

Multilevel Constitutionalism in the AI Era: The EU–East Asia Divide in Rights Protection Frameworks*

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1. Introduction

For a long time has multilevel constitutionalism (MLC) been providing a conceptual framework for understanding how constitutional authority and legitimacy are distributed across different governance layers.¹ Originating from the European experience of legal and political integration, MLC offers a model for reconciling national sovereignty with supranational coordination through shared constitutional principles—particularly fundamental rights, democratic legitimacy, and the rule of law.² However, the accelerating digitalization of governance has begun to test this framework's scope and adaptability. The emergence of artificial intelligence (AI), with its transnational data flows, automated decision-making, and opaque systems of accountability, challenges not only traditional constitutional orders but also the logic of MLC. As regulatory authorities become increasingly fragmented among states, international organizations, and private actors, the question arises as to whether multilayered structures of constitutional governance can effectively address the speed, complexity, and global reach of AI technologies while ensuring coherent and rights-

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¹ See for example, N. Walker, *Multilevel Constitutionalism: Looking Beyond the German Debate*, in *The Many Constitutions of Europe*, 2010; A. Harmes, *New Constitutionalism and Multilevel Governance*, in S. Gill - A.C. Cutler (eds.), *New Constitutionalism and World Order*, Cambridge, 2014, 143 ff.; C. Saunders, *Challenges of Multi-Level Constitutionalism*, in *ssrn.com*, 3 July 2019; G. Martinico, *Complexity and Cultural Sources of Law in the EU Context: From the Multilevel Constitutionalism to the Constitutional Synallagma*, in *German Law Journal*, 8, 2007, 205 ff.

² See I. Pernice, *Multilevel Constitutionalism and the Crisis of Democracy in Europe*, in *European Constitutional Law Review*, 11, 2015, 541 ff.

based regulation.

These questions are particularly relevant when comparing the European and East Asian experiences. The European Union (EU) has recently sought to embed constitutional principles within its emerging digital governance framework, notably through digital regulations such as the General Data Protection Regulation (GDPR),³ the Digital Services Act,⁴ and the AI Act.⁵ These instruments illustrate a systematic attempt to align technological regulations with fundamental rights protection within a supranational legal order. By contrast, East Asia, encompassing Japan, South Korea, Taiwan, and China, features a more state-centric and diversified governance landscape.⁶ When we take a closer look at the AI-related governance, although these jurisdictions have each adopted policy measures and legal frameworks to address AI's societal impacts, their approaches remain domestically grounded and only loosely connected through international soft-law instruments from international organizations, including the Organisation for Economic Co-operation and Development, United Nations Educational, Scientific and Cultural Organization, and the Group of Seven (G7).⁷ This divergence highlights the need to examine how constitutional ideas, particularly those concerning rights protection, are reconfigured under deviating regional and institutional settings.

The MLC concept offers a useful analytical lens for related comparisons, as it makes possible the systematic exploration of multi-actor governance systems, specifically how constitutional authority is distributed and how judicial or administrative mechanisms provide relevant remedies. Concomitantly, applying the MLC concept beyond the European context requires theoretical caution, seeing that its core assumptions (i.e., legal integration, shared sovereignty, and supranational adjudication) cannot be directly transplanted into regions where political and legal integration remains limited. Therefore, this study investigates how AI governance, understood as a framework of policies, regulations, and ethical guidelines governing AI development and deployment,⁸ interacts with constitutional structures in the EU and East Asia from the perspective of MLC, seeking to answer the following three main questions.

- (1) What challenges does MLC face in the AI era, where regulatory speed, technological complexity, and cross-border implications increasingly test its institutional coherence and normative foundations?
- (2) How do the EU and East Asian frameworks differ in their institutional design, normative orientation, and approaches to rights protection?
- (3) What insights can these divergences afford for rethinking the evolving

³ Regulation (EU) 2016/679.

⁴ Regulation (EU) 2022/2065.

⁵ Regulation (EU) 2024/1689.

⁶ K.-W. Chen, *How can we imagine the generative AI's regulatory scheme? – Perspectives from Asia*, in *digi-con.org*, 25 July 2023.

⁷ OECD, *Recommendation of the Council on Artificial Intelligence*, in *oecd.org*, 22 May 2019; UNESCO, *Recommendation on the Ethics of Artificial Intelligence*, in *unesco.org*, 24 November 2021; G7, *Leaders' Statement on the Hiroshima AI Process*, in *moja.go.jp*, 30 October 2023.

⁸ UNESCO, *AI Governance*, in *unesco.org*.

relationships between law, technology, and constitutional governance?

This study adopts a comparative analytical approach. It first outlines MLC's theoretical foundations, examines its application in the EU's AI governance framework, and finally contrasts this with emerging institutional arrangements in East Asia. By situating both regions within a shared conceptual framework, this study attempts to illuminate the institutional differences along with the broader constitutional challenges posed by AI governance in a globalized regulatory environment.

To achieve this goal, this study proceeds as follows. Section 2 presents a conceptual framework for MLC, explaining its relevance for emerging technology governance. Section 3 provides an overview of AI governance in the EU and East Asia, identifying their respective institutional configurations and underlying constitutional logics. Section 4 compares the two models from EU and East Asia and analyses how structural and normative differences shape the protection of fundamental rights. Section 5 concludes by reflecting on the broader implications of these findings for the study of constitutionalism in the AI era.

2. Conceptual Framework: MLC in the AI Era

2.1. MLC

Traditional constitutionalism, rooted in the Westphalian model, is based on the concept of the sovereign nation-state, which assumes a unitary system with a clear legal hierarchy that culminates in a single supreme national constitution.⁹ This model has been challenged in recent decades by the emergence of new forms of political and legal organizations that transcend national borders, most notably the EU.¹⁰ MLC theory emerged as a response, focusing on providing a framework for understanding and legitimizing these complex systems.¹¹ Developed primarily by German and English scholars such as Ingolf Pernice and Neil Walker, MLC posits that public authority and constitutional norms are no longer confined to a single state, but instead operate across multiple interconnected levels (e.g., local, national, and supranational) to form a composite constitutional order.¹² Unlike traditional constitutionalism, which focuses on a single indi-

⁹ N. Walker, *The Idea of Constitutional Pluralism*, in *The Modern Law Review*, 65, 2002, 317 ff., 320; M. Belov, *Three Models for Ordering Constitutional Orders*, in *Pravni Zapisi*, 2, 2022, 361 ff.

¹⁰ N. Walker, *The Idea of Constitutional Pluralism*, cit., 320.

¹¹ N. Walker, *Multilevel Constitutionalism: Looking Beyond the German Debate*, cit.; I. Pernice, *Multilevel Constitutionalism and the Crisis of Democracy in Europe*, cit.; I.E.A. Pernice, *The Treaty of Lisbon: Multilevel Constitutionalism in Action*, cit.; I. Pernice, *Multilevel Constitutionalism in the European Union*, cit.; A. Harmes, *New Constitutionalism and Multilevel Governance*, cit.; C. Saunders, *Challenges of Multi-Level Constitutionalism*, cit.; G. Martinico, *Complexity and Cultural Sources of Law in the EU Context: From the Multilevel Constitutionalism to the Constitutional Synallagma*, cit.

¹² See for example, I. Pernice, *Bestandssicherung der Verfassungen: Verfassungsrechtliche Mechanismen zur Wahrung der Verfassungsordnung*, in R. Bieber - P. Widmer (eds.), *L'espace constitutionnel européen = Der europäische Verfassungsraum = The European constitutional area*, Zürich, 1995, 225 ff.; N. Walker, *Multilevel Constitutionalism: Looking Beyond the German Debate*, cit.; N. Walker, *The Idea*

visible sovereign, MLC argues that sovereignty is shared among different governance levels.

The term MLC encompasses both narrow and broad conceptualizations in academia and differs in scope and theoretical origins. The narrow concept of MLC specifically refers to a particular school of thought centered on German scholar Ingolf Pernice. Pernice's theory emerged in the mid-1990s to challenge the dominant "state law" (*Staatsrecht*) tradition in German public law at the time.¹³ Its core objective was to provide an alternative framework for conceptualizing constitutional authority amid the EU's growing authority as a supranational entity.¹⁴ This concept views the EU as a unique constitutional entity, yet it does not attribute to the EU all the properties of a traditional state.¹⁵ According to Pernice, MLC hinges on five key elements that redefine the relationships among citizens, national states, and the EU. First, it proposes a "postnational" concept of the constitution, arguing that, in a globalized world, a constitution is a legal instrument for people to create public institutions to serve common interests, which is a role that the European Treaties fulfil for EU citizens. This is tied to the second element, a citizen-driven constitutional process, whereby European Treaties are seen as an expression of the common will of EU citizens, adding a new constitutional layer that draws its legitimacy directly from them and not exclusively from states. Third, the EU's constitution and national constitutions are two closely interwoven and interdependent layers of one legal system; this interdependence implies that national authorities act as European agencies when applying EU law, which in turn takes precedence over conflicting national rules. Fourth, this process provides a direct outcome that EU citizens possess multiple identities (i.e., local, national, and European) correspondent to the various political community levels to which they belong. Finally, the EU is a union of its citizens, not merely an international organization of states, with its public authority deriving legitimacy from the same people. This multilevel structure provides a framework for addressing the challenges of globalization.¹⁶ In Pernice's conception of MLC, the relationship between the state and the supranational order is not structured hierarchically, but through an interlocking and complementary framework.¹⁷ Sovereignty is conceived as pooled rather than divided, such that authority is exercised in a positive-sum arrangement that emphasizes continuity and cooperation rather than exclusivity and subordination. This non-hierarchical vision is reinforced by the model's citizen-centered orientation, placing the pro-

of *Constitutional Pluralism*, cit.; I. Pernice, *Multilevel Constitutionalism and the Crisis of Democracy in Europe*, cit.; I. Pernice, *Multilevel Constitutionalism in the European Union*, cit.

¹³ I. Pernice, *Bestandssicherung der Verfassungen: Verfassungsrechtliche Mechanismen zur Wahrung der Verfassungsordnung*, cit.; N. Walker, *Multilevel Constitutionalism*, cit., 144.

¹⁴ See also G. Nagy, *Multilevel Constitutionalism and Its Impact on the Protection of National Sovereignty – Trends, Changes and Reservations*, in *The Lawyer Quarterly*, 15, 2025, 32 ff.

¹⁵ I. Pernice, *Bestandssicherung der Verfassungen: Verfassungsrechtliche Mechanismen zur Wahrung der Verfassungsordnung*, cit.; N. Walker, *Multilevel Constitutionalism*, cit., 146.

¹⁶ I. Pernice, *Multilevel Constitutionalism in the European Union*, cit., 4-6.

¹⁷ I. Pernice, *The Treaty of Lisbon: Multilevel Constitutionalism in Action*, in *Columbia Journal of European Law*, 15, 2008, 349 ff., 383.

tection of individual rights at the core rather than privileging the state as the sole locus of constitutional authority. Despite this explicit rejection of hierarchy, the use of the term “levels” by the EU has been criticized for carrying hierarchical connotations, suggesting to some observers the persistence of latent top-down tendencies.¹⁸

While the above-mentioned understanding of MLC is rooted in the developmental processes of the EU, the broad concept defined by Neil Walker is broader in nature.¹⁹ This is a more inclusive concept that applies constitutional principles to any arena beyond the nation-state, particularly in an era of highly globalized economic, cultural, political, and legal power circuits. The central aim of this broad concept is to explore the fundamental question of can constitutionalism be conceived as an idea relevant at multiple authority levels while remaining pertinent at the state level? Importantly, this concept is not limited to the EU, serving rather as an “initial point of reference”²⁰ for any theory that claims that constitutional ideals can be applied in transnationally. The current study also assumes that the relevance of the MLC concept is not limited to the EU, but can be applied to other international organizations and global governance structures.

Although MLC offers a useful framework, it faces significant academic and practical challenges. A prominent and extensively discussed critique of MLC, or at least its EU version, concerns the “democratic deficit problem. Scholars point out that supranational decision-making lacks sufficient accountability to national parliaments, while the electoral system of the European Parliament fails to guarantee the principle of “one person, one vote.” This finding fuels the widespread perception that the EU suffers from serious democratic shortfalls.²¹ Proponents of MLC respond by arguing that the EU should not be measured against state-centered democratic standards, and that its legitimacy instead rests on a dispersed system of checks and balances and the active involvement of national governments in EU affairs. The perceived “deficit,” therefore, reflects less a lack of democratic mechanisms and more a conceptual mismatch between traditional expectations and the EU’s multilayered reality.²²

The second critique targets the system’s non-hierarchical and interactive nature and how it does not provide no clear definitions of the final arbiter in cases of legal conflict. Inevitably, this theory confronts the complex interactions between the European Court of Justice (ECJ) and the national

¹⁸ I. Pernice, *The Treaty of Lisbon: Multilevel Constitutionalism in Action*, cit., 383; See also N. Walker, *Multilevel Constitutionalism*, cit., 146.

¹⁹ N. Walker, *Multilevel Constitutionalism*, cit., 146 ff.

²⁰ *Ibid.*, 143.

²¹ P. Norris, *Representation and the Democratic Deficit*, in *European Journal of Political Research*, 32, 1997, 273 ff.; R. Bellamy - D. Castiglione, *The Uses of Democracy: Reflections on the European Democratic Deficit*, in *Democracy in the European Union*, 2000; C. Crombez, *The Democratic Deficit in the European Union: Much Ado about Nothing?*, in *European Union Politics*, 4, 2003, 101 ff.; L. Vesnic-Alujevic - R. Castro Nacarino, *The Eu and Its Democratic Deficit: Problems and (Possible) Solutions*, in *European View*, 11, 2012, 63 ff.; G. Nagy, *Multilevel Constitutionalism and Its Impact on the Protection of National Sovereignty*, cit.

²² A. Moravcsik, *Reassessing Legitimacy in the European Union*, in *JCMS: Journal of Common Market Studies*, 40, 2002, 603 ff.

constitutional courts. While the ECJ has long asserted the primacy of EU law (e.g., *Van Gend en Loos* and *Costa v ENEL*²³), national constitutional courts have consistently pushed back, asserting their ultimate authority. The German Federal Constitutional Court provides a clear example of this tension: in its series of *Solange* judgments, it initially reserved the right to review EU law for compliance with German fundamental rights (*Solange I*, 1974).²⁴ Later, in a cooperative gesture, it stated that it would refrain from such a review if the ECJ ensured a comparable level of human rights protection (*Solange*, 1986).²⁵ This dialogue evolved into the modern “identity control” and *ultra vires* review, famously used in the PSPP judgment (2020), where the German court challenged the ECJ’s ruling on a monetary policy program. Such challenging behavior underpins the ongoing tensions between national and supranational authorities.²⁶ The absence of an ultimate authority is seen as a structural weakness, as demonstrated in the PSPP judgment, where the concept of “functional supremacy” failed to resolve the tensions between the ECJ and the German Federal Constitutional Court. An alternative that has been proposed is legal pluralism, which entails accepting the coexistence of competing claims and focusing on discursive practices and mutual accommodation among courts. While MLC retains a normative aspiration for coherence, some argue that legal pluralism offers a more descriptive account of Europe’s legal reality.²⁷

Despite these challenges, MLC remains a compelling framework for understanding constitutional practices beyond the state, with much of the existing research being centered on the EU. In today’s complex and globalized society, transnational problems affect multiple states simultaneously. Thus, MLC offers a valuable lens for analyzing both the fragility and resilience of supranational legal systems, underscoring that the dynamics between national and supranational constitutionalism will continue to shape the future of societies. Against this backdrop, this study argues that the impact of emerging technologies, including AI, on constitutional democracies worldwide opens a new avenue for reexamining MLC in the digital age.

2.2. A Double-edged Sword in the AI Era?

Building on the foregoing discussion, this study posits that given the specific characteristics of AI governance, MLC can concomitantly have advantages and generate significant challenges, operating as a double-edged sword. The following analysis examines the opportunities and challenges that AI governance presents for MLC, identifying three features derived

²³ ECJ, C-26/62, *Van Gend en Loos* (1963); ECJ, C-6/64, *Costa v ENEL* (1964).

²⁴ German Federal Constitutional Court, 29 May 1974, BVerfGE 37, 271.

²⁵ German Federal Constitutional Court, 22 October 1986, BVerfGE 73, 339.

²⁶ German Federal Constitutional Court, 5 May 2020, 2 BvR 859/15.

²⁷ N. Walker, *The Idea of Constitutional Pluralism*, cit.; A. Bobić, *Constitutional Pluralism Is Not Dead*, in *German Law Journal*, 18, 2017, 1395 ff.

from the preceding theoretical framework. These propositions are presented here at the theoretical level and are later used as an analytical framework for the comparative case studies.

First, MLC may serve as a comprehensive constitutional framework or produce conflicting norms across levels. For transnational issues such as AI governance, the MLC enables the establishment of a comprehensive constitutional framework and language while, as Pernice argued, denying the existence of a strict hierarchical relationship.²⁸ In a context where states may require time to deliberate and observe before advancing AI governance, the advantage of such a unified framework rests in the provision of a common constitutional language, especially important in the context of both the complexity of technology and the novelty of regulations in this domain, and normative basis. Simultaneously, because states may pursue divergent objectives in their approaches to AI governance even if under a shared framework, diverse constitutional practices are likely to emerge, potentially giving rise to regulatory innovation and experimentation at different levels. The hardship here lies in the fact that, in the absence of a hierarchical order and effective and rapid coordination, whether through administrative or judicial mechanisms, such diversity both increases compliance costs for enterprises and risks subjecting citizens across jurisdictions to uneven levels of rights protection. This may undermine MLC's stated objective of fostering cooperation and constitutional coherence. Furthermore, if *de facto* hierarchies²⁹ exist, additional complications arise: if supranational law is treated merely as a baseline and leaves a wide scope for national adjustments, the overall level of protection might be weakened; conversely, if supranational law is enforced more stringently, it may create practical difficulties for states lacking the capacity for effective implementation. In either scenario, how administrative and judicial institutions at different levels address these normative discrepancies remains an ongoing and unavoidable conundrum.

Second, MLC may provide a basic framework or exacerbate democratic deficits. MLC emphasizes the importance of multilevel procedures to ensure governance legitimacy and legality.³⁰ The implication is that norm formation requires cross-level negotiation, deliberation, and gradual accumulation before norms can be recognized across different jurisdictions. Meanwhile, AI governance is characterized by rapid technological iterations and the emergence of risks. When the procedural orientation of MLC encounters such temporal demands imposed by AI, a "speed–legitimacy" tension inevitably arises. Unlike more established regimes that rest on a longer historical foundation and share a normative understanding, the emerging multilevel architecture of AI governance lacks historical precedent and common ground, making consensus across levels on novel

²⁸ I. Pernice, *The Treaty of Lisbon*, cit., 383; See also N. Walker, *Multilevel Constitutionalism*, cit., 146.

²⁹ See N. Walker, *Multilevel Constitutionalism*, cit., 146.

³⁰ For related discussion, see F.W. Scharpf, *Legitimacy in the Multilevel European Polity*, in *European Political Science Review*, 1, 2009, 173 ff.; B. van der Vossen, *Legitimacy and Multi-Level Governance*, in M. Del Mar (ed.), *New Waves in Philosophy of Law*, 2011, 233 ff.; M. de Jongh - T. Theuns, *Democratic Legitimacy, Desirability and Deficit in EU Governance*, in *Journal of Contemporary European Research*, 13, 2017, 1284 ff.; A. Moravcsik, *Reassessing Legitimacy in the European Union*, cit.

issues significantly more intricate. From the perspective of democratic principles, such challenges would call for even more time to be devoted to deliberations and negotiations. However, under governance conditions that increasingly prioritize speed, longstanding concerns about the democratic deficit³¹ have become even more acute. In such a scenario, if supranational-level regulations advance more quickly (vs. national-level regulations), the advantage lies in providing an early common language and framework that may help prevent lower levels from falling into a regulatory vacuum or fragmentation. However, the cost of this acceleration is the compression of time and space dedicated to discussion and deliberation among Member States, weakening legitimacy and intensifying concerns about democratic deficits. If the regulatory process develops more slowly, it may allow for greater observation and experimentation across levels, enabling jurisdictions to accumulate experience and explore localized responses, paving the way for more coordinated future action. Nevertheless, such a delay also entails the risk of regulatory vacuums at moments of acute emerging risks, resulting in deferred rights protection, and may also make even more complex to achieve an eventual consolidation and coordination of supranational norms. In short, the features of MLC in the field of AI governance render the speed of regulation an inexorable dilemma between timeliness and legitimacy.

Finally, MLC may provide multilevel protection or produce chaotic responsibility. One of the core advantages of MLC rests on its capacity, through multilevel governance, to provide citizens with multiple protection avenues.³² Even when one level of governance fails, other levels may step in, creating a form of redundant safety net. However, this multilevel protection can easily become fragmented or redundant when applied to AI governance. Generative AI's black-box nature and autonomous decision-making make the traditional attribution of responsibility in law increasingly opaque.³³ Indeed, conflicts and inconsistencies are likely to emerge when different governance levels attempt to construct liability regimes. Moreover, certain states or industries, driven by economic competition or innovation incentives, may seek to avoid excessive restrictions or liabilities, thus making coordination across levels even more difficult. The outcome is that what is framed as multilevel protection may, in practice, become a blame game of responsibility or even a liability vacuum, ultimately weakening citizen rights protection and undermining trust in the

³¹ See P. Norris, *Representation and the Democratic Deficit*, cit.; R. Bellamy - D. Castiglione, *The Uses of Democracy*, cit.; L. Vesnic-Alujevic - R. Castro Nacarino, *The EU and Its Democratic Deficit*, cit.; M. de Jongh - T. Theuns, *Democratic Legitimacy, Desirability and Deficit in EU Governance*, cit.

³² G. Di Federico, *Fundamental Rights in the EU: Legal Pluralism and Multi-Level Protection After the Lisbon Treaty*, in G. Di Federico (ed.), *The EU Charter of Fundamental Rights: From Declaration to Binding Instrument*, 2011, 15 ff.; C. Lacchi, *Multilevel Judicial Protection in the EU and Preliminary References*, in *Common Market Law Review*, 53, 2016, 793 ff.

³³ See for example, T. Wischmeyer, *Artificial Intelligence and Transparency: Opening the Black Box*, in T. Wischmeyer - T. Rademacher (eds.), *Regulating Artificial Intelligence*, 2020, 75 ff.; H. Bleher - M. Braun, *Diffused Responsibility: Attributions of Responsibility in the Use of AI-Driven Clinical Decision Support Systems*, in *AI and Ethics*, 2, 2022, 747 ff.; G. Chaudhary, *Unveiling the Black Box: Bringing Algorithmic Transparency to AI*, in *Masaryk University Journal of Law and Technology*, 18, 2024, 93 ff.

constitutional order grounded in the rule of law.

The following sections deliver a comparative analysis of the EU, which has adopted a multilevel constitutional approach to AI governance, and East Asia, which has not adopted a similar model. The comparative framework was structured around the three challenges outlined above.

3. Divided Case Studies of AI Governance at the Regional Level: EU and East Asia

If the EU offers a practical MLC model, East Asia is taking another route, one where AI governance will likely be almost entirely left to individual nation-states with no regional constitutional structure. This asymmetry leads to several pertinent questions. For example, how does the existence (or non-existence) of regional constitutional frameworks shape AI governance in terms of structure, implementation, and efficacy? What effects do fundamental rights protections have on digital societies? Finally, what lessons can be taken from the comparison between the EU and East Asia to ensure the survival of global digital constitutionalism? This section 1) analyzes the EU as a prototype for MLC, examining the upcoming AI Act and the resulting institutional elements; 2) assesses East Asia's fragmented, national-centric approach, observing Japan, South Korea, Taiwan, and China as comparative cases; 3) compares the two models.

3.1. EU: An MLC Model

3.1.1. The EU's Constitutional Logic

As the preceding discussion suggests, the EU is the most advanced experiment in supranational governance at the regional level. The legal structure of the EU is based not only on between-country treaties but also on the jurisprudence of the Court of Justice of the European Union, with national courts and authorities retaining the primary responsibility for the application and enforcement of EU law.³⁴ Over time, the EU legal system has undergone the process of constitutionalism, marked by the adoption of the Charter of Fundamental Rights (2000), establishment of principles of direct effect and supreme effect, and expansion of shared authority in economic and social policies.³⁵ The EU's AI governance upholds this constitutional trajectory.³⁶

³⁴ Individuals generally lack direct access to the ECJ when national authorities fail to act. Instead, most case including those involving algorithmic discrimination reach the Court through the preliminary reference procedure. Ljupcho Grozdanovski, In Search of Effectiveness and Fairness in Proving Algorithmic Discrimination in EU law, in *Common Market Law Review*, 58 (1), 2021, 99 ff.

³⁵ Charter of Fundamental Rights of the European Union, 2012/C 326/02. See I. Pernice, *Multilevel Constitutionalism and the Crisis of Democracy in Europe*, cit.

³⁶ G. De Gregorio, *The rise of digital constitutionalism in the European Union*, in *International Journal of Constitutional Law*, 19, 2021, 69 ff.

In 2018, in response to the call to strengthen AI supervision and promote its application, investment, and innovation, the EU initiated the formulation of AI supervision mechanisms and norms. For example, in June 2018, the European Commission established a senior AI expert group on AI, which subsequently issued a guideline entitled “Ethical Guidelines for Trusted Artificial Intelligence,”³⁷ delineating key development principles for AI, as follows: human subjectivity and supervision; technical robustness and security; privacy and data governance; transparency; diversity, non-discrimination, and fairness; accountability system; social and environmental well-being. These principles later became the basis for EU institutions to reach a consensus when constructing an AI legal framework. In April 2021, the European Commission proposed the first EU AI Act focused on securing the effective supervision of AI technology;³⁸ after several rounds of discussion, a draft of the EU AI Act was approved by the European Parliament and came into effect.³⁹

The EU AI Act adopts a risk-based approach by applying varying levels of regulatory intensity to different AI systems.⁴⁰ The Act classifies the risks posed by AI into four categories where the higher the risk, the stricter the regulation; the categories are unacceptable, high, limited, and minimal. By offering a harmonized framework across all member states, the EU AI Act reflects MLC’s governing logic of embedding fundamental rights protection as a core governing element.⁴¹ Accordingly, the EU views AI governance as both a technical regulation and a constitutional project linking innovation, the rule of law, and rights protection. This framework demonstrates how innovation and rights protection can coexist and enables the EU to institutionalize constitutional values at the regional level by implementing such considerations in its risk categories.⁴²

3.1.2. Institutional and Judicial Structure

The EU’s institutional architecture reflects its multilevel structure. Institutionally, all legislation at the regional level is initiated and overseen by the European Commission, such that while implementation is authorized to national authorities at each jurisdiction, governance is led by EU-level provisions. Additionally, serving as the principal judicial arbiter, the ECJ decides on the interpretative approach to the EU AI Act, ensuring its uniform application across different jurisdictions. National courts therefore

³⁷ High-Level Expert Group on Artificial Intelligence, *Ethics Guidelines for Trustworthy AI*, in *ec.europa.eu*, 8 April 2019.

³⁸ A. Bradford, *Digital Empires: The Global Battle to Regulate Technology*, 2023, 105 ff.

³⁹ Regulation (EU) 2024/1689.

⁴⁰ N.T. Nikolinakos, *EU Policy and Legal Framework for Artificial Intelligence, Robotics and Related Technologies - The AI Act*, 2023, 721 ff.

⁴¹ C. Cancela-Outeda, *The EU’s AI act: A framework for collaborative governance*, in *Internet of Things*, 27, 2024, 1 ff.

⁴² O. Pollicino - G. De Gregorio, *Constitutional Law in the Algorithmic Society*, in H.-W. Micklitz - O. Pollicino - A. Reichman - A. Simoncini - G. Sartor - G. De Gregorio (eds.), *Constitutional Challenges in the Algorithmic Society*, 2021, 3 ff.

function as “European courts” that interpret EU law, providing a regional institutional structure that gives individuals the possibility of asserting their rights in domestic litigations under the EU legal framework.⁴³ This structure exemplifies Pernice’s argument that sovereignty in the EU is distributed and pooled, rather than divided, among citizens, granting them overlapping layers of sovereign protection.

Through this structure, individuals can bring a case to an EU court if national regulators or courts fail to address their liberties under EU law. For instance, algorithmic discrimination cases may fall within the jurisdiction of both national judicial bodies and the ECJ. This combination of solutions serves to increase accountability and build citizens’ confidence in AI governance through a multilayered system of remedies.⁴⁴ The EU embeds basic rights into all aspects of innovation governance by linking privacy, equality, and human dignity with technical supervision.

3.1.3. Challenges of the EU MLC Model

Although the EU AI Act provides a highly sophisticated regulatory model rooted in the EU’s constitutional logic, several challenges arise from an MLC perspective. The first challenge concerns competency coordination at multiple levels. The AI Act assumes that uniform rules prevent fragmentation, whereas implementation remains reliant on national authorities, each of which has different administrative capacities, priorities, and resources. Consequently, even within a harmonized framework, enforcement and compliance disparities are inevitable, and the existence of overlapping regulatory domains (e.g., competition law, data protection, and consumer law) also creates a complex regulatory ecosystem that often blurs the lines of responsibility. From an MLC perspective, such fragmentation reflects the inherent tension between nonhierarchical governance and the need for coherence. While the MLC celebrates diversity and subsidiarity, excessive regulatory pluralism risks undermining the law’s predictability and stability. Therefore, the challenge lies in striking a balance between preserving national implementation autonomy and maintaining the unity of constitutional standards.

The second challenge pertains to democratic legitimacy. The EU’s supranational law-making process remains largely technocratic and bureaucratic, being led by the European Commission and expert groups rather than directly elected representatives. Although the European Parliament participates in the legislative procedures, citizens’ perceptions of remoteness and its limited influence persist. In the case of AI governance, the technical complexity and reliance on expert-driven risk classification exacerbate this distantness. Citizens are rarely involved in the rulemaking process and deliberative opportunities remain confined to consultation phases. An obvious consequence of these hardships is that the democratic deficit iden-

⁴³ C. Lacchi, *Multilevel Judicial Protection in the EU and Preliminary References*, cit.

⁴⁴ A. von Ungern-Sternberg, *Discriminatory AI and the Law: Legal Standards for Algorithmic Profiling*, in S. Voeneke - P. Kellmeyer - O. Mueller - W. Burgard (eds.), *The Cambridge Handbook of Responsible Artificial Intelligence: Interdisciplinary Perspectives*, 2022, 252 ff.

tified in the broader EU context persists in the AI domain, although with distinct characteristics. The legitimacy of AI regulation relies heavily on expertise and procedural rationality, not direct representation or political contestation. While this technocratic reliance may ensure precision and expertise, it risks alienating citizens from a sense of constitutional ownership and democratic agency, which is perhaps ironic if we consider that AI itself increasingly mediates democratic processes. This dilemma echoes the “speed–legitimacy” paradox previously discussed regarding MLC: the faster the regulatory framework adapts to technological change, the greater the risk of democratic and procedural deficits; conversely, the more participatory and deliberative the process, the greater the delay in addressing emerging risks. Thus, the EU model demonstrates both the strength and fragility of MLC in managing technology constitutionalization, as it makes it possible to transform constitutional principles into supranational governance but is vulnerable to temporal and democratic constraints. The third challenge concerns the tension between innovation and fundamental rights protection. The EU AI Act attempts to reconcile these two objectives using a risk-based approach. However, critics argue that such a model may inadvertently entrench a compliance-oriented bureaucracy that will subsequently discourage experimentation and innovation. Smaller enterprises and start-ups may find the cost of such compliance prohibitive. At the same time, given the dynamic nature of technological development, the categorization of AI systems according to risk may not always align with actual social consequences. Moreover, many Member States fear that overly stringent AI regulations could undermine their global competitiveness, leading to resistance and possibly uneven implementation, which could ultimately create tensions between supranational norms and national autonomy.

3.2. East Asia: Fragmentation and National-Centric Approach

3.2.1. Absence of Regional Constitutionalism

From the MLC perspective, East Asia is in a situation opposite to that of Europe. Despite significant economic collaborations (e.g., Association of Southeast Asian Nations, Asia-Pacific Economic Cooperation, and Regional Comprehensive Economic Partnership), there are no supranational human rights or AI governance constitutional platforms in the region.⁴⁵ Unlike the EU, East Asia lacks a regional court, human rights charter, and legally binding regulatory framework. What this entails is that the regional framework of AI governance is decentralized, yielding normative diversity and fragmentation at the domestic level. This allows for greater responsiveness to local realities but concomitantly leads to regulatory asymmetry

⁴⁵ T.-U. Baik, *Regional Human Rights Arrangements*, in D.S. Law - H. Lau - A. Schwartz (eds.), *The Oxford Handbook of Constitutional Law in Asia*, 2024; J.-r. Yeh, *The Development of Regional Human Right Institutions in Asia*, in Seoul National University Asia-Pacific Law Institute (ed.), *Global constitutionalism and multi-layered protection of human rights*, Seoul, 2016, 635 ff.

and difficulties regarding securing cross-border accountability. The situation becomes even more dire when it comes to upholding human rights protection in the context of cross-border AI applications.

3.2.2. National Case Studies

3.2.2.1. Japan

Japan's AI governance illustrates administrative constitutionalism grounded in coordination, not control. The Act on the Promotion of Research, Development, and Utilization of AI-Related Technologies (2025)⁴⁶ institutionalizes a cooperative architecture linking ministries, industry, academia, and citizens under the Cabinet of Japan's newly created AI Strategy Headquarters. Its guiding principles, namely innovation, participation, risk transparency, and international cooperation, are operationalized through an iterative plan-do-check-act process, enabling continuous policy adjustment and shared accountability among actors.⁴⁷ Instead of imposing legal duties, the Act establishes “duties to endeavor” for various stakeholders, reinforcing the country's long-standing reliance on soft law, administrative guidance, and interagency dialogue. Thus, policy coherence emerges not from hierarchical commands but negotiated coordination across ministries and sectors. The state functions less as a sovereign regulator and more as a convener that facilitates deliberations, mediates interests, and cultivates public-private mutual trust.⁴⁸ The new Act prioritizes global competitiveness, technological innovation, transparency, and human-centric AI development, not imposing binding responsibilities but delivering guidelines, assigning stakeholder responsibilities, and creating an AI Strategy Headquarters under the Cabinet. Companies are expected to “cooperate” with government-guided AI policies, even if the scope of this obligation is unclear and hinges on future regulations.

In terms of its constitutionalism, this cooperative model of governance signifies a shift from rule-centric legality to procedural legitimacy. Its embedding of constitutional values such as human dignity, responsibility, and transparency into administrative coordination processes enables the translation of Japan's constitutional norms into living practices. Japan hence affords a clear cut demonstration of how constitutional governance can evolve through collaboration and maintain normative integrity while adapting to the rapid transformations imposed by technologies and societal shifts.

⁴⁶ “人工知能関連技術の研究開発及び活用の推進に関する法律” (Japan), Act No. 53 of 2025.

⁴⁷ H. Habuka, *Japan's Agile AI Governance in Action: Fostering a Global Nexus Through Pluralistic Interoperability*, in *csis.org*, 9 October 2025. See also H. Habuka, *Japan's Approach to AI Regulation and Its Impact on the 2023 G7 Presidency*, in *csis.org*, 2 August 2023; Government of Japan, 「政策お知らせ」人工知能関連技術の研究開発及び活用の推進に関する法律の全面施行について, in *gov-online.go.jp*, November 2025.

⁴⁸ H. Habuka, *Japan's Agile AI Governance in Action*, cit.

3.2.2.2. South Korea

South Korea has made substantial progress in the field of AI in recent years. In 2020, the National Assembly passed the Framework Act on Intelligent Informatization⁴⁹ and its accompanying Enforcement Decree, combinedly defining a legal foundation for the state's AI-related policies. In 2021, the Presidential Commission on the Fourth Industrial Revolution published the "Strategy to Realize Trustworthy AI," outlining three core AI principles (i.e., human dignity, social good, and technological applicability) and 10 governance objectives.

More recently, in December 2024, the National Assembly adopted the Act on the Development of AI and Establishment of Trust (AI Basic Act),⁵⁰ serving primarily to regulate high-impact, generative, and high-performance AI systems based on accumulated computing capacity.⁵¹ This AI Basic Act has three major pillars. First, the establishment of a national AI committee and AI Safety Research Institute to oversee AI policy implementation and regulatory measures. Second, the promotion of AI advancement through providing support for research and development, academic data production, and data infrastructure. Finally, mirroring the EU AI Act's framework, the adoption of a reliable regulatory framework that classifies AI systems according to their impact, such that high-impact AI systems used in healthcare, public safety, and critical infrastructure must adhere to stricter standards. Generative AI systems have also been identified as key targets for stricter regulations to prevent misinformation and maintain public trust.⁵² The AI Basic Act also creates a National AI Committee, assisted by an AI Policy Center and the AI Safety Research Institute, under the President's Office to unify coordination and resource allocation.

This law is consistent with South Korea's legacy as a developmental state characterized by strong government leadership, strategic resource allocation, and industry coordination. It also accounts for international integration efforts, closely conforming to the EU AI Act, Organisation for Economic Co-operation and Development principles, and the G7 Hiroshima AI Process. It is fair to say that South Korea's AI governance illustrates the constitutionalization of its developmental state model, delivering an AI Basic Act through which the state can embed transparency and accountability in administrative processes to then transform policy coordination into a rule-based framework.

⁴⁹ "Framework Act on Intelligent Informatization" (South Korea), 2020.

⁵⁰ "인공지능 발전과 신뢰 기반 조성 등에 관한 기본법" (South Korea), 2025.

⁵¹ Bae Kim & Lee LLC, *Significance of the passage of the AI framework act and its impact on the industry*, in *lexology.com*, 10 February 2024.

⁵² Compliance obligations include disclosure by developers and users about when AI is being employed, alongside risk management functions, lifecycle monitoring, risk assessment, and incident reports. Non-compliance faces the imposition of fines of up to 30 million KRW, thereby strengthening operational capacity. See also: D.H. Park - E. Cho - Y. Lim, *A Tough Balancing Act – The Evolving AI Governance in Korea*, in *East Asian Science, Technology and Society: An International Journal*, 18, 2024, 135 ff.; J. Jeong, *Introduction of the First AI Impact Assessment and Future Tasks: South Korea Discussion*, in *Laws*, 11, 2022, 1 ff.

3.2.2.3. Taiwan

Taiwan's current approach to AI governance is defined by principled ambiguity and experimental regulation. The proposed AI Basic Act,⁵³ still pending before the Legislative Yuan as of late 2025, outlines broad aspirations, such as promoting AI development, safeguarding human rights, and ensuring trustworthy technology, but falters in enforcement mechanisms, sanctions, or defined oversight. Its provisions are declaratory, not binding, reflecting a strategic continuation of Taiwan's long-standing industry-first development logic in which policy facilitation precedes legal consolidation.⁵⁴ What this means is that Taiwan relies on sectoral governance and regulatory experimentation instead of a unified statutory framework. Core principles such as fairness, accountability, and privacy are operationalized through guidelines in specific domains (e.g., AI Principles for Financial Services),⁵⁵ while innovation is advanced via sandbox regimes (e.g., the FinTech Innovation Experiment Act (2018)⁵⁶ and the Unmanned Vehicle Technology Innovative Experimentation Act, both enforced in 2018).⁵⁷ These sandbox mechanisms afford the proper room necessary for ministries, industry, and civil society to collaborate, greatly denoting the state's preference for coordination over control.

In terms of its constitutionalism, this model embodies pragmatism and precarity: experimental governance allows flexibility and interagency cooperation, but a lack of clear accountability or remedial channels undermines the rule-of-law foundation of rights protection. The vagueness in the AI Basic Act is deliberate, blurring the boundaries between guidance and obligation; this delivers adaptive regulation but exposes legal uncertainty. Should risks, such as data misuse or algorithmic discrimination, materialize, the existing mechanisms offer no clear remedies. It is unveiled thus that Taiwan's trajectory represents a development-oriented constitutional minimalism, that is, a system that invokes the constitutional language of rights and responsibility without embedding them into enforceable institutional practices.

3.2.2.4. China

In China, AI governance adopts a state-centric and security-driven model characterized by legally binding administrative regulations placing public order and national stability above individual rights. Since 2021, the Cyberspace Administration of China has issued several major instruments, including the Provisions on the Administration of Algorithm-generated Recommendations for Internet Information Services (effective March

⁵³ National Science and Technology Council, Taiwan, *Draft AI Basic Act*, 2025.

⁵⁴ K.-W. Chen, *May Digital Constitutionalism go beyond the Atlantic? – Not a Critique, But a Reflection from East Asia*, in *digi-con.org*, 24 July 2024.

⁵⁵ «Core Principles and Policies for AI in the Financial Sector» (Taiwan), 2023.

⁵⁶ «Financial Technology Development and Innovative Experimentation Act» (Taiwan), 2018.

⁵⁷ «Unmanned Vehicle Technology Innovative Experimentation Act» (Taiwan), 2018.

2022), the Provisions on the Management of Deep Synthesis of Internet Information Services (effective January 2023), and the Interim Measures for the Management of Generative Artificial Intelligence Services (effective August 2023).⁵⁸ These measures form a comprehensive framework governing algorithms, deep synthesis (deep fakes), and generative AI. The framework mandates algorithmic registration, data provenance verification, content labeling, and risk reporting, as well as imposes obligations on providers to uphold “core socialist values” and prevent content that may endanger national security or social stability. Practically speaking, the system integrates cybersecurity, data, and personal information laws under a unified administrative control mechanism led by the Cyberspace Administration of China, Ministry of Public Security, and other state bodies. Although broad in scope, this framework emphasizes state control rather than constitutional accountability.⁵⁹

3.2.3. Evaluating the State-Centric Model in East Asia

The lack of a common constitutional normative basis or practice provides both benefits and hinderances for the state-centric model of AI governance in East Asia. To maintain their developmental advantages, these countries compete to design regulatory frameworks tailored to their evolving local settings, promoting a level of diversity that encourages regulatory innovation and may provide valuable lessons for other nations and regions in terms of AI governance model development. The dearth of supranational institutions, nonetheless, brings forward the issue that accountability exists primarily at the national level, varying thus in effectiveness and commitment to rights protection. This problem becomes even more pronounced in AI governance contexts because these technologies are likely to have cross-border applications and impacts. The current-day global technological competition also entails that such differences in regulatory attitudes are closely linked to said competition.

Regarding the three MLC-related challenges discussed in subsection 3.1.3 in relation to the EU, the situation in East Asia presents an entirely different picture. First, without overlapping or competing constitutional orders, the tension between a complete framework and national or more localized frameworks is largely absent. Each country governs AI within its own legal system and conflicts arise more between policy sectors than between constitutional levels. Second, if China is excluded because of its authoritarian nature, the democratic deficit that characterizes the EU’s multilayered system is not particularly evident in Japan, South Korea, and Taiwan; instead, their AI laws and policies are embedded in domestic democratic legiti-

⁵⁸ “Provisions on the Administration of Algorithm-generated Recommendations for Internet Information Services” (《互联网信息服务算法推荐管理规定》) (China), 2021; “Provisions on the Management of Deep Synthesis of Internet Information Services” (《互联网信息服务深度合成管理规定》) (China), 2022; “Interim Measures for the Management of Generative Artificial Intelligence Services” (《生成式人工智能服务管理暂行办法》) (China), 2023.

⁵⁹ A. Bradford, *Digital Empires*, cit., 69 ff.

macy and operate within established accountability mechanisms. Third, regarding rights protection, these systems remain confined to national boundaries, rendering institutional responsibility relatively clear while hindering the capacity to address transnational risk. There is a minimal level of value alignment with international frameworks (e.g., those developed by the Organisation for Economic Co-operation and Development, United Nations Educational, Scientific and Cultural Organization, and the G7), yet responsibility and redress mechanisms ultimately depend on national systems. Nonetheless, it is important to emphasize at this point, again, that international rather than regional normative frameworks have exerted a clear influence on the democratic practices of East Asian states, serving as a foundation for their alignment with global standards. To some extent, a multilevel relationship still exists between these international guidelines and domestic legal systems.

Regarding China's state-controlled approach to AI governance, although it also refers to risk management and rights protection, it embodies a form of "Chinese-style constitutionalism" that is fundamentally distinct from the democratic practices of other regional democracies. This divergence underscores the practical difficulty of establishing meaningful regional cooperation among constitutional or rights protection mechanisms within East Asia. With that said, although each democratic East Asian country emphasizes rights protection, only South Korea has explicitly adopted a risk-based model; the other countries feature institutional guarantees of rights that are largely reliant on pre-existing, fragmented legal frameworks, and thus not on the establishment of AI-specific mechanisms for rights protection. This means that, given the absence of a functioning international framework for rights protection, it remains unclear how domestic legal systems adapt their existing rights safeguards to the challenges posed by AI. One point to underline here is that such uncertainty, regardless of legislative progress, may be a proper reflection of the broader reality that governments worldwide are still in the process of exploration and experimentation.

4. EU–East Asia Comparison: Implications for Constitutional Governance

This section examines the implications for constitutional governance of a comparison between the two markedly different models of the EU and East Asia, particularly through the MLC perspective. First, the EU model clearly demonstrates a highly developed MLC type in which power and remedies are dispersed across regional and national levels and grounded in the protection of fundamental rights, robust regulatory instruments, and strong institutional integration. By contrast, East Asia adopts a more decentralized, state-centric approach structured around intergovernmental cooperation, limited regional coordination, and a lack of a regional system of rights protection. Nevertheless, soft and ethical norms promoted by international organizations have served as important points of alignment and dialogue in East Asian policymaking, acting as some sort of "lowest

common denominator” among diverse national frameworks. This paper therefore refers to these two models respectively as a “thick” MLC (for the EU) and a “thin” MLC (for East Asia) and focuses in particular on their characteristics from the perspective of rights protection.

4.1. The Contrasting Models of MLC in the AI Era

4.1.1. The EU Model as a Thick MLC

The “thick” MLC, as exemplified by the EU, is characterized by a high degree of institutional integration and multilayered rights protection. Power and remedies are distributed across levels, creating overlapping, yet coordinated, accountability mechanisms. This system is grounded in constitutional norms such as proportionality, transparency, and fundamental rights, being operationalized through judicial and administrative interactions between EU institutions and Member States.

Thus far, the EU has incorporated fundamental rights protection into legal and regulatory approaches to AI, including risk stratification by dignity, equality, nondiscrimination, privacy, and due process. Rights are not necessarily “invoked,” but used to inform who is to be given what regarding power relationships, regulatory triggers, and monitoring responsibility. This strong normative underpinning provides evidence of the continuous regulatory nature of embedding-based approaches. By extending the normative basis of the GDPR, the EU AI Act builds on and embodies certain norms, including proportionality, necessity, transparency, and human control, casting these common normative values and principles as composing common moral principles. These normative principles and values are also included in other EU digital legislations that promote cross-institutional logical and intersystem reasoning and coordination.⁶⁰

4.1.2. The East Asian Model as a Thin MLC

By contrast, the “thin” MLC, as found in East Asia, refers to a softer, institutionally minimalist framework. Most East Asian countries follow international norms, such as those of the Organisation for Economic Co-operation and Development, United Nations Educational, Scientific and Cultural Organization, and the G7.⁶¹ While lacking a formal regional rights system, they share a common constitutional vocabulary through policy alignment with these international standards. However, there is much divergence in the constitutionalization in their respective domestic regulations, as can be observed through their different approaches. On

⁶⁰ O. Pollicino - F. Paolucci, *Regulating AI Autonomy: A Constitutional Framework for the Digital Era*, in M. Durante - U. Pagallo (eds.), *The De Gruyter Handbook on Law and Digital Technologies*, 2025, 353 ff.

⁶¹ See for example, H. Habuka, *Japan's Agile AI Governance in Action*, cit.

the one hand, the same concept can have significantly different interpretations or implementations; on the other, given the competitive dynamics and industrial interests among East Asian countries in the AI sector, their developmental orientations may make the concrete realization of rights protection an ambiguous endeavor. Even when similar constitutional vocabularies are employed to express a commitment to rights protection, the actualization of these principles continues uncertain and warrants continuous observation. Interestingly, the recent developments in ASEAN similarly reflect the governance logic of “thin” MLCs in the context of AI governance.⁶² To date, ASEAN has not established binding legal obligations or supranational enforcement mechanisms, instead addressing AI governance through coordination-based soft law instruments. For instance, in 2024, ASEAN issued its “Guide on AI Governance and Ethics”, which aim to support organizations in its member states in the design, development, and deployment of AI systems in commercial and non-military or non-dual-use sectors.⁶³ The guidelines seek to promote regional coordination, enhance interoperability among national AI governance frameworks, and offer recommendations for national and regional initiatives to encourage responsible AI development and use. They articulate core principles such as transparency, fairness, people-centeredness, and accountability, while deliberately preserving regulatory flexibility to accommodate diverse political, economic, and institutional contexts. Emphasizing consensus-based cooperation, capacity building, and policy coordination, ASEAN thus functions as a facilitative governance platform that promotes normative convergence without constitutional integration or regional remedial mechanisms, reflecting the characteristics of “thin” MLCs in East Asia.

4.2. Comparative Rights Protection in AI Governance

4.2.1. Institutional Difference: Multilevel Remediation versus Domestic Centralization

While both models share a rhetorical commitment to rights protection, they fundamentally diverge in constitutional architecture and institutional operation. The EU’s AI governance represents a multilayered and functionally differentiated system involving the European Commission, the AI Office and Board, competent national authorities, national courts interacting through the preliminary reference mechanism, and the Court of Justice of the European Union. This architecture provides multichannel oversight and redress, allowing for both vertical and horizontal interactions across governance levels; what this means practically is that individuals may bring complaints through several procedural routes, while

⁶² A.J. Keith, *Governance of Artificial Intelligence in Southeast Asia*, in *Global Policy*, 15 (5), 2024, 937 ff.

⁶³ ASEAN, *ASEAN Guide on AI Governance and Ethics*, in *asean.org*, 2 Feb. 2024.

regulators possess tools for both *ex ante* and *ex post* interventions. This institutional layering secures that if enforcement fails at one level, another level can intervene, reinforcing the system's overall coherence.⁶⁴ Concomitantly, principles such as direct effect, supremacy, and proportionality review constrain the discretionary space of member states, preserving then the uniform application of EU law.

The EU's model has several advantages. First, it encourages open dialogue and diverse perspective integration among stakeholders within a multilevel governance framework; such collaborative governance fosters a more inclusive environment for sharing knowledge, which then enhances trust and legitimacy. Second, although there is some room for experimentation in each domestic jurisdiction, this space is governed by the direct effect and supremacy of EU law and proportional scrutiny. These institutional frameworks ensure that EU legislation is relatively uniform, which helps reduce significant quarrels among Member States regarding AI regulation implementation.⁶⁵ Regarding the tensions arising from this model, the coexistence of multiple enforcement pathways can create regulatory complexity and procedural overlap, whereas Member States' divergent administrative capacities can lead to uneven enforcement. Concerns about economic competitiveness may fuel resistance to supranational mandates, revealing the ongoing frictions between constitutional integration and national autonomy in the EU's AI governance regime.

In contrast, the East Asian approach remains domestically anchored. Among democracies, South Korea has adopted a more structured, risk-based model for AI, whereas Japan and Taiwan rely primarily on pre-existing sectoral legal frameworks to address AI-related harm. This domestic orientation precludes the emergence of a regional rights regime but gives way for greater regulatory flexibility and policy adaptability. It is undoubted that these qualities are particularly salient in contexts where technological change outpaces legislative reform. However, the transnational nature of AI technologies underscores that purely domestic safeguards may be insufficient. East Asia lacks comparable supranational adjudicatory or supervisory bodies to those in the EU, and responsibility for AI governance remains primarily at the national level. A main outcome here is significant disparities in institutional capacity and independence across jurisdictions, which then hinder response coordination to cross-border issues such as model supply chain opacity or transnational data profiling. The absence of a regional remedy mechanism implies that victims of AI-related harm have limited procedural access beyond domestic law. The transaction costs of coordination are also high, seeing that companies face inconsistent compliance obligations across jurisdictions and governments lack mechanisms for information sharing or joint enforcement. Thus, regional governance in East Asia remains a fragile and fragmented construct where

⁶⁴ See C. Novelli - P. Hacker - J. Morley - J. Trondal - L. Floridi, *A Robust Governance for the AI Act: AI Office, AI Board, Scientific Panel, and National Authorities*, in *European Journal of Risk Regulation*, 2024; B. Crum, *Brussels effect or experimentalism? The EU AI Act and global standard-setting*, in *Internet Policy Review*, 14, 2025; K. Prifti - E. Fosch-Villaronga, *Towards experimental standardization for AI governance in the EU*, in *Computer Law & Security Review*, 52, 2024.

⁶⁵ C. Cancela-Outeda, *The EU's AI act: A framework for collaborative governance*, cit., 7 ff.

alignment with international standards (e.g., Organisation for Economic Co-operation and Development or G7 principles) provides a normative baseline yet does not—and cannot—substitute for effective cross-border institutional design. At a minimum, East Asian states must engage in foundational coordination, with clear examples being establishing mechanisms for cross-border information exchange, mutual assistance in data-related requests, and cooperative frameworks for rights-based oversight.

4.2.2. Reinterpreting Fragmentation: From Deficiency to Contextual Pluralism

At first glance, the “thin” MLC appears normatively weaker than the “thick” MLC, particularly in terms of rights protection and institutional design. However, this apparent fragility may reflect a distinct mode of constitutional adaptation that mitigates several systemic tensions embedded in the EU model. First, normative conflicts are substantially minimized. East Asian jurisdictions align their domestic legal orders with international soft law principles rather than with competing supranational mandates, helping them uphold normative coherence without the burden of cross-level contestation. Second, the democratic deficit commonly observed in supranational governance is less pronounced because AI governance in East Asia is primarily legislated through national democratic and administrative processes. Third, accountability confusion is reduced because responsibility is clearly embedded within the domestic legal systems, avoiding the overlapping competencies and regulatory paralysis that sometimes constrain EU innovation and responsiveness. Therefore, while East Asia’s institutional diversity is often described as fragmented, it may more appropriately be understood as context-sensitive pluralism: a flexible and adaptive reality that reflects each country’s distinct cultural, economic, and social interpretation of constitutional rights. Therefore, normative uniformity should not be regarded as an ultimate constitutional ideal; what matters, in both the “thick” and “thin” forms of MLC, is that rights are reasonably and adequately protected.

If one was to insist that Japan, South Korea, Taiwan, and China adopt identical rights protection standards, such an expectation would face two major obstacles. First, given the geopolitical realities of the region, establishing a comprehensive human rights protection mechanism encompassing all East Asia is practically infeasible.⁶⁶ Second, in AI governance, the EU’s product-based regulatory logic is premised on the institutional foundation of a single market—a condition which is absent in East Asia. Without such structural preconditions, transplanting a comparable regulatory model could generate more problems than solutions. Ultimately, the essential objective of MLC should be to ensure that no jurisdiction remains in a condition where fundamental rights are unprotected.

The next question, then, is how rights protection can be effectively en-

⁶⁶ See for example, A. Bradford, *Digital Empires*, cit., 69 ff.; J. Cheng - J. Zeng, *Shaping AI’s Future? China in Global AI Governance*, in *Journal of Contemporary China*, 32, 2022, 794 ff.

sured within a “thin” MLC, and this study proposes two complementary pathways. For one, domestic systems can strengthen rights protection through the constitutionalization of international soft law and ethical principles; even without supranational oversight, the values embedded in global frameworks (e.g., transparency, accountability, fairness, and human dignity) can be internalized within national administrative and judicial mechanisms. Courts and independent regulators can then play a key role in translating normative commitments into legally enforceable standards, reinforcing constitutional governance from within. For another, basic transnational mechanisms for dialogue and coordination can be developed, at least in democratic states. This is because these democratic states are presumed to share similar constitutional vocabularies and overlapping normative commitments, potentially serving as the bedding for an East Asian practice of digital constitutionalism. While the EU’s version of digital constitutionalism can be discussed as a single, integrated system, the East Asian approach is inherently more decentralized and diverse; importantly, this configures differentiation, not superiority or deficiency. If these varying approaches can inform and learn from one another to enhance rights protection across different layers and contexts, such interactions would represent a constructive and desirable development.

These two pathways illustrate that even within a “thin” MLC, rights protection need not rely on supranational integration but can instead evolve through the mutual reinforcement of domestic constitutionalization and cross-border coordination.

4.3. How “Thick” and “Thin” MLC Affect its Future

It may be difficult to envision a convergent future for “thick” and “thin” forms of MLC, given the profound differences in the regional political foundations of the EU and East Asia. The EU’s experience shows how regional constitutionalization can turn AI governance into a more constitutional approach to protecting citizens’ rights through multilayered mechanisms. This architecture also increases coherence and governance functionality in a single market. The price for such coherence comes as a high procedural cost, constant renegotiation, dealing with external skepticism, and facing suspicions of a democratic deficit in the system. Thus, East Asia offers an alternative possibility. The “thin” MLC’s strengths (e.g., flexibility, adaptability, and potential for governance innovation) may offer valuable insights for “thick” MLC systems on how to address the challenges of AI governance management across multiple layers of authority. Conversely, a “thin” MLC maintains policy-level flexibility and provides space for local institutional experimentation. The tradeoff manifests in reduced cross-border accountability; a possible long-term prospect then becomes *de facto* stratification processes fundamentally based on market or national security logic, and thus not on a hierarchical order established by constitutional structures. The relative weakness of the “thin” MLC in safeguarding human rights highlights the need to consider establishing

basic transnational coordination mechanisms to ensure a minimum level of protection across borders.

5. Conclusion and Outlook

AI governance is both a technological and constitutional question that tests how existing legal orders can adapt to new forms of power and risk. The EU demonstrates how a “thick” model of MLC can institutionalize rights protection through supranational integration and multilayered remedies. The price paid for this coherence is adhering to procedural requirements that can evoke regulatory rigidity, democratic deficits, and tensions between supranational mandates and national autonomy. In contrast, East Asia illustrates a “thin” MLC lackluster in supranational adjudication and compensatory through promoting flexibility, contextual responsiveness, and normative alignment with international soft law principles. Although fragmented, this model reflects a pluralistic constitutional practice accommodative of diverse political, cultural, and economic realities. Then, the argument emerges that such disintegration should not be viewed as a shortcoming, but a different constitutional pathway that prioritizes adaptability over uniformity. From a comparative perspective, both models reveal reciprocal lessons. The “thick” MLC may learn from East Asia’s capacity for policy experimentation and decentralized governance in managing AI’s uncertainty; the “thin” MLC can strengthen its normative coherence and cross-border accountability through minimal coordination frameworks and shared ethical commitments.

Ultimately, the future of digital constitutionalism should not be defined by institutional uniformity, but by the mutual reinforcement of domestic constitutionalization and transnational cooperation. Whether through regional integration or dialogue coordination, the essential aim remains the same: to ensure that the governance of emerging technologies is conducted under the rule of law, and that no society remains without the basic protection of fundamental rights.

Abstract

This study comparatively analyzes AI governance through the lens of multilevel constitutionalism (MLC) by contrasting two distinct regional models. The study proposes that there is a “thick” MLC in the European Union that provides coherent, supranational legal framework (e.g., the EU AI Act), ensuring multilayered rights protection at the expense of regulatory rigidity and potential democratic deficits. The “thin” MLC in East Asia is instead a fragmented, state-centric approach that allows for greater flexibility and policy experimentation by aligning with international soft law but struggles with cross-border accountability and regional enforcement mechanisms. The article concludes that the conversation about these divergent paths should focus not on superiority matters but on differences, arguing that the core of the future of digital constitutionalism lies in the mutual reinforcement of rights protections and transnational cooperation.

Keywords

multilevel constitutionalism – AI governance – European Union – East Asia – fundamental rights