

# A NEW ERA OF HUMAN RIGHTS TOWARDS NEW CONSTITUTIONAL BORDERS

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**Abstract:** *The contemporary human rights landscape faces unprecedented challenges and opportunities, necessitating a reconceptualization of constitutional borders and governance frameworks. This article examines the evolution of human rights discourse from its post-World War II internationalist foundations toward emerging paradigms that transcend traditional state sovereignty. Through analysis of transnational human rights mechanisms, digital rights frameworks, environmental constitutionalism, and the recognition of collective rights, we argue that a new constitutional era is emerging—one that redistributes authority across multiple levels of governance and extends protection beyond traditional human categories. This evolution reflects both the limitations of Westphalian sovereignty in addressing contemporary challenges and the potential for more inclusive, pluralistic human rights protection systems.*

**Keywords:** *human, rights, challenges, opportunities.*

## 1. Introduction

The Universal Declaration of Human Rights (UDHR), adopted in 1948 in the aftermath of unprecedented atrocities, established a post-war consensus on fundamental human rights grounded in universal human dignity (Morsink, 1999). Yet, more than seven decades later, this foundational framework faces significant strain. Globalization, technological advancement, climate change, mass migration, and the emergence of transnational challenges have exposed the inadequacies of human rights systems designed for an era of territorially bounded nation-states.

Contemporary developments suggest that humanity is entering a "new era" of human rights, characterized by three interconnected transformations: (1) the pluralization of constitutional authority beyond nation-states; (2) the expansion of rights categories to encompass digital, environmental, and collective dimensions; and (3) the reconceptualization of borders—both territorial and conceptual—that have historically defined human rights protection.

This article examines these transformations through comparative constitutional analysis, demonstrating how contemporary jurisdictions are experimenting with novel frameworks for human rights protection. We argue that this new era represents not the abandonment of human rights as a foundational principle but rather its evolution toward more complex, multi-level governance systems better suited to addressing contemporary challenges.

## 2. The Crisis of Traditional Human Rights Frameworks

### 2.1 The Sovereignty Paradox

The traditional human rights regime, as established through the International Bill of Rights and subsequent conventions, rests on a fundamental paradox: human rights are conceived as universal and inalienable, yet their protection depends on nation-states that remain the primary repositories of enforcement power (Marks, 1998:459-514). This paradox has generated persistent implementation gaps, particularly in states with weak rule of law, limited democratic accountability, or conflicting policy priorities.

The principle of non-interference in internal affairs, embedded in the UN Charter and international law generally, constrains supranational enforcement of human rights, creating spaces where systematic violations continue despite international condemnation. The situations in Myanmar, Syria, and Venezuela exemplify how sovereignty claims shield perpetrators of mass human rights violations from meaningful accountability.

Moreover, the nation-state framework struggles with issues transcending territorial boundaries: climate change, cybercrime, pandemics, and refugee displacement originate in multiple jurisdictions and affect populations across borders. Traditional human rights protections, designed for individual protection within defined territories, prove inadequate for these transnational phenomena.

## **2.2 The Legitimacy Crisis**

International human rights institutions face growing legitimacy challenges. The UN Human Rights Council's composition includes states with poor human rights records, undermining its moral authority (Human Rights Watch, 2020). Regional human rights courts, while more effective than global institutions, remain limited by member state consent and resistance to their decisions—as exemplified by Poland and Hungary's ongoing conflicts with the European Court of Human Rights (ECtHR).

Furthermore, top-down imposition of human rights standards through international institutions raises questions about cultural imperialism and the appropriate relationship between universal principles and local democratic preferences. Resistance to international human rights mechanisms in various jurisdictions partly reflects genuine concerns about external imposition rather than purely authoritarian opposition.

## **2.3 Insufficient Scope of Protection**

Traditional human rights frameworks, focused on civil and political rights with increasingly recognized economic and social dimensions, struggle to address emerging categories of harm:

**Digital Rights:** Surveillance capitalism, algorithmic discrimination, and digital manipulation raise questions inadequately addressed by conventional human rights categories. The right to privacy, designed for protection against state intrusion, proves insufficient for protection against corporate data extraction or algorithmic profiling (Zuboff, 2019).

**Environmental Rights:** While environmental degradation manifestly affects human dignity and survival, the right to a healthy environment remains unevenly recognized in international law and constitutional systems. Climate change—the most significant contemporary threat to human welfare—lacks explicit constitutional status in most jurisdictions.

**Collective and Indigenous Rights:** Frameworks emphasizing individual rights struggle to protect collective interests in cultural preservation, self-determination, and traditional knowledge. Indigenous peoples' rights, particularly regarding land and resource control, challenge the property-rights and individualist assumptions of traditional human rights law.

## **3. Transnational Human Rights Mechanisms: Multiplying Authority**

### **3.1 Regional Human Rights Systems**

The development of regional human rights courts and commissions represents the first significant departure from purely state-based human rights protection. The European system—comprising the ECtHR, the European Commission on Human Rights, and constitutional courts—has evolved into a sophisticated multi-level human rights architecture exceeding the effectiveness of UN mechanisms.

The ECtHR's jurisprudence exemplifies how regional institutions can develop dynamic human rights interpretation addressing contemporary challenges. Cases such as *S. and Marty v.*

Italy (concerning surveillance), *Tyrer v. United Kingdom* (abolishing corporal punishment), and more recently cases addressing transgender rights, demonstrate how courts can adapt human rights protection to evolving social circumstances and emerging harm categories [*S. and Marty v. Italy*, ECtHR (2020); *Tyrer v. United Kingdom*, ECtHR (1978); *Goodwin v. United Kingdom*, ECtHR (2002)].

The Inter-American Court of Human Rights has similarly developed innovative jurisprudence, particularly regarding indigenous peoples' rights, environmental protection, and violence against women. The court's advisory jurisdiction permits consultations on emerging rights questions before formal disputes arise, enabling proactive rights development (Inter-American Court of Human Rights, 2017).

The African Court on Human and Peoples' Rights, while less developed institutionally, has established important precedents recognizing collective rights and environmental dimensions of human rights, particularly in cases addressing land dispossession and resource exploitation affecting African communities.

However, regional systems face significant limitations. Their geographic scope excludes large populations, and their enforcement mechanisms depend on member state cooperation. The ECtHR cannot compel compliance; its effectiveness relies on member states' commitment to rule of law and democratic accountability. Recent defiance by Poland and Hungary demonstrates these limitations.

### **3.2 Transnational Justice Mechanisms**

Beyond traditional courts, transnational justice mechanisms—including International Criminal Court (ICC), hybrid tribunals, and truth commissions—have emerged as alternative frameworks for accountability transcending national boundaries.

The ICC represents an important institutional innovation: a permanent international court exercising jurisdiction over crimes against humanity, genocide, and war crimes without requiring state consent (though enforcement remains dependent on state cooperation) (International Criminal Court, 1998). However, the ICC faces significant challenges: limited enforcement power, politicized prosecution decisions, and withdrawal by some states (notably the United States, initially, and several African states citing neo-colonial concerns).

Hybrid tribunals—mixing international and national jurisdiction and personnel—have operated in Cambodia, East Timor, Lebanon, and other post-conflict societies. These mechanisms combine international expertise and legitimacy with local ownership and accountability. Their effectiveness varies, but they demonstrate possibilities for justice mechanisms transcending pure national or international frameworks (Shaw et al., 2010).

Truth commissions, operating in South Africa, Guatemala, Chile, and numerous other transitional societies, prioritize reconciliation and collective acknowledgment over punishment. These mechanisms recognize that accountability need not always take judicial form and that victim healing and social reconstruction may require approaches distinct from criminal justice.

### **3.3 Corporate Accountability and Business and Human Rights**

The emergence of business and human rights as a distinct governance domain reflects recognition that corporations—increasingly powerful transnational actors—significantly affect human rights yet remain inadequately regulated through traditional mechanisms.

The UN Guiding Principles on Business and Human Rights (2011) establish a non-binding framework requiring states to protect human rights from corporate interference, companies to respect human rights, and victims to access remedies (UN, 2011). While non-binding, these principles have influenced corporate practice and state regulation. Several EU member states and other jurisdictions have implemented mandatory human rights due diligence requirements for corporations.

The French Law on Corporate Duty of Vigilance (2017), German Supply Chain Due Diligence Act (2021), and proposed EU Corporate Sustainability Due Diligence Directive represent legislative efforts to extend human rights protection into corporate supply chains—acknowledging that traditional state-based mechanisms cannot adequately protect workers and communities affected by corporate operations across borders [French Law on Corporate Duty of Vigilance (Loi de Vigilance) (2017); German Supply Chain Due Diligence Act (2021); European Commission, Proposal for Corporate Sustainability Due Diligence Directive (2022)].

These developments represent a constitutional innovation: creating legal obligations for non-state actors regarding human rights protection. This suggests an evolution toward "distributed" human rights responsibility across multiple institutional actors rather than concentrating protection exclusively within state frameworks.

#### **4. Digital Rights and the Reconceptualization of Privacy**

##### **4.1 The Right to Privacy in the Digital Age**

The traditional conception of privacy—protecting individuals' personal spaces and intimate information from state intrusion—proves inadequate for digital environments where corporations extract vast quantities of personal data and governments conduct mass surveillance.

The European Union's General Data Protection Regulation (GDPR) represents the most comprehensive attempt to reconceptualize privacy protection in digital contexts (Regulation (EU) 2016/679 General Data Protection Regulation). Rather than solely protecting informational secrecy, GDPR establishes affirmative rights: data access, rectification, erasure, and portability. Critically, it applies to all entities processing personal data, not merely states.

GDPR's approach—establishing privacy as a positive right requiring institutional accommodation rather than mere state non-interference—signals a broader reconceptualization of human rights. The regulation recognizes that in digital economies, privacy threats arise predominantly from corporate actors and that protection requires affirmative institutional design, not merely limiting state power.

Subsequent legal developments extend this reconceptualization. Brazil's General Data Protection Law (LGPD), China's Personal Information Protection Law (PIPL), and California's California Consumer Privacy Act (CCPA) represent different cultural and institutional approaches to digital privacy, reflecting varying emphases on consumer protection, state sovereignty, and individual rights [Brazil, General Data Protection Law (LGPD) (2018); China, Personal Information Protection Law (PIPL) (2021); California Consumer Privacy Act (CCPA) (2018)].

##### **4.2 Algorithmic Rights and Transparency**

Beyond privacy, digital environments generate new rights categories addressing algorithmic discrimination, transparency, and human dignity. The "right to explanation" in GDPR—permitting individuals to understand algorithmic decisions affecting them—constitutes an entirely novel right, reflecting recognition that algorithmic opacity threatens human autonomy and dignity (Article 22. GDPR), (Citron et al., 2014).

The EU's proposed AI Act establishes a risk-based framework imposing different obligations on developers and deployers of artificial intelligence systems, from transparency requirements for high-risk systems to prohibitions on certain applications (social credit systems, real-time biometric identification in public spaces) (European Commission, 2021). This framework, while not explicitly framed as human rights protection, establishes affirmative obligations protecting human dignity against technological harms.

Emerging litigation addresses algorithmic rights more explicitly. Cases in Europe and North America challenge algorithmic decision-making in hiring, credit, and criminal justice

contexts, arguing that algorithmic opacity and discrimination violate rights to dignity, non-discrimination, and due process (Selbst et al., 2018). These cases suggest that courts are beginning to conceptualize algorithmic rights as inherent in traditional human rights principles adapted to technological contexts.

#### **4.3 Digital Citizenship and Platform Governance**

Platforms (Facebook, Twitter, YouTube, TikTok, etc.) have become primary spaces for public discourse, yet their governance remains private and largely unaccountable. This raises fundamental questions: Should platform policies restricting speech receive the same deference to private property rights as traditional private entities? Do platform users possess constitutional rights to due process in content moderation?

Regulatory responses vary. The EU's Digital Services Act (DSA) imposes obligations on platforms regarding content moderation transparency, recommender system disclosure, and protection of vulnerable users (DSA, 2022). Germany's Network Enforcement Act (NetzDG) requires platforms to remove illegal content within specified timeframes, establishing quasi-judicial responsibilities for private entities.

These regulations reflect recognition that platform power has taken on quasi-governmental dimensions regarding public discourse. Rather than treating platforms purely as private entities entitled to absolute control over their services, regulators increasingly view platforms as public forums requiring human rights-sensitive governance.

### **5. Environmental Constitutionalism and Rights to Nature**

#### **5.1 Recognition of Environmental Rights**

Climate change and ecological degradation have prompted recognition of environmental rights within constitutional frameworks. Approximately 150 national constitutions now recognize environmental rights or environmental protection obligations (Boyd, 2005). However, these provisions vary enormously in strength, scope, and enforceability.

Ecuador's 1998 constitution, reformed in 2008, grants "Pachamama" (Mother Earth) legal personhood and the right "to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution." (Constitution of the Republic of Ecuador, 2008) This provision, reflecting Indigenous Andean cosmologies, represents a radical reconceptualization of environmental protection—shifting from anthropocentric protection of environmental resources for human benefit toward ecocentric recognition of nature's intrinsic value.

Other jurisdictions have adopted similar innovations. New Zealand granted personhood to the Whanganui River (2017) and established legal guardianship for the Ganges and Yamuna rivers in India [Te Ture Whenua Act 1993 (New Zealand); National Green Tribunal, Writ Petition recognizing Ganges and Yamuna as living entities (2017)]. Colombia's constitutional courts have recognized the Amazon as a subject of rights requiring protection through judicial action [Constitutional Court of Colombia, Sentencia SU095/16].

These developments suggest a fundamental reconceptualization of legal subjects: expanding rights-bearing status beyond individual humans and even beyond corporations to encompass non-human nature. This challenges foundational assumptions of human-centered law and represents a genuine conceptual innovation in constitutional thought.

#### **5.2 Climate Rights and Intergenerational Justice**

Human rights frameworks increasingly recognize climate change as a human rights issue, with impacts on rights to life, health, adequate living standards, and self-determination. The UN Human Rights Council has recognized the human right to a clean, healthy, and sustainable environment: UN Human Rights Council, Resolution 48/13 (2021).

Emerging litigation frames climate change as a human rights violation. *Juliana v. United States* (ongoing in the United States) frames climate inaction as violating plaintiffs' rights to life, liberty, and property (*Juliana v. United States*, 947 F.3d 1159 (9th Cir. 2020)). Similar cases in Germany, France, and other jurisdictions challenge government climate inaction as inconsistent with constitutional rights to life and dignity (*Neubauer v. Germany*, BVerfG, 1 BvR 2656/18 (2021)); French Constitutional Council, *Decision on Climate and Energy* (2019)).

These cases introduce an important innovation: intergenerational justice. Traditional human rights protect present individuals; climate cases argue that future generations possess rights to inhabitable environments. This requires reconceptualizing the temporal dimension of human rights, extending protection beyond currently living populations to those who will inherit degraded environments (Weiss, 1989).

### **5.3 Indigenous Peoples' Rights and Environmental Protection**

Indigenous peoples' rights—particularly regarding land, resources, and self-determination—increasingly receive constitutional protection, often with explicitly environmental dimensions. The UN Declaration on the Rights of Indigenous Peoples (2007), though non-binding, has influenced constitutional reforms in Latin America and other regions.

Indigenous environmental stewardship has gained recognition as exceptionally effective; Indigenous-managed territories show lower deforestation rates and greater biodiversity preservation than government-managed conservation areas in many regions (Schroeder, 2021). Consequently, Indigenous land rights, environmental protection, and economic development have become increasingly recognized as interconnected.

Constitutions incorporating Indigenous rights protections—Ecuador, Bolivia, Guatemala, and others—establish affirmative obligations regarding Indigenous consultation in resource extraction and development projects affecting ancestral territories. These frameworks recognize that environmental protection cannot be achieved through top-down management but requires respect for Indigenous knowledge systems and self-determination.

## **6. Collective Rights and Pluralistic Conceptions of Human Rights**

### **6.1 Beyond Individualism: Collective and Group Rights**

Western human rights discourse has historically emphasized individual rights, reflecting liberal political philosophy and constitutional traditions. Yet this individualist approach proves inadequate for protecting collective interests in cultural preservation, linguistic continuity, and collective self-determination.

Contemporary constitutional frameworks increasingly recognize collective rights. Canada's Constitution (1982) explicitly protects Aboriginal and treaty rights, recognizing Indigenous peoples' distinctive legal status and self-determination rights (Canadian Constitution Act, 1982, Part II (Rights of Aboriginal Peoples)). The European Charter for Regional or Minority Languages protects linguistic minorities' rights to education, cultural expression, and political participation in regional languages (European Charter for Regional or Minority Languages (1992)).

Bolivia's 2009 constitution, described as the world's first explicitly plurinational constitution, recognizes multiple national communities possessing distinct rights to self-governance, languages, and resource management (Bolivia, Political Constitution of the Plurinational State (2009), Articles 1-5). This represents a fundamental reconceptualization of the nation-state from a unitary entity toward a pluralistic federation of communities with distinct constitutional status. Similarly, the UN Declaration on Indigenous Peoples establishes rights to self-determination, including capacity to maintain distinct institutions, govern internal affairs, and control resources on ancestral territories—rights that cannot be satisfied through individual protections alone.

## **6.2 Cultural Rights and Minority Protections**

Beyond Indigenous peoples, cultural minorities increasingly receive explicit constitutional protection. The Framework Convention for the Protection of National Minorities (European Council, 1994) establishes comprehensive protections for minorities regarding education, language use, and cultural expression.

These protections reflect recognition that cultural survival requires affirmative support from state institutions, not merely protection from discrimination. Minority language education, cultural institution funding, and media access represent positive obligations on states to support cultural diversity.

However, cultural rights create tensions with other rights, particularly regarding gender equality and LGBTQ+ rights. Some cultural communities practice gender segregation, restrict women's educational opportunities, or condemn same-sex relationships. Balancing cultural protection with individual rights to equality and non-discrimination remains contested (Shachar, 2001).

Courts increasingly frame this as requiring contextual balance rather than hierarchical subordination of either cultural or individual rights. The ECtHR's jurisprudence on religious minorities, for instance, acknowledges religious community interests while requiring respect for individual autonomy and equality within those communities.

## **6.3 Labour Collective Rights and Worker Protections**

Labour collective rights—rights to unionization, collective bargaining, and strike action—represent another category of collective rights increasingly challenged by contemporary economic organization.

Globalized production networks, subcontracting arrangements, and platform economies fragment employment relationships, making traditional labour rights frameworks difficult to apply. Workers in global supply chains face conditions difficult to address through labour standards and collective bargaining in any single jurisdiction.

Contemporary responses include extending labour rights to supply chain workers regardless of formal employment relationships. The OECD (2011) Guidelines for Multinational Enterprises, UN Guiding Principles on Business and Human Rights, and national laws (France, Germany) requiring supply chain due diligence represent efforts to extend labour protections across borders through corporate accountability rather than traditional labour law.

## **7. Reconceptualizing Constitutional Borders**

### **7.1 From Territorial to Functional Borders**

Traditional constitutionalism assumes a hierarchical relationship between constitutional orders: a supreme constitution defining governmental power within defined territory, with international law occupying a subordinate position or operating in separate domains.

Contemporary developments suggest emergence of "functional" rather than purely territorial borders. International human rights courts, EU institutions, and transnational regulatory bodies exercise genuine legal authority not derived from national constitutions but possessing legitimacy and effectiveness within defined domains (Berman, 2012).

The EU represents the clearest institutional manifestation of this development. Rather than a federal state with a conventional constitution, the EU comprises multiple constitutional orders—national constitutions and EU law—in complex relationships of mutual recognition and occasional conflict (Avbelj et al., 2012). When Polish courts reject EU law supremacy or Hungarian courts resist EU human rights standards, we see the practical consequences of attempting to operate multiple constitutional systems in overlapping jurisdictions.

Other regional organizations (African Union, ASEAN, MERCOSUR) evidence similar attempts to create supranational legal orders while respecting member state sovereignty. These

arrangements do not resolve tensions between universality and pluralism but rather institutionalize ongoing negotiation among constitutional systems.

## **7.2 Subsidiarity and Multi-Level Governance**

The principle of subsidiarity—that governance should occur at the most local level capable of effectively addressing problems—offers a framework for conceptualizing relationships among multiple constitutional orders (Subsidiarity, EU Treaty, Article 5(3)). Rather than assuming a single supreme authority, subsidiarity permits distributed governance across multiple levels, with authority allocated based on effective problem-solving capacity.

This approach acknowledges that different issues require different governance levels: local issues may require local governance; transnational issues require international cooperation; global issues (climate change, pandemics, nuclear weapons) require global governance mechanisms. The EU explicitly adopts subsidiarity as a governing principle, with specific provisions limiting EU action to matters where member state action proves insufficient (Subsidiarity, EU Treaty, Article 5(3)). However, subsidiarity's application remains contested, with disagreement regarding which issues appropriately fall within which jurisdictional levels.

## **7.3 Pluralistic Constitutionalism and Constitutional Dialogue**

Rather than hierarchy, contemporary constitutional scholarship increasingly emphasizes pluralism and dialogue among constitutional orders. Constitutional courts, international courts, and regional institutions engage in ongoing conversation regarding human rights interpretation, with influence flowing in multiple directions.

The ECtHR influences national courts; national courts influence the ECtHR; international courts engage with regional courts. This "constitutional dialogue" creates dynamic, evolving human rights standards responding to institutional input and practical experience across jurisdictions (Slaughter, 2004).

This approach acknowledges that constitutional authority is distributed, that no single institution possesses supreme interpretive authority, and that human rights protection requires coordination among multiple actors with legitimate claims to constitutional significance. It represents a profound departure from Westphalian sovereignty and hierarchical constitutional theory.

## **8. Emerging Challenges and Contradictions**

### **8.1 Fragmentation and Inconsistency**

The multiplication of human rights institutions and standards creates significant fragmentation risks. Different regional systems may establish inconsistent protections; different national courts may interpret similar rights differently; international institutions may articulate conflicting standards.

This fragmentation can create strategic opportunities for powerful actors to forum-shop—seeking the most favorable interpretation among multiple available forums. It also generates uncertainty regarding applicable standards, complicating compliance for multinational corporations and international institutions.

However, some fragmentation may be inevitable and even desirable in diverse societies. Insisting on global uniformity might require imposing particular cultural approaches to human rights on communities with different conceptions. Permitting variation respects pluralism while maintaining minimum standards.

### **8.2 Backlash and Democratic Deficit**

The expansion of supranational human rights protection through courts and international institutions has generated significant backlash. Poland, Hungary, Turkey, India, and other states



have resisted international human rights institutions, withdrawn from human rights treaties, and asserted national constitutional supremacy.

These reactions partly reflect authoritarian resistance to human rights constraints; yet they also reflect genuine concerns about democratic accountability. International courts lack electoral accountability; their judges are not selected through democratic processes; their authority ultimately depends on member state acceptance. When these institutions are perceived as imposing particular values on reluctant populations, legitimacy questions arise.

This tension—between the universality and supremacy of human rights and the principle of democratic self-determination—remains unresolved. If a democratic majority genuinely prefers policies inconsistent with human rights standards, should international institutions override democratic preferences? How should human rights and democracy be balanced when they conflict?

### **8.3 Power Asymmetries and Structural Injustice**

While human rights discourse emphasizes universal protections, actual protection mechanisms are distributed unequally across jurisdictions. Wealthy democracies with strong institutions access sophisticated human rights protections; marginalized communities in weak states face inadequate protection.

Similarly, corporate accountability mechanisms are asymmetrically applied. Western corporations face increasing human rights due diligence requirements; corporations from authoritarian states or developing countries face less pressure. International human rights institutions sometimes reflect power imbalances, with powerful states shaping standards applicable to weaker ones.

Addressing these structural inequalities requires more than expanding formal human rights protections; it requires redistributing power and resources toward more equitable global governance.

## **9. Emerging Categories and Future Developments**

### **9.1 Digital Citizenship and Platform Governance Rights**

As discussed, digital rights represent an emerging category. Beyond privacy and algorithmic transparency, emerging frameworks address digital citizenship: rights to digital literacy, access to digital infrastructure, and meaningful participation in digital societies.

The EU's Digital Rights and Principles Declaration (2023) articulates aspirational frameworks for digital environments including digital literacy, access to digital services, and protection against digital manipulation (European Commission, 2023). These developments suggest that human rights protection requires affirmative investment in ensuring meaningful digital participation, not merely protection from digital harms.

### **9.2 Bioethics and Genetic Rights**

Advances in genetic science raise novel human rights questions: rights regarding genetic information, reproductive autonomy, genetic enhancement, and human modification (Asch, 2003). Different jurisdictions adopt varying approaches, from permissive frameworks allowing substantial genetic experimentation to restrictive regimes prohibiting genetic modification.

The absence of international consensus on genetic rights creates risks of genetic tourism (traveling to permissive jurisdictions for genetic procedures), unequal access (genetic enhancements available only to wealthy populations), and potential eugenic harms.

### **9.3 Rights to Development and Structural Reform**

Beyond civil and political rights, and increasingly recognized economic and social rights, emerging frameworks address rights to development and structural economic change.

The UN Declaration on the Right to Development (1986) establishes that development constitutes a human right, with implications for international economic arrangements.<sup>41</sup>

Implementation remains limited, particularly when development rights conflict with other interests (environmental protection, intellectual property rights, free trade). However, the recognition that global economic structures significantly affect human welfare, and that these structures should accommodate human rights, represents important conceptual development.

## **10. Toward a New Constitutional Framework: Key Principles**

Based on this comparative analysis, emerging principles characterizing the new human rights era include:

### **10.1 Multi-Level Governance**

Human rights protection increasingly operates across multiple jurisdictional levels—local, national, regional, and global—with distributed authority rather than hierarchical supremacy. This requires coordination mechanisms and principles for allocating governance across levels.

### **10.2 Pluralistic Universalism**

Universal human rights principles require implementation sensitive to cultural, institutional, and political contexts. Rather than importing uniform rules, pluralistic universalism permits variation in implementation while maintaining core commitments to human dignity.

### **10.3 Distributed Responsibility**

Human rights protection increasingly depends on non-state actors—corporations, platforms, civil society—alongside states. This requires expanding human rights obligations beyond state actors while clarifying standards and accountability mechanisms.

### **10.4 Affirmative Rights and Positive Obligations**

Moving beyond negative protections against interference, human rights increasingly require affirmative state action ensuring meaningful enjoyment of rights: infrastructure investment, institutional design, resource allocation, and capacity building.

### **10.5 Collective and Non-Human Dimensions**

While maintaining individual rights protections, frameworks increasingly recognize collective rights (cultural, Indigenous, environmental) and extend protection beyond human categories to encompass non-human nature.

### **10.6 Intergenerational Orientation**

Recognizing that present actions affect future generations, human rights frameworks increasingly incorporate intergenerational justice principles protecting future populations' interests.

## **11. Conclusion**

The contemporary era witnesses genuine reconceptualization of human rights protection in response to globalization, technological change, and emerging awareness of collective challenges transcending national boundaries. Rather than the universalist post-World War II framework or the sovereignty-dependent systems that dominated the Cold War, new approaches are emerging that distribute authority across multiple governance levels, expand rights categories, and reconceptualize the subjects and objects of rights protection.

This new era does not represent abandonment of human rights as a core value but rather evolution toward more sophisticated, multi-level systems better suited to addressing contemporary challenges. Yet this evolution generates tensions: between universal principles and cultural pluralism; between democracy and rights; between individual and collective protection; between human and environmental interests.

These tensions cannot be definitively resolved through abstract theory. Rather, they require ongoing institutional experimentation, constitutional dialogue, and democratic deliberation across jurisdictions. The new constitutional borders emerging through regional courts, international institutions, and transnational networks are not fixed but subject to continuous renegotiation reflecting experience, changing circumstances, and evolving understandings of human dignity.

The future of human rights depends not on establishing a perfect comprehensive framework but on maintaining commitment to human dignity while remaining responsive to change and respectful of pluralism. The constitutional experimentation currently occurring across jurisdictions—from recognizing nature's legal personhood to establishing algorithmic rights to recognizing Indigenous self-determination—represents humanity's ongoing effort to instantiate human rights principles in an increasingly complex, interconnected world.

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