ILE CONSTITUTIONAL REVIEW
VOLUME 5 AND ISSUE I OF 2026
APIS – 3920 – 0006 | ISSN - 2583-7168

Published by
Institute of Legal Education
https://iledu.in

AI GOVERNANCE AND CONSTITUTIONAL LAW: RECALIBRATING CONSTITUTIONAL FRAMEWORKS IN THE AGE OF ARTIFICIAL INTELLIGENCE

AUTHORS - MR. SRINIVAS M.K* & PROF. DR. M.S. BENJAMIN**

* PH.D SCHOLAR (LAW) DEPARTMENT OF STUDIES IN LAW, UNIVERSITY OF MYSORE, INDIA

ORCID: HTTPS://ORCID.ORG/0009-0002-0475-9447

** DEAN, FACULTY OF LAW, CHAIRMAN & PROFESSOR OF LAW, DEPARTMENT OF STUDIES IN LAW, UNIVERSITY OF MYSORE, INDIA

BEST CITATION - MR. SRINIVAS M.K & PROF. DR. M.S. BENJAMIN, AI GOVERNANCE AND CONSTITUTIONAL LAW: RECALIBRATING CONSTITUTIONAL FRAMEWORKS IN THE AGE OF ARTIFICIAL INTELLIGENCE, *ILE CONSTITUTIONAL REVIEW*, 5 (1) of 2026, Pg. 01-16, APIS – 3920 – 0006 | ISSN - 2583-7168. DOI - https://doi.org/10.65393/AWEY4198

Abstract

The rapid integration of artificial intelligence (AI) into governance, public administration, and judicial systems presents unprecedented challenges to constitutional law. Traditional constitutional frameworks designed to regulate human decision-making are increasingly strained by algorithmic governance, automated decision systems, and data-driven state power. This research article examines the intersection of AI governance and constitutional law, arguing that AI necessitates a recalibration of core constitutional principles such as the rule of law, separation of powers, fundamental rights, and democratic accountability. Through comparative analysis and normative evaluation, the article explores how constitutional systems can adapt to ensure that AI remains subject to constitutional constraints rather than becoming a parallel source of authority.

Keywords: Artificial Intelligence, AI Governance, Constitutional Law, Fundamental Rights, Rule of Law, Separation of Powers, Algorithmic Accountability

1. INTRODUCTION

Artificial intelligence has moved beyond the realm of experimental or auxiliary technology and is now deeply embedded in the core functions of modern government. Across jurisdictions, AI-driven systems are increasingly used to allocate social welfare benefits, predict criminal behavior, guide law enforcement patrols, manage border security through biometric identification, optimize tax enforcement, and support judicial administration through case management, risk assessment, and sentencing analytics. Governments justify this shift by emphasizing efficiency, speed, consistency, and the perceived neutrality of algorithmic decision-making.[1] In an era of growing caseloads, limited public resources, and demands for data-driven governance, AI appears to offer a technological solution to structural governance challenges.[2]However, the integration of AI into public decision-making simultaneously unsettles foundational assumptions of constitutional law. Constitutional frameworks are historically premised on human agency that

[1] *The Democratic Regulation of Artificial Intelligence*, KNIGHT FIRST AMENDMENT INSTITUTE, http://knightcolumbia.org/content/the-democratic-regulation-of-artificial-intelligence (last visited Jan. 18, 2026).

[2] IJLLR Journal, *The Constitution In The Age Of Artificial Intelligence: Legal Personhood And Fundamental Rights Of AI*, IJLLR JOURNAL (June 18, 2025), https://www.ijllr.com/post/the-constitution-in-the-age-of-artificial-intelligence-legal-personhood-and-fundamental-rights-of-a.

public power is exercised by identifiable officials who can be held legally and politically accountable. AI systems complicate this premise by introducing automated or semi-automated decisions that are generated through complex computational processes rather than human reasoning.[3] Moreover, many AI models operate opaquely, either due to technical complexity or claims of proprietary secrecy, undermining the constitutional values of transparency, reason-giving, and procedural fairness. When individuals are unable to understand how or why a governmental decision affecting their rights has been made, the legitimacy of constitutional governance is placed at risk.[4]

This diffusion of power raises a fundamental constitutional dilemma. Existing doctrines were not designed to address algorithmic governance, predictive analytics, or machine-driven discretion. Courts may struggle to review decisions they cannot technically interpret, legislatures may lack the expertise to regulate rapidly evolving systems, and traditional accountability mechanisms may fail when no single human decision-maker can be identified.[5]Consequently, a critical question emerges at the intersection of technology and constitutional law: can established constitutional doctrines be adapted to meaningfully govern AI-driven state action, or does the rise of algorithmic governance require the development of a new constitutional paradigm one that explicitly addresses artificial intelligence as a distinct form of public power? Constitutional law has traditionally functioned as a normative and institutional constraint on public power, ensuring that state authority is exercised within legally defined limits and subject to oversight.[6] Doctrines such as legality, separation of powers, judicial review, and fundamental rights protection are designed to prevent the arbitrary exercise of authority. Yet, when decision-making authority is partially delegated to AI systems often designed, trained, and maintained by private technology companies the locus of public power becomes fragmented and diffuse.[7] Responsibility may be spread across software developers, data providers, administrative agencies, and political institutions, making it difficult to identify who is constitutionally accountable for rights violations or unlawful outcomes.[8]

[3] *AI's Real Dangers for Democracy*, JOURNAL OF DEMOCRACY, https://www.journalofdemocracy.org/articles/ais-real-dangers-for-democracy/ (last visited Jan. 18, 2026).

[4] Abulgasem Al Mashai, Algorithmic Ethics for Digital Justice: Towards a Constitutional Framework for Responsible AI in Legal Systems (July 15, 2025), https://papers.ssrn.com/abstract=5353879.

[5] *Artificial Intelligence, Free Speech, and the First Amendment | The Foundation for Individual Rights and Expression*, https://www.thefire.org/research-learn/artificial-intelligence-free-speech-and-first-amendment (last visited Jan. 18, 2026).

[6] *Invisible Hand of Code: Reimagining Constitutionalism in the Age of Algorithms – NLIU Law Review*, https://nliulawreview.nliu.ac.in/blog/invisible-hand-of-code-reimagining-constitutionalism-in-the-age-of-algorithms/ (last visited Jan. 18, 2026).

[7] Johann Laux, *Institutionalised Distrust and Human Oversight of Artificial Intelligence: Towards a Democratic Design of AI Governance under the European Union AI Act*, 39 AI SOC. 2853 (2024), https://pmc.ncbi.nlm.nih.gov/articles/PMC11614927/.

[8] Andrew Coan & Harry Surden, *AI and Constitutional Interpretation: The Law of Conservation of Judgment*, LAWFARE (2024), https://www.lawfaremedia.org/article/ai-and-constitutional-interpretation--the-law-of-conservation-of-judgment.

ILE CONSTITUTIONAL REVIEW
VOLUME 5 AND ISSUE I OF 2026
APIS – 3920 – 0006 | ISSN - 2583-7168
Published by
Institute of Legal Education
https://iledu.in

2. Conceptualizing AI Governance

AI governance refers to the complex constellation of legal, institutional, technical, and ethical frameworks designed to regulate the development, deployment, and use of artificial intelligence systems.[9] It encompasses a wide range of regulatory instruments, including legislation, administrative rules, judicial doctrines, and soft-law mechanisms such as ethical guidelines and industry standards. In addition, AI governance relies on institutional arrangements such as regulatory authorities, audit bodies, and independent oversight mechanisms that monitor compliance and address harms arising from AI use. Technical standards, including requirements for accuracy, robustness, explainability, and data quality, further shape how AI systems are designed and implemented. Together, these elements seek to ensure that AI technologies align with public values such as fairness, accountability, transparency, human dignity, and respect for fundamental rights.

Beyond its regulatory function, AI governance also performs a normative role by articulating the principles that should guide the acceptable use of AI in society. These principles often expressed through concepts such as human oversight, non-discrimination, proportionality, and risk-based regulation reflect broader constitutional commitments. As a result, AI governance cannot be reduced to a purely technical or managerial exercise; it is inherently a question of how power, responsibility, and legitimacy are structured in technologically mediated societies.

From a constitutional perspective, AI governance is not merely a matter of sector-specific regulation analogous to environmental or consumer protection law.[10] Rather, it

[9] Pratyaksh Joshi & Yogesh Wamankar, *ALGORITHMIC POLICING AND DUE PROCESS IN CYBERCRIME INVESTIGATIONS: A CONSTITUTIONAL ANALYSIS UNDER ARTICLES 14, 19 AND 21 OF THE INDIAN CONSTITUTION*, 2 SHODHSAMAJIK J. SOC. STUD. 153 (2025), https://shodhsamajik.com/shodhsamajik/article/view/57.

[10] admin, *ARTIFICIAL INTELLIGENCE AND THE STATE FROM A COMPARATIVE PERSPECTIVE*, ITALIAN JOURNAL OF PUBLIC LAW

constitutes a structural constitutional issue because AI systems increasingly shape how public power is exercised and constrained. Algorithmic systems determine access to social benefits, influence policing priorities, assess risks in criminal justice, and filter information relevant to democratic participation. In doing so, they directly affect the scope and content of constitutional rights, including equality, privacy, due process, and freedom of expression.[11]

Moreover, AI alters traditional accountability relationships within the state. Decision-making authority is often redistributed across public agencies, private contractors, and automated systems, challenging established doctrines of ministerial responsibility, administrative accountability, and judicial review. When algorithms become integral to governance, constitutional questions arise not only about outcomes but also about institutional design: who decides, on what basis, and under what legal constraints. Consequently, AI governance must be understood as an integral component of constitutional governance rather than as an external or purely regulatory domain. Embedding AI governance within constitutional law ensures that AI systems remain subject to fundamental constitutional principles, including the rule of law, separation of powers, and the protection of fundamental rights. Treating AI governance as a constitutional matter acknowledges that artificial intelligence is not merely a tool of governance but a transformative modality of public power that must be constitutionally disciplined.[12]

3. AI and the Rule of Law

The rule of law requires legality, predictability, transparency, and accountability in the exercise of public power. AI systems challenge these requirements in several ways.

First, algorithmic opacity undermines legal transparency. Many AI systems particularly those based on machine learning operate as "black boxes," making it difficult for affected individuals to understand how decisions are reached.[13] This conflicts with the constitutional requirement that laws and administrative actions be knowable and reasoned.[14]

Second, AI-driven decision-making complicates judicial review. Courts traditionally assess the legality and proportionality of administrative decisions by examining reasoning processes. When decisions are produced by complex algorithms, meaningful review becomes technically and institutionally difficult, potentially weakening constitutional checks on executive power.

4. Separation of Powers and Algorithmic Decision-Making

The separation of powers doctrine is traditionally premised on a clear allocation of authority among the legislative, executive, and judicial branches of government, with each branch exercising distinct functions and operating as a check on the others. This constitutional architecture assumes that decision-making power is exercised by human institutions capable of deliberation, justification, and accountability. The introduction of artificial intelligence into governance disrupts this allocation by inserting non-human decision-makers into processes that were constitutionally designed to be controlled by identifiable branches of government.[15]

(Apr. 7, 2025), https://www.ijpl.eu/artificial-intelligence-and-the-state-from-a-comparative-perspective/.

[11] Paulo Caliendo, *Algorithmic Tax Power and Constitutional Safeguards: Global Perspectives on AI, Bias, and Digital Tax Justice*, 16 BEIJING LAW REV. 1861 (2025), https://www.scirp.org/journal/paperinformation?paperid=145651.

[12] Shivam Bharal et al., *Code, Constitution and AI: Rethinking Fundamental Rights in the Algorithmic Era*, 16 IJSAT - INT. J. SCI. TECHNOL. (2025), https://www.ijsat.org/research-paper.php?id=8087.

[13] Shivam Bharal et al., *Code, Constitution and AI: Rethinking Fundamental Rights in the Algorithmic Era*, 16 IJSAT - INT. J. SCI. TECHNOL. (2025), https://www.ijsat.org/research-paper.php?id=8087.

[14] Jan, *Balancing AI, Ethics and the Constitution*, LAW.ASIA (Dec. 9, 2024), https://law.asia/ai-regulation-india/.

[15] Matthijs Maas, *Advanced AI Governance: A Literature Review of Problems, Options, and Proposals*, INSTITUTE FOR LAW & AI (Nov. 1, 2023), https://law-ai.org/advanced-ai-gov-litrev/.

One significant disruption arises at the legislative level. Legislatures frequently lack the technical expertise, institutional capacity, and informational access necessary to regulate complex AI systems in detail. As a result, legislative bodies often resort to broad, open-ended statutory frameworks that delegate significant regulatory discretion to executive agencies. While delegation is not inherently unconstitutional, excessive reliance on executive rulemaking in the AI context risks weakening democratic control, particularly when legislative oversight mechanisms are underdeveloped or ineffective. The normative choices embedded in AI systems such as how risks are defined, which data are used, and which outcomes are prioritized may thus escape meaningful parliamentary scrutiny.

At the executive level, the challenges deepen. Administrative agencies increasingly depend on AI tools to implement public policy, enforce regulations, and make individualized determinations. However, these tools are frequently developed and maintained by private technology companies, protected by intellectual property rights and trade secrecy. This reliance creates a form of indirect privatization of public power, whereby core governmental functions are shaped by proprietary algorithms that are not fully transparent to either regulators or the public. The executive branch may exercise authority through systems it does not fully understand or control, complicating traditional doctrines of administrative accountability and undermining constitutional expectations of reasoned and reviewable decision-making.[16]

The separation of powers is further strained by the use of AI in judicial contexts. Courts have increasingly encountered algorithmic tools in areas such as bail decisions, sentencing, parole assessments, and case management. While these systems are often presented as advisory rather than determinative, their perceived objectivity and predictive capacity can exert significant influence on judicial outcomes. When judges rely heavily on algorithmic recommendations, there is a risk that judicial discretion is subtly constrained by technical systems whose underlying logic may be opaque or contested. This dynamic raises concerns about judicial independence, as decision-making authority may shift from the judge's constitutional role as an independent arbiter to algorithmic assessments produced outside the judicial branch.

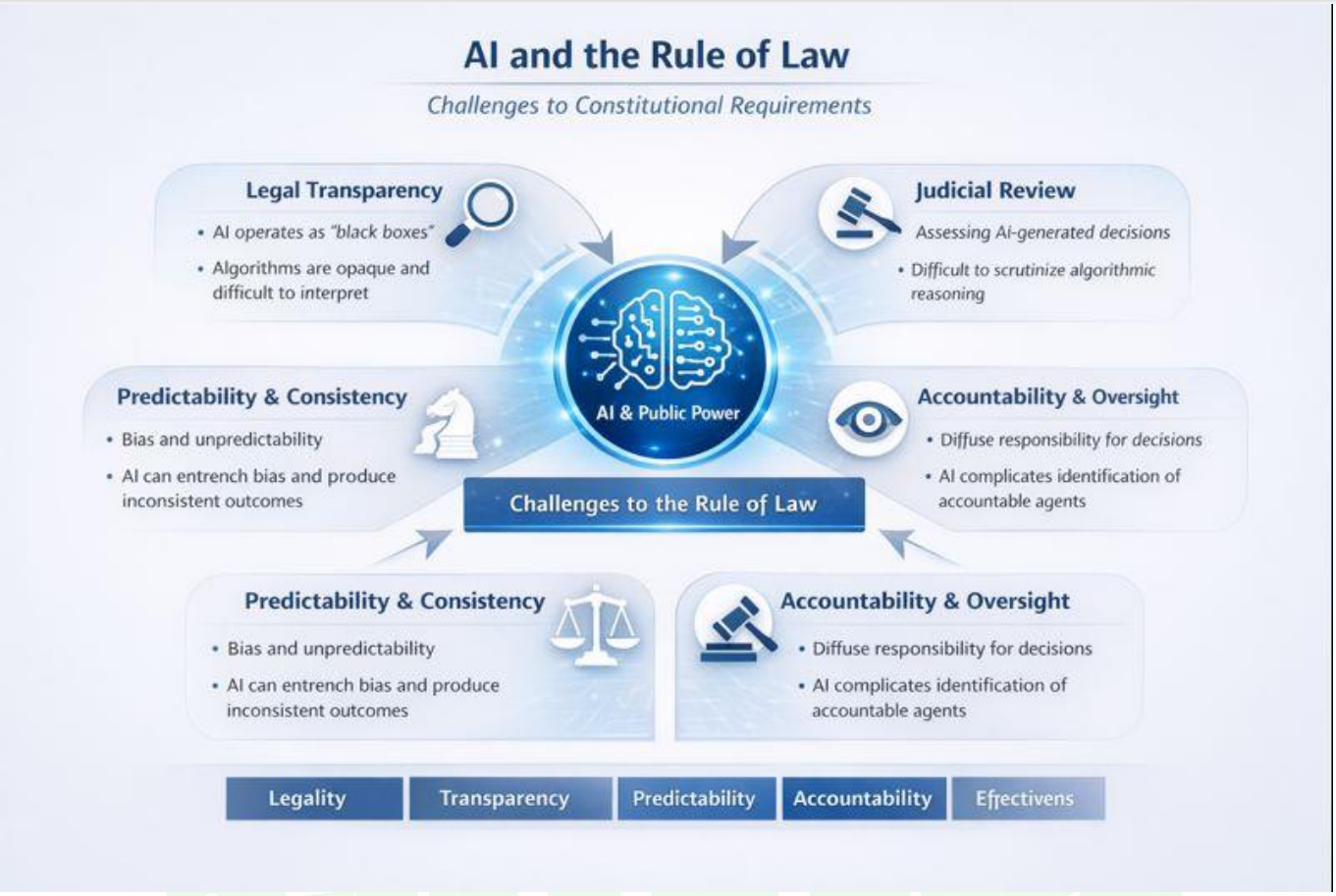
Moreover, the incorporation of AI into adjudication challenges the judiciary's capacity to fulfill its constitutional function as a check on the other branches. If courts are unable to critically assess the design, data, and assumptions underlying algorithmic systems, judicial review risks becoming deferential or symbolic rather than substantive. This erosion of effective review undermines the balance of power that the separation of powers doctrine seeks to preserve.

Taken together, these developments suggest that AI does not merely create operational challenges for governance but alters the constitutional equilibrium among branches of government. Without deliberate constitutional safeguards, AI-driven governance risks redistributing power in ways that weaken legislative oversight, dilute executive accountability, and compromise judicial independence thereby calling for a reassessment of separation of powers doctrine in the age of artificial intelligence.[17]

[16] hlr, *Resetting Antidiscrimination Law in the Age of AI*, HARVARD LAW REVIEW (Apr. 10, 2025), https://harvardlawreview.org/print/vol-138/resetting-antidiscrimination-law-in-the-age-of-ai/.

[17] Fernando A. Ramos-Zaga, *Reconceptualizing Human Authorship in the Age of Generative AI: A Normative Framework for Copyright Thresholds*, 14 LAWS (2025), https://www.mdpi.com/2075-471X/14/6/84.

ILE CONSTITUTIONAL REVIEW
VOLUME 5 AND ISSUE I OF 2026
APIS – 3920 – 0006 | ISSN - 2583-7168
Published by
Institute of Legal Education
https://iledu.in



5. Fundamental Rights in the Age of AI

AI systems have profound and far-reaching implications for the protection of constitutional rights, particularly the rights to equality, privacy, due process, and human dignity. As AI increasingly mediates the relationship between the state and individuals, it reshapes how rights are exercised, limited, and enforced. Unlike traditional administrative tools, AI systems operate at scale, rely on probabilistic reasoning, and draw inferences from vast datasets, thereby introducing new forms of rights interference that are often indirect, opaque, and difficult to contest. This raises the risk that constitutional rights may be systematically undermined without clear points of legal accountability.[18]

5.1 Equality and Non-Discrimination

The principle of equality before the law and the prohibition of discrimination are cornerstones of constitutional order. AI systems, however, pose significant challenges to these guarantees. Many AI models are trained on historical data that reflect existing social, economic, and institutional biases. When such data are used to predict behavior, allocate resources, or assess risk, AI systems may reproduce and even amplify patterns of disadvantage affecting marginalized groups.[19]

In the context of public decision-making such as welfare eligibility, policing, or immigration control discriminatory outcomes may occur without any explicit intent to discriminate. This complicates traditional constitutional equality analysis, which often focuses on intent, differential treatment, or identifiable decision-

[18] *AI Governance and Human Rights | 03 Governing AI: Why Human Rights?*, https://www.chathamhouse.org/2023/01/ai-governance-and-human-rights/03-governing-ai-why-human-rights (last visited Jan. 18, 2026).

[19] Matej Avbelj, *Reconceptualizing Constitutionalism in the AI Run Algorithmic Society*, 25 GER. LAW J. 1081 (2024), https://www.cambridge.org/core/journals/german-law-journal/article/reconceptualizing-constitutionalism-in-the-ai-run-algorithmic-society/F83A866AD4B9A80BA3622F49D63AF725.

ILE CONSTITUTIONAL REVIEW
VOLUME 5 AND ISSUE I OF 2026
APIS – 3920 – 0006 | ISSN - 2583-7168
Published by
Institute of Legal Education
https://iledu.in

makers. Algorithmic discrimination may instead arise from seemingly neutral criteria, proxy variables, or feedback loops embedded within data-driven systems. As a result, constitutional courts are increasingly confronted with the challenge of adapting equality doctrines to address structural and indirect discrimination produced by AI, including the need to scrutinize data selection, model design, and systemic impacts rather than isolated decisions.[20]

5.2 Privacy and Data Protection

AI governance is deeply intertwined with large-scale data collection, aggregation, and analysis. AI systems derive their predictive power from the continuous processing of personal and behavioral data, often sourced from multiple public and private databases. This creates significant tension with constitutional protections of privacy, which were traditionally designed to guard against discrete intrusions rather than pervasive, continuous surveillance.[21]

Predictive analytics, facial recognition technologies, and real-time monitoring tools enable the state to infer sensitive information about individuals, including their habits, preferences, and future behavior. Even when data collection is formally lawful, the combination and repurposing of data can erode the meaningful control individuals have over their personal information. Consequently, courts are increasingly required to reconsider the scope of informational privacy, moving beyond notions of secrecy toward concepts of autonomy, contextual integrity, and data minimization. Constitutional privacy guarantees must therefore evolve to address not only data collection but also algorithmic inference, profiling, and long-term data retention.

5.3 Due Process and Procedural Fairness

Automated and algorithmically assisted decision-making poses serious challenges to constitutional guarantees of due process and procedural fairness. Traditional due process frameworks are built around participation, reasoned decision-making, and the availability of effective remedies. [22]AI systems, by contrast, often operate with minimal human involvement, providing outputs that are difficult to explain or contest.[23]

Individuals affected by automated decisions may be unaware that AI has been used, may not receive meaningful explanations for adverse outcomes, or may lack access to effective avenues of appeal. This undermines the constitutional requirement that individuals be treated as rights-bearing subjects rather than passive objects of administrative efficiency. As a result, constitutional due process must be reinterpreted to include new procedural safeguards tailored to algorithmic governance. These may include rights to explanation, mandatory human oversight in high-risk decisions, transparency obligations, and access to independent review mechanisms capable of assessing both legal and technical aspects of AI systems.[24]

Taken together, these challenges demonstrate that AI does not merely create isolated rights violations but poses systemic risks to constitutional rights protection. Ensuring that equality, privacy, and due process remain meaningful in the age of artificial intelligence requires a constitutional recalibration one that

[20] *Id.*

[21] Emmanouil Papagiannidis, Patrick Mikalef & Kieran Conboy, *Responsible Artificial Intelligence Governance: A Review and Research Framework*, 34 J. STRATEG. INF. SYST. 101885 (2025), https://www.sciencedirect.com/science/article/pii/S0963868724000672.

[22] D. J. Galligan, *Procedural Fairness in Europe: The European Convention on Human Rights and the European Union*, *in* DUE PROCESS AND FAIR PROCEDURES: A STUDY OF ADMINISTRATIVE PROCEDURES 0 (D. J. Galligan ed., 1997), https://doi.org/10.1093/acprof:oso/9780198256762.003.0007.

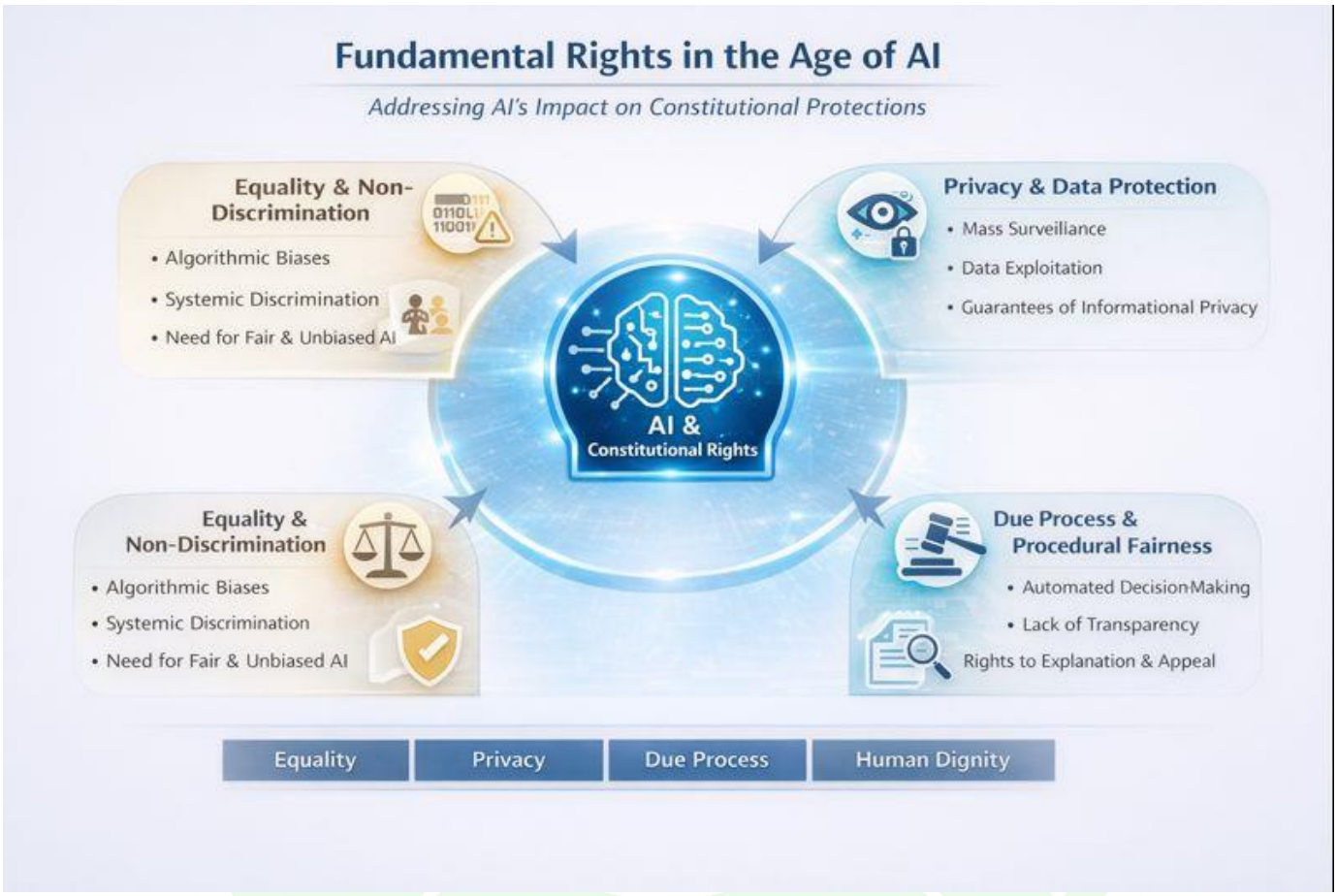
[23] Jomana Hadeer, *RECALIBRATING SOVEREIGNTY IN THE AGE OF AUTONOMOUS AI GOVERNANCE: A LEGAL BLUEPRINT FOR CROSS-JURISDICTIONAL ACCOUNTABILITY, DIGITAL BORDERS, AND AI-DRIVEN TREATY INTERPRETATION*, 2 J. INT. LAW JIL 1 (2025), https://iaeme.com/Home/article_id/JIL_02_01_001.

[24] D. J. Galligan, *The Sources of Procedures*, *in* DUE PROCESS AND FAIR PROCEDURES: A STUDY OF ADMINISTRATIVE PROCEDURES 0 (D. J. Galligan ed., 1997), https://doi.org/10.1093/acprof:oso/9780198256762.003.0010.

ILE CONSTITUTIONAL REVIEW
VOLUME 5 AND ISSUE I OF 2026
APIS – 3920 – 0006 | ISSN - 2583-7168
Published by
Institute of Legal Education
https://iledu.in

recognizes AI as a powerful intermediary of state authority and subjects it to robust rights-based constraints.[25]

instruments such as the General Data Protection Regulation (GDPR) and the proposed Artificial Intelligence Act (AI Act).[26] The GDPR establishes a robust legal architecture for the



6. Comparative Constitutional Responses

Different constitutional systems have begun to confront the challenges of AI governance in ways that reflect their broader legal traditions, institutional structures, and normative priorities. These approaches illustrate both the diversity of responses and the converging recognition that artificial intelligence is a transformative form of public power that cannot remain outside constitutional scrutiny.

The European Union (EU) exemplifies a rights-based and precautionary approach to AI governance. Central to this framework are

protection of personal data, enshrining principles such as purpose limitation, data minimization, transparency, and individual control over personal information. Importantly, the GDPR includes rights to explanation, automated decision-making safeguards, and mechanisms for contesting adverse outcomes, which together provide a normative baseline for AI systems affecting fundamental rights. The AI Act, still in the legislative pipeline, seeks to create a risk-based regulatory framework that classifies AI systems according to their potential harm to individuals and society, imposing stricter obligations on high-risk systems deployed in critical sectors such as healthcare, law enforcement, and social services.

[25] D. J. Galligan, *The Legal Approach to Procedural Fairness*, *in* Due Process and Fair Procedures: A Study of Administrative Procedures 0 (D. J. Galligan ed., 1997), https://doi.org/10.1093/acprof:oso/9780198256762.003.0011.

[26] D. J. Galligan, *The Hearing Principle*, *in* Due Process and Fair Procedures: A Study of Administrative Procedures 0 (D. J. Galligan ed., 1997), https://doi.org/10.1093/acprof:oso/9780198256762.003.0012.

ILE CONSTITUTIONAL REVIEW
VOLUME 5 AND ISSUE I OF 2026
APIS – 3920 – 0006 | ISSN - 2583-7168
Published by
Institute of Legal Education
https://iledu.in

Collectively, these instruments illustrate the EU's emphasis on preemptive governance, legal certainty, and alignment of AI deployment with core constitutional and human rights values. By contrast, the United States exhibits a more decentralized, sector-specific approach shaped by its common law tradition and strong emphasis on judicial review. U.S. AI governance is often framed within existing constitutional doctrines, particularly due process, equal protection, and administrative law principles. Rather than comprehensive pre-emptive regulation, the U.S. relies heavily on litigation and regulatory guidance to address specific harms arising from AI use.[27] For example, courts may examine algorithmic decision-making in public benefits, policing, or hiring under the lens of procedural fairness and non-discrimination, while federal and state agencies issue guidance for responsible AI deployment within their jurisdictions. This approach reflects a more reactive, case-by-case model, emphasizing accountability through adjudication and statutory oversight rather than through preemptive, uniform legal standards.

Other jurisdictions demonstrate hybrid approaches. For instance, Canada integrates privacy and human rights norms into its AI governance framework, emphasizing transparency, ethical standards, and public accountability, while China has pursued a top-down regulatory model, combining state-led technical standards with broad administrative control over AI applications. These variations reveal that AI governance is inseparable from constitutional culture: legal traditions, institutional capabilities, and societal values shape how AI systems are regulated and how rights are protected.

Despite these differences, a common trend emerges: constitutional systems increasingly

recognize that AI cannot remain invisible to law. Whether through rights-based preemptive regulation, sector-specific adjudication, or a

[27] D. J. Galligan, *Recourse: Appeals, Reviews, and Other Forms*, *in* DUE PROCESS AND FAIR PROCEDURES: A STUDY OF ADMINISTRATIVE PROCEDURES 0 (D. J. Galligan ed., 1997), https://doi.org/10.1093/acprof:oso/9780198256762.003.0013.

combination thereof, states are acknowledging that algorithmic governance must be subjected to explicit legal constraints.[28] AI is not a neutral tool but a powerful mediator of state authority, and constitutional governance must adapt to ensure that technological innovation does not outpace the protection of fundamental rights, the rule of law, or democratic accountability. This convergence underscores a global awareness that AI governance is not merely a technical or policy issue but a constitutional imperative.

7. Toward a Constitutional Framework for AI Governance

A constitutional approach to AI governance must be guided by principles that ensure artificial intelligence serves the public interest while remaining subject to established legal and democratic norms. Such a framework does not necessitate creating an entirely new constitutional order; rather, it requires adapting existing doctrines to account for the distinctive features and risks of algorithmic decision-making. Four core principles are particularly essential:

1. Human Accountability

The principle of human accountability asserts that ultimate responsibility for decisions mediated or made by AI must rest with identifiable public authorities. While algorithms can process vast amounts of data and generate recommendations or automated outcomes, the law must ensure that no decision escapes the reach of human oversight.[29] Accountability requires that public officials not the algorithms themselves bear legal and political responsibility for policy implementation and individual outcomes. This entails establishing clear lines of authority, assigning responsibility for algorithmic design, deployment, and monitoring, and ensuring mechanisms for remedy and redress when AI systems produce harm or rights violations. Human accountability is essential not only for compliance with constitutional obligations but also for maintaining public trust in technologically mediated governance.

2. Transparency and Explainability

Transparency and explainability are fundamental to upholding constitutional principles such as the rule of law, due process, and procedural fairness. AI systems, particularly those based on complex machine learning models, often operate as "black boxes," making it difficult for affected individuals, regulators, or courts to understand how outcomes are determined. Constitutional norms should therefore require that AI systems used in governance are explainable and that decision-making logic is accessible and interpretable in contexts affecting rights, obligations, or public resources. Explainability enables meaningful judicial and administrative review, allows individuals to challenge or appeal decisions, and provides citizens with assurance that public power is exercised lawfully and fairly. Transparency obligations may also extend to the datasets, design assumptions, and evaluative criteria underlying algorithmic systems.[30]

3. Proportionality and Necessity

The principles of proportionality and necessity, long established in constitutional law, are particularly relevant in the context of AI governance. AI deployment should be justified as necessary to achieve a legitimate public aim and must be proportionate in its scope, intensity, and impact. This means that the use of AI should not exceed what is required to fulfill a policy objective and must be balanced against potential infringements on

[28] *Due Process and Procedural Irregularities*, https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/4th-edition/article/due-process-and-procedural-irregularities (last visited Jan. 18, 2026).

[29] *Procedural Due Process*, LII / Legal Information Institute, https://www.law.cornell.edu/wex/procedural_due_process (last visited Jan. 18, 2026).

[30] Ben Chester Cheong, *Transparency and Accountability in AI Systems: Safeguarding Wellbeing in the Age of Algorithmic Decision-Making*, 6 Front. Hum. Dyn. (2024), https://www.frontiersin.org/journals/human-dynamics/articles/10.3389/fhumd.2024.1421273/full.

constitutional rights, such as privacy, equality, or due process.[31] For example, deploying predictive policing algorithms must be carefully weighed against the risks of discrimination, bias, and social harm. Similarly, automated welfare eligibility systems must be designed to minimize error and ensure equitable treatment. Proportionality ensures that technological efficiency does not override constitutional legitimacy.

4. Democratic Oversight

Finally, democratic oversight is essential to ensure that AI systems remain accountable to elected institutions and the public. Legislatures should retain meaningful control over AI deployment through lawmaking, budgetary authority, and oversight mechanisms. Courts must be empowered to review AI-driven decisions for legality, fairness, and compliance with fundamental rights. Democratic oversight also entails public participation, transparency of procurement processes, and opportunities for civil society engagement in evaluating and shaping algorithmic governance. Without such oversight, AI risks creating a quasi-technical authority insulated from democratic checks and public scrutiny.[32]

Together, these four principles human accountability, transparency and explainability, proportionality and necessity, and democratic oversight provide a normative and institutional foundation for constitutional AI governance. Importantly, these principles do not require abandoning existing constitutional doctrines; rather, they involve adapting and extending them to new technological realities. By embedding these principles within the constitutional order, states can harness the benefits of AI for governance while ensuring that technological innovation strengthens rather than undermines the rule of law, fundamental rights, and democratic legitimacy.[33]

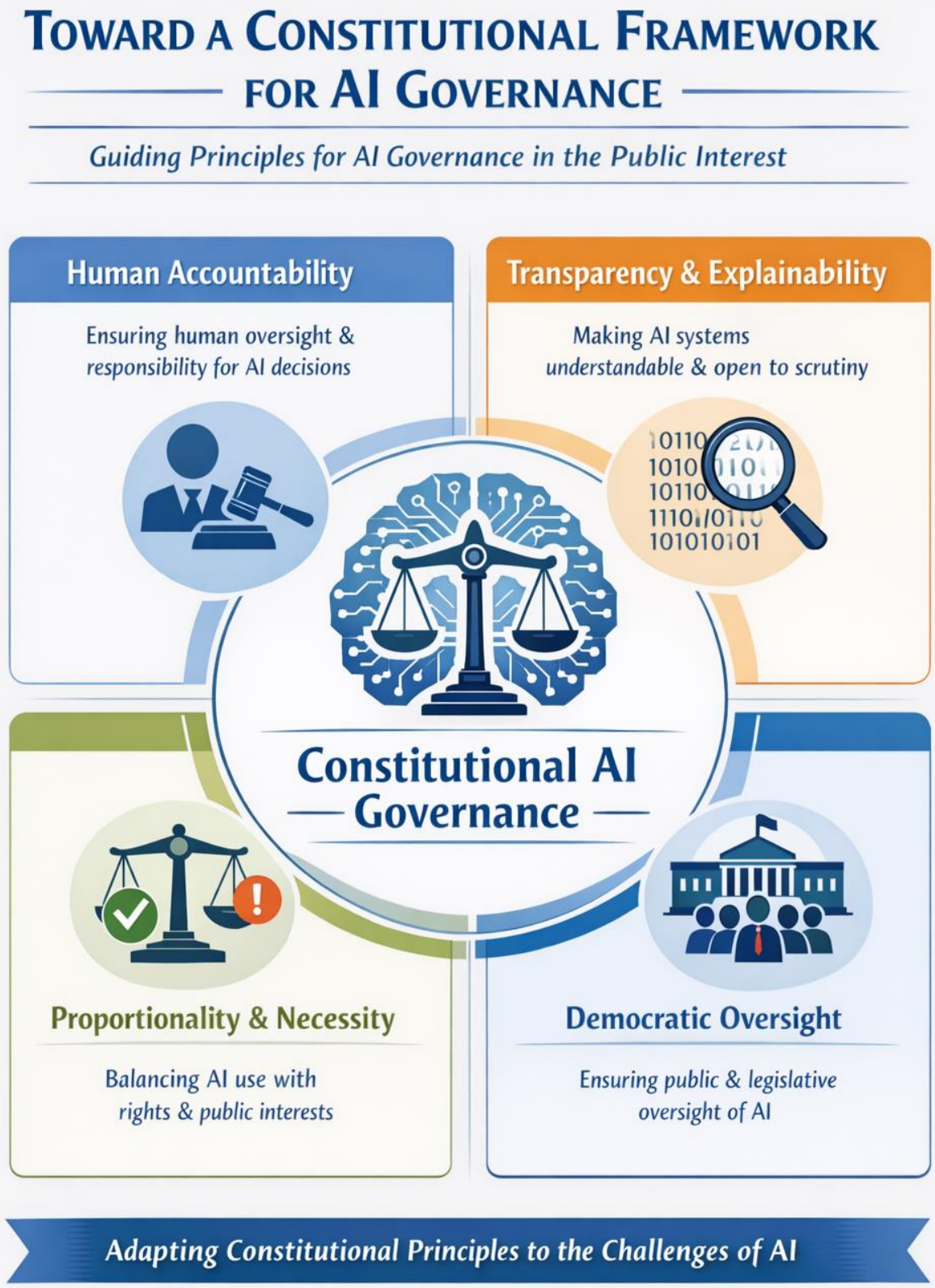
[31] Sonia K. Katyal, *Democracy & Distrust in an Era of Artificial Intelligence*, 151 DAEDALUS 322 (2022), https://doi.org/10.1162/daed_a_01919.

[32] Giovanni De Gregorio & Roxana Radu, *Digital Constitutionalism in the New Era of Internet Governance*, 30 INT. J. LAW INF. TECHNOL. 68 (2022), https://doi.org/10.1093/ijlit/eaac004.

[33] Martina Hulok, *The EU Model of AI Governance: Regulating Artificial Intelligence through Law and Policy*, 26 ERA FORUM 527 (2025), https://doi.org/10.1007/s12027-025-00869-1.

ILE CONSTITUTIONAL REVIEW
VOLUME 5 AND ISSUE I OF 2026
APIS – 3920 – 0006 | ISSN - 2583-7168
Published by
Institute of Legal Education
https://iledu.in

8. CONCLUSION



Artificial intelligence represents a profound and transformative challenge to constitutional law, demanding both conceptual and institutional adaptation. As AI systems increasingly mediate critical interactions between the state and individuals—ranging from welfare distribution to law enforcement, judicial decision-making, and public administration—the traditional assumptions of human agency, transparency, and accountability are strained. The conventional mechanisms of constitutional control, including the rule of law, separation of powers, and fundamental rights protections, must therefore be recalibrated to address the distinctive characteristics of algorithmic governance.

AI should not be viewed merely as a technical tool or administrative convenience; it constitutes a new modality of public power, capable of shaping social outcomes at scale and influencing the allocation of rights and resources. Recognizing this reality is essential for ensuring that constitutional principles remain meaningful in a technologically mediated governance environment. Without deliberate legal and institutional safeguards, AI risks creating opacity, diffusing accountability, and entrenching structural biases, thereby undermining both the legitimacy and the fairness of state action.

Embedding AI governance within the constitutional framework requires adherence to core principles: ensuring human accountability for algorithmic decisions, mandating transparency and explainability, applying proportionality and necessity in AI deployment, and maintaining robust democratic oversight. These principles do not replace existing constitutional doctrines but extend them to new technological realities, ensuring that AI operates under the same normative constraints as traditional public power.

Ultimately, a constitutionally informed approach to AI governance safeguards the rule of law, protects fundamental rights, and preserves democratic accountability. By integrating AI governance into constitutional law, states can harness the benefits of technological innovation while ensuring that efficiency and automation do not come at the expense of legality, justice, or human dignity. In this sense, AI governance is not merely a policy or regulatory challenge it is a defining constitutional issue of the twenty-first century, requiring foresight, vigilance, and a principled commitment to the foundational values of constitutional democracy.

References

1. admin, *ARTIFICIAL INTELLIGENCE AND THE STATE FROM A COMPARATIVE PERSPECTIVE*, Italian Journal of Public Law (Apr. 7, 2025), https://www.ijpl.eu/artificial-intelligence-and-the-state-from-a-comparative-perspective/.
2. Abulgasem Al Mashai, Algorithmic Ethics for Digital Justice: Towards a Constitutional Framework for Responsible AI in Legal Systems (July 15, 2025), https://papers.ssrn.com/abstract=5353879.
3. Matej Avbelj, *Reconceptualizing Constitutionalism in the AI Run Algorithmic Society*, 25 German Law Journal 1081 (2024), https://www.cambridge.org/core/journals/german-law-journal/article/reconceptualizing-constitutionalism-in-the-ai-run-algorithmic-society/F83A866AD4B9A80BA3622F49D63AF725.
4. Shivam Bharal et al., *Code, Constitution and AI: Rethinking Fundamental Rights in the Algorithmic Era*, 16 IJSAT - International Journal on Science and Technology (2025), https://www.ijsat.org/research-paper.php?id=8087.
5. Shivam Bharal et al., *Code, Constitution and AI: Rethinking Fundamental Rights in*

the Algorithmic Era, 16 IJSAT - INTERNATIONAL JOURNAL ON SCIENCE AND TECHNOLOGY (2025), https://www.ijsat.org/research-paper.php?id=8087.

6. Paulo Caliendo, *Algorithmic Tax Power and Constitutional Safeguards: Global Perspectives on AI, Bias, and Digital Tax Justice*, 16 BEIJING LAW REVIEW 1861 (2025), https://www.scirp.org/journal/paperinformation?paperid=145651.
7. Ben Chester Cheong, *Transparency and Accountability in AI Systems: Safeguarding Wellbeing in the Age of Algorithmic Decision-Making*, 6 FRONT. HUM. DYN. (2024), https://www.frontiersin.org/journals/human-dynamics/articles/10.3389/fhumd.2024.1421273/full.
8. Andrew Coan & Harry Surden, *AI and Constitutional Interpretation: The Law of Conservation of Judgment*, LAWFARE (2024), https://www.lawfaremedia.org/article/ai-and-constitutional-interpretation--the-law-of-conservation-of-judgment.
9. Giovanni De Gregorio & Roxana Radu, *Digital Constitutionalism in the New Era of Internet Governance*, 30 INT J LAW INFO TECH 68 (2022), https://doi.org/10.1093/ijlit/eaac004.
10. D. J. Galligan, *Procedural Fairness in Europe: The European Convention on Human Rights and the European Union*, *in* DUE PROCESS AND FAIR PROCEDURES: A STUDY OF ADMINISTRATIVE PROCEDURES 0 (D. J. Galligan ed., 1997), https://doi.org/10.1093/acprof:oso/9780198256762.003.0007.
11. D. J. Galligan, *Recourse: Appeals, Reviews, and Other Forms*, *in* DUE PROCESS AND FAIR PROCEDURES: A STUDY OF ADMINISTRATIVE PROCEDURES 0 (D. J. Galligan ed., 1997), https://doi.org/10.1093/acprof:oso/9780198256762.003.0013.
12. D. J. Galligan, *The Hearing Principle*, *in* DUE PROCESS AND FAIR PROCEDURES: A STUDY OF ADMINISTRATIVE PROCEDURES 0 (D. J. Galligan ed., 1997), https://doi.org/10.1093/acprof:oso/9780198256762.003.0012.
13. D. J. Galligan, *The Legal Approach to Procedural Fairness*, *in* DUE PROCESS AND FAIR PROCEDURES: A STUDY OF ADMINISTRATIVE PROCEDURES 0 (D. J. Galligan ed., 1997), https://doi.org/10.1093/acprof:oso/9780198256762.003.0011.
14. D. J. Galligan, *The Sources of Procedures*, *in* DUE PROCESS AND FAIR PROCEDURES: A STUDY OF ADMINISTRATIVE PROCEDURES 0 (D. J. Galligan ed., 1997), https://doi.org/10.1093/acprof:oso/9780198256762.003.0010.
15. Jomana Hadeer, *RECALIBRATING SOVEREIGNTY IN THE AGE OF AUTONOMOUS AI GOVERNANCE: A LEGAL BLUEPRINT FOR CROSS-JURISDICTIONAL ACCOUNTABILITY, DIGITAL BORDERS, AND AI-DRIVEN TREATY INTERPRETATION*, 2 JIL 1 (2025), https://iaeme.com/Home/article_id/JIL_02_01_001.
16. hlr, *Resetting Antidiscrimination Law in the Age of AI*, HARVARD LAW REVIEW (Apr. 10, 2025), https://harvardlawreview.org/print/vol-138/resetting-antidiscrimination-law-in-the-age-of-ai/.
17. Martina Hulok, *The EU Model of AI Governance: Regulating Artificial Intelligence through Law and Policy*, 26 ERA FORUM 527 (2025), https://doi.org/10.1007/s12027-025-00869-1.
18. Jan, *Balancing AI, Ethics and the Constitution*, LAW.ASIA (Dec. 9, 2024), https://law.asia/ai-regulation-india/.

19. Pratyaksh Joshi & Yogesh Wamankar, *ALGORITHMIC POLICING AND DUE PROCESS IN CYBERCRIME INVESTIGATIONS: A CONSTITUTIONAL ANALYSIS UNDER ARTICLES 14, 19 AND 21 OF THE INDIAN CONSTITUTION*, 2 SHODHSAMAJIK: JOURNAL OF SOCIAL STUDIES 153 (2025), https://shodhsamajik.com/shodhsamajik/article/view/57.

20. IJLLR Journal, *The Constitution In The Age Of Artificial Intelligence: Legal Personhood And Fundamental Rights Of AI*, IJLLR JOURNAL (June 18, 2025), https://www.ijllr.com/post/the-constitution-in-the-age-of-artificial-intelligence-legal-personhood-and-fundamental-rights-of-a.

21. Sonia K. Katyal, *Democracy & Distrust in an Era of Artificial Intelligence*, 151 DAEDALUS 322 (2022), https://doi.org/10.1162/daed_a_01919.

22. Johann Laux, *Institutionalised Distrust and Human Oversight of Artificial Intelligence: Towards a Democratic Design of AI Governance under the European Union AI Act*, 39 AI SOC 2853 (2024), https://pmc.ncbi.nlm.nih.gov/articles/PMC11614927/.

23. Matthijs Maas, *Advanced AI Governance: A Literature Review of Problems, Options, and Proposals*, INSTITUTE FOR LAW & AI (Nov. 1, 2023), https://law-ai.org/advanced-ai-gov-litrev/.

24. Emmanouil Papagiannidis, Patrick Mikalef & Kieran Conboy, *Responsible Artificial Intelligence Governance: A Review and Research Framework*, 34 THE JOURNAL OF STRATEGIC INFORMATION SYSTEMS 101885 (2025), https://www.sciencedirect.com/science/article/pii/S0963868724000672.

25. Fernando A. Ramos-Zaga, *Reconceptualizing Human Authorship in the Age of Generative AI: A Normative Framework for Copyright Thresholds*, 14 LAWS (2025), https://www.mdpi.com/2075-471X/14/6/84.

26. *AI Governance and Human Rights | 03 Governing AI: Why Human Rights?*, https://www.chathamhouse.org/2023/01/ai-governance-and-human-rights/03-governing-ai-why-human-rights (last visited Jan. 18, 2026).

27. *AI's Real Dangers for Democracy*, JOURNAL OF DEMOCRACY, https://www.journalofdemocracy.org/articles/ais-real-dangers-for-democracy/ (last visited Jan. 18, 2026).

28. *Artificial Intelligence, Free Speech, and the First Amendment | The Foundation for Individual Rights and Expression*, https://www.thefire.org/research-learn/artificial-intelligence-free-speech-and-first-amendment (last visited Jan. 18, 2026).

29. *Due Process and Procedural Irregularities*, https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/4th-edition/article/due-process-and-procedural-irregularities (last visited Jan. 18, 2026).

30. *Invisible Hand of Code: Reimagining Constitutionalism in the Age of Algorithms – NLIU Law Review*, https://nliulawreview.nliu.ac.in/blog/invisible-hand-of-code-reimagining-constitutionalism-in-the-age-of-algorithms/ (last visited Jan. 18, 2026).

31. *Just a Moment...*, https://onlinelibrary.wiley.com/doi/10.1002/aaai.70010 (last visited Jan. 18, 2026).

32. *Procedural Due Process*, LII / LEGAL INFORMATION INSTITUTE, https://www.law.cornell.edu/wex/procedural_due_process (last visited Jan. 18, 2026).

33. *The Democratic Regulation of Artificial Intelligence*, KNIGHT FIRST AMENDMENT INSTITUTE, http://knightcolumbia.org/content/the-democratic-regulation-of-artificial-intelligence (last visited Jan. 18, 2026).