



THE DEVELOPMENT OF PUBLIC LAW IN THE POSTMODERN ERA: IDEALISM AND REALITY IN A DEMOCRACY

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Article history:	Abstract:
Received: 28 th February 2025	The research deals with the relationship between the development of public law and the impact of postmodern philosophy on its democratic principles. Public law is characterized by its flexibility derived from judicial precedents, which makes it able to adapt to changes.
Accepted: 26 th March 2025	The paper explores the idealism inherent in common law, which is seen as a tool for protecting individual rights and promoting justice through precedent-based judicial decisions, and is supposed to be independent of political pressures, which
	These challenges are embodied in cases such as the US Supreme Court's ruling in <i>Obergefell v. Hodges</i> (2015) that legalized same-sex marriage, which reflected the evolution of values but raised controversy about judicial overreach of legislative will.
	The research proposes solutions to achieve a balance between idealism and reality, such as incorporating legal pluralism, enhancing transparency in the judiciary, and cooperating with legislators to keep up with developments. It concludes that public law needs to redefine its role.

Keywords: Law

INTRODUCTION:

First: Statement of the Problem

In this respect, critical questions will arise as to whether public law can amalgamate its traditional principles with the pressing needs of the new reality. Can public law really continue to guard the rights of the individual and the community in an age of globalization and fast-tracked technological innovations? How can the law be neutral anymore in the addictive atmospheres of politics and economics? And will the un-elected judiciary be able to keep its legitimacy in the democratic state? The research shall analyse the contradictions between the idealism posited by public law and the imposed reality of the postmodern era, with an assured focus on the actual role of the judiciary in spreading out justice in a fast-changing society and politics. The research will seek to propose suggestions for modernizing public law to be fitting to modern needs, provided that in doing so, the values based onto democracy would never be compromised..

Second: The Importance of the Research

The motivation of this research arises from the profound changes that public law is going through owing to postmodern philosophy's impact on justice and legal authority. Public law has, for quite some time, acted as a moving instrument in doing justice through judicial precedents and liberal interpretations. The past few decades have witnessed a turning point in the very essence of public law, and now it faces existential challenges to its viability and efficacy as it tries to keep pace with the rapid changes in democratic societies..

Some philosophical challenges have arisen from postmodernism; the perception of law is no longer as a neutral and independent body but as a vehicle for the repression of existing power structures, with all signification of justice therein reducing to a mere masquerade. Some political dimensions emerge too: there is a contradiction, in the case of democracies, between the power of the judiciary, which is an unelected body, and the principle of popular sovereignty; the growing influence of political parties and elites in the appointment of judges and the determination of judicial decisions makes it imperative to rethink the role of public law in achieving justice without sliding into political bias. Meanwhile, public law faces technological and technical challenges: it is becoming unable to react, or in any case only slowly, to new issues, such as digital privacy, artificial intelligence, and legal globalization. These will develop, at a pace



that often exceeds the ability of the canonical law to respond through precedents. All these features explain the importance of this research: resorting to an in-depth analysis of public law in the modern era while at the same time suggesting ways its reforms should be modernized to ensure justice in the face of-and response to-social and political dynamics, without sacrificing its credibility and democratic legitimacy..

Third: Research Objectives

1. In light of the above objectives of the research, this study aims to examine the philosophical changes with an impact on public law in the postmodern era. More specifically, the aim is to investigate the following: examining how postmodern philosophy influenced notions of law and justice; studying the interrelationship between legal relativism and the possibility of attaining judicial neutrality; and exploring the role of public law within modern democratic systems. This would include: the judiciary versus popular sovereignty-the drawbacks that public law must face within democratic contexts; and determining how political patronages of individual justices relate to the question of judicial independence and legitimacy. The other major facets of public law would look at various contemporary challenges currently facing this kind of law. The most important among these would concern: the phenomena of globalization and modern technology impacting the ability of public law to remain in tandem with growing societal changes; studies upon present-day topics like digital privacy, artificial intelligence, and data protection-as framed by public law.

Fourth: Research Methodology

This research accepts a multidimensional methodology of philosophical analysis, critical study, and a comparative approach providing an integrated vision of evolution in public law, postmodernity era. It can be described: 1. Analytical Methodology: Analyzing the philosophical developments influencing public law with a special bearing from the postmodern standpoint; investigating the contribution of legal relativism and intellectual pluralism to modern judicial rulings; analyzing the precedents relied upon) and the role they pay in building any concept of justice in a democratic system. 2. Case Study Approach: Examining landmark cases such as Obergefell v. Hodges (2015) regarding same-sex marriage and digital privacy cases to establish how public law couches social and political changes. This research aims to combine both approaches to provide a comprehensive scope of how postmodernity has accreted to public law, with certain recommendations on updating it for contemporary legal challenges..

Chapter One: Philosophical Foundations and Historical Development of Public Law

Public law is one of the superior legal systems embraced by democratic states for being based on the previous court decisions and precedents instead of on codified statutes. Thus, public law provides a high degree of flexibility in responding to societal transformations. However, a series of questions in respect to the very foundations upon which public law is built arose due to the postmodern dialectic,-that is, questions that relate to the degree in which public law is neutral and independent concerning political and social authority.¹

This chapter examines, from the perspective of postmodernism, the philosophical underpinnings that inspire public law. It further analyzes the ideals of legal relativism and the philosophy of pluralism regarding the concept of justice and the rule of law. The chapter also outlines the historical development of public law and factors that contributed to its emergence, particularly in democratic systems. It juxtaposes the role of public law in countries with heavy reliance on it and in those that depend on codified laws or similar forms of legislation. Aim of this study is to know about philosophical and political thought that provides a rationale for the coming into life and development of public law and provide an evaluation of the qualification of public law to the modern-day challenges wherein it exists in the pace of rapid social as well as political changes..

Section One: The Philosophical Foundations of Public Law in the Context of Postmodernism

Public law refers to a novel legal system built on past cases and principles derived from them; making it more flexible and responsive to social and political changes than that of codified laws. Yet, postmodernism has gradually brought about a philosophical revolution in concepts of law and justice. The law could no longer be seen as neutral and absolute but rather viewed along relative contexts determined by factors like the power structures, identity, and cultural changes.²

Postmodern philosophy aspires to deconstruct traditional law concepts, questioning its claims of objectivity and neutrality. It stresses that, in effect, law represents power relations within society more than it stands for abstract principles of justice. At that point, the research raises the question of how public law is any different from political and

¹ Mustafa Fadhel Karim Al-Khafaji Article entitled "The Postmodern Concept of Law: A Critical Study in the Philosophy of Law "Published in the Journal of the University of Babylon for Humanities, 2025, p. 113

² Abdullah Omar Al-Khawli, an article entitled: "The Impact of Postmodernism on Realist Legal Schools in Western Jurisprudence," Journal of the Kuwait International Law School, 2021, pp. 377–452 .



social influences and whether there is space for the reflection of such plurality of perspectives and intellectual trends in modern societies.³

This chapter presents an analysis of the philosophical basis informing public law, regarding the influence of postmodern philosophy on concepts of justice, law, and judicial authority. This analysis helps understand the challenges this legal system has been faced with amid contemporary intellectual and political changes..

Subsection One: The Concept of Public Law and the Impact of Postmodern Philosophy on It

First: The Concept of Public Law

Common Law is one of the world's major legal systems. It is based on the principle of judicial precedent whereby the opinions of the court developed into legal principles for future application on similar matters. It originated in England in the medieval era and went on to spread to such countries as the United States, Canada, and Australia, where it became a major bulwark of democratic legal systems..⁴

The distinct features of public law (common law) set it apart from other legal systems. They include 1. Flexibility and Continuous Development. Common law derives from judicial reasoning, which allows adaptation to social and political changes without the need for wide-reaching legislative amendments. 2. The Judiciary as the Primary Source of Law. In contrast to codified legal systems, the judiciary in common law systems is a real legislative authority through its own rulings and precedents. 3. The Principle of Judicial Precedent (Stare Decisis). Courts are bound by earlier decisions in similar cases, thus presenting a more stable and uniform basis for decisions. Justice through Interpretation and Construction: This system allows judges to interpret and develop the law, with reference to the contemporary situation functioning to fill the gaps in the law; hence, the laws are more flexible when it comes to this aspect..⁵ In spite of these advantages, public law is beset with great challenges that have come as a result of various shifts in thought and philosophy that postmodern philosophy has brought. This has completely changed the notion of law itself, proposing instead upheaved actual significance, and questioned its independence from political, economic, and social forces..

Second: The Impact of Postmodern Philosophy on Public Law

Judges' decisions anyhow cliched, dependent on the demeaning cultural and social background in which they live, make the law instrumental to excessive subjectivism. Protesting against the traditional view of judicial independence in the common law systems. Add to this a second thoughts on pluralism of legal views and the deconstruction of justice in postmodernism: Justice is not a single system by which nations are bound, but a series of multiple mutinies signifying differing sections and perspectives in society. Negotiation, meanwhile, becomes instrumental in carrying out justice according to power dynamics fixing tempers. Insert, as examples of other nontraditional legal incidents, Ministy Rights: While judicial precedents on common law materials are utilized to protect the rights of the relatively weaker sections of society, it becomes evident that these precedents might not represent all interests equally in accordance with postmodern thinking. Technological concerns reflected in the presentation of artificial intelligence and digital data protection depicts new challenges, yet new interpretations that have now alighted in public law expose the weaknesses of preconceived traditional legal material. Political-economic interdependence in the space of public law has thus been made alive in the postmodern perspective.. Some critics of the legal systems assert that judges in common law countries face political pressures in their rulings, especially when it comes to cases that involve government interests or large corporations. In digital privacy cases, certain court rulings favor large tech companies at the expense of individual rights, a situation illustrating the influence of economic interests on the workings of public law. Moreover, many high-court judicial appointments take place amid heated political maneuverings, casting doubt on the possibility of public law functioning perfectly in a neutral atmosphere..

Researcher's Perspective

Nevertheless, that analysis suggests that, despite the flexibility and adaptability of public law, it cannot be disengaged from those philosophical and political contexts that produced it. The impulse of postmodern philosophy has challenged the idea of neutrality in the law and reminded us directly of the way power relations in society shape the law. Thus, the

³ Ali Aboud Al-Muhammadawi, translated by Dr. Harith Muhammad Hassan and Dr. Basem Ali Khreisat, introduction by Ali Aboud Al-Muhammadawi, Postmodernism: A Study of Social and Cultural Transformations in the West, Ibn Al-Nadim Publishing and Distribution, p. 61

⁴ Muhand Walid Al-Haddad, Introduction to the Study of Law, Dar Al-Kutub, 2008, p. 114

⁵ Ali Aboud Al-Muhammadawi, translated by Dr. Harith Muhammad Hassan and Dr. Basem Ali Khreisat, introduction by Ali Aboud Al-Muhammadawi, Postmodernism: A Study of Social and Cultural Transformations in the West, Ibn Al-Nadim Publishing and Distribution, p. 61



intense possibility of modernity has invited the rethinking of how public law will develop in the future, enabling it to realize justice qualities behind ever-shifting paradigms of intellect and technology while accepting core values of legal stability and democracy..

Subsection Two: The Relationship Between Legal Relativism and Judicial Neutrality in the Context of Postmodernism

First: The Concept of Legal Relativism and Its Impact on Public Law

Legal relativism is one of the pivotal concepts introduced by postmodern philosophy. In opposition to such conceptions are the fixed and universal legal standards that exist independently of social, political, philosophic, and cultural contexts. According to this worldview, law is not a neutral and objective entity; it is an ongoing creation reflecting the pressures of a variety of metamorphic variables.⁶

1. Legal Relativism and Interpretive Pluralism

This perspective runs contrary to the prevalent traditional legal thinking in common law that the judicial precedents establish consistent standards¹⁰ that ensure legal inertness. Since this type of postmodernism acknowledges that there cannot be such a fixed and rigid code, that's the reason why it opens up a discourse to the idea of the law as just that text, an open text to various readings of the law depending on the context in which it is to be read into.⁷

For instance, in civil rights and human rights cases, the interpretation of legal texts varies from judge to judge, from court to court, and even from one social and political context to another. The various decisions regarding same-sex marriage, abortion, and freedom of expression underscore the extent to which interpretations of the law differ because of cultural and political factors, showing how law is not traditionally neutral..

2. The Impact of Legal Relativism on the Concept of Justice

Under legal relativism, justice no longer appears as an absolute value that can by itself be achieved through the application of laws; it is instead an outcome of negotiations, representative of the balance of power existing within a given society. The concept of justice, in this case, becomes one that is fluid and embedded with context, formed by the historical and political contexts in which it is put into effect..⁸

This idea is reflected in public law through cases that require judicial reasoning beyond existing precedents, such as:

- **Digital Privacy:** In light of technological advancements, judges face new challenges that require reinterpretation of old laws to fit the realities of the digital age.
- **Refugee and Migrant Rights:** The application of immigration and asylum laws varies according to the political and economic conditions of each country, reflecting the relative nature of law.

Thus, legal relativism reinforces the idea that law does not operate independently of social, economic, and political forces—it is influenced by them and evolves accordingly.

Second: The Problem of Judicial Neutrality in the Postmodern Context

1. Ideological Biases of Judges

In common law systems, an independent nature of judges from all forms of political and economic influence is presumed. In effect, decisions made by these judges normally reflect some form of ideological or cultural bias. For example, in the United States, the decisions of the Supreme Court are often reflective of the political orientations of the justices, who are appointed by presidents of certain political party lineages. According to postmodern thought, judges do not only base the ruling on "legal facts," but rather allow their background—be it social, cultural, or ideologically—in making those decisions also. For instance, a good number of the decisions of the Supreme Court of the United States reflect the political orientations of the justices who have been appointed by presidents with political affiliations..

2. The Influence of Political Factors on Judicial Independence

While the common law system uses juro-prudential brakes to maintain legal stability, this stability is subject to change due to political influences, particularly in matters where the government or elite's interests are at stake. This can be seen in:

- **Judicial Appointments:** In many countries, the appointment of judges to higher courts is influenced by political considerations, which may lead to biased rulings that serve particular agendas.
- **Economic Pressures:** In some cases involving major corporations, economic interests may influence judicial decisions, raising concerns about the independence of the judiciary.

Mustafa Fadhel Karim Al-Khafaji, an article entitled "The Postmodern Concept of Law: A Critical Study in the Philosophy of Law" published in the Journal of the University of Babylon for Humanities, 2025, p. 113⁶

⁷ Muhand Walid Al-Haddad, Introduction to the Study of Law, Dar Al-Kutub, 2008, p. 114

⁸ Ahmad Hamash, article: "International Legitimacy: An Embodiment of Justice or a Balance of Power?" published in the Right of Return Magazine, 2004, p. 61 .



2. Impact on Public Trust in the Judicial System

People have become increasingly aware of how law operates in the traditional sense due to the influence of postmodern philosophies.

3. This has contributed to a decline in public trust in the judicial system, especially when court decisions are perceived as biased or influenced by political or economic interests.

Researcher's Perspective

Two major questions arise about legal relativism and judicial neutrality, on the part of consequent postmodernity: how is it that public law true to all considerations, takes its distance from social and political influences? Public law is founded on precedents, making it less prone to changes; however, legal interpretations are intertwined with cultural and political contexts, rendering it really amenable to variations and conflicting interpretations. In that regard, the greatest challenge seems to have become how to strike a balance between the presumed stability of public law and the assumed need for adjusting to changing realities in democratic societies to be able to grant justice while keeping the faith of the people in the judiciary intact...

Section Two: The Historical Development of Public Law and Democratic Transformations

Public law has gone through a long line of developments, beginning from medieval England. It started as a system inspired by customs and traditions, only to evolve into a comprehensive legal system most often built from judicial precedent with varying degrees of flexibility in legal interpretation. Political and social upheaval have greatly contributed to the way these characteristics are fashioned as public law has further adapted itself to accommodate modern society. In essence, public law, therefore, has become one of the more flexible legal systems which can accept and adapt to shifting democratic aspirations and the demands of society as a whole.⁹

With the growth of democratic thought, public law has become one of the principal instruments that could be used to ensure the protection of rights, freedoms, and liberties. The judiciary assumed a fundamental role in developing and embedding the rules of constitutional principles and maintaining the separation of powers. Nevertheless, that evolution was not all smooth. The states will have political, technologic, and economic changes that influence the level of judicial independence and, at the same time, call into question whether public law could respond to democratic transformations at all without the violation of justice and neutrality of the law.¹⁰

This section looks into the historical phases of the development of public law, particularly considering the impact of democratic development on its shaping. It also looks into public law's challenges that arose in connection with political and social changes, offering insights into its ability to continue in the mode of balance in these modern changes..

Subsection One: The Emergence and Development of Public Law in Democratic Systems

First: The Historical Roots of Public Law

Common Law has its origin in medieval England under the reign of King Henry II from 1154 to 1189, when judges sent by the King started to come up with the basic outlines of a unifying legal system based on judicial precedents instead of some fragmented local laws.. Before the emergence of Common Law, England relied on localized legal systems based on customs and traditions, where each region applied its own set of rules without a unified legal framework.¹¹.

With the expansion of royal authority, royal judges began recording the decisions issued in various cases, leading to the emergence of the principle of judicial precedent (**Stare Decisis**), which means that courts are bound to follow previous rulings when deciding similar cases. This development contributed to the establishment of unified legal rules that could be applied across the entire country, thereby enhancing the stability of the legal system and promoting its unification.¹².

⁹ Mustafa Fadhel Karim Al-Khafaji, an article entitled "The Postmodern Concept of Law: A Critical Study in the Philosophy of Law," published in the Journal of the University of Babylon for Humanities, 2025, p. 113 .

¹⁰ Abdullah Omar Al-Khawli, an article entitled: "The Impact of Postmodernism on Realist Legal Schools in Western Jurisprudence," Journal of the Kuwait International Law School, 2021, pp. 377–452 .

¹¹ Hamdi Sayed Mohamed Mahmoud, *Philosophy of Law in Modern Times:*

Manifestations of European Thought in Building Legal Systems, an article published on the Al-Hewar Al-Mutamadin website 2024

¹² Ahmad Hamash, article: " Legitimacy: An Embodiment of Justice or a Balance of Power?" published in the Right of Return Magazine, 2004, p. 61.



Characteristics of Early Common Law:

1. **Flexibility and Adaptability:** Judges played a crucial role in interpreting and adapting laws to changing circumstances, making Common Law more dynamic compared to rigid customary laws.¹³.

Certainly! Here's the full English translation of your text:

Characteristics of Early Common Law:

2. **Reliance on Judicial Reasoning:** Instead of adhering to rigid legal texts, judges relied on principles of equity and justice when issuing rulings.
3. **Influence of Political and Social Factors:** The development of Common Law was affected by political conditions. At the beginning, it was the means implemented by the monarchy to try to consolidate power; however, it later evolved into a means to ensure justice and protection of individual rights.

Second: Common Law in Modern Democracies

The transformation in democratic systems over recent centuries has led to equally fundamental transformations in Common Law in its nature and scope—founded in individual rights and freedoms in particular with the passage of constitutional democracy placing heavy emphasis on the rule of law and the separation of powers..

1. **Judicial Independence in Democratic Systems**

One of the most crucial advancements that the Common Law has gone through under democracy is the promotion of independence of the judiciary. Today the judiciary is, by far, no longer an offshoot of the executive branch but has assuming the capacity of an independent authority assisting for the implementation of justice and to guarantee the fair application of the law. In the U.S., the judiciary assumes an important role in interpreting the Constitution itself, and the 1803 landmark case of *Marbury v. Madison* illustrated the principle of judicial review, that of striking down unconstitutional Laws. In the UK, even if there is no written constitution, Common Law has helped further bolster parliament sovereignty, while preserving for the judiciary a role in the protection of fundamental rights..

2. **Strengthening Individual Rights and Freedoms**

With the rise of modern liberalism, Common Law has become a mechanism for making sure that individual rights are safeguarded, since the judges will interpret laws to promote personal freedom, such as The right to a fair trial. Common Law puts emphasis on the necessity for an independent and fair trial for every individual, the turning point being in modern times when *Miranda v. Arizona* (1966) established the right that suspects should be made aware of the legal rights that they have. Freedom of expression. It was through court rulings in many of Common Law that free speech was expanded to affirm that individuals have a right to express opinions without unjustified government interference..

3. **Adapting to Modern Developments**

The law of common law has remained dynamic, evolving to fulfill the various demands of modern-day life. Among the most notable fields for the evolution of common law are: Digital law: Now that modern technologies have come into play, common law has faced some new challenges involving the reinterpretation by courts of traditional laws to deal with digital-era issues on digital privacy and intellectual property. Environmental law: Common law has propounded the interpretation to provide environmental protection and establish laws to prevent pollution and degradation..

Researcher's Perspective

Common Law was developed ever since its establishment from being a system based on customs and traditions into an integrated legal framework that provides certain justice, adapted to modern democratic transformations. However, it has to contend with significant challenges stemming from contemporary political and technological developments. This raises the question of whether, indeed, the Common Law will remain capable of ensuring a just and efficient legal system in the exponentially changing world..

Subsection Two: The Impact of Political and Social Transformations on Public Law

First: The Role of Political Shifts in Shaping Public Law

The very development of public law under polithouses has been a leading influence within decision-making changing its very principles and legal interpretations. As systems of governances evolved or democracy expanded, such

¹³ Abdul Razzaq Al-Sanhouri, The Role of the Judiciary in Protecting Basic Rights and Freedoms, Published by: Dar Al-Nahda Al-Arabiya, Year of Publication: 1998, p. 91



changes found reflection in the very nature of judicial decisions, alongside the role of courts as protectors of rights and freedoms..¹⁴.

1. Revolutions and Constitutions and Their Impact on Public Law

The Glorious Revolution in England (1688): This moment was a decisive turning point in public law with the consolidation of judicial independence and the affirmation of the rule of law, thus providing the foundation for constitutional governance in Britain. The American Revolution (1776): This resulted in a judicial system based around common law adapted to modern democratic principles, with the Supreme Court created as the legitimate body of interpreting the Constitution. The French Revolution (1789): Though adopting a system of civil law, it directly influenced the public law to found equality before the law and limit judicial privilege for the nobility..

2. Modern Democracy and the Empowerment of the Judiciary

Because of the advancement of democracy, public law has come into the forefront as an ultimate means to provide constitutional rights, specifically through the emergence of the institute of judicial review that empowers courts to invalidate unconstitutional laws. In this context, U.S. Supreme Court has been instrumental in outlining the public policy, particularly through Brown v. Board of Education (1954), which terminated racial segregation in schools..

3. Political Changes and Their Impact on the Neutrality of Public Law

Though public law intends to protect judicial independence, it will always be susceptible to political developments— whereby intervention by the executive administrations in judicial appointments or other decisive moments within court operations is a common instance. For example, some democratic systems, through political affiliation, appoint their judges, and this creates such a politicized judiciary that pre-judgment becomes an innate principle..

Second: The Impact of Social Transformations on Public Law

In addition to political changes, social transformations have played a crucial role in reshaping the principles of public law. Societal developments have introduced fresh legal issues requiring modern interpretations consistent with the evolving values and norms of contemporary society.¹⁵.

1. Human Rights and Equality

The Civil Rights Movement in the United States brought some major changes in the field of public law by ensuring the fundamental rights of African-America: Such gulags, *inter alia*, include the famous landmark case of Brown v. Board of Education, 1954, that abolished racial segregation in schools.

Women's

Rights: Public law

later developed ways of equal pay, protection from discrimination in the workplace, and recognized women's rights in connection with marriage and divorce..¹⁶.

2. Cultural and Technological Changes

Technological advancements cause new legal issues that have not existed before, which has made it impossible for the courts to cope except by coming up with new interpretations of legal precedents suitable for the digital age. Such cases include: Digital Privacy: Protecting personal data from large tech corporations has come up as a very complex legal issue that demands continuous judicial reasoning. One major case was with Google Spain v. AEPD & Mario Costeja González, which tackled the right of individuals to have their personal information erased from the internet—the "right to be forgotten." Artificial Intelligence and Legal Responsibility: With the rise in artificial intelligence, courts now face challenges that are related to determining the legal liability of companies and developers for damages caused by intelligent systems—a matter that was not equipped to handle by traditional common law..

3. Cultural Pluralism and Its Impact on Public Law

Because of increasing cultural diversity in modern societies, public law faces challenges in applying legal rules against groups with different cultural and religious backgrounds. In certain countries, including Canada and the United Kingdom, courts have begun to factor cultural values into their rulings, particularly where personal status laws and immigration issues are concerned..

Mohamed Kamel Leila, Constitutional Law and Political Systems, Dar Al-Nahda Al-Arabiya, 1986, p.

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¹⁵³ Mohamed Kamel Leila, Constitutional Law and Political Systems, Dar Al-Nahda Al-Arabiya, 1986, p.

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¹⁶ Nouman Ahmad Al-Khatib, The Intermediate In Constitutional Law, Dar Al-Thaqafa for Publishing and Distribution, 2003, p. 121.



RESEARCHER'S

PERSPECTIVE

This analysis explicitly shows how public law is more of dynamic regulation that changes in time to overcome political-social-related transformations. In this evolving light of modern democracy, social movements, and technological development, legal interpretations made public law favorable for working within changing societies, yet it is still largely sympathetic to challenges, particularly on the balancing line of setting the independence of judiciaries against political sentiments and the plea to respect legal traditions to meet other new legal questions

Chapter Two: Contemporary Challenges and Future Prospects of Public Law

The law that pertains to public activities is somewhat of a flexible child; however, nowadays, it is encountering unique challenges rooted in the rapid evolution of the political, economic, and technological fields. It has therefore become an imperative to rethink the extent to which this legal avenue can still deliver justice to, and legal stability in, that part of the world which is constantly undergoing transformation.¹⁷

So far, public law is confronted by numerous challenges involving technological advancement such as artificial intelligence and data protection and the rising globalization influence over national legal systems. In this light, there is an urgent need to reassess the performance of the judiciary in upholding the rule of law. In addition to these, the more recent political changes pose another challenge regarding how both democratic and authoritarian regimes affect the impartiality and independence of the judiciary.¹⁸

From this perspective, this chapter, furthermore, aims at using the modern challenges to analyze the obstacles directing the movement of public law. It proceeds toward the examination of certain possible future developments for this sort of law while offering some suggestions for strengthening and adapting this system to current times-without violating the core principles of justice and legal neutrality..

Section One: Challenges Facing Public Law in the Context of Modern Developments

The challenges of the public law today are complicated due to the fast-paced development in various fields, especially in the context of globalization, technological progress, and political and social changes. Although public law is notably flexible and adaptable through judicial precedents, modern developments have posed additional challenges that require re-evaluating the mechanisms of its application and interpretation.¹⁹

Globalization is one of the most influential factors affecting public law, as Growing interconnectedness of the global society with globalization has made national legal systems more intricate and has made them subject to international laws and global treaties. Modern technology, especially artificial intelligence, and the growing concern for digital privacy, introduce additional unprecedented legal challenges that compel courts to formulate new jurisprudential concepts for the digital age.

Under social and political changes, the judiciary faces serious challenges as well. The role of courts in the protection of the fundamental rights and in dealing with legislation that violates democratic order is increasing. At the same time, the efficiency of the judicial system requires accountability, which renders the system vulnerable to political interference, compromising and undermining the judicial system as an impartial adjudicator dispensing justice.

This section seeks to address the most important aspects of public law in connection with the effects of globalization and technological advancement on legal systems, the participation of the judiciary in sociopolitical developments, the issue of judicial independence in the face of intensified political and economic domination.

Subsection One: The Impact of Globalization and Technology on Public Law

First: The Impact of Globalization on Public Law

Due to the growing interdependence of countries worldwide, globalization is a salient issue that affects different legal systems, including public law. Globalization has gone far beyond the margins of domestic legal systems, with international instruments such as treaties, global institutions, and foreign legal systems having an ever-growing impact on national laws.

1. Integration of National Laws with International Law

¹⁷ Nouman Ahmad Al-Khatib, *The Intermediate In Constitutional Law*, Dar Al-Thaqafa for Publishing and Distribution, 2003, p. 121.

¹⁸ Abdel-Razzak Al-Sanhouri, *The Role of the Judiciary in Protecting Fundamental Rights and Freedoms*, Dar Al-Nahda Al-Arabiya, 1998.

¹⁹ Mohamed Kamel Leila, *Constitutional Law and Political Systems*, Dar Al-Nahda Al-Arabiya, 1986, p. 153.



Globalization makes certain that each domestic legal system deals with interrelations in such a manner that it meets given international standards, particularly in the fields of human rights, international trade, and environmental protection.

As an example, some common law countries have begun to use international agreements in the interpretation of domestic laws. A good example is the case of *R v. Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet* (1999) in the United Kingdom, where international law was employed to charge former Chilean President Augusto Pinochet for human rights abuses.

2. The Influence of Global Economic Laws on Public Law

The global economy is interlinked in such a manner that trade and economic laws umbrella new problems under them. Courts in common law countries are now more frequently confronted with cases of multinationals, for example, Issues of competitive practice and antitrust law.

This is exemplified by free trade treaties such as the North American Free Trade Agreement (NAFTA) and treaties on the protection of industrial property which have affected judicial practice in common law countries by creating a clash between domestic constituents and international requirements for legal systems²⁰.

.3 .Challenges to Legal Sovereignty in the Age of Globalization

The overlap between international and domestic laws has led to conflicts in some cases, where courts face the dilemma of reconciling national laws with international obligations.

- One of the well-known examples is in the case of *Kiobel v. Royal Dutch Petroleum Co* (2013) in America, which dealt with the question of how far foreign companies could be prosecuted for human rights abuses within the jurisdiction of American Law. This case demonstrates the complicated question of the impact of international law on public law, and raises issues of fundamental concern regarding the jurisdictional boundaries of law within globalization..²¹.

Second: The Impact of Technology on Public Law

In addition to globalization, new public law challenges have been posed by technology advances. Courts are faced with new legal issues that never existed before, such as privacy in the digital age, artificial intelligence, and cybercrime.

1. Digital Privacy and Individual Rights

- The expansion and growth of the internet has created new challenges for the courts in the common law jurisdictions, including privacy and personal information of the individual as a whole.
- Technology continues to redefine the concept of legal rights, a classic example of which is the *Google Spain Ltd., Google Inc. v. Spanish Data Protection Agency, Mario Costeja Gonzalez* case in the year 2014, where the European Court debated the "right to be forgotten." This allowed individuals to request the removal of their personal information from the databases of internet search engines.

2. Cybercrimes and Legal Challenges

- Technology has led to the creation of new crimes such as hacking, theft of identities, and cyber fraud, forcing courts to expand and develop their response to criminal law.
- For example, the United States courts have ruled against certain hacking groups and cybercrime gangs, for instance, *United States v. Aaron Swartz* (2013), which involved unauthorized access to information and sharing.

3. Artificial Intelligence and Its Impact on Public Law

- The autonomous nature of AI poses new and unique legal barriers. From self-driving cars to medical robots, courts are struggling to find answers regarding liability for harm caused by autonomous driving algorithms and intelligent systems.

²⁰ Mohamed Abdel Karim, *International Economic Law*, Dar Al-Nahda Al-Arabiya, Egypt, 2015, p. 62.

²¹ Othman Khalil Othman, *Constitutional Law: General Theory and Application in the Arab State*, University Publications House, 2004, p. 121.



- The introduction of new predictive liability systems, such as self-driving cars and other technologies, has altered the drivers of personal and social autonomy. This raises additional considerations regarding accidents involving autonomous cars: is it the fault of the programmer, the user, or the manufacturer?

4. The Impact of Technology on Judicial Proceedings

The use of electronic evidence and e-litigation is being incorporated into the judicial process in many countries with the help of technological innovations that enable new judicial procedures.

Some courts in the United States and Canada are using artificial intelligence technologies to examine legal data and assist in making preliminary rulings in some cases.

Researcher's Explanation: With regard to public law, it is precisely this analysis that illustrates the impact of the radical change caused by globalization and technology, giving rise to new legal problems that require new considerations by judges and modifications to existing laws. Globalization is forcing courts to litigate cases involving a combination of international and national laws, while technology is expanding the scope of legal issues to include digital privacy, cybercrime, and AI liability. These factors entail a significant shift in the paradigm in which public law must be configured to achieve justice and guarantee rights in a changing world..

Section Two: The Role of the Judiciary in Addressing Social and Political Changes

The judiciary is one of the core pillars of every legal system as it is critical in administering justice and safeguarding the law. However, the global social and political changes taking place today has serious implications for the judiciary. New cases that require modern legal thinking are now being brought forth by judges²².

In democratic societies, we consider the judiciary a vital independent authority that protects our fundamental rights and freedoms. This is especially important during social changes that affect issues such as equality of the general public, minority rights, and civil liberties. The role of the judiciary becomes increasingly important in times of political unrest or changes of government, ensuring respect for constitutional rights and preventing abuse of power.²³.

On the flip side, the judiciary encounters major hurdles in environments where political meddling threatens its independence, which can erode public confidence in the impartiality of court decisions. This section, therefore, seeks to delve into how the judiciary engages with social and political shifts, assess its role in safeguarding fundamental rights, and investigate the obstacles it faces in both democratic and non-democratic settings..

Subsection One: The Role of the Judiciary in Addressing Social Changes

First: The Judiciary as a Tool for Protecting Social Rights

As societies grow and values shift, the judiciary has become more crucial in safeguarding social rights and making sure that laws keep pace with new realities. In common law systems, the judiciary plays a key role in interpreting laws in a way that reflects these social changes, turning it into a significant force for promoting social justice..

1. Promoting Gender Equality and Women's Rights

- The judiciary has played a pivotal role in advancing women's rights through rulings that ensure equal pay, protect women from workplace discrimination, and grant equal rights in matters such as divorce and child custody.
- In *United States v. Virginia* (1996), the U.S. Supreme Court ruled that the Virginia Military Institute's policy of excluding women was unconstitutional, reinforcing the principle of gender equality.

2. Protecting the Rights of Minorities and Marginalized Communities

- Courts have had a significant impact in safeguarding the rights of racial and religious minorities, issuing landmark rulings that struck down discriminatory laws and ensured equal rights for all.
- In *Brown v. Board of Education* (1954), the U.S. Supreme Court declared racial segregation in public schools unconstitutional, affirming that discrimination in education violates the Constitution.

3. Labor Rights and Social Justice

- The judiciary has contributed to the development of labor laws and the protection of workers' rights through legal precedents ensuring minimum wage standards, fair working hours, and protection against exploitation.

²³ *On Laws, Judiciary, and Building Democracy*, Amr Hamzawy, Malcolm Kerr-Carnegie Middle East Center, 2017, p. 121.



- In the United Kingdom, labor courts have played a key role in upholding workers' rights in cases involving unfair dismissal and workplace harassment.²⁴.

Second: The Role of the Judiciary in Responding to Emerging Issues

Modern social changes require the judiciary to make decisions that reflect constitutional principles and individual rights in cases where there are no clear legal precedents.

1. Protecting Digital Privacy and Freedom of Expression

- With the rise of technology, issues related to digital privacy and online freedom of expression have become new social challenges faced by the judiciary.
- In *Google Spain v. AEPD and Mario Costeja González* (2014), the European Court recognized the "right to be forgotten," allowing individuals to request the removal of personal data from the internet. This ruling demonstrates the judiciary's engagement with modern digital issues.

2. Recognition of New Rights, Such as Same-Sex Marriage

- In many common law countries, courts have expanded legal definitions of marital and family rights to reflect current social realities. In the landmark case of *Obergefell v. Hodges* (2015), the U.S. Supreme Court ruled that the ban on same-sex marriage was unconstitutional, affirming that marriage is a fundamental right guaranteed by the Constitution..

Third: Challenges Facing the Judiciary in Responding to Social Changes

While the judiciary plays a crucial role in upholding social rights, it faces some difficult obstacles when addressing sensitive social issues.

1. Resistance to Change in Traditional Institutions

- When judicial decisions seek to reverse social progress, they often face fierce resistance from religious groups or conservative political factions, triggering heated public debates about the judiciary's role in promoting social change.

2. Balancing the Law and Social Custom

- Judges sometimes find themselves caught in a tense conflict between contemporary laws and established social customs, which can create friction between the application of the law and respect for cultural identities.

3. Political Pressure and the Influence of Public Opinion

- The judiciary often feels the brunt of political pressure when addressing sensitive social issues, as various political entities may attempt to influence judicial outcomes to align them with their agendas.

From the researcher's perspective

This analysis highlights the essential role of the judiciary in protecting social rights and promoting justice, particularly in light of ongoing social transformations. However, the complexities of reconciling law and tradition, confronting resistance to change, and dealing with political influences make the role of the judiciary more challenging than ever. It is essential to strengthen judicial independence and enable the courts to address contemporary social problems in a manner that respects individual rights while taking into account social changes..

Subsection Two: The Role of the Judiciary in Addressing Political Changes

First: The Judiciary as Guardian of the Constitution and the Principle of Separation of Powers

The judiciary is a key player in protecting the constitution and maintaining the balance of power in democratic systems. It closely monitors the legislative and executive branches' compliance with constitutional laws and intervenes to prevent any violations that could threaten citizens' fundamental rights. Through their rulings, the courts oversee executive actions and ensure that laws are consistent with constitutional principles.

1. Judicial Review and Its Role in Protecting the Constitution

- In many common-law countries, such as the United States and Canada, the judiciary is essential to constitutional review and has the power to invalidate laws that fail to meet constitutional standards.
- The landmark case of *Marbury v. Madison* (1803) established the principle of judicial review in the United States, granting the courts the power to assess the constitutionality of laws.

²⁴ Mohamed Abdel Karim, International Economic Law, Dar Al-Nahda Al-Arabiya, Egypt, 2015, p. 62.



- In the United Kingdom, even in the absence of a written constitution, the courts have the power to interpret laws in ways that protect fundamental rights. A significant case is *Miller v Secretary of State for Exiting the European Union* (2017), in which the court ruled that the government could not proceed with Brexit without parliamentary approval.
- 2. The Role of the Judiciary in Ensuring the Integrity of Elections and Protecting Democracy
- In some systems, the judiciary is vital in overseeing the integrity of elections and resolving disputes, thereby helping to maintain the transparency of the democratic process.
- The US Supreme Court's decision in *Bush v. Al Gore* (2000) was instrumental in resolving the election dispute between George W. Bush and Al Gore, affirming the role of the judiciary in determining election outcomes in certain cases.
- Constitutional courts in various countries also play a crucial role in striking down laws that undermine voters' rights or threaten the integrity of the electoral process..

Second: The Role of the Judiciary in Confronting Authoritarian Regimes and Political Interference

Despite the judiciary's critical role in protecting democracy, it often faces major challenges in systems characterized by authoritarianism or efforts to politicize the judiciary for specific political agendas.

1. Attempts to Politicize the Judiciary and Government Interference in Judicial Decisions

- Detect AI-generated content and transform it into something that feels more human with our AI Content Detector. Just paste your text, and you'll receive accurate, natural-sounding results in no time!
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- In certain regimes, those in power often try to sway the judiciary by appointing judges who are loyal to them or by applying political pressure to steer court decisions.
- Take Poland in 2017, for instance, where the government made moves to change the structure of the supreme court, aiming to diminish its independence and gain more control over who gets appointed to the judiciary..

• Trials of Political Leaders and the Judiciary's Role in Combating Corruption

- The judiciary is crucial in prosecuting government officials who are accused of corruption and abuse of power, serving as a vital tool for maintaining the rule of law.
- In the case of *State v. Jacob Zuma* (2021), South Africa's former president faced prison time for contempt of court and corruption-related charges, showcasing how the judiciary holds political leaders accountable, no matter their position.
- In Brazil, the Supreme Court spearheaded significant investigations into officials tangled up in the Lava Jato (Operation Car Wash) corruption scandal, leading to high-profile political trials that had a major impact on the country's political scene..

Third: The Judiciary in Times of Political Crises and Coups

When political unrest or coups d'état occur, the judiciary faces the difficult task of maintaining its legitimacy and independence. They are often caught in a conflict between enforcing the law and resisting political pressure.

1. Judicial Decisions During States of Emergency and Coups d'état

In times of political tumult, the judiciary has the ability to be a defender of democratic values or a force that legitimates new power, and this hinges on whether it remains committed to the rule of law and remains independent. For example, in the case of *Pakistan v. Musharraf* (2019), the Supreme Court of Pakistan rendered a landmark ruling, holding former President Pervez Musharraf guilty of high treason for his actions in the year 2007 when he suspended the constitution and declared a state of emergency. In some states, regrettably, authoritarian regimes have misused judiciary to legitimate acts contrary to the constitution. A clear case in point is Egypt, where, following the overthrowing of President Mohamed Morsi, judicial decisions were used to legitimate political change.

2. Judicial Remedies in Constitutional Litigation

Where there is a constitutional conflict amongst the different branches of the government, the judiciary plays an active role in the resolution of the correct legal path to be adopted. In the Venezuelan case, a political crisis had arisen as a result of a conflict between the National Assembly and the Supreme Court. The court had rendered decisions that Parliament felt were against the constitution, further exacerbating the political divide within the country.

Conclusion

It goes without question that the common law, as it evolves, has to constantly change to be as efficient and just as a legal system as possible. In the context of increasing globalization, new technologies, and international political shifts, it becomes imperative to create mechanisms that provide judicial autonomy and implement legal system reforms to meet the issues at stake. The future of public law depends on striking the correct balance in



maintaining the established legal guidelines and designing new mechanisms that enable it to successfully deal with the new political and social setting.

The judiciary has an important role to play in observing political change, upholding the constitution, ensuring the electoral process remains pure, and holding accountable those who perpetrate acts of corruption and legal abuse. However, the judiciary faces significant obstacles, particularly in non-democratic states that seek to undermine its independence. In those cases, the constitutional provisions that insulate the judiciary against political interference need to be strengthened to ensure that it remains a protector of rights and the rule of law in all political environments.

Main Findings

This research highlights that common law, despite its adaptability and jurisprudential foundation, faces significant challenges arising from globalization, technological advancements, and changes in the political and social landscape. Here are the most important findings:

1. Impact on Public Law: Postmodern philosophy has proven that the law isn't a mere framework; it has political and social determinants. This focuses on the importance of judicial interpretation in the creation of legal concepts as the environment evolves.
2. Problems created by Globalization and Technology: New legal problems, including those related to digital privacy, artificial intelligence, and intellectual property rights, have arisen as a result of enhanced international integration and technological advancements. This necessitates a revisioning of prevailing legal precedents.
3. The judiciary and social change: The courts are increasingly powerful vehicles for the promotion of rights and freedoms, notably on issues of gender equality, minority rights, and the right to speak freely. They are, however, under pressure, too, from traditional norms and political pressures.
4. Judiciary as the pillar of political stability: The judiciary has the significant function to maintain the separation of powers, protect the constitutions, and ensure the electoral process integrity. Its independence, however, remains vulnerable to political pressures, especially in non-democratic regimes.
5. The question of judicial independence: Political appointments and attempts to politicize judicial decisions erode the public confidence in the judiciary, even as the judiciary is intended to guarantee the rule of law.

II. RECOMMENDATIONS

1. Strengthen Judicial Independence

- Establish constitutional safeguards to prevent political interference in judicial appointments or court decisions.
- Improve oversight and accountability mechanisms to ensure transparency and protect the judiciary from political influence.

2. Modernize Public Law to Keep Pace with Contemporary Developments

- Develop flexible legislative mechanisms to update judicial precedents in response to issues arising from technology and globalization.
- Establish specialized courts for digital and cybercrime cases to effectively address modern legal challenges.

3. Enhance the Judiciary's Role in Protecting Rights and Freedoms

- Expand the scope of judicial review to ensure laws comply with constitutional principles, especially in matters of civil liberties.
- Support judicial independence in handling sensitive social issues, such as equality and minority rights, free from political or societal pressure.

4. Promote Cooperation Between Judiciary and Legislature

- Foster a collaborative relationship between the judicial and legislative branches to develop flexible laws that respond to social and economic changes.
- Provide training programs for judges to deepen their understanding of modern issues like artificial intelligence and digital law.

5. Raise Legal Awareness in Society

- Promote legal literacy among citizens to enhance public understanding of the judiciary's role in ensuring justice.
- Encourage media coverage of contemporary legal issues to increase transparency and strengthen public trust in the justice system.

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