Infrastructural Ordering: Satellites, Foundation Models, and the Corporate Remaking of Global Governance

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ABSTRACT

This article argues that certain digital infrastructures constitute a form of global ordering. Infrastructures, in this sense, are not merely widely used technologies but systems that others must rely on to act. The infrastructures' operators are, therefore, actors of global governance. The infrastructures' operation, in turn, constitutes a matter of concern for global publics. Therefore, the global ordering effects of digital infrastructures such as Starlink's satellite network, SpaceX's launch systems, OpenAI, Google DeepMind, and Anthropic's foundation models, Amazon and Microsoft's data centers and cloud services, and Meta and TikTok's social media platforms ought to be incorporated into political and legal analyses of global governance.

Infrastructural ordering intensifies and modifies existing modes of ordering through largely corporate-controlled material-computational architectures that directly shape and constrain individual and societal action. Most importantly, we observe a mismatch between the material and computational modality of power and the normative, rules-based modality of accountability. Because many of these material arrangements are categorized as apolitical (as matters of property, business, or technology), their governance dimensions and ordering effects often remain unaddressed. They are, clearly, all of these at once: business enterprises, owned assets, webs of contractual relations, and, in many instances, seemingly innocuous practices. Yet taken together, their ordering effects are difficult to deny.

This calls for rethinking entrenched public-private dichotomies, as well as the adequacy of existing accountability structures in law, particularly in international and corporate law. Put reversely, regulating infrastructural ordering relies as much on international and transnational efforts as it requires domestic and local reforms of only seemingly innocuous rules of corporate, procurement, and regulatory law.

The article situates these developments within the longer history of private ordering at global scale and identifies several distinctive features of contemporary infrastructural ordering: materiality, immediacy, corporate form, embeddedness, (geo)politicization, and contestation. It concludes by exploring emerging forms of accountability and arguing for institutional, normative, and conceptual experimentation to meet the challenge of establishing a just global governance regime for the 21st century.

I. INTRODUCTION

In autumn 2022, Ukrainian forces prepared to strike Russian positions on Crimea with a combined attack including aircraft and drones. Coordinating these assets depended on satellite internet provided by Starlink. Starlink is a subsidiary of SpaceX, a US corporation controlled and partially owned by Elon Musk.[1] Since Russia's full-scale invasion earlier that year, Starlink had been supplying Ukraine with internet services to maintain the country's resistance.[2] Yet when the Ukrainian military set out to destroy Russian positions on Crimea in fall 2022, suddenly, Starlink's satellite connection disappeared in some areas of the front.[3] The explanation, though extraordinary, was strikingly simple: the corporate infrastructure on which the Ukrainians depended—Starlink's roughly 14,000 low Earth orbit satellites providing internet to portable ground receivers—had abruptly turned against them.[4] Why? Because Elon Musk, the company's de facto controller, wanted it. How? Quite literally, by pulling a plug. There was no prior consultation, no government order, and no international coordination. It only required a unilateral decision, executed by a corporate actor through its own infrastructure.

Once corporate infrastructures and their (geo)politics are analytically foregrounded, comparable examples emerge.[5] Providers of telecommunications infrastructure, such as Huawei or Baidu, influence the

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[1] *Starlink IPO: Everything You Need to Know About Starlink*, FOREX.COM, https://www.forex.com/en-uk/news-and-analysis/starlink-ipo-everything-to-know-about-starlink [https://perma.cc/TA9L-ZPK7]. Significant portions of SpaceX's equity are held by institutional investors such as Sequoia Capital and, allegedly, Alphabet. *Id*.

2 Graeme Massie, *Elon Musk Helps Ukraine with SpaceX's Starlink Satellites*, INDEPENDENT (Feb. 28, 2022), https://www.independent.co.uk/news/world/europe/elon-musk-helps-ukraine-satellites-b2024893.html [https://perma.cc/7Q9M-UNGH].

3 WALTER ISAACSON, ELON MUSK 428-34 (Simon & Schuster 2023); Musk later indicated he did not switch the system off but deliberately refrained from activating it over parts of Crimea. The precise sequence remains murky—whether it was a matter of switching on or off is ultimately secondary; what matters is the unilateral decision-making and the unaccountable power to make such a call. As to Musk's control over Starlink: Musk owns 54% of the equity and controls 78% of voting rights of SpaceX, which owns Starlink. Theodore Kruczek, *Exploring SpaceX's Ownership and Future*, KEEPTRACK (Mar. 1, 2026), https://keeptrack.space/deep-dive/who-owns-spacex [https://perma.cc/WWK2-Y5RQ].

4 ISAACSON, *supra* note 3, at 28–34.

5 For a rich account of the politics and relevance of infrastructure, *see* Langdon Winner, *Do Artifacts Have Politics?*, 109 DAEDALUS 121 (1980); GEOFFREY C. BOWKER & SUSAN LEIGH STAR, SORTING THINGS OUT: CLASSIFICATION AND ITS CONSEQUENCES (1999); Susan Leigh Star, *The Ethnography of Infrastructure*, 43 AM. BEHAV. SCIENTIST 377 (1999); Brian Larkin, *The Politics and Poetics of Infrastructure*, 42 ANN. REV. ANTHROPOLOGY 327 (2013); Benedict Kingsbury, *Infrastructure and InfraReg: On Rousing the International Law 'Wizards of Is,'* 8 CAMBRIDGE INT'L L.J. 171 (2019).

For a political economy perspective, *see also* Dennis Broeders, et al., *Digital Corporate Autonomy: Geo-Economics and Corporate Agency in Conflict and Competition*, 32 REV. INT'L POL. ECON. 1189 (2025).

For a competition law perspective, *see* Ioannis Lianos, *Polycentric Competition Law: The Geo-Economic Turn* (Apr. 14, 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6556220 [https://perma.cc/8QNL-JW29].

political and economic development of entire regions.[6] They operate in corporate form, but arguably as a means of geopolitical power.[7] Baidu, for example, a Chinese company provides a satellite network that offers more accurate localization-services than the American-run Global Positioning System (GPS) in many parts of the world, causing users to switch from one system to the other while empowering Baidu – and, presumably, the Chinese government – to shut down the system for geopolitical gain.[8] In the US, the leading artificial intelligence provider, Anthropic, clashed with the Pentagon as to whether the Pentagon should be allowed to use the company's model, Claude, for autonomous weapons systems and domestic mass surveillance.[9] When Anthropic rejected the government's requests, OpenAI apparently quickly rushed in to fill the opening.[10] Similarly, developers of drones, such as the German company Helsing or former Google CEO Eric Schmidt's Relativity Space shape how an entirely new class of weaponry operates.[11] They create the hardware and software, the data infrastructure, and the interoperability protocols that now define global defense priorities thereby inserting private companies into the 'kill chain' of increasingly autonomous drones operations.[12] The prevalence of these phenomena makes future scenarios plausible in which decisive aspects of global governance are predetermined, tilted, and influenced by actors bereft of meaningful public accountability structures. The boundaries of future societal agency appear to be effectively drawn by digital corporations, often under the influence of a single controlling shareholder. What merits closer

6 Kadri Kaska, Henrik Keckvard & Thomas Minarik, *Huawei, 5G and China as a Security Threat*, *in* CCDCOE NATO COOPERATIVE CYBER DEFENCE CTR OF EXCELLENCE (2019), https://www.ccdcoe.org/uploads/2019/03/CCDCOE-Huawei-2019-03-28-FINAL.pdf [https://perma.cc/RHD8-6WYL].

7 *See e.g.* Elizabeth Economy, *Beijing's Strategy to Seize the New Frontiers of Power Essays: How China Wins the Future*, 105 FOREIGN AFF. 58 (2026); Broeders et al., *supra* note 5.

8 For the capacities of Baidu, *see* Economy, *supra* note 7, at 68 *et seq*. The localized GPS "denial" in conflict regions is established US policy and has been reported from areas such as the Middle East and Africa. In the most recent update to the policy under President Biden, the Secretary of Defense was empowered to "[t]rain, equip, test, and exercise United States military forces and national security capabilities in operationally realistic conditions that include denial or degradation of GPS." *Memorandum on Space Policy: Directive 7*, PRESIDENTIAL MEMORANDA at Sec.7(b)(iv) (Jan. 15, 2021), https://www.transportation.gov/sites/dot.gov/files/2023-11/Memorandum%20on%20Space%20Policy%20Directive%207.pdf [https://perma.cc/G9XD-DUVL].

9 Matteo Wong, *What Anthropic's Clash with the Pentagon Is Really About*, THE ATLANTIC (Mar. 9, 2026), https://www.theatlantic.com/technology/2026/03/pentagon-anthropic-dispute/686307/ [https://perma.cc/Z9FW-HQJP].

10 *Id*.

11 Arthur Holland Michel, *Europe's Drone-Filled Vision for the Future of War*, MIT TECH. REV. (Jan. 6, 2026), https://web.archive.org/web/20260306000653/https://www.technologyreview.com/2026/01/06/1129737/autonomous-warfare-europe-drones-defense-automated-kill-chains/ [https://perma.cc/DZA6-NZRH]; Michael Schwirtz, *To Fight Iran's Drones, U.S. Taps Ukraine's Hard-Earned Knowledge*, N.Y. TIMES (Mar. 13, 2026), https://www.nytimes.com/2026/03/13/world/middleeast/ukraine-drone-knowledge.html [https://perma.cc/5BH3-XPT4].

12 *Id.*

examination is the structural reality and legal inadequacies these episodes reveal: the capacity of corporate-owned and operated infrastructure to exert direct influence over matters of global governance.

These instances further complexify the already complicated scenery of actors, abilities, and responsibilities in global governance and international law. While the importance of 'private' actors is widely acknowledged, many accounts nonetheless implicitly retain a primacy of state actors over private ones.[13] Further, at least implicitly, robust geopolitical contestation is largely considered to be reserved for states and non-state actors like terrorist groups or rebels but not large corporations.[14] *In toto*, businesses are often considered chiefly significant in economic contexts and may be enlisted to address issues such as climate change or human rights within supply chains.[15] In other words, corporations are typically regarded as relatively narrow in their focus—entities that might pose challenges or offer remedies but are not considered as integral to the broader structuring of society itself. By contrast, this article argues that a subset of digital corporations exercise infrastructural ordering that can be understood as a form of – or complement to – global governance.

Global governance refers to the system of global ordering of and by states, as well as other actors.[16] Unlike earlier private governance regimes that operated through norms, contracts, or standards, infrastructural ordering refers to the capacity of private actors to structure and constrain possible actions by controlling the technical and material infrastructures on

13 For an important early account of the relevance of actors beyond the state level, both 'above' and 'below', *see* PHILIP C. JESSUP, TRANSNATIONAL LAW (1956).

14 Although the role of so-called private military contractors (PMCs) has been widely acknowledged for two decades now, especially in the context of the US invasion of Iraq in 2003 and the role of companies like Blackwater in it. Simon Chesterman and Chia Lehnhardt write already in 2007: "As private actors take on more responsibilities a central question is whether the normative framework and accountability structures adequately address the new environment. Most commentators agree that they do not. Instead, it is often implicitly or explicitly assumed that it is business interests—rather than international and national law—that govern the use and conduct of PMCs." SIMON CHESTERMAN & CHIA LEHNARDT, FROM MERCENARIES TO MARKET: THE RISE AND REGULATION OF PRIVATE MILITARY COMPANIES 2 (2007); *See also* SIMON CHESTERMAN & ANGELINA FISHER, PRIVATE SECURITY, PUBLIC ORDER: THE OUTSOURCING OF PUBLIC SERVICES AND ITS LIMITS (2009).

15 *Cf.* John Gerard Ruggie (U.N. Secretary-General's Special Representative for Business and Human Rights), *Rep. on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, U.N. Doc. A/HRC/1731 (Mar. 21, 2011) [https://perma.cc/P8U8-9BBS]; Astrid Sanders, *The Impact of the 'Ruggie Framework' and the 'United Nations Guiding Principles on Business and Human Rights' on Transnational Human Rights Litigation*, *in* THE BUSINESS & HUMAN RIGHTS LANDSCAPE 288 (Jena Martin & Karen E. Bravo eds., 2015).

16 The term 'governance' in this context – in contrast to government – was expressly chosen to account for the fact that many real-world effects indeed did not derive from state power but from all kinds of actors. Etymologically, the phrase governance goes back to the Greek concept of "steering" (*kybernan*), which shall highlight the shift from centralized command-and-control toward a poly-centered polity where institutionalized mechanisms of authority are regularized and embedded across global, regional, and private spheres. David Levi-Faur, *From "Big Government" To "Big Governance"?*, *in* THE OXFORD HANDBOOK OF GOVERNANCE (2012).

which social, economic, and political practices depend.[17] Infrastructures, as used in this article, are material-computational systems that function as non-substitutable backbones of coordination across multiple social domains, such that their design and operation prestructure the feasible set of actions for dependent actors. Three elements are decisive: (1) systemic dependence, often across heterogeneous domains (e.g. military, economic, communicative), (2) high switching costs or practical non-substitutability, and (3) the capacity to constrain and direct action at a global scale through embedded technical architectures rather than through communicated rules alone.[18] This definition excludes large but easily substitutable firms and services.[19] Not every dominant platform or widely used technology qualifies as infrastructural in this sense; the concept is limited to systems whose disruption would systematically constrain the ability of other actors to operate across domains. In other words, what makes a given setup infrastructural is not only its material existence but also the extent to which other actors (states, militaries, societal groups, and individuals) form a co-dependent relationship with it. As Susan Leigh Star and Karen Ruhleder famously put it, "infrastructure is fundamentally and always a *relation*, never a thing."[20] They further argue that infrastructure "is a fundamentally relational concept. It becomes infrastructure in relation to organized practices. Within a given cultural context, the cook considers the water system [as] a piece of working infrastructure integral to making dinner; for the city planner, it becomes a variable in a complex equation. Thus we ask, *when*—not *what*—is an infrastructure."[21] A large e-commerce platform, for instance, may be economically important without being infrastructural in this sense if users and firms retain meaningful exit options. Further, widespread economic dependence in mundane matters may not qualify as 'systemic' in the aforementioned sense if restricted to matters unrelated to grander societal themes, such as mere everyday consumption. What counts

17 For further reading from internet governance literature, *see* Laura DeNardis, *Hidden Levers of Control: An Infrastructure-Based Theory of Internet Governance*, 15 INFO., COMMC'N & SOC'Y 720 (2012).

18 "Infrastructures are built networks that facilitate the flow of goods, people, or ideas and allow for their exchange over space. As physical forms they shape the nature of a network, the speed and direction of its movement, its temporalities, and its vulnerability to breakdown. They comprise the architecture for circulation, literally providing the undergirding of modern societies, and they generate the ambient environment of everyday life." Brian Larkin, *The Politics and Poetics of Infrastructure*, 42 ANN. REV. ANTHROPOLOGY 327, 328 (2013).

19 For an introduction to an infrastructural perspective on platform and data governance *see* Julie E. Cohen, *Public Utility for What? Governing AI Datastructures*, 28 YALE J.L. & TECH. 135 (2026); Julie E. Cohen, *Infrastructuring the Digital Public Sphere*, 25 YALE J.L. & TECH. 1 (2023).

20 Susan Leigh Star & Karen Ruhleder, *Steps Toward an Ecology of Infrastructure: Complex Problems in Design and Access for Large-Scale Collaborative Systems* 253 (1994) (quoting GREGORY BATESON, STEPS TO AN ECOLOGY OF MIND: COLLECTED ESSAYS IN ANTHROPOLOGY, PSYCHIATRY, EVOLUTION, AND EPISTEMOLOGY (1987)).

21 Susan Leigh Star & Karen Ruhleder, *Steps Toward an Ecology of Infrastructure: Design and Access for Large Information Spaces*, 7 INFO. SYS. RSCH. 111, 113 (1996).

as one or the other is contingent on a given political context and may change over time. By contrast, systems such as satellite communication networks, cloud infrastructures, or foundational AI models approach infrastructural status when other actors' capacity to act becomes contingent on continued access to them. Yet this infrastructural status, and particularly its ordering effects, emerged within a specific historical configuration shaped by a unique set of practices and actors, namely, Russia's aggression against Ukraine. Absent this context, Starlink's infrastructural ordering role would likely not have become apparent in the same form.

While infrastructural ordering derives its significance from its embedding into other actors' practices, it is also characterized by a distinct material-computational dimension. Examples include communication systems like social media, satellite internet and, increasingly, artificial intelligence. This material dimension resides in the cables, satellites, data centers, datasets, and algorithms that shape the operation and functionality of these systems. The design of these systems, the way they process, direct, and (re)assemble information reflect normative choices and enable or constrain other choices down the road.[22] Infrastructural ordering, therefore, building on Mann's definition of "infrastructural power" manifests as the operator's ability "to actually penetrate civil society, and to implement logistically political decisions throughout the realm."[23] It is material rather than communicative in its relation to human agents. Yet it operates immediately, often generating direct power relations and enabling targeted forms of governance intervention. These interventions can bypass the state and other intermediary institutions that have traditionally mediated authority in global governance.

Most infrastructural ordering is controlled by corporations, as contemporary digital infrastructures are largely built, owned, and operated by private companies.[24] At the same time, the extent to which these companies are truly independent from state power is questionable; many are deeply entangled with public authority and derive significant advantages

22 The most famous example for such a mechanism is the series of unusually low overpasses along the parkways leading to the beaches of Long Island. Designed from the 1920s onward by the urban planner Robert Moses, these structures did more than guide traffic: by making the clearances too low for buses, they effectively restricted access to the coast for poorer – and disproportionately marginalized and racialized – communities who relied on public transport. The most mundane things, such as the height of an overpass, are not only a political act but can be an extraordinarily effective way of social control. *See also* ROBERT A. CARO, THE POWER BROKER: ROBERT MOSES AND THE FALL OF NEW YORK (1975).

23 Michael Mann, *The Autonomous Power of the State: Its Origins, Mechanisms, and Results*, 25 EUR. J. SOCIO. 185, 189 (1984).

24 *See e.g.* Brett Frischmann, *Privatization and Commercialization of the Internet Infrastructure*, COLUM. SCI. & TECH. L. REV. 2 (2001). For the role of private funding in the infrastructure buildup of the artificial intelligence industry, *see* KAREN HAO, EMPIRE OF AI: DREAMS AND NIGHTMARES IN SAM ALTMAN'S OPENAI (2025).

from the corporate form and the legal protections of property.[25] The infrastructures they control, however, are embedded in global connectivity and shape the capacity of other actors to act in one way or another. Infrastructural ordering is therefore geopolitical in character—and, in narrow areas, increasingly contested.

Conceptually, however, the dealings of these corporations may be misunderstood as business rather than policy, as a service rather than an exercise of power, as an innocuous 'private' act, that commands legal protections of liberty and property, of speech and of insulated liability rather than a *res publica* – a matter of public concern – that demands public accountability. Others also used Mann's work to describe aspects of this phenomenon recently as "Digital Corporate Autonomy," highlighting the pairing of economical might with material control of some of these companies.[26] Others, again, highlight the role of (digital) infrastructures as enablers of classical geopolitics, for example in excluding Russia or Iran from the inter-banking system SWIFT.[27] Infrastructural ordering, as discussed here, combines these two approaches insofar as it ascribes agency – and plausibly also geopolitical aspirations – to corporate operators, which in turn exercise these ordering ambitions through infrastructural means.

While infrastructural ordering clearly produces political effects, it does not resemble traditional political projects: it neither rests upon established policy frameworks nor is it commonly conceived as such in public discourse.[28] The challenge, fundamentally, is that these practices defy neat classification within the conventional binary of sovereign versus private, business versus politics, or imperium versus dominium. The very rationale for distinguishing these categories—rooted historically in the effort to protect individual liberty from unchecked monarchical power—breaks down in the context of infrastructural power.[29] Penetration and ordering

25 *See* QUINN SLOBODIAN & BEN TARNOFF, MUSKISM: A GUIDE FOR THE PERPLEXED (2026); ALEXANDER C. KARP & NICHOLAS W. ZAMISKA, THE TECHNOLOGICAL REPUBLIC: HARD POWER, SOFT BELIEF, AND THE FUTURE OF THE WEST (2025).

26 Broeders et al., *supra* note 5, at 1191-96.

27 Marieke de Goede & Carola Westermeier, *Infrastructural Geopolitics*, 66 INT'L STUD. Q. 1 (2022).

28 Since many of the relevant firms originate from Silicon Valley, the prevalent ethos there is particularly important. *See e.g.* ADRIAN DAUB, WHAT TECH CALLS THINKING: AN INQUIRY INTO THE INTELLECTUAL BEDROCK OF SILICON VALLEY (2020); JILLIAN YORK, SILICON VALUES: THE FUTURE OF FREE SPEECH UNDER SURVEILLANCE CAPITALISM (2021). For an influential 'original source', *see* Marc Andreessen, *The Techno-Optimist Manifesto*, A16Z.COM (Oct. 16, 2023), https://a16z.com/the-techno-optimist-manifesto/ [https://perma.cc/9G34-6KKF]; SLOBODIAN & ZAMISKA, *supra* note 25.

29 'Privatization' has long captivated legal scholarship, as did the decline of the public/private distinction. *See*

Duncan Kennedy, *The Stages of the Decline of the Public/Private Distinction*, 130 U. PA. L. REV. 1349 (1982).

require some form of normative justification – irrespective of who does it in what way and for what reasons.[30]

Mirroring the characteristics of infrastructural ordering, we can observe various conceptual and normative consequences, both for global governance and international law, as well as corporate governance and corporate law. Because infrastructural ordering operates through material means rather than primarily through communication, its regulatory impacts frequently remain unnoticed. The accountability structures that we know, legal or economic, rely on communication to an agent, like a board member. This creates a mismatch between the mode of power – materiality – and the mode of accountability – communicatory. At the same time, this form of power often establishes a direct connection to individuals—manifested, for example, in the functioning of a social media algorithm, the use of an AI model, or access to satellite internet. Such immediacy enables highly granular and tailored governance interventions, as illustrated by the deactivation of Starlink services for the Ukrainian military. Both large organizations, such as militaries, and individual users depend on these infrastructures, often finding themselves unable to function without them. Even the U.S. military could not promptly substitute its reliance on Claude, continuing to use it during the 2026 attacks on Iran despite the Pentagon's designation of Anthropic as a supply chain risk.[31] This differs to many classic institutions of global governance which seek to regulate but struggle to become or remain infrastructural.[32] Further, from a global governance perspective, these infrastructural networks may be centralized at the individual level, but collectively, they form a polycentric web of dependencies, choke points, and control mechanisms that differs from traditional locations of ordering. For example, while the global centers for diplomacy may be New York and Geneva, infrastructural power is arguably equally concentrated in Virgina (data centers) and the Bay Area (direct or immediate ownership of data centers and control over artificial intelligence foundation models).[33] Notably, some of these structures reinforce and intensify existing economic and political power imbalances, often concentrating points of control in regions such as the United States and

30 Philosophical foundations can be found in Kant, as Kingsbury and Maisley do, or in more contemporary sources like Amartya Sen's and Martha Nussbaum's capabilities approach: Benedict Kingsbury & Nahuel Maisley, *Infrastructures and Laws: Publics and Publicness*, 17 ANN. REV. L. & SOC. SCI. 353 (2021); Amartya Sen, *Equality of What?*, *in* THE TANNER LECTURE ON HUMAN VALUES (1979); Martha Nussbaum, *Capabilities as Fundamental Entitlements: Sen and Social Justice*, 9 FEMINIST ECON. 33 (2003). The latter two are also re-emerging in adjacent debates in law and political economy, *see* KATHARINA PISTOR, THE LAW OF CAPITALISM AND HOW TO TRANSFORM IT 117 *et seq*. (2025). *See also* Amna A. Akbar, *Toward a Radical Imagination of Law*, 93 N.Y.U.L. REV. 405 (2018).

31 *Cf*. Wong, supra note 9.

32 For an in-depth analysis of this, follow the *Global Hybrid and Private Governance Project* at New York University School of Law.

33 *Cf* LISA PARKS & NICOLE STAROSIELSKI, SIGNAL TRAFFIC 71 *et seq* (Oxford Univ. Press 2015).

China.[34] These networks are political in several respects. They generate distributive effects, structure inclusion and exclusion, and serve as instruments of geopolitics for both corporations and states. At the same time, corporations' infrastructural power foregrounds the political and global ordering effects of ostensibly technical rules of corporate law, including corporate purpose, fiduciary duties, state action doctrine, and founder control through dual-class stock structures. The same goes for highly technical matters such as spectrum and frequency regulation or important yet dry rules of public procurement. In some corporate contexts, however, elements of contestation and the gradual – albeit imperfect – incorporation of public law concepts, such as reason-giving, due process, and utility considerations, are increasingly evident.[35]

One important caveat: This article does not claim that infrastructural ordering – which is often controlled by corporate actors (some of which, however, having a close relationship with the state) – fully replaces traditional international governance; rather, it argues that it constitutes a parallel modality of ordering that existing conceptual vocabularies and laws insufficiently capture. In fact, the emergence of infrastructural ordering as well as its operation remain deeply entangled with and enabled by state power. Research funding, public procurement, and licensing regimes enabled and entrenched some of the technologies upon which infrastructural power later emerged.[36]

This article identifies and contextualizes the characteristics of infrastructural ordering. Since much of this infrastructural ordering is controlled by corporations, the article situates these digital corporations and their infrastructural ordering in the rich but partially overlooked history of private global ordering. Based on this analysis of past and present, the article summarizes the effects of those changes on the modus operandi of international ordering. It argues that the classic institutional focus on the state and international institutions must be complemented by attention to digital corporate infrastructures precisely because they order largely *without* state mediation, or even without human mediation. Lastly, the article highlights opportunities and problems with emerging new accountability norms that combine local regulation with global publics.

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34 Valeria Lauria & Moritz Schramm, *The Political Economy of the Artificial Intelligence Buildup in Africa: Huawei and Microsoft in South Africa* (unpublished manuscript, on file with the author).

35 MORITZ A. SCHRAMM, GOVERNANCE BY EMULATION: THE OVERSIGHT BOARD, THE DIGITAL SERVICES ACT, AND THE STRUGGLE FOR PLATFORM ACCOUNTABILITY (2026).

36 MARIANA MAZZUCATO, THE ENTREPRENEURIAL STATE: DEBUNKING PUBLIC VS. PRIVATE SECTOR MYTHS (rev. ed. 2014).

II. CHARACTERISTICS OF INFRASTRUCTURAL ORDERING

Global ordering through (almost entirely) private digital infrastructures has distinctive features.[37] Conditioned and often emboldened by their private legal form, property rights, public funding, and entanglement in the (self-)regulatory process, those corporations project power globally through control over essential technological setups.[38] From the perspective of global governance, several distinct features of infrastructural ordering, especially its corporation-driven parts, change how global governance operates. These characteristics are materiality, immediacy, corporate form, embeddedness, (geo)politicization, and contestation.

First, infrastructural ordering is on *material* and *computational* rather than *communicative*. Prior private ordering of world regions – like the East India Company – relied on different tools than the companies at issue here. Many such prior accounts of powerful private governance regimes have focused on institutions, forms, and norms that, although affecting a form of private ordering, nonetheless tend to mirror modes of governance familiar to domestic and international politics. A prime example is the formal, written rule, communicated from one human agent to the other. In contrast, the form of private infrastructural power at issue here does not rely as heavily on such semiotic, communicative acts. It is *built*.[39] Here, global governance—or what I argue ought to be theorized as a form or complement of it—manifests in the ability to cut satellite coverage, determine whether drones can interface with other weapon systems, or maintain covert access to the 5G networks of entire countries. Such power operates through computational protocols, material arrangements, and mechanisms of access and direction that *manifest* a choice or demand, rather than *formulate* one,

37 For complementary approaches, *see* K. Sabeel Rahman, *The New Utilities: Private Power, Social Infrastructure, and the Revival of the Public Utility Concept*, CARDOZO L. REV. 1621, 1640–47, 1668–79 (2018). Rahman conceptualizes "social infrastructures," from an antitrust and political economy perspective, as non-rival and non-excludable goods—both material and immaterial—that tend to be underprovided by market actors despite their heavy public reliance. Their centrality generates significant downstream effects, particularly inequalities when access is restricted or unevenly distributed. Emphasizing the material dimension, this analysis can be extended through a case study of the financial transaction mechanism. *See* de Goede & Westermeier, *supra* note 27.

38 This article proceeds on the presumption that these corporations are regulated to varying degrees yet often shape the very regulations they face. This dynamic – where law becomes intrinsic to corporate power – has been observed in digital platforms and recurs in fast-moving, concentrated sectors like space, defense, and infrastructure. *See* JULIE E. COHEN, BETWEEN TRUTH AND POWER: THE LEGAL CONSTRUCTIONS OF INFORMATIONAL CAPITALISM (2019); *see generally* Viktor Fleischer, *Regulatory Arbitrage*, 89 TEX. L. REV. 227 (2010).

39 Neat dichotomies – like communication vs infrastructure – collapse under closer scrutiny. The latter hinges on material arrangements embedded in social practices, which themselves rely on normative, communicative acts. Still this ideal-typical (and slightly exaggerated) contrast serves to spotlight what is genuinely new. *See* Bruno Latour, *Morality and Technology*, 19 THEORY, CULTURE & SOC'Y 247 (2002); BRUNO LATOUR, REASSEMBLING THE SOCIAL: AN INTRODUCTION TO ACTOR-NETWORK-THEORY (Oxford Univ. Press 2007).

vis-à-vis a subject.[40] Concretely, prior accounts understood the exercise of authority often as communication addressed to a subject who is then compelled to act.[41] The subject may be commanded, but they still possess agency; hence, the perennial debates about legitimacy. Such thinking formed the basis for Weberian sociology as well as much of modern political theory.[42] Private infrastructural power, however, tends to short-circuit this model by dramatically reconfiguring the subject's agency.[43] Power, in that sense, does not rely on communicated commands but on manifested material-computational frameworks that predetermine human action. The range of possible actions collapses into whatever path the infrastructure provides. The neat dichotomy between material and communication is, of course, analytical. Relational systems also have communicatory elements.[44] However, infrastructural ordering reconfigures the relationship between material constraint, communicative normativity, and human agency in ways that are currently insufficiently addressed in domestic and international law.

Second, much of infrastructural ordering—particularly the kind at issue here—is controlled by *corporations*. As noted earlier Starlink is a subsidiary

40 *See* seminally MICHEL FOUCAULT, SECURITY, TERRITORY, POPULATION - LECTURES AT THE COLLEGE DE FRANCE 1977-1978 (Picador 2004) (especially the lectures of 25 January and 8 February 1978); Bruno Latour & Michel Callon, *Unscrewing the Leviathan: How Actors Macro-Structure Reality and How Sociologists Help Them To Do So*, *in* ADVANCES IN SOCIAL THEORY & METHODOLOGY 286, 288 (K. Knorr & A. Cicourel eds., Routledge 1981); *see generally* LATOUR, *supra* note 39.

41 One of the most prominent theorizations of this change was provided by Lawrence Lessig. Lessig metaphorically argued that "code is law". LAWRENCE LESSIG, CODE AND OTHER LAWS OF CYBERSPACE (1999). Although elements of that framework guide this project – particularly the relevance and emphasis of novel types of ordering – this analysis goes beyond Lessig's description. His account, from my perspective, mistakenly treats this code as functionally analogous of law, a metaphor that has encouraged insufficiently precise accounts of how code actually structures societal behavior. In practice, this code operates in ways that differ meaningfully from legal regulation. For further discussion, *see* Julie Cohen's work on architectures of control. JULIE E. COHEN, CONFIGURING THE NETWORKED SELF 107 *et seq* (2012).

42 THOMAS HOBBES, LEVIATHAN (1651) (1996); MAX WEBER, WIRTSCHAFT UND GESELLSCHAFT [ECONOMY AND SOCIETY] (1922) (2005).

43 Untangling these categories strikes at the very foundations of (Western) political and legal theory, from Kant to Weber to Foucault as well as postcolonial accounts of shifting agencies in postcolonial contexts (e.g., Fanon, Spivak). *See* IMMANUEL KANT, KRITIK DER PRAKTISCHEN VERNUNFT. GRUNDLEGUNG ZUR METAPHYSIK DER SITTEN [CRITIQUE OF PRACTICAL REASON: GROUNDWORK FOR THE METAPHYSICS OF MORALS] (Wilhelm Weischedel ed., 24th ed. 2020). Individually, *see* IMMANUEL KANT, CRITIQUE OF PRACTICAL REASON (Hackett Publ'g Co. 2002); IMMANUEL KANT, GROUNDWORK FOR THE METAPHYSICS OF MORALS (Mary Gregor ed., Cambridge Univ. Press 2006). *See also* WEBER, *supra* note 42; MICHEL FOUCAULT, ARCHAEOLOGY OF KNOWLEDGE (2002); FRANTZ FANON, THE WRETCHED OF THE EARTH (1963) (Richard Philcox trans., 2004); Gayatri Chakravorty Spivak, *Can the Subaltern Speak?*, *in* MARXISM & THE INTERPRETATION OF CULTURE 66 (C. Nelson & L Grossberg eds., 1988). For critical perspectives, *see* KATRIN FLIKSCHUH & LEA YPI, KANT AND COLONIALISM: HISTORICAL AND CRITICAL PERSPECTIVES (Oxford Univ. Press 2014); Robert Bernasconi, *Who Invented the Concept of Race? Kant's Role in the Enlightenment Construction of Race*, *in* RACE 11 (2001).

44 For foundational context, *see* Star & Ruhleder, *Steps Toward an Ecology of Infrastructure: Design and Access for Large Information Spaces*, *supra* note 21.

of SpaceX, a U.S. corporation,[45] Anthropic and OpenAI are Delaware-incorporated public benefit corporations, Meta, Microsoft, and Amazon are publicly traded U.S. corporations, and Baidu, Tencent, Huawei, and Alibaba are publicly traded Chinese corporations. However, the extent to which these entities can be meaningfully characterized as "private"—that is, as structurally distinct from state power—is more complex than their formal legal status suggests. Many rely on foundational research funded by the state, profit from public procurement, and maintain extensive commercial relationships with government actors, in particular the United States federal government and the leadership of the People's Republic of China. In some cases, corporate control is even directly or indirectly shaped by the state, for example through "golden share" arrangements, as in the case of Huawei.[46] Moreover, the analytical focus on the corporate form is itself open to question. Some of these entities—most notably SpaceX, Starlink, and xAI—are, at the time of writing, effectively controlled by a single individual, Elon Musk, the world's richest man. A similar dynamic, albeit in a more institutionalized form, can be observed at Meta, where Mark Zuckerberg retains decisive control through dual class share structures. In such cases, the corporate form serves as a vehicle for the exercise of personalized infrastructural power.

Third, infrastructural ordering can be particularly *immediate* when compared to traditional forms of global governance. While traditional global governance regimes typically interact with individuals through state or local authorities, infrastructural ordering manifests directly. It does not require input from participating actors, as multilateral institutions do, nor does it depend on agents to enforce its policies, as is common among other governance actors, including private ones.[47] That immediacy cuts through vertically integrated layers, which design, produce, and allocate ownership of critical components across the relevant infrastructural stacks—from computational architecture to foundation models, from energy plants to data centers, and from rockets to satellites. This establishes an immediate power relationship between digital corporations and individual consumers, as well as entire societies. This immediacy sidesteps the state as a democratic mediator, potential guardian, and forum of contestation.

But infrastructural ordering not only sidesteps traditional forms of global governance. Arguably, the individualized power relationship between the company and an individual extends far beyond what is familiar

45 SpaceX is currently a private corporation, which intends to go public later in 2026.

46 *Fretting about Data Security, China's Government Expands Its Use of "Golden Shares,"* THE BUSINESS TIMES (Dec. 16, 2021), https://www.businesstimes.com.sg/international/fretting-about-data-security-chinas-government-expands-its-use-of-golden-shares/ [https://perma.cc/L2MM-HH4D]

47 Benedict Kingsbury, *Three Models of "Distributed Administration": Canopy, Baobab, and Symbiote*, 13 INT'L J. CONST. L. 478 (2015).

in the context of the state. In most states, public power has a limited influence on defining what is right or wrong, or true or false. Even when public power does shape public opinion or individual cognition—such as through public broadcasting, schoolbooks, or libel law—it operates through laws, commands, or narration. In contrast, social media and artificial intelligence infrastructures perform these functions directly on individuals' hardware, and potentially, in the future, within their brains.[48] This surpasses liberal conceptions of social or legal ordering, and approaches forms reminiscent of science fiction-like mind control.[49] Faced with such scenarios, it is reasonable to question whether it makes sense to conceptualize humans primarily as individuals, or rather as components embedded within a superstructure.[50] Unlike sociological structures such as *habitus* or *discourse*, this superstructure is not dispersed, gradual, or ephemeral, but highly centralized.[51] If one speculates further—considering the basic functionality of artificial intelligence as regurgitating existing information, some of which being these dystopian scenarios in existing data—one might wonder whether the dominance of such troubling scenarios could guide technological development in precisely that direction. In sum, the infrastructural power wielded by technology companies is not only more immediate than existing modes of global governance, but also more comprehensive and penetrating—reaching further into individual minds and societal and economic practices—than traditional power structures like the state or the Catholic Church have ever managed.

Fourth, infrastructural ordering is *embedded*. Embeddedness, in this sense refers to the difficulties to avoid a certain infrastructure, given the reliance of other actors and material configurations on the infrastructures

48 For the underlying physics of brain-computer interfaces, *see* Alexander E. Hramov, Vladimir A. Maksimenko & Alexander N. Pisarchik, *Physical Principles of Brain–Computer Interfaces and Their Applications for Rehabilitation, Robotics and Control of Human Brain States*, 918 PHYSICS REPS 1 (2021).

49 Among Silicon Valley circles, the hypothetical scenario of a "singularity" – a scenario in which machines surpass human intelligence and recursively develop ever more capable successors, rendering humans essentially superfluous, has become a recurring point of reference. Much, however, depends on how "intelligence" is defined in such scenarios, as well as on whether such machines has adopted an excessively utilitarian worldview, the consequences of which could quickly become dire. For an introduction, *see* David J. Chalmers, *The Singularity: A Philosophical Analysis*, 17 J. CONSCIOUSNESS STUD. 1 (2010).

50 From the rich literature on aspects and philosophical foundations of these thought experiments, *see* DON IHDE, TECHNOLOGY AND THE LIFEWORLD: FROM GARDEN TO EARTH (Ind. Univ. Press 1990); Donna J. Haraway, *A Cyborg Manifesto: Science, Technology, and Socialist-Feminism in the Late Twentieth Century*, *in* SIMIANS, CYBORGS, AND WOMEN: THE REINVENTION OF NATURE 149 (Routledge 1991); Gilles Deleuze, *Postscript on the Societies of Control*, 59 OCTOBER 3 (1992); ANDY CLARK, SUPERSIZING THE MIND: EMBODIMENT, ACTION, AND COGNITIVE EXTENSION (Oxford Univ. Press 2008).

51 For the other two, *see* FOUCAULT, ARCHAEOLOGY OF KNOWLEDGE, *supra* note 43; MICHEL FOUCAULT, THE ORDER OF THINGS: AN ARCHAEOLOGY OF THE HUMAN SCIENCES (1973); PIERRE BOURDIEU, DISTINCTION (1984).

they provide.[52] The embeddedness of these systems frequently generates significant first-mover advantages.[53] For instance, SpaceX, the parent company of Starlink, currently operates a substantially larger number of satellites than any other actor, public or private, rendering the immediate substitution with an alternative provider difficult, if not impossible.[54] Although sectors with lower barriers to entry than space exploration may sustain more robust competition, the downstream effects of infrastructural decisions within those corporations remain considerable, as they condition, enable, or foreclose future courses of action.[55]

Fifth, such infrastructural ordering, and particularly the role of corporations in effectuating it, is *(geo)political*.[56] It is political in its design and operation.[57] Material-computational arrangements like a social media site, satellite internet, or a foundation model are the result of many normative and political choices.[58] Anything from design, creation, to operation influences who is included and excluded, what the conditions for access are, and how the infrastructure can or cannot be used is as much an economic and technical decision as it is a normative, political one.[59] The political significance of infrastructural ordering manifests at individual, local and global levels. This influence may be distinctly geopolitical, as seen in the critical role played by Starlink during the war in Ukraine or the integration of artificial intelligence models into autonomous drones. However, it can also operate in subtler, tacit forms, connecting seemingly routine local issues—such as content moderation practices in Myanmar—to major security events, including the ethnic cleansing of the Rohingya

52 It is particularly the embeddedness of material arrangements in human practice, and hence their hard-to-escape nature, that renders such arrangements an infrastructure. Star & Ruhleder, *Steps Toward an Ecology of Infrastructure: Design and Access for Large Information Spaces*, *supra* note 21.

53 A prominent example from the field of standardization in the 2000s is Microsoft's "Open XML" format—a file format designed to enable interoperability across different systems—which was first adopted as a national and later as an international standard for this specific, yet commercially significant, form of file interoperability. *see* TIM BÜTHE & WALTER MATTLI, THE NEW GLOBAL RULERS 42 (Princeton Univ. Press 2011).

54 As of March 2025, SpaceX had launched over 7,000 low Earth orbit satellites—approximately half of all approx. 14,000 satellites ever deployed worldwide. Tereza Pultarova, *Starlink Satellites: Facts, Tracking and Impact on Astronomy*, SPACE.COM (Mar. 28, 2025), https://www.space.com/spacex-starlink-satellites.html [https://perma.cc/XH6Q-XUYT].

55 For example, the EU's planned NATO "drone wall" relies on seamless interoperability between drones and broader defense systems, but the influx of private firms risks technical fragmentation and strengthens dominant players like Helsing or Relativity Space. Arthur Holland Michel, *Europe's Drone-Filled Vision for the Future of War*, MIT TECH. REV. (Jan. 6, 2026), https://web.archive.org/web/20260306000653/https://www.technologyreview.com/2026/01/06/1129737/autonomous-warfare-europe-drones-defense-automated-kill-chains/ [https://perma.cc/GX85-9XRK].

56 See the parallel debate in economics (and competition law) on *geo-economics*, which addresses similar phenomena. Lianos, *supra* note 5; Cathrin Mohr & Christoph Trebesch, *Geoeconomics*, 17 ANN. REV. ECON. 563 (2025).

57 For a rich literature on this, *see* Winner, *supra* note 5; de Goede & Westermeier, *supra* note 27.

58 Winner, *supra* note 5.

59 For a good overview, *see* de Goede & Westermeier, *supra* note 27, at 3 *et seq*.

population in 2018. These local dynamics further contribute to the broader, worldwide dissemination of particular types of ideological content via social media platforms.[60] Seen in isolation these events may be instances of an interconnected world. But seen together – and not necessarily benign – the ordering effects of some of these setups are undeniable.

Sixth, as a consequence of the above, baseline political logics of liberal contestation re-emerge even in spheres of private ordering. Concretely, *contestation*, at times, arises outside classic state structures when the individual and societal significance of a particular infrastructure—and its misalignment with fundamental elements of publicness—becomes evident.[61] A vivid example is Meta's Oversight Board. The Oversight Board is a private adjudicatory and advisory body, arguably created by the company to deflect criticism and avoid regulation.[62] However, while by design unable to upend Meta's externality-producing business model, even critics of the Board agree that it brought some elements of accountability to Meta.[63] Perhaps more importantly, the Board began advising the company on how to introduce elements of administrative justice into its decision-making processes. While clearly no panacea (but what is?), public contestation prompted institutional experimentation. Shortly thereafter, similar concerns drove reforms in the European Union, creating an entire class of private adjudicators tasked with reviewing content moderation decisions.[64] A further illustration is Anthropic's invocation of "constitutional AI"—a phrase that, while linguistically questionable for what amounts to classic reinforcement learning, nonetheless embodies a crucial feature of innovative digital governance.[65] Borrowing established constraints from one domain, such as limits on public power through administrative or constitutional law, and repurposing them in new arenas like social media and artificial intelligence regulation is a significant experiment.[66] Yet, more significant than the success or failure of any single

60 Human Rights Council, Rep. of the Independent International Fact-Finding Mission on Myanmar, U.N. DOC. A/HRC/39/64 (Sep. 12, 2018) [https://perma.cc/US2T-KCNU]; Germain Gauthier et al., *The Political Effects of X's Feed Algorithm*, 652 NATURE 416 (2026).

61 For a variety of examples, *see* BRITT S. PARIS, RADICAL INFRASTRUCTURE: IMAGINING THE INTERNET FROM THE GROUND UP (2026).

62 Kate Klonick, *The Facebook Oversight Board: Creating an Independent Institution to Adjudicate Online Free Expression*, 129 YALE L.J. 2232 (2020); Brenda Dvoskin, *Expertise and Participation in the Facebook Oversight Board: From Reason to Will*, TELECOMMC'N POL'Y 1 (2022); Evelyn Douek, *The Meta Oversight Board and the Empty Promise of Legitimacy*, 37 HARVARD J. L. & TECH. 373 (2023); SCHRAMM, GOVERNANCE BY EMULATION, *supra* note 35, at 183-99.

63 Kate Klonick, *Inside the Making of Facebook's Supreme Court*, THE NEW YORKER (Feb. 12, 2021), https://archive.is/7cVHV [https://perma.cc/44Y7-S8VH].

64 SCHRAMM, GOVERNANCE BY EMULATION, *supra* note 35, at 100-78.

65 Metaphorical allusions to constitutions may be generative or misleading. Josh Cowls et al., *Constitutional Metaphors: Facebook's "Supreme Court" and the Legitimation of Platform Governance*, 26 NEW MEDIA & SOC'Y 2448 (2024).

66 SCHRAMM, GOVERNANCE BY EMULATION, *supra* note 35.

experiment is the broader trend: accountability institutions and governing documents are increasingly modeled after established frameworks, particularly those drawn from ethics and public law.[67] In other work, I have described this phenomenon as *governance by emulation*, a process that is innovative, historically contingent, and normatively ambivalent.[68]

III. HISTORY AND DEVELOPMENT OF PRIVATE ORDERING AT A GLOBAL LEVEL

Powerful corporations in general, and privatization in particular are not novel,[69] nor is globalization. Private ordering at the global stage is – contrary to many popular assumptions – as old as the global stage itself. In many ways, the creation of a global system of human relation historically relied on private activity, especially trade, as much as it did on classic statist aspects like warfare. The creation of the Hanseatic League combined trade and defense interests of trading guilds and port cities in the North and Baltic Seas for two hundred years. Much of colonialism relied on chartered companies, vast structures that were ostensibly 'private' yet brutally governed whole systems of administration and ran their own military.[70] However, historically, the international legal order was identified with the so-called Westphalian system where the state was the exclusive vehicle of political authority. Following the Great Depression and throughout the Second World War, private corporations were primarily situated within a Keynesian framework. During this period, and reaching into the mid-1970s, private firms were largely viewed as "auxiliary forces within civil society" that might be recruited for the fulfillment of public tasks under state-organized steering.[71] While corporations were understood to have globally relevant effects, they were technically considered secondary actors—an extension of business acumen that joined state-led developmental goals rather than serving as the underlying condition for the exercise of power. This era, in political theory up until Michel Foucault's lectures at the College de France in the late 1970s, and in economic theory even stronger

67 The performative play with "constitutional metaphors" serves – if not backed by sufficient practice – mainly companies and is used strategically by them. For a study of how Meta used the metaphor of the "supreme court" for its Oversight Board, *see* Cowls et al., *supra* note 65.

68 SCHRAMM, GOVERNANCE BY EMULATION, *supra* note 35, at 100-78.

69 Rehearsing all these debates goes too far. For a recent and quite cunning overview, *see* Le Droit International Face à la Distinction Public/Privé [International Law and the Public/Private Distinction], COLLÈGE DE FRANCE, https://www.college-de-france.fr/en/agenda/lecture/international-law-and-the-publicprivate-distinction [https://perma.cc/BF4W-9XFP].

70 In that sense, even the extent to which warfare is a classic statist endeavor could be drawn into question, since the East India Company commanded a force of more than 200,000 troops in the late 18th century. *See generally* H. V. BOWEN, THE BUSINESS OF EMPIRE: THE EAST INDIA COMPANY AND IMPERIAL BRITAIN, 1756–1833 (2005).

71 Claus Offe, *Governance: An "Empty Signifier"?*, 16 CONSTELLATIONS 550, 555 (2009); *see* also Levi-Faur, *supra* note 16, at 12.

due to the work of the Chicago School, maintained the relatively sharp separation between the public legal sphere (*imperium*) and the private order of economy and property (*dominium*). State territorial changes were not expected to disturb the "international economic order" sustained by private entrepreneurs.[72]

Even as globalization accelerated, contemporary thought continued to treat private actors primarily as auxiliaries to the state, assuming that public institutions remained the central locus of political authority while corporations merely performed functions assigned within state-defined frameworks. In reality though, a perhaps more convincing counter narrative – or at least complexification of the story – is that the very designation as private for a corporation also unburdens that corporation from the tedious demands of public government. There is historical evidence that, especially in colonial contexts, the executives of the East India Company both pondered whether they were in fact sovereign and, quite strategically, invoked the private nature of the enterprise to dodge demands for justice by saying, in essence, 'we are, after all, not a state'.[73] *Mutatis mutandis* are current understandings of legal privileges and duties skewed in favor of the corporate form, which empowers anything incorporated as a firm to dole out unrestricted funds to elected politicians as a matter of speech while, at the same time, it must not, by default, respect a version of due process when dealing with individuals.[74]

In the academy, by the 1980s, the conceptual tools of "government" proved insufficient to capture the sum of the diverse ways in which public and private institutions manage common affairs.[75] The concept of "governance" was introduced as a means of describing a poly-centric world, highlighting the gradual retreat of the state, especially in economic terms,

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72 The imperium/dominion distinction draws on Carl Schmitt's famous analysis of the Westphalian system and the Eurocentric order. CARL SCHMITT, THE NOMOS OF THE EARTH IN THE INTERNATIONAL LAW OF THE JUS PUBLICUM EUROPAEUM (Gary L. Ulmen trans., 2006). Notwithstanding his controversial legacy, Schmitt's analysis remains epistemologically important, even if normatively questionable. *See* Joseph H.H. Weiler, *Cancelling Carl Schmitt?*, EJIL:TALK! (Aug. 13, 2021), https://www.ejiltalk.org/cancelling-carl-schmitt/ [https://perma.cc/5NSH-YGRP].

For the two other referenced works, *see* FOUCAULT, SECURITY, TERRITORY, POPULATION, *supra* note 40; Milton Friedman, *A Friedman Doctrine - The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES 379 (Sep. 13, 1970), https://www.enriquedans.com/wp-content/uploads/2019/08/friedman.pdf [https://perma.cc/SM73-GL64]. Some of these ideas later, half a century later, influenced theories of *lex mercatoria* during the globalization in the 1990s. *See* GUNTHER TEUBNER, GLOBAL LAW WITHOUT A STATE (1997).

73 *See* DOREEN LUSTIG, VEILED POWER: INTERNATIONAL LAW AND THE PRIVATE CORPORATION 1886-1981 (2020). However, archival evidence also indicates that some board members actively played with the idea of considering the company sovereign. Swati Srivastava, *Corporate Sovereign Awakening and the Making of Modern State Sovereignty: New Archival Evidence from the English East India Company*, 76 INT'L ORG. 690 (2022).

74 For an international perspective *see e.g.* KATHARINA PISTOR, THE CODE OF CAPITAL: HOW THE LAW CREATES WEALTH AND INEQUALITY (2019). For a concrete U.S. American version of this issue *see* Citizens United v. Federal Election Commission*,* 558 U.S. 310 (2010).

75 Levi-Faur, *supra* note 16.

and growing importance of non-state actors—such as NGOs and transnational corporations—who have entered domains previously reserved for governments or devised entirely new arenas of global connectivity, competition, and, at times, cooperation.[76] In contrast to traditional government, stylized as a command and control model, global governance denotes a "broad, dynamic, and complex process of interactive decision-making" that functions through both formal institutions and informal arrangements, thereby accommodating a range of interests across national boundaries.[77]

Following the neoliberal pivot of the mid-1970s, the role of the corporation in global governance in particular underwent a qualitative transformation, evolving from a secondary market participant to (imperfect) facilitator of governance results, ranging from industry standard-setting (a very old practice, see above the example of the Hanseatic League) to the multilateral institutions like the International Standards Organization to unilateral standard setting for internal purposes by central market actors, e.g. in social media or artificial intelligence.[78]

There are several factors, however, that distinguish the present moment from prior examples of global private ordering. To begin, the international system appears increasingly challenged. We witness a rapid erosion of the institutional and geopolitical order that once mediated private ordering regimes.[79] Today's world appears much more unstable than the 1970s, 1990s, or early 2010s. The entrenchment of individual tech tycoons in government – most notably the world's richest man, Elon Musk, in early 2025 in the United States – draw into question the overall distinction between economic and political power in domestic politics. The weakness of the state in effectively curtailing these trends appears – as many commentators noted – not as a result of its scaling down but its osmosis with Silicon Valley.[80] The aim is not traditional libertarianism, which seeks to

76 Disentangling the various conceptual histories, *see* Thomas Weiss, *Governance, Good Governance and Global Governance: Conceptual and Actual Challenges*, 21 THIRD WORLD Q. 795 (2000).

77 *Id.* at 810.

78 On standards, *see* HARM SCHEPEL, THE CONSTITUTION OF PRIVATE GOVERNANCE: PRODUCT STANDARDS IN THE REGULATION OF INTEGRATING MARKETS (2005).

79 For example, in 2025, the Commission scrapped legislation and allegedly curtailed enforcement of key regulations targeting large tech companies, reportedly under political pressure from the second Trump administration and its allies in Silicon Valley. Duc Minh Nguyet (Moon) Nguyen & Philip Luck, *The New Containment Doctrine: How the United States Is Using Trade to Stop Digital Regulation*, CTR FOR STRATEGIC & INT'L STUD. (Mar. 9, 2026), https://www.csis.org/analysis/new-containment-doctrine-how-united-states-using-trade-stop-digital-regulation [https://perma.cc/RPW8-KHKJ].

80 For a critical perspective, *see* SLOBODIAN & TARNOFF, supra note 25. For further discussion, *see* Maha Rafi Atal et al., *Oligarchic Sovereignty: Technology and the Future of Global Order*, 52 REV. INT. STUD. 1 (2026).

minimize state involvement as much as possible. Instead, the objective is to intertwine corporate power with state power, often through infrastructure.[81]

Complementarily, prior liberal norms regarding state violence (or the hiding thereof) crumble. Simply put, state power in many world regions appear more openly muscular and willing to project kinetic force than in prior decades.[82] It does so, in turn, increasingly reliant on tools provided by these very digital corporations. The complexity lies in the entanglement of technology and state power. Take the use of Palantir by the United States Immigration and Customs Enforcement (ICE)or the use of Anthropic's Claude in the 2026 strikes on Iran as an example. Even though the second Trump administration declared Anthropic a "supply chain risk", a category formerly reserved for foreign companies like Huawei, it continued to rely on the company's models.[83] Who calls the shots and who really has the upper hand in these situations is hard to say, and probably depends on the aspects of power and societal influence one considers.

Consequently, while the traditional (international) law and relations imaginary remains centered on the state, international organizations and the likes, the actual sites of important elements of global control have partially shifted toward private entities that possess de facto control over the infrastructures that enable and shape the conditions in which the former operate. Some, like the French theorist Bruno Latour might even argue that the material infrastructures themselves assume a form of material agency in this dynamic.[84] The state, international relations, and global governance, to an extent, are contingent on and fenced by digital infrastructures that are by virtue of laws created by the state – mostly corporate, contract, and property law – largely autonomous from the state. Those corporate actors benefit from the historically explainable but today strategically groomed regulatory self-restraint of the state while traditional loci of global ordering are potentially not even aware of how baked in they are.

As a result, even though the conventional imaginary of international law and relations continues to revolve around the state, international organizations, and similar entities, the locus of significant global control

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81 *Id*.

82 Examples ranges from the rhetorical to extensive warfare as in Ukraine, Gaza, Lebanon, and Iran as well as the international system's inability to intervene with inner-state warfare as in Sudan. Among these rich commentaries, *see e.g.* Oona A. Hathaway, *The Great Unraveling Has Begun*, N.Y. TIMES (Jan. 6, 2026), https://www.nytimes.com/2026/01/06/opinion/peace-conflict-war.html [https://perma.cc/P76S-XAPX].

83 Wong, *supra* note 9.

84 Theorizing infrastructure as a so-called 'actant' can help to highlight the relevance of infrastructural arrangements. However, this only moves the discussion from one constructed category (actor/actant) to the equally constructed categories of what one actually means with concepts like agency, control, influence, and causality. For further discussion, *see* Christian Bueger, Tobias Liebetrau & Jan Stockbruegger, *Theorizing Infrastructures in Global Politics*, 67 INT'L STUD. Q. 1, 4 *et seq*. (2023); For foundational context, *see* LATOUR, *supra* note 39.

has, in part, migrated toward private actors who wield de facto authority over the infrastructures underpinning and shaping the environments in which those traditional institutions operate. The infrastructures' existence and autonomy are secured chiefly through the legal frameworks of corporate, contract, and property law. These laws, crafted by the state, have rendered such infrastructures largely autonomous from it. Corporate actors, in turn, profit from a regulatory restraint that is historically explicable yet has become strategically cultivated, while conventional centers of global ordering may scarcely recognize just how deeply embedded within these infrastructures they already are.

IV. WHAT TO DO: ACCOUNTABILITY, PUBLICNESS, NEW THINKING

The foregoing analysis suggests that some contemporary corporate infrastructures cannot be adequately conceptualized within the inherited binaries that structure both legal doctrine and political theory.[85] They are neither merely private firms nor plausibly emergent sovereigns. Yet they exercise forms of power that are public in their effects, constitutive in their operation, and global in their reach. The normative challenge, therefore, is not simply to regulate large corporations more effectively. Rather, it is to confront and instigate a transformation in the very modalities and concepts through which societal organization is channeled, exercised, and understood.

One reason why infrastructural ordering, especially when exercised by corporations, remains largely unaccountable is persistent misclassification. The prevailing legal imagination continues to treat these actors primarily as market participants. Within this frame, the principal accountability mechanisms are competition, consumer choice, and corporate governance. Such mechanisms presuppose substitutability, exit, and the boundedness of corporate externalities. These assumptions are increasingly untenable in sectors characterized by infrastructural dependence, high switching costs, and deep technological integration into social and political life. Even when these mechanisms prove effective, their scope is limited to specific groups—such as the American electorate—rather than encompassing all individuals who are impacted.

Infrastructural corporations shape the conditions under which individuals communicate, societies deliberate, and states project power. Their decisions produce path dependencies that are difficult to reverse and often operate at temporal and spatial scales beyond those of conventional

85 The discursive stickiness of these binaries is remarkable, given the extensive scholarship discarding it. *See* Duncan Kennedy, *The Stages of the Decline of the Public/Private Distinction*, 130 U. PA. L. REV. 1349 (1982).

regulatory responses. To treat such actors as big, yet ordinary firms, is therefore to obscure their implications for societal self-governance.[86] Indeed, the legal categories of property, contract, and managerial discretion function, in this context, not merely as organizational tools but as devices that depoliticize what are, in substance, questions of collective ordering.

At the same time, it would be equally misleading to conceptualize these corporations as proto-states or quasi-sovereigns. Despite their profound societal effects, they remain culturally and organizationally embedded in the rationalities of business.[87] Their ethos is primarily oriented toward profitability and market dominance rather than the long-term stewardship of a political community.[88] At the same time, however, several infrastructural technology companies appear to possess a more comprehensive ideological substrate than dominant industries, such as finance. While the rise of high finance since the 1970s, alongside neoliberalism, dismantled forms of state corporatism and entrusted the resolution of a wide range of societal problems to "the market," it did not articulate a political project beyond carving out as much space for business as possible.[89]

By contrast, several of the leading figures – and presumably many decision makers – within the technology companies at issue here, especially those engaged in artificial intelligence, display an affinity for hyper utilitarian ideas of "effective altruism" and existential risks.[90] Further, many of these companies are deeply entangled with government, particularly through seed funding and contractual relationships. Their political orientations, however, appear to vary. Some tycoons, such as Elon Musk, seek to embed themselves within government rather than dismantle it. Yet they do not necessarily present themselves as serving a coherent contemporary political project beyond deregulation and speculative ambitions such as colonizing Mars.[91] Other companies, by contrast, are far more explicit about their political commitments here and now.

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86 *See* Rahman, *The New Utilities: Private Power, Social Infrastructure, and the Revival of the Public Utility Concept*, *supra* note 37, at 1668 *et seq*.

87 *See* DAUB, *supra* note 28; SHEERA FRENKEL & CECILIA KANG, AN UGLY TRUTH: INSIDE FACEBOOK'S BATTLE FOR DOMINATION (2021); HAO, *supra* note 24.

88 *Cf.* SHOSHANA ZUBOFF, THE AGE OF SURVEILLANCE CAPITALISM: THE FIGHT FOR A HUMAN FUTURE AT THE NEW FRONTIER OF POWER (2019); *Statement of Frances Haugen*, Whistleblower Aid (Oct. 4, 2021), https://www.commerce.senate.gov/wp-content/uploads/media/doc/Frances%20Haugen%20Written%20Testimony.pdf [https://perma.cc/NKB9-R3WG]; FRENKEL & KANG, *supra* note 87.

89 Friedman, *supra* note 72, at 379.

90 For an introduction to effective altruism, *see* William MacAskill, *The Definition of Effective Altruism*, *in* EFFECTIVE ALTRUISM: PHILOSOPHICAL ISSUES 10 (Hillary Greaves & Theron Pummer eds., Oxford Univ. Press 2019).

91 *See generally* SLOBODIAN & TARNOFF, *supra* note 25.

Particularly open about its political character is Palantir.[92] Palantir's CEO Alexander Karp has been described by Time Magazine as "an unashamed tech nationalist."[93] In a 2025 best-selling book, Karp argued that "Silicon Valley has lost its way" and that "the engineering elite of Silicon Valley has an affirmative obligation to participate in the defense of the nation and the articulation of a national project—what is this country, what are our values, and for what do we stand—and, by extension, to preserve the enduring yet fragile geopolitical advantage that the United States and its allies in Europe and elsewhere have retained over their adversaries."[94] Despite the significance of these claims – and what may well be realistic assessments of geopolitical competition in surveillance, artificial intelligence, and space – political relevance does not automatically confer political legitimacy. The question of who defines a "national project," or indeed whether a "national" project is the appropriate framework at all, is a matter of societal self-governance rather than managerial discretion.

This distinction matters. Traditional theories of public power presume that authority is exercised within institutionalized confines of justification, legal and electoral accountability. Corporate infrastructures, by contrast, exercise ordering effects without adopting the ethos or institutional form of public authority.[95] The extent to which innuenda to adjudicative control (via the Oversight Board), ethics and constitutions (via Anthropic's Long Term Benefit Trust and its 'constitutional AI') may yield cultural or even legal change remains to be seen.[96] Their governance remains managerial rather than constitutional, iterative rather than stabilizing, and frequently insulated from the symbolic and procedural expectations that accompany state action.[97] The result is a peculiar configuration in which public consequences arise from actors that neither understand themselves, nor are widely perceived, as political rulers.[98]

This hybridity of public and private elements and the material embeddedness of infrastructural ordering generate an accountability deficit that cannot easily be remedied by existing institutional models. State-based

92 The fact that Palantir *has* a strong political focus is not necessarily surprising though. It was founded in the early 2000s with seed funding of In-Q-tel, the Central Intelligence Agency's venture capital arm and worked closely with the government ever since, *cf* . Shane Harris, *Palantir Technologies Spots Patterns to Solve Crimes and Track Terrorists*, WIRED.COM (July 31, 2012), https://archive.is/dAhHW [https://perma.cc/5CM4-QMD9].

93 Nikhil Kumar, *Alex Karp*, TIME (Apr. 16, 2025), https://time.com/collections/100-most-influential-people-2025/7273812/alex-karp/ [https://perma.cc/A2SX-T6BA]

94 KARP & ZAMISKA, *supra* note 25, at 3, xiv.

95 Linnet Taylor, *Public Actors Without Public Values: Legitimacy, Domination and the Regulation of the Technology Sector*, 34 PHIL. TECH. 897 (2021).

96 SCHRAMM, GOVERNANCE BY EMULATION, *supra* note 35; *see also* Cowls et al., *supra* note 65.

97 *See e.g.*, Steve Yegge, *The Anthropic Hive Mind*, MEDIUM.COM (Feb. 6, 2026), https://steve-yegge.medium.com/the-anthropic-hive-mind-d01f768f3d7b [https://perma.cc/NY3L-AGZK]; Regarding Open AI, *see* HAO, *supra* note 24.

98 Taylor, *supra* note 94.

regulatory mechanisms struggle to match the transnational scope and technical complexity of these infrastructures. Among the most widely discussed infrastructure-focused approaches is the public utility model.[99] While the public utility commits to broad public benefit, its impact tends to be confined within specific jurisdictions. Professor K. Sabeel Rahman's thoughtful advocacy for "firewalls, public obligations, and public options" represents an essential contribution to the ongoing discourse and is likely to form a critical part of any comprehensive solution.[100] Nevertheless, many of these mechanisms, originally conceived with services such as electricity or water in mind, are well-equipped to enhance general access but often encounter difficulties in ensuring the sustained adaptation and delivery of dynamic services like artificial intelligence or content moderation. Unlike utilities such as water or electricity, these services depend on complex, evolving algorithmic processes that continually reshape the very product to which a public utility approach seeks to extend access.[101] This makes a public utility approach only somewhat suited to meet the challenge of infrastructural ordering, which is not only access but, importantly, design and operation. Much in the same vein, Professor Julie Cohen highlights that public utility approaches for digital infrastructures remain "relatively insensitive to questions about infrastructure configuration and input sourcing, and it has proved poorly designed for handling problems of infrastructure redesign and transition."[102] The "public obligation" component proposed by Professor Rahman, moreover, frequently draws upon forms of emulative governance. This approach – I call it '*Governance by Emulation'* – carries both notable advantages and challenges, especially when seeking to translate public-oriented principles into environments shaped by profit-driven private ordering.[103] Jurisdictional fragmentation, dependence on corporate expertise, and geopolitical competition further

99 *See* Rahman, *The New Utilities: Private Power, Social Infrastructure, and the Revival of the Public Utility Concept*, *supra* note 37; Cohen, *Infrastructuring the Digital Public Sphere*, *supra* note 19.

100 *See* Rahman, *The New Utilities: Private Power, Social Infrastructure, and the Revival of the Public Utility Concept*, *supra* note 37, at 1645 *et seq*. For further discussion, *see* K. Sabeel Rahman, *Infrastructural Regulation and the New Utilities Symposium: Revisiting the Public Utility: Essay*, 35 YALE J. REG. 911 (2018).

101 For AI perspective, *see e.g.* Jennifer Cobbe, Michael Veale & Jatinder Singh, *Understanding Accountability in Algorithmic Supply Chains*, *in* 2023 ACM CONFERENCE ON FAIRNESS, ACCOUNTABILITY, AND TRANSPARENCY 1186 (2023); Paul Friedl, *Dis/Similarities in the Design and Development of Legal and Algorithmic Normative Systems: The Case of Perspective API*, 15 L. INNOVATION & TECH. 25 (2023).

For content moderation, *see* Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 HARVARD L. REV. 1598 (2018); MacKenzie F. Common, *Fear the Reaper: How Content Moderation Rules Are Enforced on Social Media*, 34 INT'L REV. L., COMPUT. & TECH. 126 (2020); Robert Gorwa, Reuben Binns & Christian Katzenbach, *Algorithmic Content Moderation: Technical and Political Challenges in the Automation of Platform Governance*, 7 BIG DATA & SOC'Y 1 (2020).

102 Cohen, *Infrastructuring the Digital Public Sphere*, *supra* note 19, at 22.

103 SCHRAMM, *supra* note 22.

weaken the capacity of public authorities to impose effective constraints.[104] Market-based forms of accountability fare little better.[105] In contexts where infrastructures are deeply embedded in everyday practices and collective systems, meaningful exit options are limited. Users, firms, and even governments often find themselves locked into technological ecosystems that are difficult to replace.

Democratic accountability presents additional conceptual challenges. If infrastructural decisions affect globally dispersed publics, it becomes unclear who constitutes the relevant demos and which institutional channels through which their preferences might be articulated.[106] Efforts to imagine global voting or plebiscitary forms of participation also risk reproducing the very pathologies that digital infrastructures have amplified in local contexts—namely that it is misguided to try to square the logic of classic lawmaking with the day-to-day of infrastructural power.[107] Legitimate norm-creation is an important goal. Sufficient normative practice, however, does not derive from rules and process alone but from embedding via technological and infrastructural design, supervision, and culture.[108] In domains closely linked to societal communication and knowledge production, majoritarian mechanisms may privilege the loudest, most organized, or most algorithmically pushed constituencies rather than outcomes that are epistemically reliable or normatively just.[109] The normative intuition that legitimacy can be secured through simple aggregation of preferences therefore appears increasingly fragile.

If corporate infrastructures represent neither conventional market actors nor emergent sovereigns, then accountability must be reconceptualized in

104 Regarding the European Union's legislative process, *see* SCHRAMM, *supra* note 46; Emilia Korkea-aho, *Legal Lobbying: The Evolving (But Hidden) Role of Lawyers and Law Firms in the EU Public Affairs Market*, 22 GERMAN L.J. 65 (2021); Fleischer, *supra* note 25.

105 Emilie M. Hafner-Burton, *Sticks and Stones: Naming and Shaming the Human Rights Enforcement Problem*, 62 INT'L ORG. 289 (2008); Marcia Narine, *From Kansas to the Congo: Why Naming and Shaming through the Dodd-Frank Act's Corporate Governance Disclosure Won't Solve a Human Rights Crisis*, 25 REGENT UNIV. L. REV. (2013).

106 For reflections, *see* Benedict Kingsbury & Nahuel Maisley, *Infrastructures and Laws: Publics and Publicness*, 17 ANNU. REV. L. SOC. SCI. 353 (2021).

107 *Id.*; *See* Rahman, *The New Utilities: Private Power, Social Infrastructure, and the Revival of the Public Utility Concept*, *supra* note 37, at 1689 *et seq*.; PARIS, *supra* note 61.

108 For the relevance of internal culture in sectors like banking and sports governance, *see* Anjan V. Thakor, *Corporate Culture in Banking*, ECON. POL'Y REV. 5 (2016); Miguel Maduro & Joseph H.H. Weiler, *'Integrity', 'Independence' and the Internal Reform of FIFA*, *in* GOOD GOVERNANCE IN SPORT 129 (2021).

109 Rune Karlsen et al., *Echo Chamber and Trench Warfare Dynamics in Online Debates*, 32 EUR. J. COMMC'N 257 (2017); Seth Flaxman, Sharad Goel & Justin M. Rao, *Filter Bubbles, Echo Chambers, and Online News Consumption*, 80 PUB. OP. Q. 298 (2016); Matteo Cinelli et al., *The Echo Chamber Effect on Social Media*, 118 P.N.A.S. 1 (2021); Rafael Jimenez-Duran, *The Economics of Content Moderation: Theory and Experimental Evidence from Hate Speech on Twitter* (George J. Stigler Ctr. for Study of the Econ. & State Working Paper No. 324 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4590147 [https://perma.cc/G7CK-BWVY].

institutional terms that reflect their distinctive position.[110] What is required is not merely the extension of existing regulatory tools but the gradual construction of forms of infrastructural publicness—arrangements that recognize the constitutive role of these systems in structuring collective life and enable newly assembled groups means of self-governance as well as respect for certain norms of justice.[111] As Professor Amna Akbar argued in the context of police reform, "[c]onstitutional meaning is not simply located in the courts, legislature, and executive, . . . social movements develop new and challenging constitutional meanings, contributing to our working constitutional order. They contest the shape of power, law, and society."[112] Similarly, the institutional and normative experimentation that is needed to incrementally contain infrastructural ordering as a just form of governance will require learning from diverse, global communities and combine self-organizing with existing legal approaches.[113] Importantly, despite the relevance of infrastructure and the materiality of its power, the law will remain, inevitably, part of the solution and part of the problem.[114] Experimentation has already begun, ranging from local, communitarian initiatives such as energy cooperatives to activist networks of self-governance—for example, those that emerged during the Black Lives Matter protests in 2020 and resurfaced in local resistance to – partly Palantir-enabled – ICE enforcement in 2025 and 2026.[115] Some of these networks pursue broader political agendas beyond addressing a single issue, while others arise in response to market failures in underserved communities. Such arrangements may combine elements of domestic regulation, transnational coordination, and novel participatory or deliberative bodies capable of representing affected publics without presupposing a fully formed global polity.[116] They may also involve –

110 Debates on how to solve all kinds of principal-agent dilemmas are an ongoing debate in corporate governance scholarship. *See e.g.* Eric A. Posner & E. Glen Weyl, *Quadratic Voting as Efficient Corporate Governance*, U. CHI. L. REV. 251 (2014).

111 *Id.*

112 Akbar, *supra* note 30, at 475.

113 Highlighting for example the power to decide what gets "datafied," *see* Angelina Fisher & Thomas Streinz, *Confronting Data Inequality*, 60 COLUM. J. TRANSNAT'L L. 829 (2022).

114 Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937, 978 (2006) ("The focus on action in a separate sphere broadly defined as civil society can be self-defeating precisely because it conceals the many ways in which law continues to play a crucial role in all spheres of life."); SCHRAMM, GOVERNANCE BY EMULATION, *supra* note 35, at 12 ("P]ublic law ideas remain strong while public law actors face ever greater challenges to effectively execute their laws vis-à-vis digital corporations.").

115 For the former, *see* PARIS, *supra* note 61. For the latter, *see e.g.* Alyssa Oursler, '*2020 Never Ended': How Black Lives Matter Organizing Taught Minneapolis to Handle ICE Surge*, GUARDIAN (Jan. 20, 2026), https://www.theguardian.com/us-news/2026/jan/20/minneapolis-organizes-trump-ice-crackdown [https://perma.cc/H7WE-J9K9].

For a more administration-focused perspective, *see* JULIE E. COHEN ET AL., MECHANISMS FOR INCLUDING PUBLICS IN ADMINISTRATIVE GOVERNANCE (2025) [https://perma.cc/8MRF-3KBU].

116 For an American perspective, *see* K. SABEEL RAHMAN & HOLLIE RUSSON GILMAN, CIVIC POWER: REBUILDING AMERICAN DEMOCRACY IN AN ERA OF CRISIS (2019).

potentially with a resurgence of universalism – plain adherence to core principles of justice like equality and dignity rather than profit.[117]

Recent experiments — from private adjudicatory boards to ethics-based design frameworks — suggest that the search for accountability is already underway, albeit in fragmented and normatively ambivalent forms.[118] These initiatives often emulate established public law models, borrowing concepts such as proportionality, due process, or constitutional constraint. While such processes of institutional bricolage cannot substitute for democratically grounded authority, they indicate a growing awareness that infrastructural power must be rendered visible, contestable, and subject to principled limitation.

The embeddedness and materiality of infrastructural ordering further complicate efforts at contestation and reform. On a practical level, it is difficult to alter systems that have already been constructed, that is physically built. Once a material infrastructure is established, available choices are often limited to adapting its existing configuration rather than fundamentally changing it and its downstream normative consequences. Economically, construction is costly. The development of material and computational infrastructures typically demands substantial upfront investment, making it so expensive that a range of stakeholders—including investors, local politicians, regulators, and industry participants—may be motivated to preserve a system even if it proves less profitable than anticipated.[119] Their interest in maintaining the status quo often stems from a desire to avoid defaults or broader systemic crises.

V. CONCLUSION

Ultimately, infrastructural ordering, and particularly the role of digital corporations within it, challenges our understanding prevailing understandings of global governance both in terms of *who* acts and *how* ordering is effectuated. It is immediate, material, largely corporate-controlled and enables highly tailored governance interventions. The ordering effects of these infrastructures are sufficiently far-reaching to demand public accountability, yet no pre-existing institutional framework

117 It is, of course, premature to draw definitive conclusions, yet one might reasonably anticipate that the next philosophical 'turn' will – in a somewhat reflective way – take another look at universal principles of morality and justice. This is particularly plausible given that certain laudable aspects of deconstructionism and critical theory have, paradoxically, been redirected against the very ideals they once sought to advance. *See* Seyla Benhabib, *Another Universalism: On the Unity and Diversity of Human Rights*, 81 PROC. & ADDRESSES OF THE AM. PHIL. ASS'N 7 (2007); STEFAN EICH ET AL., ANOTHER UNIVERSALISM: SEYLA BENHABIB AND THE FUTURE OF CRITICAL THEORY (2023).

118 *See e.g.* K. Sabeel Rahman & Jocelyn Simonson, *The Institutional Design of Community Control*, 108 CALIF. L. REV 679 (2020).

119 For an overview of the political economy of classic infrastructures, *see* JOSÉ A. GÓMEZ-IBÁÑEZ & ZHI LIU, INFRASTRUCTURE ECONOMICS AND POLICY: INTERNATIONAL PERSPECTIVES (2022).

is clearly capable of supplying it. The challenge, therefore, is not simply to discipline firms through regulation. Rather, regulation must be accompanied by the invention of institutional forms that can render infrastructural power answerable to the global publics whose lives it structures, without assuming the prior existence of a unified global community or sovereign authority.

In this sense, the rise of corporate infrastructures signals a deeper transformation in the organization of public-facing power at a planetary scale. Recognizing and theorizing this transformation is a first step toward addressing its normative implications. Whether global governance will evolve toward more robust forms of infrastructural accountability, or whether existing asymmetries will further harden into hierarchies of technological and proprietary control, remains an open question. What is clear, however, is that the conceptual vocabulary of the twentieth century is no longer sufficient to grasp the stakes of the present.