy deficit. This triple convergence (the normative, institutional, and governance axes exhibiting the same hybrid configuration) is the strongest evidence that the hybrid order is not a contingent description but the multidimensional structural reality of contemporary international law.

8. SOVEREİGNTY, LEGİTİMACY, PLURALİSM, AND TWAIL

The seventh chapter integrates the most contested dimensions of the hybrid order—the transformation of sovereignty, democratic legitimacy and representation, the tension between fragmentation and constitutional pluralism, legal pluralism, and critical/TWAIL perspectives. The chapter's distinguishing move is to treat critical objections not as a rejection arriving from outside the analysis, but as structural components embedded within the hybrid framework itself.

8.1 The Contemporary Dimensions of the Sovereignty Debate

Krasner's (1999) fourfold typology of sovereignty and his framework of "organized hypocrisy" displace sovereignty from its standing as a single-axis category and disaggregate it into four structural types: international legal sovereignty (recognition, treaty-making capacity, diplomatic representation), Westphalian sovereignty (independence from external intervention and non-interference in internal affairs), domestic sovereignty (the effective authority of the state over its own territory), and interdependence sovereignty (the capacity to regulate cross-border flows—of capital, goods, information, persons, and pollutants). Krasner demonstrates that these types manifest differently across distinct periods: in the post-1990 era of globalization, interdependence sovereignty has weakened, while Westphalian sovereignty has been preserved for the great powers yet eroded for smaller states. The "organized hypocrisy" thesis documents the contradiction whereby the discourse of

sovereignty is sustained at the formal level even as it is transgressed in practice: humanitarian intervention (Kosovo 1999, Libya 2011), IMF conditionality, the subjection of national regulatory autonomy to external scrutiny through WTO dispute settlement, and the transfer of national judicial sovereignty to private panels through investment arbitration. This plural-typological reading shows that sovereignty must be read not according to an "all-or-nothing" logic but as a structural and enduring feature of the hybrid order.

Cohen's neo-Westphalian synthesis transcends the dichotomy of "Westphalian sovereignty or cosmopolitan authority": states remain enduring primary actors, yet they operate under multiple international institutional constraints, and this constitutes not a "loss of sovereignty" but a "constitutional-plural reconfiguration of sovereignty" (constitutional dialogue, constitutional respect, plural judicial protection). Rosenau's (1992) framework of the relocation of sovereign competences shows that sovereignty is dispersed in five directions: upward (to international/regional institutions—the EU, the UN, the ICC), downward (to local administrative units), laterally (to the private sector and civil society), inward (to independent central banks and regulatory agencies), and outward (to private transnational networks—ICANN, ISO, the Basel committees). Held's (1995) framework of cosmopolitan democracy re-grounds sovereignty within a normative architecture of eight principles (equal moral worth, equal political participation, the avoidance of harm, sustainable resources, justice and solidarity, peace, and others) and within a multi-level democratic governance extending from the local to the global.

Slaughter's (2004) thesis of the networked state and of "disaggregated sovereignty" reads sovereignty not as a unitary, single-centred state actor but as something that acquires operative force through the cross-border networked interactions of governmental units (regulators, judges, ministries). *A New World Order* (2004) taxonomizes these networks into three types: regulatory networks (in which sectoral authorities such as the Basel Committee, IOSCO, and the IAIS generate de facto global standards without binding treaty), judicial networks (the reciprocal exchange of jurisprudence among constitutional and apex courts—transjudicial communication), and legislative networks (the cross-border cooperation of parliaments). The thesis contends that sovereignty does not vanish but is functionally fragmented and redistributed; its empirical evidence is the coordinated adaptation of the Basel III standards by the central banks of twenty-eight countries, the jurisprudential dialogue among the German Federal Constitutional Court, the CJEU, and the ECtHR, and the implementation of the OECD's tax-oversight standards in more than one hundred and thirty countries. This dispersal carries a cost: decisions taken within specialized networks escape the oversight horizon of national parliaments, generating a technocratic legitimacy deficit—Anderson and Krisch's (2010) critique emphasizes this "democratic deficit," the absence of transparency within networks, and the persistence of North–South asymmetry across them; thus the networked state unites, within a single framework, both the innovative coordinative capacity of the hybrid order and its vulnerability before democratic oversight. MacCormick's (1999) post-sovereign framework of "relative sovereignty" defines sovereignty not as absolute and indivisible but as relative and divisible, "a determinate position within a distribution of competences"—the transfer of certain competences by EU member states to EU institutions is not a "loss of sovereignty" but a "sharing of sovereignty"; in the EU context, the tension between the primacy of EU law and the preservation of national constitutional orders is worked through a constitutional-pluralist reading by way of Brexit (2016–2020), the rule-of-law crises in Poland and Hungary, and the PSPP judgment of the German Federal Constitutional Court (2020).

Rodrik's trilemma names three vertices—deep global economic integration, nation-state sovereignty, and democratic politics—and argues that at most two of these can be preserved simultaneously: the Bretton Woods compromise (1944–1980) combined limited integration with sovereignty and democracy; the "golden straitjacket" (1980–2008) combined deep integration with sovereignty by narrowing the democratic sphere; and the "global governance" scenario (post-2008) combines deep integration with democracy by sharing sovereignty with global institutions. Brexit, Trump, and the U.S.–China trade wars are the empirical manifestations of this trilemma. Rodrik's contribution lies in demonstrating that the fragility of the hybrid order arises not merely from institutional design but from a structural tension between democracy and global integration. Finally, the debate over digital sovereignty opens a new dimension of sovereignty along three veins: data sovereignty, infrastructure sovereignty, and regulatory sovereignty; its empirical evidence is the GDPR, the EU Artificial Intelligence Act (2024), China's data laws (2021), and the U.S. CHIPS Act (2022). The "Brussels Effect" (Bradford (2020)—the global diffusion of EU regulatory sovereignty), "digital Westphalia" (Mueller), and "digital constitutionalization" (Celeste (2022)) name the tendencies of this dimension. The shared conclusion of all these frameworks is that sovereignty does not disappear; it is transformed by being qualified and pluralized—this is the sovereignty dimension of the hybrid order.

8.2 The Problem of Democratic Legitimacy and Representation

Rather than reiterating the frameworks of legitimacy treated along the governance axis, the chapter analyzes the new dimensions that the problem of representation assumes within the constitutionalization debate. The philosophical ground rests on Kant's *Toward Perpetual Peace* (republican government, a free federation of peoples, universal hospitality) and on Habermas's (1996) cosmopolitan project: Habermas defends global constitutionalization as "a utopia not yet exhausted" and regards the cross-border reconstruction of democratic legitimacy within the "postnational constellation"—the formation of a global civic public—as a categorical necessity; the dual function articulated in *Faktizität und Geltung*, whereby the citizen is at once addressee and author, is the foundation of the global deficit (citizens remaining mere addressees). Scharpf's input–output legitimacy and the throughput legitimacy added by Schmidt show that the attempt to compensate for the deficit through output legitimacy proves insufficient in periods of crisis.

The chapter's original development is the "affected interests principle": the right to democratic participation must be accorded not only to the formal members of a political community but to everyone who will be affected by a decision. Held (1995) carries this to the global level; Bohman's framework of a "demoi of demoi" holds that the absence of a single global demos does not render democratic legitimacy impossible but rather requires it to be redefined through the interaction of multiple communities; and Goodin's (2008) reflective democracy proposes, alongside participation, a process of deliberation that incorporates the perspectives of affected parties. The principle appears most concretely in climate justice: the exposure of the communities that contribute least to greenhouse gases (small island states, sub-Saharan Africa) to the gravest consequences is a structural problem of justice (Caney). The representation of future generations (Tremmel—intergenerational justice, an intergenerational ombudsman) and the legal representation of nature are developments that democratic theory has struggled to resolve. The North–South asymmetry of representation, the cosmopolitan–republican tension, and Hirschl's critique of juristocracy (the democratic limit of transferring political decisions to the judiciary) constitute the chapter's further axes.

The chapter renders the structural fragility of democratic legitimacy concrete through contemporary dynamics of erosion. Levitsky and Way's (2010) framework of "competitive authoritarian regimes" and Ginsburg and Huq's (2018) analysis of "constitutional retrogression" demonstrate that democracies are dissolved from within not by the classic military coup but through the gradual erosion of judicial independence, a free press, and civil society (Hungary, Poland, Turkey, Brazil, the Philippines). Brexit (2016), the election of Trump, and the U.S. withdrawals from the Paris Climate Agreement, UNESCO, the UN Human Rights Council, and the WHO (2017 and 2025) reveal both the limited institutional capacity of the global governance architecture to respond to democratic erosion and the way in which contradictory institutional consolidation demands continual negotiation. The procedural solution to legitimacy is grounded in Habermas's (1996) discourse ethics: the principle of universalization (U—the legitimacy of a norm depends on its being acceptable to all those affected by it in free deliberation), the discourse principle (D), and the "ideal speech situation" (deliberation purged of power asymmetries); the formation of a global public sphere through transnational media, civil society (Fridays for Future), and academic networks is the contemporary renewal of this framework. Yet the critique advanced by Fraser and Calhoun emphasizes that the thesis of a "transnational public sphere" fails to account for its own Eurocentrism and for deep asymmetries of power and resources—it remains contestable to what extent genuine discursive equality can be realized under such asymmetries. The Nanz–Steffek framework of deliberative democracy (access to information, public deliberation, the model of the Aarhus Convention) offers concrete institutional instruments for closing the deficit. The chapter's conclusion is that global governance has neither attained a fully democratic structure nor eliminated the problem of legitimacy; multiple sources of legitimacy (state consent, institutional effectiveness, the participation of affected communities, expert knowledge, civil society, and justification) operate together in tension—this is the multilayered legitimacy structure of the hybrid order.

The chapter also applies the technical instruments of legitimacy analysis: Kingsbury, Krisch, and Stewart's (2005) Global Administrative Law (GAL) partially closes the deficit through procedural safeguards (transparency, justification, participation, review), but, as Krisch (2010) cautions, administrative legitimacy cannot substitute for democratic legitimacy; Buchanan and Keohane's (2006) complex legitimacy, by applying its three criteria (minimal moral acceptability, comparative benefit, and institutional integrity) to the WTO (its integrity eroded by the 2019 Appellate Body crisis), the UN Security Council (its paralysis over Ukraine in 2022, the P5 veto), and the EU (which satisfies the three criteria most fully), shows that each institution exhibits a distinct "hybrid legitimacy profile"; and Franck's (1990) framework of fair process completes the analysis. The structural fragility of legitimacy is empirically confirmed by Levitsky and Way's (2010) "competitive authoritarian regimes," Ginsburg and Huq's (2018) constitutional retrogression, and the waves of U.S. withdrawal from international institutions (Paris, UNESCO, the UN Human Rights Council, the WHO; the renewed withdrawal from Paris and

the WHO in the second term in 2025)—contradictory institutional consolidation demands continual negotiation and reinforcement.

8.3 Fragmentation and Constitutional Pluralism

The chapter treats fragmentation and constitutional pluralism within a theoretical comparison. The fragmentation approach observes that international law, by disaggregating into specialized regimes (trade, environment, human rights, investment, the sea, space, cyber), develops each regime independently according to its own normative logic, thereby threatening the integrity of the system. This was registered at the formal institutional level for the first time in the ILC's 2006 Fragmentation Report, chaired by Koskenniemi (2005); the report conceives fragmentation along five axes (the rise of specialized regimes, lex specialis, lex posterior, harmonious interpretation, and the debate over self-contained regimes) not as a pathology but as a "structural-functional reality"—a beneficial diversity—and proposes the systemic integration of VCLT Article 31(3)(c) as a remedial instrument; yet Koskenniemi himself notes that this principle remains contingent upon the normative priorities of the interpreting institution and may reproduce fragmentation rather than resolve it. Fragmentation becomes visible at the concrete judicial level in the trade–environment tension (Shrimp–Turtle) and in normative conflicts (Petersmann (2009)—trade versus human rights); Alter and Meunier's "regime complexity" (the way overlapping regimes generate an environment of strategic forum competition), Helfer's (2002) "regime shifting" and "treaty exit" (states relocating an issue to a more favourable forum), and Pauwelyn's (2003) analysis of norm conflict render fragmentation a domain as strategic as it is normative; Cass, for his part, by showing that the WTO has acquired a "sub-constitutional" structure internally, reveals that fragmentation is interwoven with sectoral constitutionalization.

The constitutional pluralism approach reads fragmentation not as a collapse but as the coexistence of plural constitutional orders that operate together through mutual recognition and dialogue without a definitive hierarchy. The chapter constructs the triadic framework of constitutionalism–fragmentation–pluralism (Trachtman: the future will evolve along the axis of this tension; MacDonald-Johnston, Halmai): the tension among the three perspectives is not a problem to be resolved but a constitutive feature of the contemporary order. Fischer-Lescano (2004) and Teubner's (2012) framework of "regime collisions" explains fragmentation through the deepening of societal constitutionalism (the autonomous constitutional processes of functional subsystems); Walker's (2002) constitutional pluralism and Maduro's (2003) "contrapunctual law" (the procedural framework of the plural-constitutional order—not a top-down hierarchy but deliberative dialogue) develop this line; Halliday and Shaffer's empirical-comparative vein on transnational legal orders, and Pauwelyn's (2003) "regime interaction," show that regimes, even as they operate formally separately, are bound to one another through principles of interpretation and rules of procedure, and that full disaggregation is thereby forestalled. Cançado Trindade's (2010) jus gentium approach grounded in universal values stands against the danger of normative relativism inherent in fragmentation, while Choudhry's "migration of constitutional ideas" offers a comparative contribution to the view that constitutionalization operates not top-down but bidirectionally and horizontally. The hybrid thesis is reducible to none of the three: it neither endorses the claim of purely constitutionalist integrity, nor disregards fragmentation, nor absolutizes pluralism.

8.4 The Legal Pluralism Thesis

The chapter assesses legal pluralism as the fifth theoretical vein; this vein carries to the contemporary global level the anthropological-sociological origins treated in depth in the second chapter (Griffiths (1986), Merry (1988), Santos (2002)). Berman's (2012) global legal pluralism (the management of overlapping jurisdictions through hybrid procedural mechanisms) provides the modern synthesis; Tamanaha's (2008) typology of pluralism provides the analytical typology; Merry's socio-legal pluralism provides the renewal of the anthropological vein; Griffiths's distinction between strong and weak legal pluralism (between a "weak" pluralism that regards state law as the sole centre and a "strong" pluralism that recognizes genuine normative plurality) provides the analytical category; and Twining's (2009) global jurisprudence enables the transcendence of Western-centrism. The chapter's assessment is that legal pluralism empirically captures the distributed, multilayered reality of authority but does not sufficiently account for a shared normative core or for the hierarchical force of peremptory norms; the hybrid thesis, while embracing the descriptive power of pluralism, balances it against the vertical core of the normative axis.

The chapter deepens, in particular, Berman's (2012) framework of "managed pluralism": overlapping jurisdictions are not a pathology to be resolved but an enduring condition to be managed, and this management operates through eight procedural-coordinative mechanisms—dialogic mechanisms (the exchange of jurisprudence among courts), the margin of appreciation doctrine, limited autonomy regimes, sub-contracting regimes, mutual recognition regimes, negotiated autonomy, instructive consensus, and constitutional dialogue. These eight mechanisms show

that plurality produces not disorder but a regularity of its own, and they demonstrate by what instruments the hybrid order's structure of "plural authority without definitive hierarchy" can be operated in practice; by revealing that, even in the absence of an ultimate rule of supremacy, the relationship among levels can be transformed not into conflict but into a manageable tension, they make a direct contribution to the hybrid thesis's conception of "managed plurality."

8.5 TWAIL and Critical Perspectives

The chapter reaches its culmination with TWAIL (Third World Approaches to International Law), treated not as a rejection arriving from outside the analysis but as a constitutive component of the hybrid framework. TWAIL's historical roots extend to the 1955 Bandung Conference (the principles of sovereign equality, non-interference in internal affairs, and struggle against colonialism affirmed by twenty-nine Asian and African states) and to the New International Economic Order (NIEO) movement of the 1960s and 1970s (the 1974 UN General Assembly Declaration; the claim that the global economic order reproduces structural inequalities); academically, it was institutionalized as an autonomous tradition at the close of the 1990s with Anghie (2004), Chimni (2006), Mickelson, Okafor, Mutua (2001), Gathii (2011), and Rajagopal. TWAIL's most fundamental critique is Anghie's analysis of "permanent sovereignty": the basic conceptual instruments of international law—sovereignty, state recognition, the responsibility to protect—were constructed during the colonial era upon the distinction between the "civilized" and the "uncivilized" and legitimated a Eurocentric agenda through the discourse of universal law; international law is therefore not a neutral framework of rules but the product of particular relations of power and a structure that reproduces them. The formal sovereignty obtained after colonialism has functioned not as a genuine transformation but as a cloak for neo-colonial relations; the empirical evidence for this is the structural adjustment programs of the IMF and the World Bank, investor–state dispute settlement mechanisms, the selective application of the Responsibility to Protect, and the predominant orientation of international criminal law toward Africa. Chimni deepens the relation between global capitalism and international law; Mutua, Gathii, and Pahuja deepen the critical reading of human rights discourse, of development, and of institutions. Mutua's "savage-victim-saviour" framework analyzes the implicit logic of human rights discourse through three archetypes: the savage (Global South states and traditional cultures positioned as potential violators), the victim (the "vulnerable other" rendered an object of protection), and the saviour (Western states, institutions, and INGOs to whom universal authority to intervene is attributed); for Mutua, this triad is a reproduction of classic colonial discourse, and its empirical evidence appears in four domains—the predominant orientation of the ICC toward Africa, the selective application of humanitarian intervention (the comparison of Libya, Syria, and Yemen), the North–South asymmetry of human rights monitoring mechanisms, and the structural conditioning of development and humanitarian aid.

TWAIL is not mere critique; it also offers constructive contributions. The chapter illustrates these through three veins: the formation of alternative channels of legitimacy by Slaughter's (2004) intergovernmental networks, the norm-shaping of Haas's (1992) epistemic communities (the IPCC being the most concrete example), and the input of Global South social movements into norm production within Rajagopal's perspective of "international law from below"—these provide an empirical ground for the multi-actor governance dimension of the hybrid order. The chapter also integrates the other critical perspectives: the deconstructive line of Kennedy (2006) and Koskenniemi (2005) (that beneath the technical appearance of legal discourse lies political struggle), the realist legacy (Krasner (1999), Mearsheimer, Goldsmith-Posner (2005), Guzman (2008), Posner—a contribution to the thesis's dimension of "limits"), and the constructivist line (Wendt (1999); Risse-Sikkink on the socialization of human rights; Finnemore-Sikkink (1998) on the norm life cycle; Zürn's (2018) "politics of legitimacy"; Acharya's (2014) multiplex world; Chayes-Chayes (1995) "managerial compliance"—whereby states comply not through coercion but through legitimacy, capacity, and interpretation; Auby's global administrative law). The critical caution of the constructivist line is that norm regression and counter-normative mobilization are likewise possible—that internalization is reversible; this enables the simultaneous apprehension of both the normative force and the fragility of the hybrid order. The hybrid thesis internalizes TWAIL's critique of power asymmetry and hegemony without denying the reality of normative gains; this is the theoretical foundation of the framework's commitment to making the Global South perspective a constitutive component.

The chapter elaborates the specific arguments of the critical frameworks. Mutua's (2001) "savages-victims-saviors" triad shows that human rights discourse legitimates intervention by perpetually positioning African states as the "executioner," the aggrieved as the "victim," and Western actors as the "saviour." Pahuja's *Decolonising International Law* deepens TWAIL along three dimensions: the Eurocentric architecture of the claim to universality, the functioning of the "development" discourse as an instrument that re-disciplines the Third World, and the reproduction of inequalities by the Bretton Woods institutions. Koskenniemi's (2005) *The Gentle Civilizer*

of Nations, by documenting that the evolution of the modern discipline of international law—from the late nineteenth century to the aftermath of the Second World War—was interwoven with the "civilizing mission" of European civilization, furnishes TWAIL's internal (Western) historical evidence. Kennedy's (2006) analysis of the "dark sides" emphasizes that the claim of technical expertise and impartiality on the part of well-intentioned legal-humanitarian interventions ("expert governance") renders political choices invisible and depoliticizes the decision-making process—a caution addressed to the technocratic governance vein of the hybrid order. Marks's (2000) framework of structural injustice, in turn, shows that the regimes of international trade, investment, intellectual property, and environment systematically reproduce North–South, capital–labour, and polluter–victim asymmetries, and that the human rights regime frames poverty as "isolated losses" rather than "causes" and climate change as "here-and-now harms" rather than "historical responsibility." This critical socio-legal vein exposes a fundamental limit of the hybrid order—the inadequacy of normative gains in resolving material inequalities—and renders it imperative for the thesis to take critical account of the risk that its claim of "acquiring constitutional qualities" may reproduce structural inequalities.

The chapter elaborates the internal diversity of the TWAIL tradition through the specific framework of each theorist. Chimni's (2006) Marxist theory of international law is the tradition's most systematic synthesis: the contemporary international legal order is the legal expression of the construction of a "global state" that secures the maintenance of the liberal capitalist order on a global scale; viewed from this reading, the claim of constitutionalization is an ideological instrument that conceals existing inequalities beneath a narrative of normative progress. Mickelson's analysis shows that the discourse of "universality," by reducing different historical experiences and normative traditions to a single Eurocentric framework, exerts an "epistemic violence." Okafor's second-generation TWAIL reveals that critique is not confined to the historical-structural dimension but also encompasses the contemporary justice concerns of Third World societies. Gathii's (2011) critique of international economic law documents that investment and trade law operate through institutional arrangements that legitimate asymmetric power relations and that they constrain the policy space of Global South states at a structural level; Eslava's ethnography of Bogotá, in turn, shows empirically how international law is materially concretized in local everyday life and reproduces inequalities. The chapter reads TWAIL's internal plurality not as a weakness but as the richness of critical thought: the difference in tone and scale of intervention between Chimni's radical-foundational critique and the more institutionally oriented approaches of Okafor and Rajagopal is a sign of the tradition's vitality. TWAIL's limits are also honestly acknowledged: the as-yet incompletely developed programmatic framework concerning how constructive proposals are to be realized at the institutional level is the tradition's future agenda. TWAIL's deepest challenge to the hybrid order thesis is the question of "in whose favour hybridity operates"—formal inclusiveness (a state's having a seat at the table) does not entail equality of bargaining power and agenda-setting capacity; the hybrid thesis keeps this question open and, for precisely this reason, positions the axis of power asymmetry as the third constitutive axis.

The chapter closes with the future of the hybrid order and with synthesis (7.7.5): sovereignty is transformed by being qualified and pluralized, legitimacy remains multi-tiered and incomplete, pluralism and the constitutional tendency operate together, and the equal participation of the Global South is positioned as the condition of the order's legitimacy.

9. CONCLUSİON: AN INTEGRATİVE SYNTHESİS OF THE HYBRİD ORDER, ITS IMPLİCATİONS, AND ITS FUTURE

The concluding chapter synthesizes the findings emerging from the work as a whole along three axes, reduces the thesis to technically falsifiable propositions, subjects it to empirical testing across four contemporary laboratories, sets out its multi-domain implications, and delineates the horizon of reform.

9.1 An Integrative Synthesis of the Three Axes

The synthesis of the normative axis demonstrates that jus cogens (the eight-norm list of the ILC 2022), erga omnes obligations, and the supremacy of Article 103 of the UN Charter together constitute a genuine core of constitutional hierarchy, yet that the enforcement of this core remains structurally weak and selective. *The synthesis of the institutional axis* reveals that courts and organizations have erected a constitutional architecture endowed with three functions (dispute settlement, norm interpretation, norm development), but that this authority is subject to backlash and to the prerogative of the great powers (the veto). *The synthesis of the governance axis* documents that authority has diffused into a multi-actor plurality, while the democratic deficit and the want of accountability—above all the North-South asymmetry—persist. The integrative synthesis of the three axes constitutes the very core of the thesis: each axis simultaneously exhibits both genuine constitutional achievement and structural limitation; none can be reduced to pure constitutionalization or to pure fragmentation. This represents a re-articulation, within the hybrid model, of the three strands of Klabbers-Peters-Ulfstein (2009) (the

normative, institutional, and judicial) and of the threefold functional framework of Dunoff-Trachtman (enabling, constraining, and supplemental-legitimating); the interactional theory of law advanced by Brunnée-Toope (2010) (according to which law arises in the interplay of shared understandings, practice, and legitimacy) furnishes the epistemological foundation of the synthesis. The contemporary operative force of the three axes may be traced in a concrete jurisprudential trajectory specific to each: *along the normative axis*, the chain of consolidation of erga omnes and peremptory norms (Barcelona Traction 1970 → Belgium v. Senegal 2012 → The Gambia v. Myanmar 2022 → South Africa v. Israel 2024); *along the institutional axis*, the chain of development of organizational-judicial authority (Reparation for Injuries 1949 → Kadi I-II 2008-2013 → the ICC arrest warrant for Putin 2023); and *along the judicial axis*, the chain of accumulation of judicial constitutionalization (Tadić 1995 → Loizidou 1995 → Cassis de Dijon 1979 → BVerfG Klimaschutz 2021 → the ITLOS Climate Advisory Opinion 2024). These three parallel trajectories render concrete the proposition that the constitutional-tendency dimension of the hybrid order is not an abstract assertion but an observable jurisprudential reality.

9.2 Comparative Empirical Corroboration: Four Laboratories of the Hybrid Order

The thesis is tested simultaneously across four widely divergent policy domains—environment, health, the digital sphere, and peace and security—and in all four the same structural pattern (the simultaneous presence of constitutional elements alongside pluralist-asymmetric elements) is observed. *The climate laboratory:* the Paris Agreement 2015, the ITLOS Climate Advisory Opinion (21 May 2024), and the ECtHR's KlimaSeniorinnen judgment (9 April 2024) constitute the constitutional elements; the system of nationally determined contributions (NDCs), the power politics of national climate diplomacy, and the North-South financing asymmetry constitute the pluralist elements. *The pandemic laboratory:* the 2024 amendments to the International Health Regulations, the design of the Pandemic Treaty (CA+), and the WHO's new emergency authority are constitutional; vaccine nationalism, the inadequacy of COVAX, and the North-South tension within the PABS system are the pluralist elements. *The digital laboratory:* the GDPR, the EU Artificial Intelligence Act 2024 and the "Brussels Effect," the multi-stakeholder architecture of ICANN, and the OECD-G20 Two-Pillar Approach (2021) are constitutional; China's Data Security Law and "alternative digital sovereignty," the fragmentation of the internet, and the supply-chain resistance of the United States are the pluralist elements. *The Ukraine laboratory:* UN General Assembly Resolution ES-11/1, the ICJ's provisional-measures order (16 March 2022), the ICC's arrest warrant for Putin (17 March 2023), and the debates surrounding a special tribunal for the crime of aggression constitute the constitutional line; the paralysis of the UN Security Council, the Russian veto and non-implementation, Russia's non-party status vis-à-vis the ICC, and the resistance of the BRICS+ to sanctions constitute the pluralist elements. The Ukraine case is paradigmatic: whereas a manifest violation of the prohibition on the use of force and the paralysis induced by the veto disclose the legitimate kernel of the realist critique, the condemnation by the General Assembly, the ICJ's measures, the ICC's warrant, and the unprecedented sanctions reveal the capacity of law to condemn, to impose costs upon, and to delegitimize a violation—law is unable to prevent the breach, yet neither does it leave that breach unpunished or costless. The methodological significance of the four cases lies in their conjoint demonstration of both the falsifiability and the explanatory necessity of the thesis: no rival theory can account for all four cases—pure constitutionalism cannot explain the power asymmetries, pure realism cannot explain the binding frameworks and judicial achievements; only the hybrid model situates achievement and limitation within a single frame across all four domains.

9.3 Theoretical Contributions, Critical Foundations, and the "Third Way" Position

The theoretical contributions cluster along five axes (contributions to the literatures of global constitutionalism, pluralism-fragmentation, global governance, international courts, and the critical-realist objections); their methodological anchor is Lakatos's (1970) theory of research programmes. According to Lakatos, a progressive programme preserves a hard core while adapting its auxiliary hypotheses in light of new facts and anticipating unforeseen connections; the hybrid thesis possesses these features—its hard core (the durable coexistence of constitutional tendencies with fragmentation) coherently apprehends a wide spectrum of phenomena ranging from climate to trade and from human rights to security, and it generates testable predictions corroborated across the four laboratories. The thesis synthesizes, within a single analytical programme, traditions that had hitherto developed in isolation (constitutionalism, pluralism, fragmentation, governance, and multi-level law) and produces novel conceptual instruments such as the "pluralist legal order exhibiting constitutional tendencies," the "mutually reinforcing normative-institutional cycle," and the "dynamic process of constitutionalization."

The contributions take concrete form under four headings. *Contribution to the literature of global constitutionalism:* to document the reality of constitutional tendencies while demonstrating that these cannot be reduced to a global replica of national constitutional architecture (Amar's constitutional biography—the gradual and contradictory rather than linear maturation of constitutional orders; Wiener's "invisible constitution of politics"; Halmai). The theoretical heritage of constitutional pluralism is deepened along eight lines: Walker (constitutional pluralism), Krisch (2010) (*Beyond Constitutionalism*), Teubner (constitutional fragments), Maduro

(contrapunctual law), Kumm (the cosmopolitan turn in constitutionalism), Tamanaha (the archaeology of pluralism), Paulus (plural constitutionality), and Halberstam's "constitutional heterarchy" (the proposition that plural orders stand not in a flat hierarchy but in a complex mutual recognition). The contribution to the critical objections consists in the internalization of postcolonial theory (Said, Fanon, Spivak, Mignolo-Quijano's "coloniality of power," Bhabha's concept of "hybridity," Mbembe's necropolitics, Santos (2002) "epistemologies of the South") and of feminist international legal theory (Charlesworth-Chinkin-Wright, MacKinnon, Crenshaw's intersectionality, Merry (1988) vernacularization); Anghie's (2004) analysis of imperialism, for its part, demonstrates that the universalist claim of the discourse of constitutionalization cannot be assessed independently of its historical colonial burden. Fukuyama's cycles of political order and decay underscore that the hybrid transformation is not a linear but a cyclical and reversible, institutional-design-sensitive, and open-ended process. The critical-theory stratum is elaborated through two traditions that lend philosophical depth to the thesis's axis of power asymmetry. The six founding strands of postcolonial theory are the following: Said's *Orientalism* (1978) demonstrates that the West's production of knowledge concerning "the East" was at the same time a constitutive operation through which the West constructed itself; Fanon's *The Wretched of the Earth* (1961) analyzes the psychological and social dimensions of the violence of colonialism and decolonization; Spivak's "Can the Subaltern Speak?" (1988) problematizes the claim of Western theory to "represent" oppressed subjects; Mignolo's local histories/global designs (2000) and Quijano's concept of the "coloniality of power" (2000) reveal that, notwithstanding the termination of formal colonialism, the colonially grounded logic of power persists structurally within the global order; Bhabha's *The Location of Culture* (1994) theorizes the "hybridity" that characterizes the postcolonial encounter—a concept that is itself a source nourishing the very name of the hybrid-order thesis. This backbone is carried onto the contemporary plane through the frameworks of Mbembe's *Necropolitics* (the capacity not to administer life but to distribute death) and Santos's (2002) "epistemologies of the South" (an alternative to the Western epistemic order); while Pahuja (*Decolonising International Law*) and Koskenniemi (2005) (*The Gentle Civilizer of Nations*) document, through an internal historical critique, the entanglement of the modern discipline of international law with the European "civilizing mission." Feminist international legal theory, in turn, is developed along seven strands: the founding works of Charlesworth-Chinkin-Wright (*The Boundaries of International Law*) demonstrate the "deeply gendered character" of international law—the masculine organization of the public-private distinction and the dearth of female representation; Otto examines the structural exclusion of sexual minorities (LGBTI+), Knop a feminist reading of the right to self-determination, and Buss the judicial treatment of sexual violence in conflict (ICTY Furundžija/Foča, ICTR Akayesu); MacKinnon's radical "dominance" feminism, Merry's (1988) concept of "vernacularization" (the translation of universal norms into the local idiom of justice), and Crenshaw's concept of "intersectionality" (patterns of inequality in which the axes of gender, race, and class are mutually imbricated) complete this strand; intersectionality furnishes the analytical architecture for understanding through which structural patterns the "protection gaps" within global constitutionalization are reproduced. These two traditions, by laying bare the seemingly neutral yet in fact power-reflecting character of the thesis's descriptive categories, endow description with a critical vigilance.

The hybrid-order thesis assumes a *third-way* position between constitutionalism and realism/fragmentation: it constructs a dialogical synthesis with TWAIL and critical perspectives (internalizing the critique of power asymmetry without disavowing the normative achievements), it enters into structural engagement with the realist critique (conceding that power tests law while also demonstrating law's genuine normative effect), and it articulates with the norm dynamics of Risse-Checkel-Acharya (norm localization, a multiplex world). The model's structuralist-interpretivist epistemological stance (according to which transformations are produced by both structural conditions and actor practices; supported by the philosophy of Besson-Tasioulas that the validity of norms possesses independent foundations irreducible to state will) secures both its empirical testability and its capacity to generate normatively meaningful inference. The thesis closes with five reinforcing arguments: descriptive accuracy, capacity for theoretical integration, empirical testability, critical self-awareness, and a sense of normative direction.

9.4 The Technical-Operational Formulation of the Thesis

The chapter reduces the thesis to three propositions. *(i) Definition:* A field of law is hybrid in character when it simultaneously and durably exhibits constitutional-axis features (normative hierarchy, binding judicial authority, supranational institutional competence) and pluralist-axis features (regime fragmentation, overlapping authorities, power-sensitive implementation), and when neither wholly suppresses the other. *(ii) The empirical proposition:* This coexistence is the pattern observed across the dominant fields of contemporary law; the fields differ not in kind but solely in the relative weight of the two axes. *(iii) The comparative and falsifiability proposition:* This pattern is explained more comprehensively not by pure constitutionalism, fragmentation, or realism, but by the hybrid model that situates the two axes simultaneously; the thesis is falsified in the event that one axis wholly suppresses the other. The formulation is tied to observable indicators (on the constitutional dimension: jus

cogens/erga omnes, Article 103, stable jurisprudence, supranational competence; on the pluralist dimension: regime fragmentation, the proliferation of soft law, overlapping authorities, power asymmetry) and to an evidentiary matrix applied to the four case domains. The falsifiability of the thesis takes concrete form along *five measurable axes of tension*—normative, institutional, judicial, participatory, and legitimacy tensions: should the constitutional elements overwhelm the pluralist elements along all of these axes, the thesis yields to constitutionalism, and in the converse case to the fragmentation thesis; the simultaneous and durable observation of both constitutes the empirical corroboration of the thesis. The metaphor of "the twilight of constitutionality" names precisely this falsifiable intermediate position: neither full daylight (a completed constitution) nor full darkness (a mere order of power).

9.5 Implications for International Law

The implications are multi-domain. As regards the logic of norm production, state consent is no longer the sole legitimate source of bindingness; the practitioner must evaluate a norm not merely by a formal instrument of consent, but by its position within institutional interpretive practices and within the international community's shared system of values (the legalization framework of Goldstein et al.). As regards institutional interpretive practice, interpretation is a constitutive process; this may be read in a comprehensive jurisprudential chain: PCIJ Lotus (1927, the Westphalian positivist substratum) → ICJ Reservations (1951) → Barcelona Traction (1970, erga omnes) → Nicaragua (1986) → ECtHR Loizidou (1995) → Pinochet (1998-99, the limitation of head-of-state immunity by universal jurisdiction) → ICJ Palestinian Wall (2004) → ECtHR Bosphorus (2005, equivalent protection) → CJEU Kadi (2008, the judicial configuration of constitutional pluralism) → ICC Al-Bashir (2009-10, the judicial review of a sitting head of state) → ICJ Kosovo (2010) → ICC Al-Mahdi (2016, the crime against cultural heritage); the EU's "normative sedimentation" along the Van Gend en Loos-Costa v. ENEL line (Weiler) is the paradigm of this process. The implication for sovereignty is a synthesis of Chayes-Chayes's (1995) "new sovereignty" (the redefinition of sovereignty not as isolation but as the capacity for effective participation in international norms), Krasner's (1999) organized hypocrisy, and MacCormick's (1999) plural constitutional architecture. The implication for the national-international interaction is analyzed through Halliday-Shaffer's programme of transnational legal orders (in which norms are transmitted not unidirectionally but through a cyclical "normative translation"); the integration of international jurisprudence into domestic law by the constitutional courts of Germany and South Africa is exemplary. The implications further encompass the contemporary architecture of judicial constitutionalization, the requirement of taking account of TWAIL's "boundaries" thesis, the five-tiered architecture of legal pluralism, civil society and non-state actors, the architecture of investment arbitration, treaty negotiations, transnational criminal investigations, international law from a Turkish perspective, and the pedagogical transformation of international legal education (so as to extend beyond the classical state-centric narrative to encompass theoretical plurality and critical perspectives).

9.6 The Particulars of the Multi-Domain Implications: Turkey, Investment Arbitration, and Jurisprudential Strands

The CONCLUSION carries the thesis into numerous concrete domains. The Turkish perspective constitutes a micro-laboratory of the hybrid order at the level of a middle power: the country is articulated with multiple constitutional orders along five axes—institutional articulation (founding member of the UN, the ECHR 1954, the WTO/OECD, NATO; albeit standing outside the Rome Statute), the laboratory of EU-member-state interaction (negotiations ongoing since 2005, the 1995 Customs Union), operability in judicial practice (the supremacy accorded to international treaties by Article 90/5 of the 1982 Constitution, the individual application to the Constitutional Court since 2012, references to ECtHR jurisprudence), the Turkey-ECtHR axis of tension (Demirtaş No. 2 2018-2020, Yalçınkaya 2023, the Article 46 problematic of compliance), and a flexible positioning within a multipolar order (the BRICS+ talks of 2024, the dialogue-partnership in the SCO, the Organization of Turkic States, the Astana trio). This dual character—articulation with constitutional tendencies coupled with the experience of the limits of that articulation—demonstrates that Turkey occupies a position negotiated between neither full integration nor full rupture, and that the hybrid order affords scope for manoeuvre to mid-scale actors as well.

Investment arbitration is the paradigmatic instance of "polycentric regime complexity": more than 3,000 bilateral investment treaties and more than 2,700 ISDS disputes; the "regulatory chill" effect (Philip Morris v. Australia, Vattenfall v. Germany, Eco Oro v. Colombia) circumscribes national regulatory autonomy; the UNCITRAL Working Group III reform process (the proposal for a Permanent Multilateral Investment Court, an appellate mechanism, the 2023 Code of Conduct for Arbitrators) exemplifies the strand of constitutional consolidation; the new-generation treaties (CETA, USMCA, EU-Vietnam), by expressly enshrining the "right to regulate,"

exemplify the balance between investment protection and the public interest; while the Anghie (2004)/TWAIL framework demonstrates the asymmetry of the system to the detriment of the Global South.

The CONCLUSION further deepens the thesis along three jurisprudential strands. The Chinkin-Charlesworth (2000) gender framework treats the masculine character of international law (the masculine organization of the public-private distinction, the deficit of representation) and the institutionalization of the Women, Peace and Security (WPS) agenda (UNSC Resolution 1325 and the nine subsequent resolutions, UN Women); the judicial recognition of sexual violence in conflict (ICTY Furundžija/Kunarac, ICTR Akayesu—the recognition of sexual violence as an act of genocide, Articles 7-8 of the Rome Statute) and Crenshaw's intersectionality complete this strand. Cançado Trindade's (2010) IACtHR perspective encompasses the emergence of the individual as a subject of international law (jus standi, the right of direct access), the "control of conventionality," the jurisprudence on Indigenous peoples (Awas Tingni, Saramaka, Sarayaku), the environmental-climate advisory opinion (OC-23/17), and the jurisprudence of "moral reparation"; this demonstrates the distinctive contribution of the Latin American strand alongside the Eurocentric line of judicial constitutionalization. Simmons's (2009) empirical compliance thesis, for its part, reveals that human rights treaties produce compliance not "merely on paper" but by mobilizing domestic political processes (a typology of forms of compliance: formal, performance-based, reporting, and judicial compliance; articulated with the spiral model of Risse-Ropp-Sikkink (1999)), and that this may be traced in the dynamics of Turkey's Constitutional Court individual application and ECtHR compliance—the theoretical basis of the national-international articulation.

9.7 Perspectives of Institutional and Political Reform and the Three Possible Trajectories of the Order

The reform agenda is not a utopian call for a world state but a concrete and circumscribed programme. The reform of the UN Security Council is treated through four options: the enlargement of P5 membership (India, Brazil, Japan, Germany, an African representative), the limitation of the veto power (a commitment to refrain from exercising the veto in cases of grave human rights violations, paralleling France's 2013 ACT initiative), the strengthening of the "Uniting for Peace" procedure (A/RES/377 1950), and the expansion of the powers of the General Assembly through the Veto Initiative Mechanism (A/RES/76/262, 2022). The chapter underscores that the veto obstructs not the validity of a norm but solely its implementation—reform must therefore target the implementation deficit while preserving the normative core. The reform of the WTO requires that the crisis of the Appellate Body (the dysfunctionality that set in on 11 December 2019) be overcome through three structural alternatives: the resolution of the United States' opposition (concerns over judicial activism, the discipline of the 90-day period, the limit on obiter dicta), the rendering permanent of the MPIA (Multi-Party Interim Appeal Arbitration Arrangement, 2020) model, or a complete redesign of the system; this crisis demonstrates that institutional constitutionalization is not irreversible and that capacities once acquired may erode through a want of political will. The reform of investment arbitration (UNCITRAL WG III—the MIC, an appellate mechanism), the potential for the renewal of Article 103 of the UN Charter with environmental and humanitarian norms, and the democratization of global governance (Held's (1995) five proposals: the bindingness of the UNGA, UNSC reform, a UN Parliamentary Assembly, a Global Tax Authority, and a Global Environmental Authority) complete this agenda.

The chapter analyzes the future of the order through three possible trajectories. The first trajectory is the "constitutional consolidation" (optimistic) scenario: UNSC reform is realized, the WTO Appellate Body is restored to operability, the climate regime acquires stringent compliance mechanisms, and the Pandemic Treaty and a Special Tribunal for the Crime of Aggression are institutionalized—its probability is low owing to the constraints of multipolar dynamics. The second trajectory is the "entrenched continuation" (realist) scenario: structural UNSC reform is not realized, but "Uniting for Peace" is strengthened, the WTO is sustained through the MPIA alternative, the climate regime preserves its "flexible, bottom-up" character, and multipolarity is consolidated with the BRICS+—its probability is the highest owing to the equilibration of the multiple channels. The third trajectory is the fragmentation/regression scenario: the erosion of institutional achievements and the weakening of the normative framework by great-power rivalry. The chapter's critical conclusion is that the hybrid order can evolve toward a genuine global constitutionalization only by reckoning with the colonial legacy and by securing the equal participation of the Global South—through the multicultural enrichment of the norms deemed "universal," the equal participation of Southern civil-society actors in norm production, and the reconstitution of development and climate justice on the basis of historical responsibility. The perspective of reform thus does not content itself with mere institutional repair but requires a conceptual and historical reckoning as well.

9.8 Limitations and Future Research

The chapter is self-critical and honestly marks the limits of the analysis. The first limitation is the depth of the empirical anchor: although the thesis explains a broad spectrum of cases through a single logic, each case is an

analytical illustration rather than a comprehensive field study; the seven contemporary cases have been selected as demanding tests that probe the theory, yet they do not constitute an exhaustive universe. The second limitation is the Eurocentric bias in the selection of cases and data: because the most advanced laboratories of constitutionalization (the EU, the ECtHR) are concentrated in the North Atlantic, the analysis's coverage of the integration experiences of the Asia-Pacific, Africa, and Latin America in equal depth remains an ongoing task. The third limitation is the theoretical-empirical balance: although the thesis offers falsifiable propositions, the quantitative measurement of the five axes of tension has not yet been tied to a systematic data programme. The fourth open question concerns the conceptual ruptures produced by the digital transformation: as Bratton's (2015) analysis of "the stack" demonstrates, the classical land-sea-air-based model of territorial sovereignty is losing its function in the age of digital infrastructure, and domains such as the governance of artificial intelligence are emergent fronts that demand the continual updating of the model.

These limitations give rise to a concrete *future research agenda*. The first is the application of the three-axis model, as an instrument of analysis, to other domains: any field of international law—climate, health, the digital sphere, trade, space, the sea—may be analyzed through these three axes and its hybrid character tested; this endows the thesis with the character of both a diagnosis and a method. The second consists of *three methodological instruments* that would render the five axes of tension measurable: quantitative data on norm compliance (rates of implementation of court judgments), systematic analyses of jurisprudence, and comparative assessments of institutional performance. The third is the systematic analysis of the incremental effects of *democratic backsliding* (Levitsky-Way (2010) competitive authoritarianism, Ginsburg-Huq (2018) constitutional erosion) upon the architecture of global governance—the waves of withdrawal from institutions and the fact that "contradictory institutional consolidation" requires continual negotiation render this programme imperative. The fourth is *epistemic inclusivity*: the equal incorporation into the analysis of the literature of Global South scholars (Anghie (2004), Chimni (2006), Mutua (2001), Gathii (2011)) is the precondition for the multicultural testing of the criteria deemed "universal." This agenda positions the hybrid-order thesis not as a closed verdict but as a progressive research programme.

9.9 The Closing Thesis

The closing thesis rests upon a measured equilibrium between realism and possibility. The hybrid order does not tend toward a utopian conception of a world state; it openly acknowledges the structural character of power asymmetries, the difficulty of institutional reform, and the incompleteness of constitutionalization. Yet this realism does not turn into a fatalistic resignation: the observed reality of constitutional tendencies indicates that the hybrid order may evolve toward a more inclusive form. This evolution is neither inevitable nor impossible; it is a contingent possibility that will be shaped by academic analysis, institutional design, political struggle, and above all by the Global South's demand for equal participation. The analysis assumes a third analytical position over against the two poles of international legal thought—the pessimistic realism that emphasizes the impotence of law and the optimistic idealism that takes progress for granted: from realism it learns that power and inequality continually test law and that normative achievements are not secured; from possibility it learns that law, in spite of power, produces a genuine normative effect, imposes costs upon violations, and opens grounds for transformation. The book's final verdict is that contemporary international law is neither a completed constitution nor a mere heap of fragments, but an incomplete yet constitutive hybrid legal order, and that its future is shaped not in the inevitable triumph of constitutionalization nor in the immutable dominance of power politics, but in the constitutive hybridity of the perpetual tension between the two dynamics.

REFERENCES

1. Abbott, K. W., & Snidal, D. (2000). Hard and soft law in international governance. *International Organization, 54*(3), 421-456.
2. Acharya, A. (2004). How ideas spread: Whose norms matter? Norm localization and institutional change in Asian regionalism. *International Organization, 58*(2), 239-275.
3. Acharya, A. (2014). *The end of American world order*. Polity Press.
4. Adler, E., & Pouliot, V. (Eds.). (2011). *International practices*. Cambridge University Press.
5. Alter, K. J. (2014). *The new terrain of international law: Courts, politics, rights*. Princeton University Press.
6. Alvarez, J. E. (2005). *International organizations as law-makers*. Oxford University Press.
7. Anghie, A. (2004). *Imperialism, sovereignty and the making of international law*. Cambridge University Press.
8. Barnett, M., & Finnemore, M. (2004). *Rules for the world: International organizations in global politics*. Cornell University Press.
9. Bellamy, R. (2007). *Political constitutionalism: A republican defence of the constitutionality of democracy*. Cambridge University Press.

10. Benvenisti, E., & Downs, G. W. (2007). The empire's new clothes: Political economy and the fragmentation of international law. *Stanford Law Review, 60*(2), 595-631.
11. Berman, P. S. (2012). *Global legal pluralism: A jurisprudence of law beyond borders*. Cambridge University Press.
12. Bickerton, C. J. (2012). *European integration: From nation-states to member states*. Oxford University Press.
13. Bovens, M. (2007). Analysing and assessing accountability: A conceptual framework. *European Law Journal, 13*(4), 447-468.
14. Boyle, A., & Chinkin, C. (2007). *The making of international law*. Oxford University Press.
15. Bradford, A. (2020). *The Brussels effect: How the European Union rules the world*. Oxford University Press.
16. Bratton, B. H. (2015). *The stack: On software and sovereignty*. MIT Press.
17. Brunnée, J., & Toope, S. J. (2010). *Legitimacy and legality in international law: An interactional account*. Cambridge University Press.
18. Bryde, B.-O. (2001). International democratic constitutionalism. In R. St. J. Macdonald & D. M. Johnston (Eds.), *Towards world constitutionalism* (pp. 103-125). Martinus Nijhoff.
19. Buchanan, A., & Keohane, R. O. (2006). The legitimacy of global governance institutions. *Ethics & International Affairs, 20*(4), 405-437.
20. Büthe, T., & Mattli, W. (2011). *The new global rulers: The privatization of regulation in the world economy*. Princeton University Press.
21. Cançado Trindade, A. A. (2010). *International law for humankind: Towards a new jus gentium*. Martinus Nijhoff.
22. Celeste, E. (2022). *Digital constitutionalism: The role of internet bills of rights*. Routledge.
23. Charlesworth, H., & Chinkin, C. (2000). *The boundaries of international law: A feminist analysis*. Manchester University Press.
24. Chayes, A., & Chayes, A. H. (1995). *The new sovereignty: Compliance with international regulatory agreements.* Harvard University Press.
25. Chimni, B. S. (2006). Third World approaches to international law: A manifesto. *International Community Law Review, 8*(1), 3-27.
26. Cohen, J. L., & Arato, A. (1992). *Civil society and political theory*. MIT Press.
27. Cutler, A. C. (2003). *Private power and global authority: Transnational merchant law in the global political economy*. Cambridge University Press.
28. De Gregorio, G. (2022). *Digital constitutionalism in Europe: Reframing rights and powers in the algorithmic society*. Cambridge University Press.
29. Downs, G. W., Rocke, D. M., & Barsoom, P. N. (1996). Is the good news about compliance good news about cooperation? *International Organization, 50*(3), 379-406.
30. Dworkin, R. (1986). *Law's empire*. Harvard University Press.
31. Fassbender, B. (2009). *The United Nations Charter as the constitution of the international community*. Martinus Nijhoff.
32. Ferrajoli, L. (2007). *Principia iuris: Teoria del diritto e della democrazia*. Laterza.
33. Finnemore, M., & Sikkink, K. (1998). International norm dynamics and political change. *International Organization, 52*(4), 887-917.
34. Fischer-Lescano, A., & Teubner, G. (2004). Regime-collisions: The vain search for legal unity in the fragmentation of global law. *Michigan Journal of International Law, 25*(4), 999-1046.
35. Franck, T. M. (1990). *The power of legitimacy among nations*. Oxford University Press.
36. Gathii, J. T. (2011). TWAIL: A brief history of its origins, its decentralized network, and a tentative bibliography. *Trade, Law and Development, 3*(1), 26-64.
37. Ginsburg, T., & Huq, A. Z. (2018). *How to save a constitutional democracy*. University of Chicago Press.
38. Glendon, M. A. (2001). *A world made new: Eleanor Roosevelt and the Universal Declaration of Human Rights*. Random House.
39. Goldsmith, J. L., & Posner, E. A. (2005). *The limits of international law*. Oxford University Press.
40. Goodin, R. E. (2008). *Innovating democracy: Democratic theory and practice after the deliberative turn*. Oxford University Press.
41. Grant, R. W., & Keohane, R. O. (2005). Accountability and abuses of power in world politics. *American Political Science Review, 99*(1), 29-43.
42. Griffiths, J. (1986). What is legal pluralism? *Journal of Legal Pluralism and Unofficial Law, 18*(24), 1-55.
43. Grimm, D. (2010). The achievement of constitutionalism and its prospects in a changed world. In P. Dobner & M. Loughlin (Eds.), *The twilight of constitutionalism?* (pp. 3-22). Oxford University Press.
44. Grotius, H. (2005). *The rights of war and peace* (R. Tuck, Ed.). Liberty Fund. (Özgün eser 1625)
45. Guzman, A. T. (2008). *How international law works: A rational choice theory*. Oxford University Press.

46. Haas, P. M. (1992). Introduction: Epistemic communities and international policy coordination. *International Organization, 46*(1), 1-35.
47. Habermas, J. (1996). *Between facts and norms: Contributions to a discourse theory of law and democracy* (W. Rehg, Çev.). MIT Press.
48. Held, D. (1995). *Democracy and the global order: From the modern state to cosmopolitan governance*. Polity Press.
49. Held, D., & McGrew, A. (2002). *Globalization/anti-globalization*. Polity Press.
50. Helfer, L. R. (2002). Overlegalizing human rights: International relations theory and the Commonwealth Caribbean backlash against human rights regimes. *Columbia Law Review, 102*(7), 1832-1911.
51. Henkin, L. (1979). *How nations behave: Law and foreign policy* (2. baskı). Columbia University Press.
52. Hooghe, L., & Marks, G. (2003). Unraveling the central state, but how? Types of multi-level governance. *American Political Science Review, 97*(2), 233-243.
53. Hurd, I. (2007). *After anarchy: Legitimacy and power in the United Nations Security Council*. Princeton University Press.
54. Hurrell, A. (2007). *On global order: Power, values, and the constitution of international society*. Oxford University Press.
55. Ikenberry, G. J. (2011). *Liberal leviathan: The origins, crisis, and transformation of the American world order*. Princeton University Press.
56. International Commission on Intervention and State Sovereignty. (2001). *The responsibility to protect*. International Development Research Centre.
57. Keck, M. E., & Sikkink, K. (1998). *Activists beyond borders: Advocacy networks in international politics*. Cornell University Press.
58. Kennedy, D. (2006). *Of war and law*. Princeton University Press.
59. Keohane, R. O., & Nye, J. S. (1977). *Power and interdependence: World politics in transition*. Little, Brown.
60. Kingsbury, B., Krisch, N., & Stewart, R. B. (2005). The emergence of global administrative law. *Law and Contemporary Problems, 68*(3-4), 15-61.
61. Klabbers, J., Peters, A., & Ulfstein, G. (2009). *The constitutionalization of international law*. Oxford University Press.
62. Koppell, J. G. S. (2010). *World rule: Accountability, legitimacy, and the design of global governance*. University of Chicago Press.
63. Koremenos, B., Lipson, C., & Snidal, D. (2001). The rational design of international institutions. *International Organization, 55*(4), 761-799.
64. Koskenniemi, M. (2005). *From apology to utopia: The structure of international legal argument* (Yeni baskı). Cambridge University Press. (Özgün eser 1989)
65. Krasner, S. D. (1999). *Sovereignty: Organized hypocrisy*. Princeton University Press.
66. Krisch, N. (2010). *Beyond constitutionalism: The pluralist structure of postnational law*. Oxford University Press.
67. Lakatos, I. (1970). Falsification and the methodology of scientific research programmes. In I. Lakatos & A. Musgrave (Eds.), *Criticism and the growth of knowledge* (pp. 91-196). Cambridge University Press.
68. Lessig, L. (2006). *Code: Version 2.0*. Basic Books.
69. Levitsky, S., & Way, L. A. (2010). *Competitive authoritarianism: Hybrid regimes after the Cold War*. Cambridge University Press.
70. Loughlin, M. (2010). *Foundations of public law*. Oxford University Press.
71. MacCormick, N. (1999). *Questioning sovereignty: Law, state, and nation in the European commonwealth*. Oxford University Press.
72. Maduro, M. P. (2003). Contrapunctual law: Europe's constitutional pluralism in action. In N. Walker (Ed.), *Sovereignty in transition* (pp. 501-537). Hart Publishing.
73. March, J. G., & Olsen, J. P. (1998). The institutional dynamics of international political orders. *International Organization, 52*(4), 943-969.
74. Marks, S. (2000). *The riddle of all constitutions: International law, democracy, and the critique of ideology*. Oxford University Press.
75. Mashaw, J. L. (2006). Accountability and institutional design: Some thoughts on the grammar of governance. In M. W. Dowdle (Ed.), *Public accountability* (pp. 115-156). Cambridge University Press.
76. Mathews, J. T. (1997). Power shift. *Foreign Affairs, 76*(1), 50-66.
77. Merry, S. E. (1988). Legal pluralism. *Law & Society Review, 22*(5), 869-896.
78. Mosler, H. (1974). The international society as a legal community. *Recueil des Cours, 140*, 1-320.
79. Mutua, M. (2001). Savages, victims, and saviors: The metaphor of human rights. *Harvard International Law Journal, 42*(1), 201-245.
80. Orakhelashvili, A. (2006). *Peremptory norms in international law*. Oxford University Press.

81. Orford, A. (2011). *International authority and the responsibility to protect*. Cambridge University Press.
82. Pauwelyn, J. (2003). *Conflict of norms in public international law: How WTO law relates to other rules of international law*. Cambridge University Press.
83. Peters, A. (2009). The merits of global constitutionalism. *Indiana Journal of Global Legal Studies, 16*(2), 397-411.
84. Petersmann, E.-U. (1991). *Constitutional functions and constitutional problems of international economic law*. University Press Fribourg.
85. Pierson, P. (2004). *Politics in time: History, institutions, and social analysis*. Princeton University Press.
86. Popper, K. R. (1959). *The logic of scientific discovery*. Hutchinson.
87. Radbruch, G. (1946). Gesetzliches Unrecht und übergesetzliches Recht. *Süddeutsche Juristen-Zeitung, 1*(5), 105-108.
88. Risse, T., & Deitelhoff, N. (2020). Negotiating, arguing, and bargaining. In T. Risse, *The return of the state in international relations*. Cambridge University Press.
89. Risse, T., Ropp, S. C., & Sikkink, K. (Eds.). (1999). *The power of human rights: International norms and domestic change*. Cambridge University Press.
90. Roberts, A. (2017). *Is international law international?* Oxford University Press.
91. Rosenau, J. N. (1992). Governance, order, and change in world politics. In J. N. Rosenau & E.-O. Czempiel (Eds.), *Governance without government: Order and change in world politics* (pp. 1-29). Cambridge University Press.
92. Ruggie, J. G. (2011). *Report of the Special Representative on the issue of human rights and transnational corporations: Guiding principles on business and human rights* (A/HRC/17/31). Birleşmiş Milletler.
93. Santos, B. de S. (2002). *Toward a new legal common sense: Law, globalization, and emancipation* (2. baskı). Butterworths LexisNexis.
94. Sassen, S. (2006). *Territory, authority, rights: From medieval to global assemblages*. Princeton University Press.
95. Schabas, W. A. (2011). *An introduction to the International Criminal Court* (4. baskı). Cambridge University Press.
96. Schedler, A. (1999). Conceptualizing accountability. In A. Schedler, L. Diamond, & M. F. Plattner (Eds.), *The self-restraining state: Power and accountability in new democracies* (pp. 13-28). Lynne Rienner.
97. Shelton, D. (2006). Normative hierarchy in international law. *American Journal of International Law, 100*(2), 291-323.
98. Simmons, B. A. (2009). *Mobilizing for human rights: International law in domestic politics*. Cambridge University Press.
99. Slaughter, A.-M. (2004). *A new world order*. Princeton University Press.
100. Stone Sweet, A. (2004). *The judicial construction of Europe*. Oxford University Press.
101. Strange, S. (1996). *The retreat of the state: The diffusion of power in the world economy*. Cambridge University Press.
102. Tamanaha, B. Z. (2008). Understanding legal pluralism: Past to present, local to global. *Sydney Law Review, 30*(3), 375-411.
103. Tams, C. J. (2005). *Enforcing obligations erga omnes in international law*. Cambridge University Press.
104. Teubner, G. (2012). *Constitutional fragments: Societal constitutionalism and globalization* (G. Norbury, Çev.). Oxford University Press.
105. Tomuschat, C. (1999). International law: Ensuring the survival of mankind on the eve of a new century. *Recueil des Cours, 281*, 9-438.
106. Twining, W. (2009). *General jurisprudence: Understanding law from a global perspective*. Cambridge University Press.
107. Vattel, E. de. (2008). *The law of nations* (B. Kapossy & R. Whatmore, Eds.). Liberty Fund. (Özgün eser 1758)
108. Venzke, I. (2012). *How interpretation makes international law: On semantic change and normative twists*. Oxford University Press.
109. Verdross, A. (1923). *Die Einheit des rechtlichen Weltbildes auf Grundlage der Völkerrechtsverfassung*. Mohr.
110. Vitoria, F. de. (1991). *Political writings* (A. Pagden & J. Lawrance, Eds.). Cambridge University Press. (Özgün eser 1539)
111. Walker, N. (2002). The idea of constitutional pluralism. *The Modern Law Review, 65*(3), 317-359.
112. Wapner, P. (1996). *Environmental activism and world civic politics*. SUNY Press.
113. Wendt, A. (1999). *Social theory of international politics*. Cambridge University Press.
114. Zumbansen, P. (2010). Transnational legal pluralism. *Transnational Legal Theory, 1*(2), 141-189.
115. Zürn, M. (2018). *A theory of global governance: Authority, legitimacy, and contestation*. Oxford University Press.

116. Judicial Decisions and Legal Documents:
117. Barcelona Traction, Light and Power Company, Limited (Belçika v. İspanya), Judgment, I.C.J. Reports 1970, s. 3.
118. Brunner v. European Union Treaty (Maastricht), 2 BvR 2134/92, BVerfG, 12 Ekim 1993.
119. Costa v. ENEL, Dava 6/64, [1964] ECR 585 (ABAD).
120. Internationale Handelsgesellschaft, Dava 11/70, [1970] ECR 1125 (ABAD).
121. Lisbon Treaty Case, 2 BvE 2/08, BVerfG, 30 Haziran 2009.
122. Loizidou v. Türkiye (Ön İtirazlar), Başvuru No. 15318/89, AİHM, 23 Mart 1995 *[*Loizidou v. Turkey *(Preliminary Objections), Application No. 15318/89, ECtHR, 23 March 1995]*.
123. Military and Paramilitary Activities in and against Nicaragua (Nikaragua v. ABD), Merits, I.C.J. Reports 1986, s. 14.
124. Prosecutor v. Akayesu, Dava No. ICTR-96-4-T, Judgment, 2 Eylül 1998.
125. Prosecutor v. Al Mahdi, Dava No. ICC-01/12-01/15, Judgment and Sentence, 27 Eylül 2016.
126. Reparation for Injuries Suffered in the Service of the United Nations, Advisory Opinion, I.C.J. Reports 1949, s. 174.
127. S.S. "Lotus" (Fransa v. Türkiye), Judgment No. 9, 1927, P.C.I.J. Series A, No. 10.
128. Van Gend en Loos v. Nederlandse Administratie der Belastingen, Dava 26/62, [1963] ECR 1 (ABAD).
129. Weiss and Others (PSPP), 2 BvR 859/15, BVerfG, 5 Mayıs 2020.
130. Birleşmiş Milletler Şartı *[Charter of the United Nations]*, 26 Haziran 1945, 1 UNTS XVI.
131. Viyana Antlaşmalar Hukuku Sözleşmesi *[Vienna Convention on the Law of Treaties]*, 23 Mayıs 1969, 1155 UNTS 331.