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ARTICLE

Juges Sans Frontières? A Glocal Theory of Constitutional Interpretation

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Abstract
This article presents a "glocal" method of comparative constitutional interpretation. In the debate on the judicial use of foreign ideas, transnationalists claim to propose a simultaneously global and local approach. However, they perpetuate the methodological nationalism of globalists and localists by assuming nations as their primary units of analysis. In contrast, this article advances a truly glocal theory of judicial interpretation. The glocal is the product of a constant interplay between the global and the local, from the inception of an idea to its practical judicial application. This approach follows a three-step process. First, it provides a multiscale toolkit to demonstrate that ideas may have never been purely national in the first place but are the result of plural hybridizations. Second, it uncovers the units that generate and disseminate constitutional knowledge: trans-territorial networks united by thematically shared beliefs rather than by nationality or a global mission. Third, it equips judges with the ability to glocalize or customize the idea, not as an exercise of national differentiation but as a strategy to make it epistemically familiar and more politically appealing to the network. In this way, the article critically engages with the debate on constitutional transplants, challenging its nationalist bias.

Keywords: Glocalization; Foreign Constitutional Ideas; Transplants; Migrations; Borrowings

A. Introduction: The Use of "Foreign" Constitutional Ideas

In 2009, the Nepalese Supreme Court decided the case of *Lakshmi Dhikta v. Nepal.*[1] Lakshmidevi was an impoverished woman from the Dadeldhura district in far-western Nepal and a mother of six children. Although entitled to an abortion, she was forced to continue the pregnancy because she lacked 1,130 rupees to pay for the procedure. After examining domestic law, the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), and foreign precedents like *Roe v. Wade*[2], a two-judge bench, led by Chief Justice Kalyan Shrestha, ruled in her favor. The Court ordered the Congress to produce a comprehensive legal framework to make abortion affordable for underprivileged women and ordered the Government to compensate Lakshmi.

Eleven years later, more than fourteen thousand kilometers away, transcending the Nepalese-Spanish linguistic barriers and connecting Kathmandu with Mexico City, Justice González from

[1] *Lakshmi Dhikta v. Government of Nepal,* Supreme Court of Nepal, Writ No. 0757, 2066 (2009), *translated in* LANDMARK DECISION OF SUPREME COURT OF NEPAL ON ABORTION RIGHTS, CENTER FOR REPRODUCTIVE RIGHTS & FORUM FOR WOMEN, LAW AND DEVELOPMENT, https://reproductiverights.org/wp-content/uploads/2021/07/Laxmi-dhitta1-endnote.pdf.

[2] *Roe v. Wade*, 410 U.S. 113 (1973).

the Mexican Supreme Court (SCJN) invoked *Lakshmi*.[3] Several NGOs filed an *Amparo,* a concrete constitutional complaint against the state of Veracruz for criminalizing abortion, arguing that it was a breach of the CEDAW and the *Belém do Pará* Conventions. González used *Lakshmi* to frame abortion through the lens of "transformative equality."[4] Proposing a structural remedy, he suggested that Congress ought to legislate the right to abortion to protect women from gender discrimination. However, the majority rejected this remedy. They held they would be overstepping the legislature if they ordered a new statutory framework. *Lakshmi* did not take root in Mexican soil, at least not then.

A year after, this time following an abstract constitutional complaint, the SCJN decriminalized abortion in Coahuila,[5] the state bordering Texas. In a highly unusual press release in English entitled "*Landmark Decisions at The Vanguard for Reproductive Rights Worldwide"* the SCJN triumphantly affirmed:

> The decision goes further, even, than the emblematic *Roe v. Wade* decision handed down by the U.S. Supreme Court, because it recognizes that economic barriers to reproductive services must be addressed in order to guarantee the right to health.[6]

The *New Yorker* echoed this news and noted that the ruling gave "'Mexicans greater rights' [. . .] than Texans now have."[7] On June 24, 2022, the day the U.S. Supreme Court overruled *Roe*, then Mexican Chief Justice tweeted:

> Seldom have I felt as proud to be part of the Supreme Court of Mexico as today. All rights for all people. *Until equality and dignity become the custom.*[8]

He was quoting the words from the daughter of an indigenous woman wrongfully convicted in Mexico,[9] who had borrowed the phrase from a 1974 protest song against the Chilean dictatorship recorded in France.[10] Finally, two historical "super" amparos achieved what was until then

[3]Draft judgment for Amparo en revisión 636/2019, Primera Sala de la Suprema Corte de Justicia de la Nación [First Chamber of the SCJN], available at: https://www.scjn.gob.mx/sites/default/files/listas/documento_dos/2020-07/AR-636-2019-200716.pdf.

[4]*Id.* at. 28–31.

[5]Acción de Inconstitucionalidad 148/2017, Pleno de la de la Suprema Corte de Justicia de la Nación [Full Court of the SCJN], Luis María Aguilar Morales, September 9 2021 (Mex.), https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetalllePub.aspx?AsuntoID=227921.

[6]Press Release, Suprema Corte de Justicia de la Nación [SCJN] [Supreme Court], *Mexican Supreme Court: Landmark Decisions At The Vanguard For Reproductive Rights Worldwide* (Oct. 1, 2021), https://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=6606.

[7]Stephania Taladrid*, Mexico's historic step toward legalizing abortion*, The New Yorker, Oct. 28, 2021, https://www.newyorker.com/news/news-desk/mexicos-historic-step-toward-legalizing-abortion.

[8]Arturo Zaldívar (@ArturoZaldivarL), Twitter (Jun. 24, 2022, 9:58 AM), https://mobile.twitter.com/ArturoZaldivarL/status/1540348763964813318 (Rodrigo Camarena-González, trans. *All translations are by the author, unless otherwise indicated).

[9]Francisco López Bárcenas, *Hasta que la dignidad se haga costumbre [Until dignity becomes a habit]*, Jornada (Feb. 23, 2017), https://www.jornada.com.mx/2017/02/23/opinion/021a1pol; Tracy Wilkinson, *Mexican woman wrongly imprisoned is freed – 3 years later*, L.A. Times (Sept. 19, 2009), https://www.latimes.com/archives/la-xpm-2009-sep-19-fg-mexico-freed19-story.html.

[10]Nicolás Felipe Pino Naranjo, *Espacios musicales que contribuyeron al desarrollo de la Resistencia a la Dictadura Militar chilena [Musical spaces that contributed to the development of the Resistance to the Chilean Military Dictatorship],* Universidad Academia de Humanismo Cristiano (2014), http://bibliotecadigital.academia.cl/xmlui/bitstream/handle/123456789/3005/TPROMU%2002.pdf?sequence=1&isAllowed=y; «*Hasta que la dignidad se haga costumbre*»*: Cómo surgió la frase emblema del estallido social chileno ["Until dignity becomes a habit": How the emblematic phrase of the Chilean social upheaval came about],* CHV Noticias (Oct. 22, 2019), https://www.chvnoticias.cl/nacional/hasta-que-la-dignidad-se-haga-costumbre-frase-historia_20191022; National Strike: March Until Dignity Becomes Custom, Peacepresence (May 31, 2021), https://peacepresence.org/parar-para-avanzar-un-mes/.

considered impossible: The SCJN commanded the legislatures to decriminalize abortion: First in the State of Aguascalientes,[11] then at the federal level.[12]

This series of cases and events raises crucial questions about using "foreign" constitutional ideas in our interconnected world. Why did González, for instance, cite *Lakshmi* instead of the globally influential case of *Roe v. Wade* or the more locally significant Judgment of C-355-2006 from the more culturally, geographically, legally, and linguistically familiar Colombian Constitutional Court?[13] How can we understand the Court's rejection of a *Lakshmi*-inspired transformative remedy and its subsequent peaceful acceptance without any formal amendment to explain this change of position? Could the latest Mexican ruling have tailored *Lakshmi* to a context of massive violations of rights and commanded public servants to participate in gender discrimination awareness courses or issue public apologies? Are the territorial borders of Mexico and Nepal the frontiers of constitutional knowledge, or González and Shrestha are part of a single "global village" of judges?

These issues, which are part of a single, intensely debated question, are the focus of this Article: How do the global and the local interact in the production and circulation of constitutional ideas? On one side, Globalists view nations as the building blocks of a process towards a so-called universal consensus,[14] a unitary law common to humankind where borders vanish.[15] However, globalism carries imperialistic and homogenizing implications as evidenced by the actual or perceived threat of constitutional convergence. On the other side, localists emphasize the importance of borders, arguing that law is state-relative, equating the local to the national, reducing global ideas to "meaningless form of words,"[16] or worse, an undemocratic imposition that obstructs the growth of local law.[17] In between, transnationalists propose an intermediate stance, suggesting that constitutions should be understood as "simultaneously global and local,"[18] with judges sometimes acting as mediators between these dimensions.[19] Nevertheless, they inadvertently perpetuate nationalism by framing engagement or dialogue with the global in terms of national identities and national differentiation. Ultimately, all perspectives consider nation-states as the primary units of analysis in the creation and dissemination of constitutional ideas.

In contrast to the unitary view of the global and the persistence of nationalist approaches, I present a "glocal"[20] approach in this Article, which holds immense relevance to comparative legal studies. The glocal, as I will elaborate below, is the constant interplay of the global with the local, ongoing processes of hybridizations, interpenetrations, and resistances about what judges perceive as epistemically familiar or foreign and politically attractive or undesirable. Before judges treat

[11]Amparo en Revisión 79/2023, Primera Sala de la Suprema Corte de Justicia de la Nación [First Chamber of the SCJN], Juan Luis González Alcántara Carrancá, August 30 2023 (Mex.), https://www2.scjn.gob.mx/ConsultasTematica/Detalle/308233

[12]Amparo en Revisión 267/2023, Primera Sala de la Suprema Corte de Justicia de la Nación [First Chamber of the SCJN], Ana Margarita Ríos Farjat, September 6 2023 (Mex.), https://www2.scjn.gob.mx/ConsultasTematica/Detalle/311450

[13]C-355/06, Corte Constitucional [C.C.] [Constitutional Court], Jaime Araújo Rentería and Clara Inés Vargas Hernández, May 10 2006, (Colom.) https://www.corteconstitucional.gov.co/relatoria/2006/c-355-06.htm

[14]*See*, e.g., Donald Kommers, *The Value of Comparative Constitutional Law,* 20 German L.J. 524 (2019) (originally published on 1976); Eduardo Ferrer Mac-Gregor & Rubén Sánchez Gil, *Foreign Precedents in Mexican Constitutional Adjudication*, 4 Mexican L. Rev. 293, 307 (2012).

[15]Jeremy Waldron, *Foreign Law and the Modern Ius Gentium*, 119 Harv. L. Rev. 129 (2005).

[16]Pierre Legrand, *The Impossibility of 'Legal Transplants'*, 4 Maastricht J. Eur. & Comp. L. 111, 119 (1997).

[17]*See*, *e.g.*, Carlos F. Rosenkrantz, *Against Borrowings and other Nonauthoritative uses of Foreign Law,* 1 Int'l J. Const. L. 269, 293 (2003); Richard A. Posner, *Foreword: A Political Court*, 119 Harv. L. Rev. 32, 85-90 (2005); Pierre Legrand, *Comparative Legal Studies and the Matter of Authenticity*, 1 J. Comp. L. 374, 365 (2006).

[18]Sujit Choudhry, *Globalization in Search of Justification: Toward a Theory of Comparative Constitutional Interpretation*, 74 Ind. L.J. 819, 824 (1999).

[19]Vicki C. Jackson, Constitutional Engagement in a Transnational Era 156 (2010).

[20]*See* Victor Roudometof, Glocalization: A Critical Introduction (2016) (introducing and explaining the idea of "glocal").

precedents, provisions, institutions, or theories as legal sources that a nation owns, they must be reminded that ideas are epistemic representations in which the global and the local interact from the very birth of an idea. Moreover, it is not only that ideas are glocal, but the agents that interpret them are themselves glocal. Judges grasp, interpret and modify ideas, not as citizens or global lawyers but as members of several transterritorial networks. First, as members of several glocal networks, judges develop beliefs through which they grasp, interpret, assess, and modify ideas. Second, as members of a particular apex court, judges glocalize or tailor ideas while solving cases conditioned by the beliefs of their colleagues and what is expected of courts as institutional agents.

Spurred by the ongoing three-decade dialogue on glocalization in cultural studies, geography, sociology, and the humanities, I propose a glocal judicial interpretation theory. This interpretative approach follows a three-step process. First, it provides a multiscale toolkit to demonstrate that ideas may have never been purely national in the first place but are the result of plural hybridizations. Second, it uncovers the units that generate and disseminate constitutional knowledge: Trans-territorial networks united by thematically shared beliefs rather than by nationality or a global mission. Third, it equips judges with the ability to glocalize or customize the idea, not as an exercise of national differentiation but as a strategy to make it epistemically familiar and more politically appealing to the network.

After this introduction, the structure of the rest of the Article is the following: In Section B, I review representative literature on the use of foreign ideas and suggest that it displays a "methodological nationalism" bias working under the assumptions that the nation is the primary collective epistemic agent, or that nationality is a fundamental feature of the individual epistemic agent. In the rest of the Article, I advance a glocal interpretative framework for judges to overcome methodical nationalism. In Section C, I suggest how judges can de-nationalize the production of ideas by scaling up, down, and out territorial borders to expose their glocal origins. Still, scalar borders cannot account for how epistemic networks reproduce and modify ideas. Thus, in Section D, I submit how judges can unravel glocal constitutional networks linked by shared or overlapping frames of beliefs. Section E closes the circle of glocalization where decisionmakers glocalize the idea, adapting it not to the so-called identity of the national community as transnationalists do but to the set of beliefs that the constitutional network that solves the case holds. In Section F, I apply the framework to show how a glocal approach to ideas can go well beyond *Lakshmi* and *Roe*-inspired structural remedies in Mexico. I conclude with remarks on the possibilities and pending research questions for a glocal interpretative approach.

B. Localists, Globalists, and Transnationalists on the Use of Foreign Ideas

It is common to say that comparative public law scholars have discussed the circulation of ideas across nations and legal traditions since at least the 1970s, although legal transplants have occurred since the "earliest recorded history."[21] Mobile ideas can range from concrete items—like abortion precedents—to moderately abstract frameworks—like the proportionality test—all the way up to abstract theories or political organizations—like the rule of law[22], or even the nation-state.

This debate is animated by three approaches: Localism, globalism and transnationalism. Localists assume that epistemic communities are co-extensive to the nation-state. Coming from different cultural and political positions, Scalia, Legrand, and Carvalho, among others, seem to imply that the community is always "local", whereby they usually mean the "national." Scalia argues that "we [Americans] don't have the same moral and legal framework as the rest of the

[21]Alan Watson, Legal Transplants 21 (1974).

[22]Mauro Bussani, *Deglobalizing Rule of Law and Democracy: Hunting Down Rhetoric Through Comparative Law*, 67 Am. J. Comp. L. 701, 701 (2019).

world."[23] Legrand highlights the local distinctiveness of legal cultures and traditions that produce a kind of "tacit knowledge"[24] and a "realm of possibility"[25] of what is acceptable inside a community. Most recently, Carvalho claims that a legal system implies an "all-embracing network of beliefs that holds institutional practices and social ways of life,"[26] and that "legal epistemology is only possible as local epistemology."[27] Localists accept the postulate that the social connection individuals have with the national territory in which they were born, inhabit for a long time, or attend law school in, grants them an epistemic privileged position not only compared to the general culture, history, and politics of an imagined and idealized community they belong to, but also to the technical knowledge of their peculiar law.[28]

Thus, according to localists, epistemic communities are, paradoxically, a diffuse assemblage of individuals sharing a complex system of beliefs but, at the same time, a clearly delimited unit as drawn by territorial borders. They hold that, even if national communities are heterogenous, hybrid, internally fluid, and conflictive, disagreements happen within national territories. The community is not only given but taken for granted as co-extensive to the country. This illusion of epistemic national closure is what statutes banning the citation of foreign sources attempt to achieve.[29] To be sure, although such statutory prohibitions make it illegal to *cite* ideas, they do not prevent consulting them. No congress in the world can effectively limit the access of a judge to ideas, much less in our digital world. The prohibition is, at least, an incentive against intellectual stimulation in judicial writing and, at worst, a nationalist bias that impedes knowing the layers of glocalization.

So-called localists are, in fact, epistemic nationalists. Epistemic nationalism is a reification that portrays the state as a centralized, fixed, territorialized, and homogeneous community that monopolizes the production of overlapping epistemic frameworks to grasp, interpret and modify ideas. Epistemic nationalism works under the assumptions that either the nation is the main collective epistemic agent, or that nationality is a fundamental feature of the individual epistemic agent in the production and circulation of ideas. However, the state-nation is an imprecise unit as much as nationality is an irrelevant feature to map, anticipate or reconstruct the origin of ideas and epistemic consensuses. In domestic courts, judges are typically citizens of the same country. Despite sharing nationality, they may well exhibit different beliefs about law and legal science. Conversely, lawyers of different nations may actually understand each other converging on their attitudes towards law. Initiatives promoting such convergence comprise, for instance, the South-African Constitutional Court's program for foreign clerks[30] and the Argentinean Supreme Court's decision allowing foreigners to work as *secretarios* or judicial clerks.[31] Finally, some foreigners even sit as apex judges in Pacific countries.[32]

Judges generate, grasp, develop, reproduce, diffuse, spread, and reject ideas in a heterogonous way inside a country. Decisionmakers do not share beliefs because they were born, live or work in the same national territory. Rather, people come to hold similar or overlapping set of beliefs

[23]Norman Dorsen, *The relevance of foreign legal materials in U.S. constitutional cases: A conversation between Justice Antonin Scalia and Justice Stephen Breyer*, 3 Int'l J. Const. L. 519, 521 (2005).

[24]Legrand, *supra* note 17, at 377.

[25]*Id.* at 383.

[26]Julio Carvalho, *Law, language, and knowledge: Legal transplants from a cultural perspective*, 20 German L.J. 21, 22 (2019).

[27]*Id.* at 44.

[28]Anna Dziedzic. Foreign Judges in the Pacific 81–97 (2021).

[29]*See* Center for American Progress, *Foreign Law Bans* (May 2013), https://cdn.americanprogress.org/wp-content/uploads/2013/05/ForeignLawBans-INTRO1.pdf (noting that by 2013, there were 32 states in the U.S. trying to regulate the use of foreign law courts by domestic judges, particularly Sharia law).

[30]Constitutional Court Of South Africa, *Invitation for applications for foreign law clerks* (Mar. 2019), https://www.concourt.org.za/images/phocadownload/lawclerk/Invitation-for-Foreign-Law-Clerk-Applications-Mar-2019.pdf.

[31]*Los extranjeros también pueden ser secretarios [Foreigners can also be secretaries]*, Diario Judicial (Aug. 09, 2006), https://www.diariojudicial.com/nota/53426.

[32]*See* Dziedzic, *supra* note 28.

because they read, learn, and are eventually persuaded or tacitly accept beliefs. In Mexico, for instance, universities and judicial institutes use both civil law-inspired treatises of domestic authors[33] and the writings of prominent foreign authors such as Kelsen and Hart. Furthermore, teachers, who may have studied abroad, deploy the Socratic method in their classrooms, provide clinical legal education,[34] study the German Constitutional Court's *Lüth* case or the Colombian constitutional replacement doctrine.[35] Although the Mexican Supreme Court does not usually hear oral arguments, it organizes a university moot court competition simulating *Amparo* proceedings judged by its Justices.[36]

The illusion of epistemic nationalism may suggest that globalism is better suited to track epistemic consensus, but globalists continue to take the nation-state as their central unit of analysis, as producers and circulators of ideas. Although globalists reject that countries are epistemically closed or self-sufficient, they argue that nation-states can develop a quasi-scientific consensus. Waldron, for instance, argues that looking for a consensus among "civilized countries"[37] "[w]e, in country A, look at what is held in common between the laws of countries B, C, D, and so on."[38] Legal convergence among states increases epistemic confidence in the existence of a shared number of features taming diversity while decreasing the power of local, in other words, national, exceptionalisms.[39] Counting "freedom loving"[40] nations becomes the pragmatic way of identifying correctness, like counting heads in the legislative process.

Nevertheless, nations hardly develop consensuses; *networks of persons do.* As national societies become massive, personal ties become more diffuse and nationals more distant. Conversely, smaller groups linked by shared epistemic or political beliefs tend to be or appear more cohesive. Globalists work on the wrong assumption that a single official national institution—such as an apex court—captures or records the beliefs of millions of citizens and then produces a unitary input in an imaginary consensus-building process among nations. An input that is then taken, erroneously, to represent the whole nation. This reification obscures the enduring tensions, dissents, and polarizations among networks of judges, lawyers, communities and social groups, and lay citizens, which persist around controversial issues long after a court decides a case. I submit instead, that if the consensus ever emerges, it will always arise among *concrete* agents who happen to hold a nationality. Therefore, when a government institution decides, say, about abortion, it is, in fact, a network of persons—representatives, officials, or experts—who speak on behalf of other persons. Consequently, I believe it is usually inaccurate to speak of global consensus.

According to globalists, talking about a global constitutional community makes sense because of an underlying shared commitment to legal science. According to Waldron, the core idea of the legal profession is the notion of "treating cases alike."[41] Thus, a global community of lawyers "enables scientists from one *country* to talk to one another, to share a sense of common enterprise,

[33]*E.g.*, José Luis Soberanes Fernández, Raúl Márquez Romero & Pedro Salazar Ugarte, Constitución Política De México Comentada [Mexican Constitution Annotated] (2021).

[34]Carmen Hortensia Arvizu Ibarra, Martha Martínez Garía & Julia Romero Ochoa, *Experiencia de Innovación en La Educación Jurídica De La Universidad De Sonora: El Currículo [Experience of Innovation in Legal Education at the University of Sonora: The Curriculum]*, 146 Cuadernos Unimetanos (2008).

[35]Carlos Bernal Pulido, *Unconstitutional Constitutional Amendments in the Case Study of Colombia: An Analysis of the Justification and Meaning of the Constitutional Replacement Doctrine*, 11 Int'l. J. Const. L. 339 (2013).

[36]Suprema Corte de Justicia de la Nación [SCJN] [Supreme Court], El camino hacia la Suprema Corte. Competencia universitaria de litigio constitucional y de derechos humanos. Segunda edición [The road to the Supreme Court. University competence in constitutional and human rights litigation. Second edition], https://www.scjn.gob.mx/derechos-humanos/sites/default/files/pagina-basica/archivos-genericos/Reglamento.pdf.

[37]Jeremy Waldron, "Partly Laws Common to All Mankind": Foreign Law in American Courts 3 (Yale Univ.Press, 2012).

[38]*Id.* at 48.

[39]Waldron, *supra* note 15, at 132; Waldron, *supra* note 37 at 3, 89.

[40]Waldron, *supra* note 15, at 145.

[41]Waldron, *supra* note 37, at 109—141, 196.

and to recognize and assist one another with their *common* methodology."[42] Globalists accept that state-nations produce frameworks of beliefs as localists, but take the premise one step further: They conceive constitutional knowledge, first, as unitary, and then cumulative and commensurable. However, epistemically, some lawyers develop an idea about what counts as valid constitutional knowledge or weighty reasoning, while other co-national lawyers may disagree with such conceptions. An American judge, for instance, may hold that the basic pattern of constitutional reasoning does not lie in comparing cases but rather in identifying the relevant binding text and discovering the meaning commonly assigned to it. In addition, the so-called global legal methodology approach creates an artificial and unsustainable frontier between lawyer-dominated legal-technical doctrinal knowledge and political-moral knowledge that concerns, at least at first sight, all humankind. Courts, in particular, as the "legalistic fora"[43] that Waldron himself has criticized, abstract from concrete human creativity, suffering, and resistance while subsuming vivid experiences into abstract legal categories. The key, as this Article insists upon, is to avoid reifying constitutional bodies as national producers of legal sources and understand that networks of persons produce and circulate ideas.

Thus, globalists may appeal to a broader community, the equivalent of the "global village" in the realm of constitutional law. Waldron advances a community of all "fundamental-rights bearers extending around the world."[44] But then the right-bearer community is so broad as to include all persons becoming an abstract, and all-encompassing criterion as to become meaningless. If we want to pursue an accurate consensus, the epistemic community, which defines membership, cannot be defined at a high degree of abstraction of epistemic beliefs nor attached to the national community, but instead attached to specific thematic of political beliefs. Humankind as a criterion of membership becomes too thin and fuzzy to connect agents across the globe.

Some localists seem to concede the descriptive accuracy of the global consensus approach while advancing a normative defense of localism to resist homogenization. Günter Frankenberg argues that constitutional ideas are "commoditized" in the global market of ideas.[45] First, there is an apparent "point of origin" of the idea. As he exemplifies:

> The formula of "a government of laws and not of men," for instance, ritually ascribed to the Constitution of Massachusetts (1780), appears to date from Aristotle's political philosophy. More darkness yet overshadows the origin of the concept of the German "Rechtsstaat" that is attributed to Immanuel Kant, Adam Müller, and the fairly unknown jurist Ludwig Harscher von Almendingen.[46]

Then comes a process of decontextualization, where the idea is "reified,"[47] abstracted from its historical origins and turned into a marketable commodity. Later, the idealized entity becomes part of the global market of constitutional ideas. Finally, in a process that is both conscious and unconscious, decisionmakers and cultures "re-contextualize" foreign ideas to fit the new setting. He notes, however, that even in a global world there can be "odd details"[48] that resist transnational transfer. For him, a constitutional provision is as devoid of meaning as *IKEA* furniture until someone supplies it with new meaning.[49] Frankenberg seems melancholic of the national, missing "genuine" local ideas that are embedded in self-contained and self-sufficient territories.

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[42] *Id.* at 104.

[43] Jeremy Waldron, *The Core of the Case Against Judicial Review*, 115 YALE L.J. 1346 (2006).

[44] Waldron, *supra* note 37, at 138.

[45] Günter Frankenberg, *Constitutional Transfer: The IKEA Theory Revisited*, 8 INT'L J. CONST. L. 563, 571 (2010).

[46] *Id.* at 570–571.

[47] *Id.* at 571.

[48] *Id.* at 574. *See also*, Günter Frankenberg, *Constitutions as Commodities: Notes on A Theory Of Transfer* in ORDER FROM TRANSFER 15 (Günter Frankenberg ed, 2013).

[49] *See*, George Ritzer, *Rethinking globalization: Glocalization/Grobalization and Something/Nothing*, 21 SOCIOLOGICAL THEORY 193 (2003).

Thus, an apparent promising alternative to globalism is transnationalism that seeks to return to the local. Choudhry vigorously questions the imperialistic implication of convergence and so-called universalism by stressing that he "takes distinct *national* constitutional identities seriously."[50] Similarly, Jackson argues that the consensus among nations can be too abstract as to be useful and that there is usually partial convergence and divergence in the details and implementation.[51] Moreover, foreign law, and the consensus it may bring, is not a "tie-breaker" but a "reflective mirror"[52] for "seeing the question through the eyes of *another country's* constitutional system."[53] Transnationalists are interested in a "dialogue,"[54] or at least, the "engagement"[55] of judges with foreign ideas in a quest for better—national—self-understanding. Foreign ideas reveal idiosyncrasies of the national system, lessons to emulate and avoid, and interconnections between countries. Thus, Vicki Jackson argues that engagement with the transnational does not automatically mean the importation of foreign ideas,[56] stressing instead "shared constitutional values"[57] and their judicial interpretations that may become persuasive to other countries. Likewise, Choudhry sees national ideas and histories as "missing links"[58] that connect apparently dissimilar jurisdictions. All in all, transnationalists argue that global ideas are not commodities but an "interpretive foil,"[59] "reflective tools,"[60] or "mirrors"[61] for assessing their national societies with fresh eyes. As Jackson summarizes:

> If constitutions both help constitute and are constituted by an international community, as well as a specifically national community, engagement may be a necessary requisite of constitutional interpretation.[62]

Other transnationalists have focused on deliberately adapting foreign ideas as an exercise of *national* differentiation. Scott Stephenson focuses on "constitutional reengineering,"[63] a process between "endogenous and exogenous crosscurrents."[64] He notes that the goal of Canadian drafters when reengineering ideas was to have rights and judicial review without judicial supremacy. However, it is worth noticing that the national political environment may hinder reengineering's potential and favor the status quo. Most recently, Claudia Geiringer argued that there is a dual process of "repurposing"[65] and "de-purposing." Geiringer understands the migration of ideas as a process beyond the local agent's control, marked by misreading's, "adulteration," "contamination,"[66] and bad fit, but also by adaptation and reconfiguration.

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[50]Sujit Choudhry, *How to Do Comparative Constitutional Law in India: Naz Foundation, Same Sex Rights, and Dialogical Interpretation, in* Comparative Constitutionalism in South Asia 45, 69 (Sunil Khilnani, Vikram Raghavan & Arun K. Thiruvengadam eds., 2010).

[51]Jackson, *supra* note 19, at 67–69 (italics added).

[52]*Id.* at 144.

[53]*Id.* at 225 (italics added).

[54]Choudhry, *supra* note 18, at 836.

[55]Vicki C. Jackson, *Constitutional Comparisons: Convergence, Resistance, Engagement*, 119 Harv. L. Rev. 109, 111 (2005).

[56]Jackson, *supra* note 19, at 156.

[57]*Id.* at 117.

[58]Choudhry, *supra* note 50, at 44, 71, 78.

[59]Choudhry, *supra* note 18, at 857.

[60]Jackson, *supra* note 19, at 71.

[61]Frank I. Michelman, *Reflection*, 82 Tex. L. Rev. 1737, 1738 (2003).

[62]Jackson, *supra* note 19, at 72.

[63]Scott Stephenson, *Constitutional Reengineering: Dialogue's Migration from Canada to Australia*, 11 Int'l J. Const. L. 870 (2013). *See* Wiktor Osiatynski, *Paradoxes of Constitutional Borrowing,* 1 Int'l J. Const. L. 244, 252 (2003) (referring to this concept as "borrowing by adaptation").

[64]Stephenson, *Id.* at 876.

[65]Claudia Geiringer, *When Constitutional Theories Migrate: A Case Study*, 67 Am. J. Comp. L. 281, 284 (2019).

[66]*Id.* at 321.

Transnationalists are the most outspoken in their quest to mediate the particular and the "universal,"[67] and in finding understandings simultaneously "global" and "local,"[68] but they also replicate nationalism. Even if they study how ideas circulate and adapt in other spaces, their central units of production of ideas, and the given instrument for delineating the inquiry, is the nation-state.[69] In particular, they nationalize ideas, attaching them to state borders.[70] Regardless of all the possible epistemic communities or that can influence the development, interpretation, modification, and rejection of ideas, they reduce the phenomenon to a trans*national* process. For Stephenson, "preexisting paradigms"[71] constrain any potential change triggered by exogenous factors. Similarly, although Geiringer identifies a transnational epistemic battlefield, she takes "cross-cultural"[72] as synonymous of cross-national. It is not only that beliefs shared by nationals may be internally fluid and conflictive, but, more importantly, epistemic communities are not co-extensive to state-nations. Instead, paradigms are deeply entrenched shared beliefs by members of communities that that transcend both national borders and territoriality itself.

Sociolegal transnationalists take a less legalistic and nationalist approach. Sally Engle Merry coined the term "vernacularization" to show how human rights "need to be translated into local terms and situated within local contexts of power and meaning."[73] She notes that some activists participate in "two cultural spheres" or have some "double consciousness"[74] that allows them to "translate down"[75] foreign perspectives to local contexts. Similarly, Sierra showed that the Mexican Constitution appears "foreign" to Mexican indigenous peoples. They, nevertheless, resort to constitutional provisions or state practices in the process of cultural negotiation to advance their political agenda.[76]

Sociolegal transnationalists fall into another kind of reification and essentialism: East and West, or nowadays the so-called Global North-South divide. They draw frontiers no longer between states, but between, two cultural spheres or geopolitical binomials that separate "us" from "them". The reality, however, is that most of us, not only devoted bilingual transnational activists, belong not to one or two cultures but to many more communities not attached to defined territories. Most importantly, the West is not attached to a defined set of nations, nationalities or hemispheres and geographies but is an imagined community of individuals who self-perceive as western with shared beliefs.

Others have tried to overcome methodological nationalism by employing a glocal approach highlighting an interaction of the global and the local, but most of them do it only in passing.[77] A noteworthy exception is the work of de Visser and Son Bui. They understand the recent processes of constitution-making in Bhutan, and other Asian countries, as glocal. [78] For instance,

[67]Jackson, *supra* note 19, at 11, 156.

[68]Choudhry, *supra* note 50, at 824, 856.

[69]Hermínio Martins, *Time and Theory in Sociology, in* Approaches To Sociology: An Introduction To Major Trends In British Sociology 246, at 270, 276 (John Rex ed., International Library of Sociology, 1974).

[70]Andreas Wimmer & Nina Glick Schiller, *Methodological Nationalism, the Social Sciences, and the Study of Migration: An Essay in Historical Epistemology*, 37 Int'l Migration Rev. 570, 576 (2003).

[71]Stephenson, *supra* note 63, at 894.

[72]Geiringer, *supra* note 65, at 322.

[73]Sally Engle Merry, Human Rights and Gender Violence: Translating International Law Into Local Justice 1 (2006).

[74]*Id.* at 3.

[75]*Id.* at 216.

[76]María Teresa Sierra, *Interlegalidad, justicia y derechos en la Sierra Norte de Puebla [Interlegality, justice and rights in the Sierra Norte of Puebla], in* Haciendo Justicia, Interlegalidad, Derecho Y Género En Regiones Indígenas 163, 165 (María Teresa Sierra ed., 2004).

[77]*See* Julie Mertus, *From Legal Transplants to Transformative Justice: Human Rights and the Promise of Transnational Civil Society*, 14 Am. U. Int'l L. Rev. 1335, 1345 (1999); Shalini Randeria, *Glocalization of Law: Environmental Justice, World Bank, NGOs and the Cunning State in India*, 51 Current Sociology 305 (2003); Ran Hirschl, *Holy Glocalization: Constitutions and Sacred Texts in the 'Non-Secular' World*, 32 Harv. Int'l Rev. 38 (2010).

[78]Maartje de Visser & Ngoc Son Bui, *Glocalised Constitution-Making in the Twenty-First Century: Evidence from Asia*, 8 (2) Global Constitutionalism 297, at 308, 327 (2019). *See also*, Venkat Iyer, *Constitution-Making in Bhutan: A Complex and Sui Generis Experience*, 7 The Chinese J. f Comp. L. 359, 367–68 (2019).

the 2008 Constitution of Bhutan was triggered by a king educated in Darjeeling and Berkshire, who, worried by mounting Nepalese anti-monarchist sentiments, abdicated the throne and embraced constitutionalism. Its drafting, informed by 100 foreign constitutions, resulted in a Buddhist-inspired constitutional democracy. The Constitution promotes both the rule of law and *Gross National Happiness* (GNH).[79] GNH, though apparently a Bhutanese concept, nevertheless brings to mind the "pursuit of happiness" in the U.S. Declaration of Independence. De Visser and Son Bui do not privilege the homogenizing vision of the global over the essentializing view of the national, highlighting instead the horizontal interplay between both levels.

However, I contend, Visser and Son Bui continue to replicate nationalism making the local co-extensive to the national. Indeed, they often reduce the multiplicity of epistemic communities into one equated to the political-legal state-nation, clearly delimited by national borders. They argue, for instance, that Bhutan's local-national unit receives the influence of other "exogenous"[80] units as India or Nepal. Furthermore, the national units of Bhutan or Nepal interact with a broader "global" unit that developed the universal model of constitutional democracy. Although they concede that nations are not monolithic, and that the attitudes of nationals are "contingent and thematically determined,"[81] nations remain their central unit of production and circulation. They do not entirely abandon methodological nationalism for any division is inherently related the state-nation. Their approach, thus, is better understood as "glo-national," rather than genuinely glocal.

What is missing, then, is a framework that is thoroughly glocal. The reification of a constitutional idea occurs well before it goes global. It starts in the process of production of constitutional ideas. The national bias first appears when persons ascribe a single nationality to a constitutional idea, attached to an identifiable national unit. Then, decisionmakers internalize ideas as supposedly purely national items, forgetting that ideas are hybrid epistemic representations, ways of conceptualizing human experiences and solving social conflicts with plural origins. Most constitutional ideas are polycentric and multi-scale entities are already interpenetrated by the local and the global. Constitutional ideas are therefore glocal.

The glocal method I elaborate on below is an alternative to the three methodological approaches. On the one hand, it challenges the notion of the local as synonymous with the Nation-state, envisioning the local as epistemically familiar and politically desirable to the community members, while appearing foreign or undesirable to outsiders. This perspective draws not territorial borders but epistemic and political frontiers between two or more communities. Under more rigorous scrutiny, we find that a local idea which now seems familiar, pure, and unitary, owned and internalized by a single community, was once novel and unfamiliar. At one point, multiple hybridizations, interpenetrations, and resistances across communities transformed the ideas that other approaches render invisible.

On the other hand, I visualize the global as what appears to be familiar to and accepted by all or most members of an imaginary, unified community that transcends borders and frontiers. However, a closer examination reveals that communities not only accept or reject ideas but also grasp and frame them differently. This diversity of communities actively shapes ideas, forms consensuses, and establishes frontiers. Communities are not nations but networks of persons connected and separated by beliefs. When we eliminate the national bias, we realize that ideas are not just intermingled and blurred but actively shaped and influenced by these hybrid communities, giving rise to the glocal.

Table 1 summarizes the key features of the three mainstream approaches and identifies the practical implications of adopting a glocal approach that I advance in the rest of the Article.

[79]The Constitution of The Kingdom of Bhutan, Article 9 (2)–(3).
[80]De Visser & Ngoc Son Bui, *supra* note 78, at 308.
[81]*Id.* at 328.

Table 1. Four Methodological Approaches

	Localism (Nationalism)	Globalism	Transnationalism	Glocalism
Units of analysis	The state-nation. An epistemically closed unit with a distinctive and self-sufficient legal, moral, and political framework.	The globe. A master unit composed of state-nations as sub-units.	Nations as "local" units in a transnational dialogue.	Trans-territorial networks linked by shared beliefs.
Criteria of Knowledge	National history, political, cultural, and moral beliefs of the nation.	Convergence and global consensus among nations.	A balance between the global and the national; national identities and national differentiation.	The "best" and most glocal solution according to the network.

C. De-nationalizing the Production of Ideas

The first step to overcoming methodological nationalism is to de-nationalize ideas. This inquiry is more epistemic than historical: It casts doubt on the supposed national origins of ideas, avoiding the reification of national territorial physical borders as a determinant of intellectual ownership or an individual's nationality or collectivity as the essential feature of ideas while highlighting the process of hybridization and global-local interpenetration that ideas undergo. In this sense, ideas are not entities but epistemic representations of concepts, objects and social relations that account for the possibilities and contingencies of human thought. Constitutional ideas, in turn, represent what is just for a constitutional network, the proper distribution of power, and the presuppositions to exert or engage in democracy.

The Mexican Constitution makes this process of glocal production particularly transparent. In 1917, before the Soviet Union or the Weimar Republic, although influenced by a transnational movement of labor rights, the Mexican constitution entrenched social rights. Partially inspired by pre-Columbian institutions, Article 27 recognized the right to collective land for peasants and indigenous communities as framed by the revolutionary demands of Zapata and Montaño. However, this provision was amended in 1992 as part of the NAFTA agreement with U.S. and Canada, making it possible to transform social land into private property. Moreover, in the Mexican constitutional order, rights are not found only in the constitution but in international treaties. Like other Latin-American states, Mexico reinterpreted the French doctrine of "*bloc de constitutionalité,*"[82] an idea that gives non-constitutional sources constitutional status. In Mexico, all human rights treaties are part of the constitution.[83] Nevertheless, unlike under the Colombian *bloque de constitucionalidad*,[84] in a conflict between national and international norms, domestic sources triumph.[85] Regarding the distribution of powers, for instance, Article 41 created an independent electoral institute outside the three branches of government, an institution that can be explained by decades of a hegemonic party system that made Mexico a "perfect dictatorship,"[86] but that also reflects the so-called "new separation of powers"[87] global trend. Most recently, in

[82]Conseil Constitutionnel [CC] [Constitutional Council] decision No. 71-44 DC, July 16 1971 (Fr.), https://www.conseil-constitutionnel.fr/en/decision/1971/7144DC.htm; Louis Favoreu, *Le principe de constitutionnalité: essai de définition d'aprés la jurisprudence du Conseil constitutionnel [The Principle of Constitutionality: An Attempt to Define it According to the Jurisprudence of the Constitutional Council]*, *in* Recueil d'études en hommage à Charles Eisenmann 33 (1975).

[83]Constitución Política de los Estados Unidos Mexicanos, CP, art. 1, Diario Oficial de la Federación [DOF] 05-02-1917.

[84]Constitución Política de Colombia, [C.P.] art. 93; C-225/95, Corte Constitucional [C.C.] [Constitutional Court], Alejandro Martínez Caballero, May 18, 1995, (Colom.), https://www.corteconstitucional.gov.co/relatoria/1995/c-225-95.htm

[85]Contradicción de Tesis 293/2011, Pleno de la Suprema Corte de Justicia de la Nación [SCJN] [Full Court of the SCJN], Arturo Zaldívar Lelo De Larrea, 8 September 2013 (Mex.), https://www2.scjn.gob.mx/ConsultasTematica/Detalle/129659

[86]Mario Vargas Llosa, *Encuentro Vuelta*, (August 30, 1990), https://www.youtube.com/watch?v=kPsVVWg-E38.

[87]Bruce Ackerman, *The New Separation of Powers*, 113 Harv. L. Rev. 633, 712–18 (2000).

what the Supreme Court has termed "new constitutional engineering,"[88] Mexico created, among others, the IFT, an independent anti-trust agency like the U.S. Federal Trade Commission, yet constitutionally entrenched and co-equal with the classical branches.[89]

The Mexican Constitution text is best understood, I submit, through a "glocal" lens. Federalism, presidentialism and other allegedly U.S. ideas inspired framers and judges.[90] There are some provisions expressed in the so-called style of "majestic generalities"[91] that include the prototypical liberal freedom of expression but also the third generation right to culture.[92] However, unlike the U.S., Mexico is embedded in a tradition of constitutional codification with an energetic appetite towards the exercise of constitutional amendment powers. Under this light, Mexico's "supreme code,"[93] with 148,725 words and 257 amendments, arguably shares more with the "extremely elaborate Constitution of India,"[94] or with the 977-times-amended and 388,882-word Constitution of Alabama than with the United States' Federal Constitution. Some of the detailed constitutional provisions regulate, for instance, how the electoral institute allocates a total 48 minutes of media time between electoral authorities and political parties during campaigns.[95] Moreover, the constitutional text departs from the implicit recognition of *jurisprudence constante* supposedly typical of the civil law, and explicitly recognizes precedents as a binding source of law. At the same time, there are apparent oddities; Mexican amendments regulate consequential elements via transitional provisions that can be as important as the actual amendment.[96] In other words, the whole Mexican constitutional practice is a complex glocal mélange.

Some may object that this glocal portrait of the production of constitutional ideas is overbroad, applicable only to Mexico and, perhaps, other Latin-American states. Indeed, a well-known narrative depicts Mexican legal culture as thrown in an ever-going process of transnational hybridization since the advent of *mestizaje*, in other words, interracial and cross-cultural interpenetration.[97] In popular culture, some argue that Latin America is the "hybrid region *par excellence*."[98] Rosenkrantz, a Yale graduate and current Justice of the Argentinean Supreme Court, shares this anxiety regarding his own national constitutional culture.[99] Latin-American nations are said to import but not export ideas, even if ideas acquire a life of their own.[100] In this account, localists from the North exaggerate their originality and globalists from Southern countries lament their backwardness.

Yet, the importer v. exporter nationalist dichotomy is flawed as it is based under the questionable assumption of national purity in the production of ideas. After all, what would U.S constitutionalism be without the Roman principle of *lex posterior derogat legi priori* that permitted

[88]Controversia Constitucional 117/2014, Pleno de la Suprema Corte de Justicia de la Nación [Full Court of the SCJN], Alfredo Gutiérrez Ortiz Mena, May 7 2015 (Mex.), https://www2.scjn.gob.mx/ConsultasTematica/Detalle/175161

[89]*See*, Francisca Pou Gimenez and Rodrigo Camarena-González, *From Expertise to Democracy-Shaping?*, Tex. Int'l L.J. 301, 326 (2022).

[90]Diego Valadés, *El sistema presidencial mexicano: Actualidad y perspectivas [The Mexican Presidential System: Current Events and Prospects]*, 44 Boletín mexicano de derecho comparado 283, 284 (2011).

[91]*Fay v. New York*, 332 U.S. 261, 282 (1947).

[92]Constitución Política de los Estados Unidos Mexicanos, CP, art. 4, Diario Oficial de la Federación [DOF] 05-02-1917 (Mex.).

[93]Amparo en revisión 2119/1999, Primera Sala de la Suprema Corte de Justicia de la Nación [SCJN] [First Chamber of the SCJN], Olga Sánchez Cordero de García Villegas, 29 November 2000 (Mex.).

[94]Frankenberg, *supra* note 45, at 574.

[95]Constitución Política de los Estados Unidos Mexicanos, CP, art. 41 III A (a), Diario Oficial de la Federación [DOF] 05-02-1917.

[96]Constitutional amendment of 14 August 2001, transitory article 3 on indigenous electoral districts.

[97]Alfonso Noriega Cantú, El Juicio de Amparo 5 (1985).

[98]Peter Burke, Cultural Hybridity 4 (2009).

[99]Carlos F. Rosenkrantz, *Against Borrowings & other Nonauthoritative uses of Foreign Law*, 1 Int'l J. Const. L. 269, 292–93 (2003).

[100]Roberto Gargarella, *Grafts and Rejections: Political Radicalism and Constitutional Transplants in The Americas*, 77 Rev. Jur. U.P.R. 507 (2008).

the creation of the modern principle of constitutional supremacy,[101] or without Lockean liberalism,[102] Montesquiean separation of powers,[103] and common law methodology?[104] Although there are Latin-American exporters like Fix-Zamudio,[105] or the Colombian Constitutional Court,[106] the point is not to fall in the trap of methodological nationalism, treating states or nationals as immersed in a competition between recognizable brands in the marketplace of ideas. Rather, we should be stressing sub-national and para-national interconnections, including asymmetrical epistemic and cultural relations that transcend both state-centric or nationalistic analysis as well as global top-down master narratives.

Indeed, we can see "glocal" connections in the origins of prestigious constitutional ideas of the North. Take, for instance, *Brown*, perhaps the most exported U.S. precedent,[107] and a global symbol of a structural judicial remedy that inspired transformative equality. The Equal Protection Clause is part of the Reconstruction amendments that repudiated the "Three-fifths Compromise" and other vestiges of ante-bellum U.S. law. Nevertheless, *Brown* cannot be dissociated from the legacy of transcontinental slavery. Moreover, the right to equality is a universal presupposition of any liberal state. In addition, although the U.S. did not ratify the 1948 Genocide Convention until 1988, it was hard to read in the 1950s the 14th amendment without considering this then non-binding source.[108] Moreover, before *Brown*, Mexican-Americans had already sued and obtained systematic school integration in California.[109] Furthermore, World War II revealed an uncomfortable anomaly. Despite the professed egalitarian commitments of the US constitution, an American racially-segregated army fought Hitler's white supremacy, an international pseudo-scientific philosophy itself partially inspired by American pre-*Brown* jurisprudence and US antimiscegenation and migration laws.[110] In addition, the consequences of post-slavery racial relations, particularly in the Deep South shaped the law.[111] These layers of glocalization made Topekan Linda Brown–then a third-grader in an only-black school–one of the "ideal" plaintiffs to challenge racial segregation on schools.

How do we systematize these complex global-local interactions? In the literature on glocalization and geographical scales, we find three techniques to reconstruct units of analysis. Two are vertical: Scaling down and up.[112] Individuals and collectivities can scale up organizing relations in ascending levels of analysis, starting at the municipal and then going up to the sub-national, national, regional, continental, and so on, expanding and widening the unit until they go fully global. We can also scale down, contracting or narrowing the unit until we go entirely local.

[101] Jean-Louis Halpérin, *The Concept of Law: A Western Transplant?*, 11 Theoretical Inquiries in L. 333, 338 (2009).

[102] Rogers M. Smith, *Beyond Tocqueville, Myrdal, & Hartz: The Multiple Traditions in America American,* 87 (3) Pol. Sci. Rev. 549, 551–56; Michel Rosenfeld, *Hate Speech in Constitutional Jurisprudence: A Comparative Analysis,* 24 (4) Cardozo L. Rev. 1523, 1549; Laurence Claus, *Montesquieu's mistakes and the true meaning of separation*, 25.3 Oxford J. Legal Stud. 419 (2005).

[103] The Federalist No. 47 (James Madison).

[104] Gerald J. Postema, *Some Roots of Our Notions of Precedent, in* Precedent in Law 9 (Laurence Goldstein ed, Oxford Clarendon Press 1987); David. A. Strauss, *Common Law Constitutional Interpretation*, 63 U. Chi. L. Rev. 877 (1996).

[105] Héctor Fix-Zamudio, *The Writ of Amparo in Latin America*, 13 U. Miami Inter-Am. L. Rev. 361 (1981).

[106] Manuel José Cepeda Espinosa & David Landau, Colombian Constitutional Law: Leading Cases (2017).

[107] *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954); Sheldon Bernard Lyke, Brown *Abroad: An Empirical Analysis of Foreign Judicial Citation and the Metaphor of Cosmopolitan Conversation*, 45 Vand. J. Transnat'l L. 83 (2021).

[108] *See* John Docker, *Raphaël Lemkin, Creator of The Concept of Genocide: A World History Perspective*, 16 Humans. Rsch. 49, 59–63 (2010); *See* also Unesco, The Race Question (1950), https://unesdoc.unesco.org/ark:/48223/pf0000128291.

[109] *Mendez v. Westminster Sch. Dist.*, 64 F. Supp. 544, 551 (S.D. Cal. 1946).

[110] Richard J. Goldstone & Brian Ray, *The International Legacy of* Brown v. Board of Education, 35 McGeorge L. Rev. 105, 106, 109 (2004); James Q. Whitman, Hitler's American Model: The United States and the Making of Nazi Race Law, 5, 9, 15–16, 33, 51, 78 (2017).

[111] Earl Warren, *Notre Dame Law School Civil Rights Lectures*, 48 Notre Dame L. Rev. 14, 19–21, (1972).

[112] Noel B Salazar, *From Local to Global (and Back): Towards Glocal Ethnographies of Cultural Tourism, in* Cultural Tourism Rsch. Methods 188, 190–91 (Greg Richards & Will Munsters eds., 2010).

Then, a horizontal technique is "scale out,"[113] the systematization between coordinated units at the same level of analysis.

Using these techniques, we can de-nationalize, for instance, the origin of the idea of the right to abortion. A mainstream comparative enquiry used to start with *Roe*. For instance, the SCJN in AI 148/2017 argued that the "global jurisprudential dialogue was indispensable,"[114] and cited *Roe* and decisions from Colombian, German, Spanish, Italian, and South African apex courts. However, against this US-inspired Western canon, usually championed by *Roe*, scaling out at the national scale we find that in 1920, the USSR was the first country to decriminalize abortion practice by doctors via a statute. Also, its Supreme Court exonerated a woman and the midwife for committing the crime.[115] Similarly, other countries that belonged to the former USSR, such as Armenia, decriminalized abortion since 1955. Moreover, as the SCJN had noted in the previous case, *Lakshmi* not only recognized abortion as a right but considered socio-economic barriers to exert this right. In fact, abortion's legendary origin is sometimes attributed to the Byzantine Empress Theodora.[116] Scaling further out, we find that although more than sixty countries have decriminalized abortion,[117] hundreds have not.

Scaling down, we go from the national to the sub-national: From the United States to Texas and from Mexico-to-Mexico City. We find that although legal abortion has been available in Mexico City since 2007, the legislation of other Mexican states continued to criminalize it. Similarly, even with *Roe*, dozens of American states, including Texas and Mississippi, placed restrictions on abortion upon request.[118]

Finally, we scale up. At the regional level as the SCJN noted,[119] the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women, better known as the *Belém do Pará Convention*, exists. We scale further up to the global scale. As a common globalist enquiry, the judgement AI 148/2017 suggested that abortion was linked to the notion of reproductive rights conceived in the 1968 United Nations Proclamation of Tehran,[120] which recognized a "human right to determine freely and responsibly the number and spacing of their children." Also, there is the CEDAW, sometimes known as an International Bill of Rights for Women, an international Convention adopted by the United Nations in 1979 and ratified by 189 nation-states. The CEDAW committee, comprising twenty-three women's rights experts from all around the world, oversees the convention and issues annual reports and general recommendations. Recommendation twenty five on temporary special measures exhorting states to implement "measures adopted towards a real transformation of opportunities, institutions and systems,"[121] and recommendation thirty-five explicitly calling for the decriminalization of abortion.[122]

[113] *Id.* at 190–94.

[114] Acción de Inconstitucionalidad 148/2017, *supra* note 5, at 19–20.

[115] Wendy Z. Goldman, Women, The State and Revolution. Soviet Family Policy and Social Life. 1917-1936, 255–57 (1993).

[116] Eduardo Galeano, Espejos: una historia casi universal, 73 (2009); E. Poulakou-Rebelakou, J. Lascaratos & S.G. Marketos, *Abortions in Byzantine times (325-1453 AD)*. 2 Vesalius 19, 21 (1996).

[117] *The World's Abortion Laws*, Center for Reproductive Rights, https://reproductiverights.org/maps/worlds-abortion-laws/.

[118] *The History of Abortion Law in the United States*, Our Bodies, Ourselves Today (Revised August 2022), https://www.ourbodiesourselves.org/health-info/u-s-abortion-history/.

[119] SCJN, 148/2017, *supra* note 5, at 102.

[120] *Id.* at 51 n.81.

[121] Comm. on the Elimination of Discrimination against Women, General Recommendation No. 25 on Article 4(1) of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures, ¶ 10, U.N. Doc. CEDAW/C/2004/I/WP.1/Rev.1 (2004), https://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf.

[122] Comm. on the Elimination of Discrimination against Women, General Recommendation No. 35, on Gender-Based Violence Against Women, Updating General Recommendation No. 19, ¶ 29(c)(i), U.N. Doc. CEDAW/C/GC/35 (2017), https://documents.un.org/doc/undoc/gen/n17/231/54/pdf/n1723154.pdf.

Table 2. De-nationalizing Ideas

Dimension	Vertical	Horizontal
Techniques	Scale Down and Up	Scale Out
Units	Sub-National National Regional Global	Texas, Mississippi, Mexico City Armenia, Mexico, Nepal, USA Latin America, Soviet Union United Nations

As summarized in Table 2, this methodological framework helps to problematize national and global widespread biases regarding the origin of constitutional ideas: Who was the author of the right to abortion? Perhaps not the U.S. in *Roe* as commonly maintained. The case of Armenia and the Soviet Union questions this Western-centric narrative. *Lakshmi* also expanded the inquiry by stressing socio-economic inequality. Additionally, the sub-national unit of Texas placed restrictions. This tension begs the question: Is Texas an "uncivilized" sub-national unit in the process of global consensus? Or are Armenia or Nepal more civilized jurisdictions than the U.S. after *Dobbs*? The use of the multiscalar approach elaborated and deployed above suggests that it was not a national or transnational but a networked phenomenon that seems to have started long before the U.S. began to decriminalize abortion.

However, the example also underscores the limitations of territorial scalars. An exclusively territorial approach fails to explain how judges comprehend ideas and facilitate their circulation. It neglects to acknowledge the existence of epistemic communities, as it mistakenly merges territorial borders with political, moral or epistemic frontiers. De-nationalize seeks to question the apparent statist origin and the country's exclusivity of an idea, as if the nation forged it as a single unit, or if the author's nationality was a key feature of the idea. Instead, it seeks to show the plural origins of constitutional ideas and, more importantly, the contingency of a given community in accepting and rejecting them. Nevertheless, de-nationalization still gravitates toward territorial scales, whether sub- or supra-national.

Therefore, the glocal approach is significantly strengthened by the inclusion of transterritorial networks. Transterritorialization, as I use it here, refers to mapping not physical or geographic borders among provinces, regions, or continents but links across shared beliefs that people hold. This transterritorial approach is crucial for overcoming methodological nationalism. Decisionmakers transterritorialize because the cognitive frameworks, intellectual traditions, or political schools of thought in which they work do not operate under the boundaries of a state. Once we abandon epistemic nationalism, we realize that epistemic communities are not synonymous with national societies. However, a singular, supposedly universal, global village cannot encompass all human knowledge, subjects, and frames of reference in a solitary entity. This concept of networks, which I will delve into further in the rest of the Article, is a testament to the depth and complexity of the circulation of constitutional ideas.

D. Unraveling Glocal Networks

The second step is to transterritorialize networks. A judge grasps, interprets, accepts, modifies, or rejects a constitutional idea considering a previously held set of beliefs. A person can identify and hold an idea and express it to others. However, the other must share a framework of beliefs to grasp the idea and understand each other before engaging in any discussion. How do constitutional judges forge their frameworks of beliefs? I suggest that they do it not through a national community or a community of the global legal profession but through belongingness to and immersion in a plurality of glocal networks.

Judges develop frameworks of beliefs through an interplay of non-legal and legal practices. Non-legal practices can be as diverse as reading a novel or a political treaty, watching a documentary, or reflecting on their lived political or moral experience. Legal practices, on the other hand, are instances of the professional exercise of their legal traditions. However, as will become apparent in the following lines, legal traditions are hybrid, plural, transterritorial, networked, and contested rather than pure, territorialized, and pacifically accepted. For instance, a lawyer born, raised, and educated in the U.S. may reject the relevance of precedent in constitutional interpretation—a supposedly typical feature of the common law while embracing a textualist approach and a normative defense of legislatures over judges—allegedly a vital aspect of the civil law.

When a judge shares a framework of beliefs with another one, they form epistemic communities. Discussing in the context of international relations, Haas notes that we can conceptualize epistemic communities at least at two distinct levels of abstraction.[123] The first is at the level of Foucauldian epistemes, in other words, a diffuse frame of epistemic assumptions and intellectual influences that affect how knowledge is produced, reproduced, and assessed across a community. The second understanding, that Haas and his colleagues prefer, is at the level of individuals who share a framework of beliefs and are part of joint enterprises like schools of thought and discussion forums such as academic seminars, journals or international or transnational institutions.

Localists assume epistemic communities to fall under the first level of abstraction and treat them as co-extensive to the national community. According to them, judges who have lived in a country and attended a law school share beliefs with fellow national lawyers, forming a community as Legrand or Carvalho claim. However, we must not equate epistemic communities to national societies or a global community of lawyers. On the one hand, a lay citizen may lack the legal-technical ground with a judge of the same country, even if they speak the same language and are affected by a common national history. For instance, basic constitutional concepts such as Due Process are epistemically unfamiliar to 92% of Americans, a jurisdiction assumed to have a deep-rooted constitutional culture.[124] On the other hand, lawyers and even non-lawyers of different countries may understand each other thanks to a common framework of beliefs.

We must reject the assumption that epistemic communities work in *a priori* ontologically given determinate level of abstraction. The epistemic beliefs of judges vary across a continuum of abstraction ranging from: (i) Practical know-how and problem-solving skills, (ii) methodologies, models, and patterns of reasoning, and (iii) theories to identify, weigh, validate and assess knowledge. We can find epistemic communities at any of these different levels of abstraction. Considering that beliefs are individual mental states that third parties cannot directly apprehend, the data from which we can infer beliefs is composed of statements expressed by judges in judicial or academic form.The most transparent evidence stems from individual texts—concurring or dissenting opinions, academic texts, and a lesser degree when they draft collective decisions. Thus, we can understand epistemic communities as a group of persons who, regardless of their nationality or profession, share or have overlapping beliefs with varied degrees of abstraction.

[123]Peter M. Haas, *Introduction: Epistemic Communities and International Policy Coordination*, 46 Int'l Org. 1, 27–28 (1992). *See* also, John Gerard Ruggie, *International Responses to Technology: Concepts and Trends*, 29 Int'l Org., 557, 569 (1975).

[124]*How Well Do Americans Know the Constitution?,* The Woodrow Wilson National Fellowship Foundation (Sept. 10, 2019), https://woodrow.org/news/how-well-americans-know-constitution/; Chris Cillizza, *Americans Know Literally Nothing About the Constitution,* CNN (Sept. 13, 2017, 4:39 PM), https://edition.cnn.com/2017/09/13/politics/poll-constitution/index.html.

A *network* is a more precise concept than a community to map a set of decisionmakers who share beliefs. A community is usually understood a relatively homogenous collectivity composed of individuals with consistent and unitary subjectivities settled in a territory. By contrast, as Helga Leitner advances, a network "generally cannot be mapped as a bounded territory (except for a spatially contiguous network) but must be represented as a disjoint set of local territorial units connected to one another."[125] As she notes, networks "span"[126] rather than cover a territorial space. A country is crossed by and stage of an array of divergent networks just as these can transcend and pierce state borders. In this sense, networks are a-national or para-national. Constitutional networks are recognizable persons who voluntarily subscribe to or tacitly follow shared or overlapping thematic beliefs regardless of nationality or profession.

Networks are an alternative unit of analysis to traditional comparative scholarship that considers state-nations the given, fixed, relatively homogeneous unit. Most importantly, the recourse to networks avoids the pitfalls of methodological nationalism. A networked approach is skeptical of the metaphysical or transcendental assumptions implied by treating nations as main epistemic agents or nationality as a critical feature of the cognizant subject while assessing consensus inside and across the persons that form a network, giving them social cohesion.

The shared beliefs inside a network produce consensus. The greater the number of persons holding similar beliefs and having strong attachments to them, the stronger the social cohesion inside the network, producing a tight-knit assemblage of persons who share a sense of bonding and interdependence. Regarding the glocal relations of power, Roudometof speaks of "varying degrees of density or thickness,"[127] of specific agents to generate or resist "waves" of ideas and practices. Similarly, as Singer and his colleagues have shown in the realm of social epistemology, it is not only reasonable but, in fact, coherent, for persons to stick to the previous beliefs of their epistemic networks rather than accepting new ideas that they perceive as foreign.[128] The thicker the network is, the more resistant to foreign ideas it shall prove. In this way, a network closes itself inward.

A network can become dominant. It can expand and succeed in spanning more persons who have internalized beliefs as if they were immutable truths. The force of this paradigm-like beliefs hides the glocal and hybrid of ideas, rendering invisible previous epistemic and political battles among several networks, reifying the so-called national character of constitutional ideas, homogenizing persons into the appearance of a single community, even if the consensus building process is never unanimous or linear. In this way, the more radical or unfamiliar the idea is in relation to the beliefs of the network, the more resistance they would exert.

There are epistemic networks composed of individuals who share beliefs regarding patterns of reasoning. On the one hand, we can find dynamic readers who defend the progressive development of law by analogy. Choudhry, an Indian-born lawyer, agrees with Waldron about the importance of analogical reasoning. Choudhry holds that "[l]egal argument—especially in the common law world—often proceeds by analogy."[129] In fact, analogical reasoning is not a distinctive feature of the common law but a pattern of reasoning across legal traditions. In the classic period of Roman Law, interpreters invoked individual precedents and used analogy.[130]

[125]Helga Leitner, *The Politics of Scale and Networks of Spatial Connectivity: Transnational Interurban Networks and the Rescaling of Political Governance in Europe, in* SCALE & GEOGRAPHIC INQUIRY 236 (E. Sheppard & R.B. McMaster eds., 2004).

[126]*Id.* at 237.

[127]ROUDOMETOF, *supra* note 20, at 65.

[128]D.J. Singer, Aaron Bramson, Patrick Grim, Bennett Homan, Jiin Jung, Karen Kovaka, Anika Ranginani & William Berger, *Rational Social and Political Polarization*. 176 PHIL. STUDS. 2243, 2244 (2019).

[129]Choudrhy, *supra* note 50, at 71.

[130]THOMAS DA ROSA DE BUSTAMANTE, TEORÍA DEL PRECEDENTE JUDICIAL 14–19 (Juan Carlos Panez & Brian L. Ragas trans., 2016).

Analogical reasoning is part of argumentative approaches to the law,[131] and a key mechanism to safeguard coherence in the law while expanding it.[132] Analogical reasoning is defended by many lawyers from the so-called civil law traditions. Such iconic legal philosophers include Bobbio, Domat, Olbrechts-Tyteca, and Perelman,[133] coming from Italy, France, and Belgium, respectively. American Justices, such as Breyer, Kagan, and Sotomayor, are also advocates of analogy as a pattern of reasoning linked by "factual likeness,"[134] and "fit" among decisions. In Mexico, Justice Zaldívar argued that consistency requires judges to solve analogous cases "using similar reasoning."[135] Accordingly, this is an example of an epistemic network that connects jurists from Belgium, India, Italy, France, Mexico, New Zealand, and the United States linked by the belief in analogy as a pattern of core constitutional reasoning.

On the other hand, there are networks of static-readers. Justice Clarence Thomas argued that U.S. federal *written* law—Constitution, statutes, and treaties—"removes most (if not all) of the force that *stare decisis* held in the English common-law system."[136] Similarly, Antonin Scalia identified himself as a member of the civil law tradition. In a provocative essay entitled "Common-Law Courts in a Civil-Law System," he took inspiration from 18th century exegesis to better understand his role as a judge in statutory and constitutional cases.[137] In a subsequent book, Scalia and Garner grounded their support for textualism on English and U.S. authors, but also in civil law scholars such as Thibaut and Montesquieu.[138] In Mexico, like Scalia, Justices Anguiano and Luna frequently referred to dictionaries to find literal meaning of words in complex constitutional cases ranging from to gambling rights of persons with disabilities.[139] Therefore a transterritorial epistemic network transcends so called legal traditions and connects jurists from France, Mexico, and the United States by the mid-level epistemic pattern of constitutional reasoning as text-based.

Certainly, the epistemic beliefs of judges interact with political beliefs. For instance, the epistemic belief on analogy as a basic pattern of constitutional reasoning interplays with the political belief that judges are empowered, or in fact, obliged to develop the meaning of the law while being partially constrained by the past. Similarly, the epistemic belief on textual interpretation connects with the political belief on the proper role for constitutional judges. As Scalia and Garner argued: What "makes an excellent judge in a modern, democratic, text-based legal system,"[140] is their training in the "skills of textual interpretation." People do not reach an agreement because they share a college degree, status as rights holders, or nationality. Instead, they agree because the idea aligns with their overlapping epistemic and political beliefs. This agreement can manifest in various ways: Following, endorsing, modifying, or rejecting the idea.

Thus, there are also political networks of judges sharing beliefs about what is just. The degree of abstraction of political beliefs can range from (i) concrete decisions or rules expressed in clear,

[131] Chaïm Perelman & L. Olbrechts-Tyteca, The New Rhetoric: A Treatise on Argumentation (J. Wilkinson & P. Weaver trans., 1969).

[132] Norberto Bobbio, L'Analogia Nella Logica del Diritto (Paolo di Lucia ed., 2006) (1938).

[133] *Riggs v. Palmer*, 22 N.E. 188, 190 (N.Y. 1889) (citing the Code Napoleon and the work of Jean Domat); Geoffrey Samuel, A Short Introduction to the Common Law 103 (2013).

[134] *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 379–80 (2022) (Breyer, Sotomayor & Kagan, JJ., dissenting).

[135] Primer Sala de la Suprema Corte de Justicia de la Nación [SCJN] [First Chamber], Amparo Directo en Revisión 3166/2015, at 5 (2016) (Zaldivar, dissenting) (Mex.).

[136] *Gamble v. United States,* 587 U.S. 678, 717 (2019) (Thomas, J., concurring).

[137] Antonin Scalia, Common-Law Courts in a Civil-Law System: The Role Of United States Federal Courts in Interpreting the Constitution and Laws 347 (1997).

[138] Antonin Scalia & Bryan A. Garner, Reading Law: The interpretation of legal texts 78 n.2, 345 (2012).

[139] Controversia Constitucional 97/2004, Pleno de la Suprema Corte de Justicia de la Nación [SCJN] [Full Court of the SCJN] (2007), January 27 2004 (Aguirre Anguiano, dissenting) (Mex.), https://repositorio.lasalle.mx/bitstream/handle/lasalle/397/N%c3%bam.9_P.287-299.pdf?sequence=1&isAllowed=y ; Versión taquigráfica de la sesión pública ordinaria del Pleno de la Suprema Corte de Justicia de la Nación celebrada el 19 de enero de 2012 [Shorthand Version of the Ordinary Public Session of the Full Court of the Supreme Court, held on January 19, 2012], at. 7 (Mex.).

[140] Scalia & Garner, *supra* note 138, at 7.

although divergent linguistic formulations, (ii) more intermediate underlying rationales, principles and doctrines that cover an array of cases and scenarios, reaching and (iii) theories grounded on the values they pursue considering the society they want to build, and worldviews they subscribe or follow.

Some schools of thought exemplify the concept of political networks. Alexy and Dworkin, from different geographies and legal traditions, are grouped under "Neo-constitutionalism."[141] This term, coined by the Italian scholar Susana Pozzolo, underscores the commonality of rights-discourses and the prominence of principles over rules. Neo-constitutionalism became a "canon,"[142] for some Latin-American scholars. Mexican judges such as Gutierrez internalized the neo-constitutionalist canon and infer principles from provisions, treating them as Alexian "optimization mandates."[143] A more court-centered approach has been dubbed "transformative constitutionalism." This school advances a concern for substantive equality and assigns to courts the role to change society. Karl E. Klare, a U.S. scholar, coined the term to identify the type of constitutionalism to which some sectors of post-apartheid South Africa aspired.[144] Although this school is frequently identified with the Global South it can also be found in the North. As Hailbronner notes, the post-Holocaust German Constitutional Court or the American Warren Court were as concerned with transformative constitutionalism as some South-African judges. [145] All of them engaged in a post-authoritarian constitutional project lead by activist courts with strong judgments and structural remedies aimed at redressing systemic injustices.

On another side of the spectrum, but at the same level of abstraction of beliefs, lies "popular constitutionalism." Micaela Alterio, an Argentinean scholar based in Mexico, allies with Tushnet—a US Scholar, and Waldron—a New Zealander based in New York—to call into question the notion of a government of judges.[146] Their basic tenet is that, in democracies, judges ought not to have the final word. Popular constitutionalists hold beliefs such as that there are institutional mechanisms and non-institutional ways to know the popular will, even if the People is a plural and antagonistic subject.[147] They all reject judicial supremacy and strong constitutional review, advancing instead an intermediary role for the judiciary to enforce a procedural rather than a substantive vision of democracy.

In contrast to this networked approach, nationalists and transnationalists hold that what links judges is not their thematically shared political beliefs, but their nationality. They argue that so-called national mores, culture, history, and political beliefs of nationals are expected to constrain the subjective discretion of judges.[148] Barak writes:

> It may be true that the judge sometimes sits in an ivory tower, though my ivory tower is located in the hills of Jerusalem and not on Mount Olympus in Greece.[149]

[141]Susanna Pozzolo, *Neoconstitucionalismo y Especificidad de la Interpretación Constitucional [Neoconstitutionalism and Specificity of Constitutional Interpretation],* 21 Doxa 339 (1998).

[142]Miguel Carbonell & Leonardo Garcia Jaramillo, El Canon Neoconstitucional [The Neoconstitutional Canon] (2010).

[143]Amparo en Revisión 547/2018, Primer Sala de la Suprema Corte de Justicia de la Nación [SCJN] [First Chamber], (Oct. 31, 2018) (Mex.), https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=238462.

[144]Karl E. Klare, *Legal Culture and Transformative Constitutionalism*, 14 S. AFR. J. oN HUM. RTS. 146, 150 (1998).

[145]Michaela Hailbronner, *Transformative Constitutionalism: Not Only in the Global South*, 65 Am. J. Compar. L. 527, 541–43 (2017).

[146]Ana Micaela Alterio, Entre lo Neo y lo Nuevo del Constitucionalismo Latinoamericano [Between the Neo and the New of Latin American Constitutionalism] 133 (2021).

[147]Ana Micaela Alterio, *Reactive vs Structural Approach: A Public Llaw Response to Populism*, 8 Glob. Constitutionalism 270, 275, 282–88 (2019).

[148]Dziedzic, *supra* note 28, at 84.

[149]Aharon Barak, The Judge in a Democracy 104 (2008).

Nevertheless, the thickness of a political network, a group of persons who share similar political beliefs and values, provides much more cohesiveness than the shared identity of a nationality. It is reasonable to expect that the consensus inside a thematic political network would weigh more and produce more social pressure than the membership in a national community. Thus, the political beliefs that a judge holds regarding, for instance, female sorority would weigh more than the relation of nationality as a sense of community. To elaborate on Barak´s metaphor, the attachment of an Israeli pro-choice judge to the premises of Planned Parenthood in Brooklyn, may be tighter than to the Jerusalem Hills. Therefore, a courageous but candid pro-choice apex judge may grant more weight to a so-called foreign idea decriminalizing abortion, than to an apparent binding domestic pro-life constitutional precedent.

Similarly, globalists like Waldron argue that there is a political community that ties all humans in their status as "fundamental-rights bearers."[150] Yet, if citizenship is too thin a membership to create social cohesion, with more reason, the vague membership of a right-holder community is. Persons and collectivities who vindicated their claims were not right-bearers but right-less subjects through the eyes of the dominant networks. Think of indigenous movements, civil rights movements, or women suffragists movements in the 19th century. They did not self-identify as ghostly right-holders but affirmed the concrete subjectivities they shared with fellow members of the resistance network, a network bound by shared experiences and common beliefs, fostering a sense of unity. In this way, for instance, the thickness of the particular glocal network of pro-choice lawyers across Texas and Mexico City was much more cohesive in the 1960s than the judicial network that happened to decide *Roe.*[151]

Epistemic and political networks interact. The knowledge that certain networks generate in prestigious universities, and famous apex courts enjoys political power. For instance, Waldron´s book *Partly Laws Common to All Mankind,* although making references to Islam laws and certain Asian countries, only cites sources written—or available—in English, and makes reference to fifty-six court cases from the United States, but none from India, or any judgment coming from a jurisdiction from the civil law legal family.[152] Similarly, the Mexican Supreme Court in AI 148/2017 urged a so called global dialogue citing *Roe* three times,[153] but did not consider the cases of *Lakshmi* in Nepal or the equivalent Canadian case of *R v. Morgentaler*,[154] let alone the Soviet Union legislation mentioned above. The literature on epistemic injustice, political epistemology, and political economy of knowledge shows unequivocally this inequality.[155]

Therefore, while there is a conceptual possibility of forming a genuinely global constitutional community, in other words a universal, non-hierarchical, horizontal set of persons linked by overlapping beliefs in a single unit, this analytical potential is heavily mediated by linguistic barriers and economic, cultural, and geopolitical power relations. These imbalances of power, to a greater or lesser extent, are a common phenomenon affecting all of us, significantly biasing and obscuring our enquiries. Even this Article and its author, armed with bilingual, relatively bijuridical capacities and aims, is constrained by these frontiers. Therefore, talking about and mapping a plurality of glocal thematic networks is more descriptively accurate and intellectually honest than a single national or global community.

Table 3 organizes the above-mentioned examples of constitutional networks.

[150]Waldron, *supra* note 37, at 138.

[151]Sarah Weddington, *The Donahue Lecture Series: Roe v. Wade: Past and Future*, 24 Suffolk U. L. Rev. 601 (1990), 602.

[152]Waldron, *supra* note 37, at 190–92, 212–14, 259–79.

[153]SCJN, 148/2017, *supra* note 5, at 20 n.12, 30 n.36, 77 n.100.

[154]*R v Morgentaler*, [1988] S.C.R. 30 (Can.).

[155]Daniel Bonilla, *The Political Economy of Legal Knowledge, in* Constitutionalism in the Americas 29 (Colin Crawford & Daniel Bonilla Maldonado eds., 2018).

Table 3. Examples of Constitutional Networks

Network	Static readers	Dynamic readers	Neo-constitutionalists	Transformative Constitutionalists	Popular constitutionalists
Beliefs	Primacy of the literal meaning over evolving or precedential meaning.	Treat cases alike and develop the law coherently.	Principles over rules. Constitutional review and precedents over legislation.	A judicial project for a radical transformation of society.	Skepticism on judges.
Members	Anguiano Garner Luna Montesquieu Thomas Scalia	Bobbio Breyer Choudhry Domat Kagan Olbrechts-Tyteca Perelman Sotomayor Waldron Zaldívar	Alexy Carbonell Dworkin García Gutierrez Prieto Sanchís	González Shrestha Warren	Alterio Esquivel Tushnet Waldron

E. Glocalizing Ideas

The third step is to glocalize the idea. Once decisionmakers have de-nationalized the idea and mapped constitutional networks, they glocalize it to fit their fellow judges' beliefs. Here, the fundamental question is: How should I portray or adapt the idea so that we can call it our own? The difference with transnationalists is that the "we" in this process is not the national society but a more transparent and less metaphysical "we." It is the "glocal" network of persons, who, linked by a common or overlapping frame of beliefs, happen to solve the case in a particular space.

At this stage, we can distinguish between networks as *diachronic structures* and *synchronic agents*. The previous section focused on networks as diachronic structures, where I mapped several persons who have held shared beliefs over time. In this analysis stage, I described the shared beliefs that could form a *potential* consensus, in other words, theoretical compatibility between their intersubjective beliefs.

In contrast, this section focuses on courts as synchronic agents. I narrow the focus to a limited number of decisionmakers within a concrete space and timeframe. As a collective institutional agent, a national apex court is a set of judges who aggregate their beliefs to form not a potential but an *actual* consensus. In this way, the internal consensus creates a network for the case that will interact with future networks, thereby shaping the long-term implications of the court's decisions. In the remainder of this Article, I focus on apex courts composed of few judges who usually share nationality and academic degrees and sometimes even attended the same law school. However, they may hold different epistemic and political beliefs and thus form different networks within a single court. Regardless of their differences, they must form a synchronic network and solve the pragmatic question about who ought to, and how, win a particular case.

Glocalizing occurs in a continuum between the two extremes from merely framing the idea to modifying it. Formal glocalizing involves translating the idea into something more familiar considering the shared framework of beliefs, so it can be more easily grasped without substantially modifying the idea. Substantive glocalizing involves adding a significant component or novel feature and heterogeneity to recreate the idea and make it politically attractive or desirable for the network. Following Swyngedouw, we find an "interpenetration" of territorial scales and non-

territorial networks, of foreign ideas and familiar beliefs, whereby ideas are "reproduced but also contested and transformed."[156]

Glocalizing is not the exclusive province of cosmopolitan lawyers. Rather, glocalizing is a social epistemic process that we do intuitively in everyday life when we present a foreign idea to others. The most obvious expression of "glocalizing" is linguistic translation. At first sight, without a shared linguistic framework, an idea, as Legrand once argued, remains a "meaningless form of words."[157] Nevertheless, people can and do understand each other without sharing a language, appealing instead to signs, sounds, symbols, or images. When we find a stranger but want to communicate, we abstract peculiar features of the new idea, trying to find common ground with previously held beliefs that allow understandability and reduce the foreignness of the other person. For instance, pizza, now a traditional Italian American dish and a cultural icon in Chicago and Detroit, was once "feared" and "misunderstood" when described in the 1950s by North-American newspapers as a "huge pancake topped with tomato-cheese mixture" or "pie-like bread" pronounced "peetza."[158] The peculiar features of pizza were abstracted, the relevant similarities for communication verb missing and fitted into a previously held beliefs about categories and ingredients so that another person could grasp the idea.

Glocalizing occurs in constitutional adjudication with goals other than mere communication. Transnationalists scholars such as Maximo Langer or Sally Engle talk about "translating"[159] ideas. But they use the linguistic metaphor either to analyze the process of restating faithfully an idea from one state-nation to another, or from one geocultural binarism to another—for example, from the US to Argentina or from the east to the west. In adjudication, the epistemic notion of familiarity and the legal principles of certainty and coherence mediate an idea. Epistemic representations of ideas are reified, already abstracted from their social origin, and translated into familiar legal and constitutional categories, documented in provisions or precedents that give rise to further and ongoing processes of glocalization. Like epistemic appraisal or justification related to the credibility and justification of an idea, legal certainty related to constitutional norms requires judges to consider citizens' expectations and progressively develop the law rather than radically disturb settled beliefs in a big-bang fashion. Coherence requires judges to show that their decisions follow or are derived by a set of shared pre-existing beliefs of judicial networks in such a way that the idea fits with previous beliefs forming a mutually supported whole.[160]

In the interpretative process of glocalizing, the scalar techniques analyzed in section C reappear, but now as methods of analogical reasoning, useful to link an idea with the beliefs held across the network. First, judges can glocalize out, establishing a horizontal link between the idea and beliefs with the same degree of abstraction. They assimilate the idea with a previously held belief, finding a common ground between them, even if that means abstracting peculiar features or differences between both. Lawyers approach this epistemic procedure through what they call analogy *legis* or argument from precedent, extending the meaning and scope of a rule to cover other objects or scenarios not previously considered, given their similarity.[161]

[156]E Swyngedouw, *Neither Global nor Local: 'Glocalization' and the Politics of Scale, in* Spaces of Globalization: Reasserting the Power of the Local 137, at 146 (K Cox ed, 1997).

[157]Legrand, *supra* note 16, at 119.

[158]Mark Frauenfelder, *North Americans Feared and Misunderstood Pizza in the 1950s*, Boing Boing, (Nov. 21, 2022, 9:53 AM), https://boingboing.net/2022/11/21/north-americans-feared-and-misunderstood-pizza-in-the-1950s.html; Paul Fairie (@paulisci), Twitter (Jul. 29, 2022, 2:22 PM), https://twitter.com/paulisci/status/1551649152479555584.

[159]Maximo Langer, *From Legal Transplants to Legal Translations: The Globalization of Plea Bargaining and the Americanization Thesis in Criminal Procedure*, 45 Harv. Int'l L.J. 1 (2004); Merry, *supra* note 73, at 2, 137, 211.

[160]*See* Amalia Amaya, The Tapestry of Reason: An Inquiry into the Nature of Coherence and its Role in Legal Argument (2015).

[161]Giovanni Damele, Analogia Legis *and* Analogia luris*: An Overview from a Rhetorical Perspective*, *in* Systematic Approaches to Argument by Analogy (Henrique Jales Ribeiro ed, 2014).

Second, judges can glocalize up, finding an ascendent link between an idea and beliefs of a higher degree of abstraction. Lawyers call this process analogy *juris* or argument from general principles. After judges draw a connection by analogy *legis,* they find a third encompassing category with a higher degree of abstraction that covers both the novel case and the previous rule. This process can go from a rule to a principle, to a doctrine connected by a set of principles, and up to an all-encompassing theory. Bobbio, for instance, distinguished partial and full analogy juris, the former referring to a principle inferred from a set of rules and the latter to a principle inferred from the whole national legal order.[162] Similarly, In the realm of moral philosophy, Raimundo Panikkar advanced the idea of a "homeomorphic equivalent,"[163] seeking to find common ground not between rules of a particular country, but between moral beliefs of distinct cultural traditions. He argued, for instance, that the Indian notion *dharma* may fulfil the homeomorphic equivalent of the Western notion of individual rights, paradigm in which dignity performs as a higher principle while human rights and dharma as more concrete beliefs.

Finally, judges can glocalize down, linking an idea with previously held beliefs in a more concrete level of abstraction. Lawyers and philosophers call this "specification,"[164] finding a more concrete rule that fits previous beliefs. Following a top-down approach, they advance that the new sub-rule is not entirely foreign because it is grounded on previously held categories of higher abstraction. In this way, judges glocalize vertically up or down, from a sub-rule to a more abstract rule, principle, doctrine, or theory and glocalizing out, for instance, comparing a theory with another one.

The techniques work substantively by deliberately modifying the idea, making it more desirable for the network, even if so-called authenticity is lost in the process. Substantive glocalization is like what Stephenson calls "constitutional re-engineering," in other words the conscious process of appropriating an idea "and supplement, change, replace one of its cardinal features,"[165] accepting some elements and rejecting others, while being constrained by rooted paradigms. However, substantive glocalization is not at all an exercise of national differentiation. Rather, it conceives adaptation as a battle between distinct networks intersected by diverse, even antagonistic projects and agendas. The collective dimension of synchronic networks is a unifying force that reveals a pragmatic aspect, conditioning individuals' normative views. A judge must consider the factors and the likelihood, all things considered, that her colleagues would accept her subjective proposal because of their shared or overlapping epistemic familiarity or political desirability.

These three techniques may interact, glocalizing the idea formally and substantially at different levels of abstraction. For instance, Shrestha glocalized *Roe* in *Lakshmi*, adding socio-economic and gender concerns to the US ruling. He cited *Roe* to strengthen the belief that the fetus is not a human life, even if the right to abortion and the 12-week rule existed in Nepal since 2002.[166] Most importantly, he and the plaintiffs framed the case under the lenses of gender equality—something that the exclusively-male Burger Court ignored, guided by the more classical liberal approach concerned with privacy rather than substantive equality.[167] By focusing on the affordability of abortion, *Lakshmi* introduced a concern with economic equality, one that is not always central even among progressive liberal-egalitarians.[168]

Similarly, a judge can continue glocalizing *Lakshmi* by linking it to different patterns of reasoning or even epistemes. A network can glocalize *Lakshmi* with a quasi-mathematical Alexian

[162]Bobbio, *supra* note 132, at 183.

[163]Raimundo Panikkar, *Is the Notion of Human Rights a Western Concept?* 30 Diogenes 75, 77–78 (1982).

[164]Henry S. Richardson, *Specifying Norms as a Way to Resolve Concrete Ethical Problems,* 19 Phil. & Pub. Affs. 279 (1990); Amaya, *supra* note 159, at 315–30.

[165]Stephenson, *supra* note 63, at 874.

[166]*Lakshmi Dhikta v. Government of Nepal*, *supra* note 1, at extract 2.

[167]Elizabeth Schneider, *The Dialectic of Rights and Politics: Perspectives from the Women's Movement, in* At The Boundaries of Law (RLE Feminist Theory) 301, 314 (Martha Albertson Fineman and Nancy Sweet Thomadsen eds, 1991).

[168]*See* Ronald Dworkin, Freedom's Law: The Moral Reading of the Constitution 36 (1996).

conception of proportionality to justify the decriminalization of abortion and avoid the criticism of judicial activism by framing the pro-choice decision as the mere outcome of following the rules of "arithmetic."[169] As Bernard Schlink argues, there is nothing inherently "German"[170] about the proportionality test as a pattern of reasoning. Other judges can glocalize *Lakshmi* even further, fitting the concrete rule into the more abstract level of legal theory. The so-called legal science approach is not a peculiar German episteme. It is an epistemic stance aimed at reducing subjectivity, a call to engage in system-building, conceiving law as a set of mutually supported propositions. An approach indeed advanced by Germans such as von Jhering, but also by authors of other nationalities such as Kelsen and Alchourrón and Bulygin.[171] Thus, Argentinean, German, Indian, Mexican, Nepalese, or Russian judges can learn from each other, glocalizing up an idea to more abstract beliefs.

In this way, a glocal approach is attractive for pragmatic reasons. It invites each agent not only to grasp but to transform the idea. In line with American legal realism, it deformalizes legal sources. A constitutional idea, whether foreign or domestic, binding or persuasive, is accordingly conceptualized as an input to make arguments that individuals can use to capture, constrain, convince, or orient the beliefs of a given constitutional network. Judges enjoy a degree of discretion that is not unfettered but varies across networks depending on the degree of internal consensus. As Llewelyn once argued: "[W]here the rule rates high in wisdom and is also technically clear and neat, the guidance is indeed so cogent as, in effect, to be almost equivalent to control or dictation."[172] The interpretative leeway is constrained by the shared beliefs and their ranking, placing ideas along a continuum between the extreme points: Entrenched paradigms versus far-fetched absurdity. The internal consensus inside the network constrains the judge, or what Llewelyn called "fit"[173] and "flavor." But fit and flavor according to whom? According to the persons with the knowledge and power to solve the case. Each apex court would have a case-by-case, thematically created, unitary network linked not by nationalities or professions but by epistemic and political beliefs.

However, it is unlikely that judges can radically succeed in modifying all the court's beliefs in a single case. A skillful judge can circumvent some but not all frontiers, presenting the idea as more familiar or attractive than initially perceived. Thus, glocalizing is also conservative or moderately foundational. The previously held beliefs usually enjoy priority over the new idea. This epistemic entrenchment may explain why so-called constitutional borrowings fail. Whereas transnational scholars argue that ideas were not—properly—adapted to the state-nation, I would suggest instead that the dominant networks rejected such ideas. As González-Ocantos has shown, to get a seemingly foreign idea accepted, it is necessary first to make "pedagogical interventions," in other words, through formal and informal mechanisms such as seminars, workshops, or social networking to convince judges to modify their intellectual toolkit they use to conceive and interpret the law.

Although glocalism's pragmatic dimension is in line with legal realism, its normative dimension is more complex. Glocalism, in its essence, rejects both globalism and localism. It rejects the illusion of a given master community composed of lawyers or right-bearers that provides single and universal answers for everyone and the national community that relativizes knowledge or answers only depending upon nations. It does not seek to form a unique universal knowledge or to close a single local knowledge.

Glocalism is neither epistemically universalist nor relativist but pluralist. The world is not a single space but an array of territorial and transterritorial fora. Agents develop or follow a framework of epistemic beliefs and then assess the idea considering such framework. Then, they

[169]Robert Alexy, *On Balancing and Subsumption. A Structural Comparison*. 16 Ratio Juris 433, 445–48 (2003).

[170]Bernhard Schlink, *Proportionality, in* The Oxford Handbook of Comparative Constitutional Law 718, 732 (Michel Rosenfeld & András Sajó eds, 2012).

[171]Diego López Medina, Teoría Impura del Derecho 14–15 (2004).

[172]Karl N. Llewellyn, The Common Law Tradition: Deciding Appeals 179 (1960).

[173]*Id.* at 222.

Table 4. Glocalizing ideas

Technique	Formal and Substantive Glocalization
Glocalizing Out From rules to rules, principles to principles, theories to theories.	A 12-week fetus is not an independent human life.
Glocalizing Up From rules to principles, to theories From concrete know-how to patterns of reasoning to theories of legal knowledge	Frame the decision on abortion as the outcome of an arithmetical formula or as part of the broader stand toward legal science.
Glocalizing Down From rules to sub-rules	Glocalize a liberal approach with a socially oriented one. A welfare state must provide affordable abortion.

find others who may or may not share a framework and grasp and assess ideas collectively. The time is also plural. Individually, at some point in time, a person may hold a deeply entrenched belief that such an idea ought to be universally shared, while being conscious that they can change their mind in the future, in other words, modify the framework of beliefs. They may be aware that an idea may be foreign or not be endorsed by others unless and until they change their epistemic and political beliefs. In this way, glocalism provides a rich normative framework based on plural and mutual understanding. It opens the door for plural knowledge, as some, such as Arturo Escobar,[174] have argued. These processes lead to plural consensuses in time and space, among and across networks with overlapping beliefs rather than a global, single consensus.

Table 4 summarizes and exemplifies the three techniques for glocalizing ideas.

F. Glocalizing a Structural Remedy: Beyond *Lakshmi* and *Roe*

To conclude the sketch of the approach, this section exemplifies the three steps of glocalization with the *Lakshmi*-inspired debate on structural remedies via *Amparo*. A substantive consensus on reproductive rights emerged in the Mexican Court in the four cases regarding abortion. But the Justices disagreed on the remedies to be awarded and the danger of overstepping the separation of powers principle. As Justice Ríos put it in his dissenting opinion:

> [I]t was clear to me that the laws are unconstitutional because they impose a prison sentence on a woman who voluntarily decides to terminate her pregnancy [. . .] my main concern was to design a good remedy taking into account several conditions that seemed to conflict," among others, with an "institutional form of deference to the Congress.[175]

How could a justice convince their colleagues that a *Lakshmi*-inspired structural remedy was *not that foreign*? How could they and their clerks glocalize the idea to fit the beliefs of the judicial network when deciding the case?

Originally, as suggested by the rejection of *Lakshmi* in the previous ruling, and the dissenting opinion by Justice Ríos, most Justices had considered that, even if there was systematic violence against women's reproductive rights, the Court was not empowered to order the legislature to decriminalize abortion via *Amparo*. The *Amparo* is a semi-concentrated concrete federal

[174] Arturo Escobar, Designs for the Pluriverse: Radical interdependence, autonomy, and the Making of Worlds 4–7, 68–69, 124, 198 (2018).

[175] Amparo en Revisión 267/2023, Primera Sala de la Suprema Corte de Justicia de la Nación [SCJN] [First Chamber] (Sept. 6, 2023) (Ríos, dissenting) (Mex.).

constitutional complaint supposedly restricted to granting individual remedies. For certain lawyers, the invalidation of laws is only possible through abstract constitutional review. The problem is that, at least at first sight, abstract review is only available to public authorities, not particulars. Thus, the question that still divides the Court is: In the face of massive violation of reproductive rights, is it the judicial order to change the legislation via *Amparo* compatible with the doctrine of separation of powers?

In the first step of my approach, we ought to de-nationalize the production of judicial structural remedies or general orders. We start by scaling out: Despite nationalistic appearances, we find that the individually oriented *Juicio de Amparo* is not completely Mexican.[176] The *Amparo* was originally influenced by Tocqueville´s interpretation of U.S. judicial review and by the medieval English writ of *habeas corpus,* owing its name to procedures from the Kingdom of Aragón.[177] The Mexican Constitution of 1847 created the *Amparo* with mere individual effects, mirroring other codified civil law limitations on the power of judges in Austria, Chile, or Colombia.[178] Such a distrust of judicial lawmaking may have started in the Code Napoleon.[179] Or before that, in the 1790 French law on the judiciary which prohibited noble judges in Parliaments of the Ancien Régime from performing any law-making role.[180] Or, perhaps before in 1453, when Charles VII ordered a written compilation of customs.[181] Or even before that, when Justinian I—482–565 AD— commanded a compilation of roman legislation under the principle that *non exemplis, sed legibus iudicandum est*, translating to"cases should be decided based on laws, not precedents."[182]

Simultaneously, the possibility of a judicial order invalidating legislation is not foreign to the civil law tradition. On the contrary, constitutional courts yield the tremendous power of negative legislation, in other words, directly striking the law out of the statute-books, a power that impresses common law lawyers such as Waldron.[183] Eventually, this power of negative legislation evolved to actual positive law-making when the issue was no longer that of an existing law breaching the constitution, but instead that that the legislature failed to pass a law. Indeed, the most recent discussion on whether *Amparo* judges can order a complete legislative framework to remedy a legislative omission was inspired by German *Appellentscheidung*,[184] a once unfamiliar remedy among constitutional courts used to invalidate laws, rather than forcing to legislate.

Scaling down at the national level, the potential remedy interacts with the systematic violation of rights via the special national law that includes a "gender violence alert."[185] In turn, this law relates to the Law of Victims, another national law that provides for collective remedies, and commands a "transformative approach,"[186] understood as the:

[176]Mexican Reform Act: 11 May 1847 (repealed), Art. 25 (Mex.).

[177]Fix-Zamudio, *supra* note 105, at 381–83.

[178]*E.g.,* Civil Code of Austria of 1811, art. 12; Civil Code of Chile of 1855, art. 3. Civil Code of Colombia of 1887, art. 17.

[179]Code Napoleon [Napoleonic Code], art. 5, 1804 (Fr.).

[180]Lois des 16 et 24 août 1790 sur l'organisation judiciaire [Law on the Organization of the Judiciary], Aug. 24, 1790, art. 10, 12 (Fr.)

[181]Andre Tunc, *Grand Outlines of the Code Napoleon*, 29 TUL. L. REV. 431, 432 (1954-1955).

[182]Codex Justinianus. VII. 45.13. *Author´s translation.

[183]Waldron, *supra* note 43, at 1354.

[184]Controversia Constitucional 14/2005, Pleno de la Suprema Corte de Justicia de la Nación [SCJN] [Full Court], at 59 (Mex.); Ranieri Lima Resende & José Ribas Vieira, *Judicial Review and Democracy: Paths to a Dialogic Control of Constitutionality*, 113 Rev. Brasileira Estudos Politicos 405, 412 (2016); Geraldina González de la Vega, *La Suprema Corte Frente las Omisiones del Legislador*, Nexos (Sept. 25, 2014), https://eljuegodelacorte.nexos.com.mx/la-suprema-corte-frente-las-omisiones-del-legislador/ (Mex.).

[185]Ley General de Acceso de las Mujeres a Una Vida Libre de Violencia [General Law of a Woman's Right to a Life Free of Violence], Art. 22, Diario Oficial de la Federación [DOF] 01-02-2007, last amended 26 January 2024 (Mex.).

[186]Ley General de Víctimas [General Law of Victims], art. 5, Diario Oficial de la Federación [DOF] 09-01-2013, last amended DOF 25 April 2023 (Mex.) (italics added).

> [N]ecessary efforts aimed at ensuring that the measures of aid, protection, attention, assistance and integral protection, care, assistance and *comprehensive* reparation to which the victims are entitled contribute to the elimination of the *patterns of discrimination* and marginalization that may have caused the victimizing events.

Then, scaling up to the regional level, we find again the *Belém Do Pará* Convention, but now in connection to remedies rather than rights. Mexico was condemned in 2009 for structural violence and failure to exercise due diligence by the Inter-American Court in the *Cotton Field Case,* a case of serial killings of young women in the border city of Ciudad Juárez.[187] The case dealt with the responsibility of police agents and prosecutors, but also courts and the federal and local judiciaries in at least 139 cases. By now, a structural remedy does not look that foreign anymore.

In the second step of the approach, we turn to mapping constitutional networks that interpret the idea of structural judicial remedies for redressing collective grievances. A synchronic network of anti-structural remedies may include Mexican Justices Ríos and Pardo. A broader diachronic network may include Mexicans who have long died but also overseas Justices and scholars that are skeptical of structural orders. This network may include Mariano Otero, the so-called creator of the *Amparo*, but also living Supreme Court of the United States Justices. For instance, as Anna Conley has highlighted, Justice Gorsuch has held that no court may "lawfully enjoin the world at large, [. . .]or purport to enjoin challenged laws themselves."[188]

By contrast, pro-structural remedies Justices inside the current Mexican Court may be González and Gutiérrez, arguably holding similar beliefs to those Earl Warren held in *Roe*, and Kalyan Shrestha in *Lakshmi* in their quest for transformative remedies. As Shrestha, writing for the Nepalese court, held:

> Once the constitution guarantees a fundamental right, the right to exercise it and to obtain a remedy if it is violated becomes a person's inherent right. Consequently, it also becomes the responsibility of the legislature to establish the appropriate preconditions for the enjoyment of the right.[189]

We can include these networks under a broader level of abstraction of epistemic and political beliefs. On the one hand, judges endorsing anti-structural remedies judges may interact with advocates of popular constitutionalism. On the other hand, pro-structural remedies' judges may also interact with neo-constitutionalists or transformative constitutionalists. Again, constitutional networks are not limited to state-nations or binarisms—north or south, Civil or Common law, etcetera— but are assemblages of persons with shared beliefs. Indeed, the possibility of *a Laskshmi*-inspired structural remedy from a so-called Global South perspective arrived at Justice González through an academic bridge with the Global North.[190] The draft did not cite the original judgment written in Nepali, nor the English version, but a chapter written by Melissa Upreti,[191] a Nepali and English scholar, in a book published by the University of Pennsylvania Press on Transformative Equality.

Thus, we arrive to the third and final step of glocalization: How can a judge glocalize *Lakshmi* to fit the beliefs of a synchronic network? As curious as it sounds, the path to glocalize a *Lakshmi*-inspired structural remedy was the theory of corporate personhood. The once odd and foreign

[187]Caso González y Otras ("Campo Algodonero") v.. México, Inter-Am. Ct. H.R. (ser. C) No. 205 (2009).

[188]Anna Conley, *A Challenge to Equitable Originalism,* 17 NYU J.L. & Liberty 112, 119 (2023).

[189]*Lakshmi Dhikta v. Government of Nepal*, *supra* note 1, at 11.

[190]Perhaps influenced by his clerks. *See Fernando Pastrana Sosa,* Red Internacional de Derecho Constitucional Familiar, https://www.sitios.scjn.gob.mx/derecho-familiar/integrantes/sosa-pastrana-fernando (Mex.).

[191]Melissa Upreti, *Toward Transformative Equality in Nepal: The* Lakshmi Dhikta *Decision in* Abortion Law in Transnational Perspective: Cases and Controversies 279 (Rebecca J. Cook, Joanna Erdman & Bernard Dickens eds. 2014).

idea of corporation as right-holders, with Roman and German roots, made possible to equalize amparo remedies with abstract constitutional review with general effects.[192] Since the late 19th century, decades after the creation of *Amparo*, previous networks had won the epistemic and political battle that a sum of individuals could create an autonomous entity with fundamental rights, a notion that was ignored by the Napoleonic Code and rejected by prominent scholars as Marcel Planiol.[193] Ultimately, abstract review relies heavily on the fiction that entities have rights and duties, even when no actual harm on biological persons is produced—for example the Ombudsperson sues the Congress. Mixing contractual and organic theories of corporate personhood, a 3-2 majority of Justices invalidated abortion laws via *Amparo*.

The Court had already held that civil associations can suffer indirect harm to their social purpose as evidenced in their bylaws.[194] Thus, in AR 79/2023, *GIRE,* and *MORAS HELP MORRAS (Gals helping Gals)*, two feminist organizations sued the congress of the State of Aguascalientes because their mission was to "support in the defense and promotion of human rights and gender equality in Mexico, including, but not limited to, the reproductive rights of women, young women and girls."[195] Following a contractual approach, in another case, a district court ordered all authorities not to apply abortion laws to "all those persons with the capacity to gestate, assisted, advised, or defended by the complainant associations."[196] Yet, the Supreme Court went even further. It treated associations as a quasi-biological entity. Regardless of their bylaws, the Court considered as "well-known fact their role in social media safeguarding reproductive rights such as safe home abortion practices, provide contacts for escorting clandestine abortions and give testimonials from people who have had abortions, etc."[197] The Court went beyond the associative links and commanded the congress to "repeal the articles declared unconstitutional [. . .], before the end of the ordinary period of sessions."[198] The personhood theories that treat corporations as organic beings, independent of the biological individuals that created them, made possible to consider the feminist organizations as constitutional right-holders, and to expand the decriminalizing effects to all persons of flesh and bone. For any judge who is skeptical of corporate personhood theories, the remedy is bound to appear epistemically anomalous, even if adequate to fulfill the politically desirable function of decriminalizing abortion. As Justice Pardo, one of the dissenting Justices argued, the remedy was improper because the entities "lack the biological ability to gestate."[199]

In addition, there could have been at least two other ways to substantively glocalize a structural remedy, going beyond *Roe* and *Lakshmi*. In the context of strong, although not dominant transformative networks, it is possible to imagine a mega-structural remedy that would make Earl Warren or Shrestha blush. In this sense, the *Law of Victims* includes a right to a comprehensive reparation solution, an exhaustive scheme of remedies not usually used in *Amparo* rulings.[200] This

[192]Ron Harris, *The Transplantation of the Legal Discourse on Corporate Personality Theories: From German Codification to British Political Pluralism and American Big Business*. 63 Wash. & Lee L. Rev. 1421 (2006).

[193]Fausto Rico Álvarez et al., Introducción al Estudio del Derecho Civil y Personas 329–340 (2009); SOCIEDADES ANÓNIMAS. Pleno de la Suprema Corte de Justicia de la Nación [SCJN] [Full Supreme Court], Semanario Judicial de la Federación. Quinta Época, Tomo XIII, página 284, Tesis Aisalada (Mex.).

[194]Amparo en revisión 323/2014, Primera Sala de la Suprema Corte de Justicia de la Nación [SCJN] [First Chamber] Jorge Mario Pardo Rebolledo, (Mar. 11, 2015).

[195]Amparo en Revisión 79/2023, *supra* note 11, at ¶ 76 i.

[196]Amparo Indirecto 259/2020, Juzgado Quinto de Distrito de Amparo en Materia Penal en el Estado de Puebla [Fifth District Court in Criminal Matters in the State of Puebla] (Oct. 13, 2022) (Mex.).

[197]Amparo en Revisión 79/2023, *supra* note 11, at ¶ 76 ii.

[198]*Id.* at 334.

[199]Amparo en Revisión 79/2023, Primera Sala de la Suprema Corte de Justicia de la Nación [SCJN] [First Chamber of the Supreme Court] (Aug. 30, 2023) (Pardo, dissenting) (Mex.).

[200]Ley General de Víctimas, *supra* note 186, Chapter VI.

scheme was inspired by the Interamerican Court of Human Rights' jurisprudence involving dictatorships or massive human rights violations. The remedial scheme, in turn, was nurtured by Roman law roots that made classical restitution impossible.[201] Indeed, in a same-sex-marriage case, Justice Gutierrez proposed a similar reinterpretation of *Amparo* remedies, asking not only for the invalidation of laws, but also for economic damages and the retraining of homophobic officials.[202] Based on the *Law of Victims*, the Court could have commanded, among other remedies, public apologies from civil servants and the latter's attendance of sexual orientation and gender identity awareness courses.[203] This structural command is not at all far-fetched given that, as Justice Farjat argued "it is estimated that between 750,000 and 1 million [clandestine] abortions are performed in Mexico each year," and, to cite the Interamerican Court, exceptional violations "justify exceptional reparations."[204]

This mega-structural remedy would glocalize *Lakshmi* up under transformative constitutionalism. As Justice González suggested, *Lakshmi* coheres with transformative constitutionalism, but it also fits the broader notion of Public Interest Litigation (PIL). PIL is not a peculiar Global South enterprise; it can be tracked back to, at least, a speech that Louis Brandeis gave in 1905 inviting Harvard lawyers to work for the people rather than for big corporations.[205] This judicial attitude for social change was later popularized in the 60s in the US amid the Civil Rights Movement and the Warren Court.[206] the Supreme Court of India redefining and institutionalizing it later on.[207] In India and Nepal, PIL is not only an epistemic concept about the use of apex courts to achieve social reform, but a constitutionally codified procedure.[208] Thus, González, in his transformative constitutionalist robe, may have weaponized corporate personhood theories even further, framing the remedy as more epistemically familiar and in light of the *Law of Victims*.

Of course, González also met with resistance from members of other constitutional networks. It is entirely possible that a staunch feminist justice also is simultaneously critical of judicial supremacy. There could be a process of glocalizing transformative constitutionalism to the level of alternative constitutional theories grounded both on popular will and gender equality with more inclusive and democratic procedures. Judges can also glocalize down the theories with concrete and relatively familiar judicial orders. There could have been, for instance, public hearings with those directly affected rather than with CSOs. The Court conducted this kind of hearings fifteen years before with cases dealing with abortion in Mexico City.[209] The *Law of Victims* authorizes engagement remedies that would limit the charge of judicial supremacy. Article 7, section XX recognizes the rights of victims "[t]o participate in the formulation, implementation and monitoring of public policy on prevention, aid, care, assistance and comprehensive reparation."[210] Therefore, although the epistemic oddity of decriminalizing abortion via corporate theory would

[201]Laurence Burgorgue-Larsen, *The Right to Determine Reparations*, *in* THE INTER-AMERICAN COURT OF HUMAN RIGHTS: CASE LAW AND COMMENTARY 229, (Laurence Burgorgue-Larsen, Amaya Úbeda de Torres eds., 2011).

[202]Amparo en Revisión 706/2015, Primera Sala de la Suprema Corte de Justicia de la Nación [SCJN] [First Chamber of the Supreme Court] (2016) (Gutiérrez Ortíz Mena, concurring) (Mex.).

[203]Ley General de Víctimas, *supra* note 186, art. 27 (Mex.).

[204]Carpio Nicolle et al. v Guatemala, Inter-Am. Ct. H.R. (ser. C) No. 117, at 89 (Nov. 22, 2004); Reparations and Costs, Paniagua Morales ('White Van'), Inter-Am. Ct. H.R. (ser. C) No. 76, at ¶ 81 (May 25, 2001).

[205]Louis D. Brandeis, *An address delivered May 4, 1905, at Phillips Brooks House, before the Harvard Ethical Society: The Opportunity in the Law* (May 4, 1905), available at: https://louisville.edu/law/library/special-collections/the-louis-d.-brandeis-collection/business-a-profession-chapter-20.

[206]Edwin Rekosh et al, INTRODUCTION TO PURSUING THE PUBLIC INTEREST: A HANDBOOK FOR LEGAL PROFESSIONALS AND ACTIVISTS 1, 1 (Edwin Rekosh et al. eds., 2001).

[207]UPENDRA BAXI, THE INDIAN SUPREME COURT AND POLITICS 121 (1980).

[208]Nepal Interim Constitution of 2063 (2007), art. 107 (2).

[209]Suprema Corte de Justicia de la Nación, [Full Supreme Court] Acuerdo General número 2/2008 [Regulation 2/2008] (Mar. 10, 2008), at 4.

[210]Ley General de Víctimas, *supra* note 186, art. 7, frac. XX, 2023 (Mex.).

Table 5. Three Steps of Glocalization

Step 1 De-nationalize Ideas Scale out, down and up	Step 2 Constitutional Networks	Step 3 Glocalizing down, out, and up
Amparo: Individually oriented measures towards biological persons Vs Abstract review and structural remedies: Collective or institutional measures	Pro-structural vs Anti-structural judges Organic vs Contractualists Transformative constitutionalists vs Popular constitutionalists	Mega structural remedy: Compensation, apologies, courses, etc. Abstract review and general effects via concrete and individually-oriented mechanism Engagement remedies amid massive violations

still be present, it would be made patent that alternative mechanisms capable of creating a more balanced glocal protection are conceivable.

Which network should have glocalized the idea? From a pragmatic perspective, the engaging remedy holds the potential to overcome the democratic deficiency raised against the accusation of judicial supremacy. More importantly, it fosters a strong sense of collaboration and inclusion within a broader network. This remedy, while not immune to rejection, is less likely to be seen as an imposition when compared to a command from an elite group of pro-choice Justices. The engaging remedy, once glocalized, will further evolve in subsequent networks, interacting with other ideas and beliefs. For instance, in future cases regarding affordability or the right to abortion free of charge, the structure of the remedy will interact with other institutions and doctrines concerned with financial law, such as legislative budget committees or other financial agencies. In summary, the engaging remedy could lead to a more cohesive and influential network.

What about from a normative perspective? A glocal approach does not seek to impose engagement remedies as a universal model. There will be plural territorial and transterritoral spaces of discussion. Other apex courts may come to other conclusions regarding engagement remedies considering their doctrines of separation of powers and democracy. In the same way, other schools of thought will reject or modify the idea, considering their beliefs on judicial review. Moreover, times are also plural. These episodes of glocalization are not a one-time event, but an array of continuous and evolving processes. They will continue until the origin of engagement remedies becomes unrecognizable and almost untraceable. In this way, optimal glocalization critically depends on the perceived equilibrium between familiarity and political desirability inside and across the relevant networks at different times.

Table 5 summarizes the three steps of glocalization as applied to the case study.

G. Concluding Remarks

This Article proposed a new lens to understand the production and circulation of constitutional ideas in the judicial fora. Despite nationalist biases, apex judges already use glocal sources whose plural, multiscalar, and hybrid origins transcend the borders and levels of the nation-state. Further, judges interpret such ideas through more familiar local lenses as members of non-territorial networks. In this process of interpretation, the national is not synonymous with the familiar. What one may consider foreign may be familiar to another co-national or can become familiar or desirable once framed or modified, even if they take different ideological positions regarding the adequate balance of glocalization. The normative ideal behind this work is to make

the standpoint of glocalizers as transparent as possible, fostering a more accurate and plural understanding of ideas.

Although I narrowed the enquiry of this Article to the scope and space of judicial interpretation, we can expand the glocal approach to other spaces such as parliaments, law schools, or social movements. Ultimately, the methodology serves to avoid legal nationalistic reifications and remind us that constitutional sources are just ideas that legislators, academics, activists, and lay citizens grasp, advance and resist, considering their epistemic and political agendas. Thus, there are still intriguing questions to be answered. For instance, is the way legislators interpret glocal ideas—concrete like rules or highly abstract as the rule of law—compared to judges, that different? Is the affect of scholars and teachers slower but more profound in the glocalization of ideas than that of clerks or justices? A more exhaustive theory will include a comprehensive analysis of the interplay among different types of glocalizers.

The glocal approach offers a promising alternative to comparative constitutional studies, stripping them of their nationalist bias. As outlined above, a glocal theory of constitutional interpretation holds the potential to transcend the parochial and homogenizing approaches often found in localism, transnationalism, and globalism. This outlook encourages us to continue exploring hybridizations, interpenetrations, impositions, and resistances to every idea assumed to be purely national or global.

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