UNIO - *EU Law Journal*. Vol. 11, No. 1, June 2025, pp. 21-35.

School of Law – University of Minho

Cultural and legal hybridism: in search of a new legal theory for the regulation of informational phenomena

Alexandre Veronese*

ABSTRACT: This study is a theoretical exploration of the limitations of legal theory when addressing informational phenomena. It begins by observing that sociology and communication sciences already offer frameworks for understanding the intersection between social and digital life. However, this intersection has become increasingly problematic with the radical intensification of connectivity. The research employs an abstract analysis of ideal models of Internet regulation and their interplay with user behavior. It presents a detailed framework, outlining classical types of regulation and evaluating the extent to which these normative orders are adhered to on a continuum ranging from minimal to maximal compliance. The latter section critically assesses various legal theories. A key finding is that all these theories rely on the nation-state as a central element in defining the essence of Law. Further, the study examines theoretical approaches to overcoming this limitation. These include proposals to open national legal systems to external and reciprocal influences, promote legal harmonisation, and develop a concept of transnational legal pluralism. The work introduces the idea of legal norms and rules as cultural and legal hybrids, borrowing from anthropology to address the complex interplay between social and digital life. It concludes that while opening national legal systems to external influences offers significant potential, this approach also risks undermining fundamental principles of the rule of law.

KEYWORDS: Legal theory – information society – rule of law – pluralism – cultural and legal hybrids.

* Associate Professor of Social and Legal Theory at the University of Brasilia (Faculty of Law).

1. Introduction

Social sciences today increasingly have a clear vision that the social world is not separate from communicational interactions enabled by new information and communication technologies. This understanding is the perspective of Lee Rainie and Barry Wellman in sociology, for example.[1] Research in the field of communication has also developed a body of literature pointing to this conclusion.[2] Human lives are both digital and non-digital.

At the dawn of this phenomenon, some social science scholars still regarded its emergence as a novelty. The philosophical notions of virtual,[3] collective intelligence, as described by Pierre Lévy, highlights this.[4] However, over the years, particularly with Manuel Castells's work, it became evident that the networked view of social life would pose new challenges to researchers.[5]

The legal world, however, has continued to operate with the theoretical perspective of legally perfect systems despite their imperfections in applying regulatory mechanisms. The most common phrase remains: "*The law will always lag behind technological advancements.*" Contemporary regulation theory has always been broader than classical legal theory. One of these was the idea of transnational and multi-sectoral governance. This concept paved the way for the construction of global management structures, much like technical standards already exist to address issues that transcend borders.

A vehicle designed for global use must be capable of traveling on roads in different countries while meeting the same safety standards. Quality standards for pharmaceuticals and medical supplies provide another example, as they must be safe for use by different people on a global scale. As a result, certification systems exist to ensure this.

Nevertheless, legal systems have always been defined by elements linking them to nation-states, even though private norms with social applications exist beyond the purview of the state. Nation-states have not disappeared. However, responses to social phenomena brought about by new information and communication technologies have revealed their limits.

The scope of the present study is ambitious. It aims to propose a new concept of the rule of law that can address these phenomena. The proposal combines Manuel Castells' concept of the Network State with Néstor García Canclini and Peter Burke's concept of cultural hybridity.

The final assertion is clear: societies can only produce regulation under two possible scenarios. Both require some concession of sovereignty. The first scenario involves the international, global integration of national legal systems, defined by the adherence of nearly 200 nation-states to international treaties with full effectiveness. This solution would preserve the traditional concept of the rule of law, as it has existed for centuries. However, there is a crisis in the global governance system.

---

[1] Lee Rainie and Barry Wellman, *Networked: the new social operation system* (Cambridge, MA: The MIT Press, 2014).

[2] Andrew Chadwick, *the hybrid media system: politics and power* (Oxford: Oxford University Press, 2017).

[3] Pierre Lévy, *Becoming virtual* (New York, Plenum Trade, 1998).

[4] Pierre Lévy and Robert Bonnono, *Collective intelligence: mankind's emerging world in cyberspace* (New York, Basic Books, 1999).

[5] Manuel Castells, *The information age: economy, society, and culture*, three volumes (Hoboken, NJ, 1999).

The second scenario involves reformulating the concept of the rule of law to incorporate the notion of cultural and legal hybridity, a reworked form of legal pluralism. Open to normative influences from external sources, this formulation of the rule of law would have to accept and integrate various external norms, even when they conflict with national legal provisions. Those influences include technical norms, social norms, and economic practices understood as normative forces.

The concept of cultural and legal hybridity, which is the central proposition of this research, would mitigate these processes of "*interference*" from other "*sovereignties*" without prior consent in social relations.

The text is structured as follows. The next section will analyse the current regulatory dilemma regarding new phenomena. This section will also address the core aspect of the research: demonstrating the problem. The problem lies in the concept of the national legal system, the international legal order, and their regulatory implications. Following this, the legal limitations of traditional conflict resolution mechanisms will be outlined, whether through public international law (*e.g.*, decisions of multilateral bodies) or private international law (*e.g.*, the acceptance of foreign norms to resolve specific issues).

2. Regulating? National, international, or transnational?

The concepts of national, international, and transnational regulation are not new, even in the Internet world.[6] The first two are older than the last. The distinction of the third concept lies in its broad scope, which includes private actors as regulatory entities. Thus, it is possible to consider producers of technical standards, such as ISO, IEEE, and W3C, as normative sources.

It is important to note that working with normativity beyond the State will be necessary, using an analytical framework derived from Max Weber.[7/8] This analytical framework is the foundation for behavioral debates, which will be the central focus.

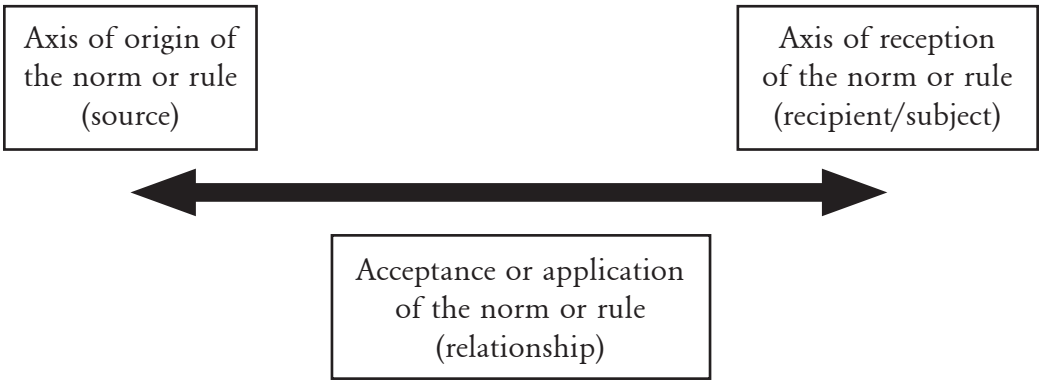
Therefore, the first assumption is that not only national or international law, including regional law and European Union law – serve as justifications for actions and social relations. Furthermore, this assumption leads to the conclusion that law (whether national or international) is not necessarily the most substantial normative source influencing and justifying actions. Social norms and standardised technical regulations may exert greater normative force than the law of a nation-state or even international law.

The analysis of this normative force will depend on specific empirical evaluations. The context will be relevant. Not all national laws are the same, just as nation-states do not identically receive international law. Consequently, the plurality of normative sources varies according to the reception axis.

Finally, the key aspect of empirical evaluation lies in the relational outcome– in the reception or application of norms. In simplified terms, the diagram below illustrates these two axes.

[6] Christopher T. Marsden (ed.), *Regulating the global information society* (London, Routledge, 2000).
[7] Max Weber, *Economy and society: a new translation* (Cambridge, MA: Harvard University Press, 2019).
[8] Max Weber, *Economy and* (Los Angeles, CA, University of California Press, 2013).

Image. Streamlining of axes.



Source: author's creation.

It is important to note that this model is merely didactic, as it considers the existence of a plurality of sources and recipients and variations in the degree of reception or application. Regarding reception, the key point is that recipients may follow certain norms or rules without coercion. For Max Weber, this would represent the highest legitimacy for a normative order. The more common scenario, however, is an application based on a coercive apparatus to ensure the validity of norms or rules, even when recipients consider them illegitimate.

Another simplification is that norms or rules require a broader context. The simplest example of this is the national legal order. Later, the discussion will address the limitations of traditional legal theories in dealing with networked phenomena. Some of these limitations already existed in the non-networked context. However, the intensification of connectivity and digitalisation has made this framework even more complex.

The following table aims to organise two key axes. It is impossible to use a graph because the plurality of empirical situations is extensive.

Table. Normative sources, application, and reception.

Sources	Axis of acceptance or application (need for coercion)	Axis of reception (acceptance by legitimacy)
National Law	Null. The state has laws but cannot enforce them.	Null. Legal norms exist but are generally not followed because individuals or groups do not consider them legitimate.
	Minimal. Few individuals or groups follow legal rules under coercion.	Minimal. Very few individuals or groups consider legal norms legitimate and follow them.
	Moderate. The rules are enforced mainly and followed under coercion.	Medium. A reasonable average of people or groups consider legal rules legitimate and follow them.
	Maximum. There is high coercive effectiveness, and most people and groups follow the rules.	Medium. A reasonable average of people or groups follow the legal rules because they consider them legitimate.

International or regional legal systems	Null. The nation-state adhered to the treaties and accepted their rules. However, national and transnational law and other normative sources lead to the non-application of legal norms, even with the risk of international sanctions to the country.	Null. The nation-state's adherence to treaties does not guarantee the legitimacy of international or regional legal norms, either within state apparatuses or in social life.
	Minimal. The nation-state accepts legal norms from treaties. However, their application is low due to various factual issues. Coercion is possible, but it does not achieve effectiveness.	Minimal. Very few individuals or groups consider the legal norms legitimate and follow them.
	Medium. The rules are primarily applied and followed with coercion.	Medium. A reasonable average of people or groups follow Legal rules because they consider them legitimate.
	Maximum. There is high coercive effectiveness, and most people and groups follow the rules.	Maximum. High social adherence to legal rules due to their broad legitimacy.
Transnational (private) law	Null. The rules for forming agreements between private parties, such as arbitrable contracts, exist. However, even when adhering to agreements, the parties do not comply with them, preferring other normative sources. Those relationships occur despite private coercive means (exclusion from the group) or state coercion (sanctions).	Null. Accepting legal relations based on transnational normative sources does not necessarily translate into their legitimacy. Therefore, the expected compliance does not occur. Alternatively, the rules are considered so illegitimate that they do not even allow the formation of relations.
	Minimal. A few parties agree to participate in private relations based on private norms and rules. This situation occurs even when social sanctions (such as exclusion from economic relations or higher costs for alternatives) or technical sanctions (more complex or less efficient products and services) exist.	Minimal. Due to the low legitimacy, there is a small adherence to private norms and rules based on consent. There may even be preferences for them to the detriment of other normative sources, such as state and international law.
	Medium. Some people and groups use private norms and rules due to risks of social, economic, or technical sanctions. Others bypass these norms and rules or even use other normative sources.	Medium. Some people and groups consider these norms and rules legitimate. This legitimacy may be due to their efficiency compared to other normative sources or an aversion to legal norms.
	Maximum. The use of these norms and rules is widespread among people and groups. This phenomenon occurs because the goal is to bypass local or international public law compared to other potential advantages. Additionally, the use of these norms and rules may be imperative for the existence of the relationship.	Maximum. Transnational legal norms and rules enjoy superior legitimacy compared to other normative sources. This judgment by individuals and groups comes from comparing many normative sources.

Social norms and rules	Null. There are social norms and rules of conduct that most people and groups do not follow. They may adhere to other normative sources for various reasons, regardless of potential reprisals.	Null. Social norms and rules exist and are recognized. However, they do not enjoy social legitimacy compared to other normative sources.
	Minimal. Social norms and rules have social sanctions. However, only a minority of individuals and groups follow them. They prefer other normative sources.	Minimal. Social rules and norms have legitimacy recognised by only a few individuals and groups. The majority believes other normative sources are more legitimate than social rules or norms.
	Medium. Multiple social norms and rules may exist, which leads to neither majority nor minority compliance. However, many individuals and groups follow them, regardless of sanctions.	Medium. Similarly to the effectiveness of social sanctions, there may be a plurality of social norms and rules. This plurality induces partial legitimacy. Some individuals and groups recognise and legitimise social norms and rules, while others do not.
	Maximum. Most individuals and groups follow social norms and rules. Social sanctions contribute to their effectiveness, even though a minority may disagree.	Maximum. The legitimacy of social norms and rules is widespread. A minority may disagree with them and not follow them. However, the majority believes in them.
Technical norms and standards	Null. Technical standards exist, but individuals or groups do not follow them. They may use alternative standards. To a radical degree, refusing to use them can hinder or make relationships unfeasible. This situation is already a technical sanction.	Null. The legitimacy of technical standards and norms is not recognised regardless of use. Although widespread use may occur, there will be no consent. If possible, groups and individuals will seek alternatives.
	Minimal. Only a small number of individuals and groups follow technical norms and standards. Alternatives may exist, even if they are less efficient (or even dangerous), which is already a technical sanction.	Minimal. Few people or groups recognise the legitimacy of technical standards and norms, and most do not believe in them.
	Medium. As with social norms and rules, competing standards and rules may exist. The most significant sanction is the risk of lower interoperability between systems or devices.	Medium. People and groups have different beliefs about the legitimacy of technical standards and norms. Some individuals or groups may not believe in their legitimacy and deny their use. Another part may seek competing technical standards and rules.
	Maximum. Technical norms and rules enjoy broad effectiveness due to their widespread use. This results from the highly effective sanction of exclusion (or greater risk or lower efficiency).	Maximum. Most individuals and groups believe in technical legitimacy, making the standards and rules widespread. A small group may disagree with their legitimacy and even provide alternatives.

Source: author's creation.

It is worth noting that economic interests (objective) and religious, moral, or social interests (subjective) can be elements of non-compliance. These motivations

can occur in contexts with strong and effective coercion (*e.g.*, a protest of the government even under heavy repression) and others with low legitimacy (*e.g.*, general dissatisfaction with the norms or rules). Economic interests may be rational choices for compliance. However, even these rational interests may not be sufficient to accept illegitimate rules, for example.

For those familiar with the debate on law and cyberspace, the table's complexification of Lawrence Lessig's model, which defines four "*regulatory*" forces, will not be surprising.[9] The difference in this text is that economic interests and some social interests (which he would consider "*social norms*") are excluded from this research in favor of aligning with Max Weber's sociological theory on actions and social relations. Another point is that the same happens with technical norms and standards. They are not, like legal norms, a monolithic block. There are technical norms and standards with varying degrees of coercive effectiveness and social legitimacy. Lawrence Lessig's model has received several critiques.[10-11] However, it certainly opened a debate that was previously blocked. In the 1990s, the central issue was the possibility, or not, of regulating cyberspace. Lawrence Lessig asserted that cyberspace could be subject to "*regulation*" by efficiently combining the four forces: *(i)* law; *(ii)* social norms; *(iii)* economic incentives and disincentives; and *(iv)* technical norms and standards. His most significant contribution to the debate was shedding light on technical norms and standards as a "*regulatory*" force. This contribution allowed several authors to identify hardware, software, and firmware developers as central actors in shaping user behaviors. However, it is important to review these critiques.

2.1. Physical boundaries are relevant

David Johnson and David Post are sure to be the most well-known authors in the debate on the issue of national boundaries as an obstacle to applying national laws to Internet applications.[12] Their central argument is that users would be in a physical location and, simultaneously, in a virtual location, like cyberspace. Their solution will reappear in Andrew D. Murray's work sophisticatedly: users can use non-state norms and rules in various ways.[13] Moreover, if a large group of users do so, legal norms and rules lose their normative strength due to their low effectiveness. There are various ways to circumvent state law through technical means (such as strong encryption, for example). Furthermore, the nation-state may not have a surveillance and punishment apparatus that enforces its rules over other normative sources. Alternatively, even these might be so strong (technical norms and standards) that it would be counterproductive to try to enforce them (such as not using TCP/IP protocols and ICANN's DNS systems). Despite Lawrence Lessig's criticisms of this perspective, which envision the possibility of national law controlling technical norms and standards, their argument remains relevant,

[9] Lawrence Lessig, *Code: and other laws of cyberspace, version 2.0*, 2nd ed. (New York: Basic Books, 2006.
[10] Viktor Mayer-Schonberger, "Demystifying Lessig." *Wisconsin Law Review*, (2008): 713-746.
[11] Andrew D. Murray, *The regulation of cyberspace: control in the online environment* (Abington: Routledge-Cavendish, 2007).
[12] David R. Johnson and David G. Post, "Law and borders: the rise of law in cyberspace", *Stanford Law Review*, v. 48 (5): 1996, 1367-1402. David G. Post, "What Larry does not get: code, Law, and liberty in Cyberspace." *Stanford Law Review*, v. 52 (5) (1999): 1439-1459.
[13] Andrew D. Murray, *The regulation of cyberspace: control in the online environment* (Abington: Routledge-Cavendish, 2007).

especially considering that not all nation-states have the same institutional capacities.

2.2. Technical norms and standards can be by-passed

The second criticism of Lawrence Lessig's theory is the strength he attributes to the concept of the Code as a "*regulatory*" force. In several passages of his most important book, he proposes combining law and Code as enforceable means to compel individual behaviour.[14] He and Joel R. Reidenberg know it is possible to change the Code. However, the normative element of the solution, using the Code to shape the potential actions of individuals, leads part of the literature to consider their model as deterministic from a technological perspective, according to Viktor Mayer-Schöenberg. Other authors, such as Jonathan Zittrain, follow this path.[15] Also, Primavera De Fillippi and Aaron Wright.[16] Another element of techno-determinism is the assumption that technology usually is imbued with social values. Neither of the two arguments is complete or absolute. Lawrence Lessig's theory is not simplistic. It does not fully embrace technological determinism. However, it accepts some degree of increased autonomy of technology at the expense of alternative social uses. An example would be creating a system that almost forces social behaviour. Moreover, while such a situation may occur, there are several examples of the social use of technologies created for one purpose, whose social use modifies it.

2.3. Law (national, international, regional, or global) does not have as much normative strength

Lawrence Lessig's great solution would be to combine law with the Code. This assessment extends to the work of Joel R. Reidenberg. The latter author does not indicate a prevalence of law; on the contrary, he warned that the norms and rules of systems would create a "*Lex Informatica.*"[17] However, Lawrence Lessig was in a scenario where he proposed a model in which law could control technology. The central issue, addressed in the previous section, is that law does not have this normative strength to varying degrees. A nation-state may have laws but lack the apparatus to enforce them. The recipients of legal norms and rules may not consider them legitimate and may not follow them despite the risks.

3. What is the legal system? A concept to review

The classical understanding of positive legal norms is attributed to John Austin, who defines such norms as directives issued by a sovereign authority.[18] He does not engage in a broad debate about legitimacy and plurality of norms. From his perspective, a relationship between a subject and a sovereign exists.

[14] Lawrence Lessig, *Code: and other laws of cyberspace, version 2.0*, 2nd ed. (New York: Basic Books, 2006).
[15] Jonathan Zittrain, *The future of the internet – and how to stop it* (New Haven: Yale University Press, 2008).
[16] Primavera de Filippi and Aaron Wright, *Blockchain and the law: the rule of the code* (Cambridge, MA: Harvard University Press, 2019).
[17] Joel R. Reidenberg, "Lex Informatica: The formulation of information policy rules through technology", *Texas Law Review*, v. 76 (3), 1998, 553-598.
[18] David Campbell and Philip A. Thomas, eds., *The province of jurisprudence determined by John Austin* (London: Routledge, 2019).

The sovereign determines legal norms, and the subjects comply with them. Non-compliance attracts a sanction. The debate on legitimacy or the foundation of the legal system will be addressed later by authors such as Hans Kelsen, Herbert L. A. Hart, John Finnis, and Joseph Raz. The paper briefly reviews authors searching for the concept of social recognition (Herbert L. A. Hart), a strict legal foundation (Hans Kelsen), the nature of law (John Finnis and Lon. L. Fuller), or the authority of law rather than that of the sovereign (Joseph Raz). What unites all these modern authors is the identification that legal norms cannot be understood without a concept of a legal system, regardless of the many divergences regarding the source of legitimacy.

The focus of the examination must be limited to the contrast between non-legal norms and rules and legal norms and rules. The classical contrasts in legal theory involve the existence of two or more applicable legal norms and rules for similar situations (antimony). A legal norm or rule is also absent, which needs to be filled (gap). There are several ways to seek these solutions. In the case of gaps, it is possible to resort to analogies and principles, whether legally fixed or derived as "*general principles of law.*" The central issue for analysing social sciences (sociology, anthropology, economics, among others) concerning law is the measurement of effectiveness and legitimacy.

3.1. Command and control by the sovereign

The first author must be John Austin. It is possible to return to Edward Coke to keep the analysis within the Anglo-American world – alternatively, long-established authors of natural law. However, John Austin sought a theory to justify the validity of norms without directly resorting to the search for universal, religious, or secular elements to varying degrees. It is reasonable to place him at the beginning of legal positivism. His solution is very close to that of Thomas Hobbes, in which the concept of authority bases itself on the synthesis of the social world. The sovereign would be the embodiment of social plurality. John Austin's view can be considered oversimplified. There would be a sovereign – a group or an individual – who would hold the power to issue commands, which the people under the threat of sanction would follow. His view can be pragmatic, as the author writes in the early 19th century, under the strong influence of the utilitarian model. The need to affirm the concept of the nation-state and sovereignty is necessary for his model.

3.2. Legal norm and legal system as derived from their foundation

The most important author for this postulation is Hans Kelsen. In addition to his pure theory of law, he produced a work later during his exile in the United States of America.[19] This later work is significant for being the subject of more prolonged reflection and critical dialogues over decades. Hans Kelsen's concept of legal norm seeks legitimacy within the legal system, which, in turn, is legitimised by a fundamental norm. His goal is to separate the analysis of law (whether national or international) for practical purposes or scientific goals from morality, customs, and other non-legal elements.

An important differentiation made by Hans Kelsen is to separate the concept of legal norms from those of moral, social, and technical norms. Thus, he seeks a concept of legal norm as an "*ought-to-be*", in contrast to human conduct, which is related

[19] Hans Kelsen, *General theory of Law and State* (New York: Routledge, 2005).

to "*what is.*" There can be various types of "*ought-to-be*" (moral, social, or technical). However, the crucial difference for Hans Kelsen lies in its foundation of validity. He does not use the concept of legitimacy, as this could introduce extralegal elements in evaluating normative validity. The foundation of a legal norm is the legal system itself, which has scales of validity, with its pinnacle being an abstract norm: the fundamental norm. He does not deny the role of sanction and coercion. However, reducing the concept of legal norms solely to the possibility of sanction would introduce an element of factuality, which would not allow the jurist to understand and apply the legal norm as a derivation of a system without resorting to social life, moral, and political issues, or even technical considerations. There are classic examples of non-legal norms and rules with sanctions, such as a punishment for deviating from the expected social conduct. This situation also applies to technical norms. Not following a technical norm can have consequences, such as the inability to obtain authorisation to license a product or even actual damages. Therefore, such a conceptualisation would not allow a clear separation between the non-legal and the legal.

This clear differentiation between the non-legal and the legal has positive and negative aspects. The positive aspect is the attempt to distance consequentialism – and other elements – from evaluating validity in creating and applying legal norms. The intermediate aspect is that the theory separates moral considerations of any kind, which is a risk in some instances, as indicated by the theories of Ronald Dworkin[20] and Robert Alexy.[21] Finally, the negative aspect is the denial of the normative plurality of law. This denial is a goal of Hans Kelsen's theory. However, the strict use of this denial limits the understanding that there are equally grounded legal norms that exist at the same time. It is this understanding that would require a theoretical effort from jurists to broaden their analytical horizons to understand reality. At this point, he follows a path, without diverging, from Max Weber. For this author, other normative orders may be more effective than a legal order. Hans Kelsen does not diverge from this. However, considering it outside the law theory, he does not focus on this theme. Finally, both Hans Kelsen and Herbert L. A. Hart will be concerned with the concept of the rule of law. For both, it is impossible to understand law without separating it from morality and social rules. The most interesting conclusion from this point of view is that force (sanction) serves the law rather than grounding it.

3.3. Herbert L. A. Hart

Herbert Hart's model avoids seeking metaphysical solutions to the problem of legitimacy and foundation. It makes significant progress compared to John Austin's model, as it is aware of the need to build a theory of the legal system to address the concept of legal norms.[22] His concept of law does not depart from the relationship between subjects and sovereign power. However, his foundation for the concept of the legal system is complex. It uses the rule of recognition. Unlike Hans Kelsen's concept of a fundamental norm, the rule of recognition presupposes analysing the existence of people (society) who accept the system's

[20] Ronald Dworkin, *Taking rights seriously: with a new appendix, a response to critics* (Cambridge, MA: Harvard University Press, 1978. Ronald Dworkin, *Law's empire* (Cambridge, MA: Belknap Press of Harvard University Press, 1986).

[21] Mathias Klatt, ed., *Institutionalized reason: the jurisprudence of Robert Alexy* (Oxford: Oxford University Press, 2012).

[22] Herbert L. A. Hart, *The concept of Law*, 3rd ed. (Oxford University Press, 2012).

legitimacy. Moreover, he creates two types of legal norms. The first is structural and recognition norms. These are norms for the creation of other norms, as well as for organising changes in the system and for adjudication. The second legal norm is normative commands (obligations). In his work, there is a very effective concern about differentiating legal norms from social norms and moral norms.

3.4. Joseph Raz

This author is closer to contemporary times. He identifies the need for a legal system as a prerequisite for law (rule of law).[23] However, like the other authors reviewed, he does not address the issue of normative plurality in today's world. His concept relies on the nation-state, which produces a legal system based on authority. Nevertheless, for Joseph Raz, authority is not merely a group of people or a leader – it is the intrinsic authority of law itself.

One critique of Joseph Raz's concept – beyond the broader issue of plurality – is that it makes it difficult to distinguish between the legitimacy of a norm or rule and the authority that enforces it. He, John Finnis, and Lon L. Fuller develop theoretical models in which the authority of law finds legitimacy in morality or social forces. Likewise, all three authors rely on liberal assumptions for this legitimisation.

The key difference with Joseph Raz is that he does not propose minimal conditions for legitimising authority. Another notable distinction is that Raz accepts social morality as an element of legitimising this authority. As a result, he formulates a compelling argument about legal obedience without the need for coercion. This perspective helps explain why individuals adhere to moral, social, and technical norms and rules. However, he did not explore these contrasts in-depth, remaining within the realm of legal theory.

3.5. John Finnis e Lon L. Fuller

Both John Finnis and Lon L. Fuller are more skeptical than Joseph Raz when designing models in which morality plays a role in the concept of law.[24/25/26] Both do not abandon the perspective of subjecting legal normativity to some external elements. However, they define the criteria for the legal system.

The synthesis of the various authors reviewed can be enlightening. Understanding the normative dilemmas of today's world requires a realistic or sociological theorisation of law. Legal theory, which was founded in opposition to this premise, finds this position uncomfortable.

4. The limits of traditional means of contact between legal systems and other normative sources

Other authors have already written that law cannot be understood solely in its national aspect. However, this theoretical view clashes with reality. The first issue is that legal theory is deeply rooted in the social perception of jurists and even the public. Law is seen as an imperative system external to individuals and endowed with significant symbolism.

---

[23] Joseph Raz, *The authority of Law*, 2nd ed. (Oxford University Press, 2009).
[24] John Finnis, *Natural Law & natural rights*, 2nd ed. (Oxford: Oxford University Press, 2011).
[25] Lon L. Fuller, *The Law in quest of itself* (New York: The Lawbook Exchange, 2006).
[26] Lon L. Fuller, *The morality of Law* (New Haven: Yale University Press, 1969).

This conceptual view explains why sociologists from Émile Durkheim to Talcott Parsons have considered social life the foundation of law. For Durkheim, understanding society requires analysing social morality, which has its formal manifestation in Law.[27] For Parsons, the concept of culture becomes socially widespread within the legal system and norms.[28] Neither manages to develop models to comprehend normative plurality, as Max Weber did.

However, even Max Weber's interpretive sociology has limitations, as it remains confined to national social systems. Contemporary legal theory views private international law as a normative point of contact between legal systems and acknowledges international cooperation, whether private or public.

However, the legal mesh, or normative mix, can only be unraveled by a theory that accepts normative pluralism as a source. There is, however, a paradox. Accepting that there are other "*legal*" sources within the same legal system undermines the very concept of legal order. This paradox happens because the concept of a legal system does not tolerate antinomies or gaps.

The simplest solution would be to rely on traditional mechanisms for incorporating external law or to have a legal system that recognises social, moral, and technical rules and norms without subjecting them to the legal system's authority. However, this solution risks the concept of the rule of law.

Possible solutions to this theoretical dilemma require imagination. The first three solutions already do this. The fourth solution is the innovation of this research.

4.1. Open and mutually influential legal systems

It is not new that national or regional legal systems are open to incorporating external influences, which may come through comparative law. There are historical examples of foreign legal norms being applied instead of national ones because they more accurately resolve specific cases.

Additionally, contemporary examples of foreign law influence the creation of national legal norms. There are also clear cases of the incorporation of international law into domestic law and modifications to domestic law due to the adoption of international treaties. The same applies to private norms. International arbitration is a well-established and normalised reality within various national legal systems, having even generated its own legal and social market.[29]

The issue would be the degree of openness and the degree of influence. A good example is the concept of legal extraterritoriality.[30] For there to be coherent regulation, this degree would need to increase significantly. However, there is known resistance – whether conscious or not – to openness and influence. This resistance has two premises. The first is the sovereignty of the nation-state. The risk of losing this concept increases as external law bypasses national filters. The second is the social concept of law. Even when dealing with so-called multinational states, increased openness and influence could be a theoretical risk to the self-determination of people.

---

[27] Émile Durkheim, *The division of labor in society* (New York, Free Press, 2014).
[28] Talcott Parsons, "Culture and social system revisited." *Social Science Quarterly*, v. 53 (2), (1972): 253-266.
[29] Yves Dezalay and Bryant Garth, *Dealing in virtue: international commercial arbitrage and the construction of a legal order* (Chicago, IL, University of Chicago Press, 1998).
[30] Nuno Cunha Rodrigues, ed., *Extraterritoriality of EU economic law: the application of EU economic law outside the territory of the EU* (Cham: Springer Nature, 2021).

This openness and influence already exist. What requires clarification is the acceptance of this situation. European Union law is a good example. The role of the Court of Justice of the European Union is crucial in implementing openness and influence without undermining the sovereignty of the Member States. International law presents contradictory examples. Some international organisations, such as the Council of Europe, have considerable or reasonable normative power in their decisions. In the case of others, this power is less pronounced.

The advantage of the path of openness and influence is that the national legal systems can translate and adapt concepts with some limits. The disadvantage is that some nation-states with less power in the international arena may become "*legal satellites*" of stronger nation-states. However, this situation is already an economic reality. Several countries have economies that are "*dollarised.*" Facts impose themselves on theories. However, the reality of the exercise of national sovereignties is very diverse, as will be discussed in the next section.

4.2. Globalisation and law: harmonisation

The term "*harmonisation*" is also not new. The most evident example is the United Nations on International Trade Law (UNCITRAL), which dedicates itself to producing model texts for incorporation by various countries.[31] The motivations of UNCITRAL are primarily economic. The goal is for countries to have more excellent compatibility in their national laws to facilitate trade exchanges. However, the phenomenon of globalisation is social and cultural. Adopting societal consumption and interaction patterns is evident, even though this – paradoxically – reinforces local struggles to defend specificities. Some authors refer to this phenomenon as Global-Local.[32]

4.3. Legal pluralism and its international version

Pluralism is a foundation for discussing cultural and legal phenomena.[33] It involves both classic studies, which identify the existence of competing and parallel normative orders, and contemporary debates about globalisation and its legal effects. The best legal example of pluralism for understanding technological phenomena is the existence of foreign private rules and their widespread use in other societies, even when nation-states deny them legal validity. Chris Reed and Andrew D. Murray progress in this field by expanding the concepts of network communitarianism.[34] The second author also explores the topic with applicability by proposing the model of symbiotic regulation.[35] Several examples of internet applications with rules that violate national laws are used daily. Another legal example is the globalisation of jurisdiction. A party may choose to litigate in another country in favor of a more favorable jurisdiction. Alternatively, there may be transnational litigation, where a company faces similar lawsuits in different jurisdictions with contradictory outcomes.

---

[31] Rishi Gulati, Thomas John, and Ben Köhler, eds., *The Elgar companion to UNCITRAL* (Cheltenham: Edward Elgar Publishing, 2023).

[32] Victor Roudometof, "The glocal and global studies", *Globalizations* 12 (5) (2015): 774-787.

[33] David Nelken and Johannes Feest, eds., *Adapting legal cultures* (Oxford: Hart Pub., 2001). Paul Schiff-Berman, *Global legal pluralism* (Cambridge: Cambridge University Press, 2012).

[34] Chris Reed and Andrew D. Murray, *Rethinking the Jurisprudence of Cyberspace* (Cheltenham: Edward Elgar Pub., 2018).

[35] Andrew D. Murray, "Symbiotic regulation", *John Marshall Journal of Computer and Information Law*, 26 (2), (2009): 207-228.

4.4. Cultural and legal hybrids

The last concept comes from Néstor García Canclini and Peter Burke: cultural hybridism or hybrid culturalism. Both authors developed it in different works. However, its origin is similar: Latin America. An example is religious syncretism: Catholicism and Afro-Brazilian religions. The postulation of this research follows Néstor García Canclini, who is concerned with the new information and communication technologies. However, first, a warning is necessary. The concept of hybridism can receive criticism because it derives from biology. In this sense, for Néstor García Canclini, it is important to have a definition: "*social and cultural processes with distinct structures and practices, previously in separate forms, combined to generate new structures, objects, and practices.*"[36] The examples can reach everyday cultural products such as music and architecture. However, there is a catch. The pluralism of laws, as well as other norms and rules (social, technical, and moral), is imperative to recognise the possibility of legal hybrids. Thus, it is necessary to understand that the legal systems of nation-states have limitations, which will vary depending on their strength in enforcing their rules. The solution of recognising legitimacy and use in other normative sources is a risk. However, it also presents a virtue: the potential for change in legal systems to better align with the social legitimacy of the norms and rules that organise societies. Furthermore, it allows, if there are instruments, to measure the degree of social adherence to legal norms and rules by contrast.

5. Discussion and conclusions

This study presents a theoretical solution for dealing with the plurality of norms and rules applicable to new information and communication technologies. However, discussing its risks before concluding that cultural and legal hybrids are the best solution for regulating the radically connected world is important.

The first risk involves an important concept in legal theory: the rule of law. Accepting the validity of norms and rules not filtered through a legal system could lead to the erosion of several liberal postulates. This issue is why contemporary legal philosophers are skeptical or concerned. Even those who accept the existence of non-legal normativity, such as morality, are concerned with maintaining values like democracy, freedom, and others.

The second risk concerns a typical problem in sociology, a discipline that originated in modernity: social fragmentation. Accepting normative plurality risks fragmenting the nation-state into multiple groups with different normative orders. Ultimately, the very concept of society could be at risk. Social fragmentation could lead to severe political dysfunction, especially in democratic countries.

The third risk is a political philosophy issue. The loss or corrosion of a minimum consensus within the nation-state regarding applicable norms and rules could open space for the prevailing normativity from a new type of "*colonisation*." This new "*colonization*" could come from large transnational corporations, for example, not only from other nation-states as in the past. Imagine having important decisions and rules about social life coming from elsewhere without the involvement of a political association with the power to define its destiny.

[36] Néstor García Canclini, *Hybrid cultures: strategies for entering and leaving modernity* (Minneapolis, University of Minnesota Press, 2006).

All three risks require safeguards to prevent the erosion of social life. Therefore, new theoretical models must consider some protection, considering the current limitations of the nation-state concept. They need to mitigate risks and perils.

Despite the risks, from a cultural standpoint, creating legal hybrids is already an ongoing process. Legal norms and rules circulate worldwide and through nation-states from different sources. However, nation-states still wield their power, some more than others, to reinterpret, nullify, or adapt these exogenous norms and rules.

A good example is the influence of the European Union on personal data protection[37] and in the social and economic fields.[38-39] The process of legal hybridisation comes from cultural translations, as field research demonstrates. Legal norms and rules may have a meaning that, in principle, refers to identity. It would be the same rule, transplanted. However, the fact that the norm or rule originates from a different social and legal context means that there is a translation. The "*letter of the law*" may be the same. Its meaning, however, may be different. Only empirical research can assess the degree of difference, that is, by examining practices and objects.

Article received on 9 April 2025 and accepted for publication on 26 April 2025.

[37] Alexandre Veronese *et al.*, "The influence of European Union personal data protection standards in Latin America from the perspective of social actors and Latin American authorities", *UNIO - EU Law Journal*, 9 (2) (2023): 118-138.

[38] Elaine Fahey, *The global reach of EU Law* (Abington: Routledge, 2017).

[39] Anu Bradford, *The Brussels effect: how the European Union rules the world* (Oxford: Oxford University Press, 2010).