CONFIGURATIONAL POWER AND THE CONSTITUTIONAL CRISIS OF DIGITAL DEMOCRACY

PODER CONFIGURACIONAL E A CRISE CONSTITUCIONAL DA DEMOCRACIA DIGITAL

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ABSTRACT

Technology corporations now function as de facto sovereign actors over the infrastructures through which contemporary democracies communicate, organise, and deliberate, yet their accountability remains oriented toward shareholders rather than the billions whose political lives they shape. This article argues that such dominance constitutes a form of configurational power, a meta-institutional authority exercised through platform architectures and algorithmic systems that existing corporate governance frameworks cannot meaningfully constrain. During the 2024 US elections, it was observed how unilateral design decisions by major social media platforms destabilised the information environment at a time of increasing democratic fragility. To address this governance deficit, the article develops the concept of constitutional stakeholding, a paradigm that subjects quasi-sovereign corporate power to democratic accountability while remaining compatible with the core structure of corporate law. The framework introduces three mutually reinforcing mechanisms: mandatory tri-partite governance committees that allocate binding authority among corporate representatives, civil society actors, and community members selected through stratified random sampling; algorithmic constitutional review grounded in pre-deployment democratic impact assessments and continuous monitoring; and enforceable charter provisions that embed constitutional obligations through supermajority amendment rules and stakeholder derivative suits. The article concludes that constitutional stakeholding can be advanced through overlapping transformations in securities disclosure, fiduciary norms, and market-based governance pressures, offering a realistic pathway to align configurational corporate power with democratic self-government in an era defined by interlocking crises.

Keywords: Constitutional stakeholding; configurational power; platform governance; corporate law; algorithmic accountability.

RESUMO

As corporações de tecnologia agora funcionam como atores soberanos de facto sobre as infraestruturas pelas quais as democracias contemporâneas comunicam, organizam-se e deliberam; no entanto, sua responsabilidade permanece orientada para os acionistas, em vez dos bilhões de pessoas cujas vidas políticas elas moldam. Este artigo argumenta que tal domínio constitui uma forma de poder configuracional, uma autoridade meta-institucional exercida por meio das arquiteturas de plataformas e sistemas algorítmicos que os atuais modelos de governança corporativa não conseguem restringir de maneira significativa. Durante as eleições norte-americanas de 2024, observou-se como decisões unilaterais de design tomadas por grandes plataformas de mídia social desestabilizaram o ambiente informacional em um momento de crescente fragilidade democrática. Para enfrentar esse déficit de governança, o artigo desenvolve o conceito de participação constitucional, um paradigma que submete o poder corporativo quase soberano à responsabilização democrática, mantendo-se compatível com a estrutura central do direito societário. O arcabouço introduz três mecanismos mutuamente reforçadores: comitês de governança tripartite obrigatórios que alocam autoridade vinculante entre representantes corporativos, atores da sociedade civil e membros da comunidade selecionados por amostragem aleatória estratificada; revisão constitucional algorítmica baseada em avaliações de impacto democrático pré-implantação e monitoramento contínuo; e disposições estatutárias executáveis que incorporam obrigações constitucionais por meio de regras de emenda por supermaioria e ações derivativas de stakeholders. O artigo conclui que a participação constitucional pode ser promovida por meio de transformações sobrepostas na divulgação de valores mobiliários, nas

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normas fiduciárias e nas pressões de governança orientadas pelo mercado, oferecendo um caminho realista para alinhar o poder corporativo configuracional com o autogoverno democrático em uma era definida por crises interligadas.
Palavras-chave: Participação constitucional; poder configuracional; governança de plataformas; direito societário; responsabilização algorítmica.

1. INTRODUCTION: PRIVATE POWER, PUBLIC CRISIS

In January 2025, Meta announced sweeping changes to content moderation across Facebook, Instagram, and WhatsApp, affecting roughly 3.9 billion users. Third-party fact-checking partnerships were wound down, hate-speech policies were relaxed in ways that particularly affected transgender people and migrants, and core recommendation systems were reconfigured, all without prior legislative debate, judicial review, or meaningful public consultation. What for Meta appeared as an internal governance decision amounted, in practice, to the largest single alteration of speech governance in human history. The central argument of this paper is hereby established: Despite the fact that technology corporations wield de facto sovereign power over essential democratic mechanisms, their institutional accountability is primarily directed towards shareholder interests (a mandate often poorly executed), thereby bypassing the citizenry whose existence is profoundly shaped by their operational framework.

The concept of configurational power provides a way to name this authority. Unlike traditional market power, which operates through prices, output, or contractual terms, configurational power works through the design of platforms, the tuning of algorithms, and the setting of technical defaults that shape the horizon of what users can see, do, and become. When a handful of firms control the basic architectures through which economic coordination, social interaction, and political communication occur, precisely at a time of overlapping crises of climate, democracy, technology, and social cohesion, their governance decisions inevitably raise constitutional questions that conventional corporate law was never designed to answer.

Meta's 2025 overhaul is not an aberration but a particularly visible instance of a recurring pattern: platforms unilaterally making decisions with profound democratic implications, under governance structures optimised for industrial firms rather than for entities that now govern information, identity, and participation. As Klonick argues, the large platforms have become the new governors of speech (KLONICK, 2018, p.1599). Their decisions are shielded by legal regimes that treat them as private speakers

entitled to robust First Amendment protection, producing a constitutional paradox in which private control over the public sphere largely escapes democratic accountability.

Existing corporate and regulatory frameworks struggle to recognise, let alone control, this form of power. Ciepley has long argued that the public–private distinction underpinning corporate law obscures the reality that large corporations function as hybrid entities, privately owned but exercising forms of rule-making and coercion that resemble public authority (CIEPLEY, 2013, p.139). Platforms exemplify this hybridity: they are constituted as private corporations, yet they operate as de facto public utilities in domains such as communication, search, and payments, without being subject to the constitutional controls that normally accompany public power.

The shareholder-primacy model assumes that the legitimacy of corporate governance derives from shareholders' consent and that the main task of corporate law is to ensure faithful agency and efficient risk-bearing for investors. For platforms, this model misdescribes both who is affected and who is capable of exercising meaningful control. Platform decisions shape the interests of users, workers, advertisers, dependent businesses, and democratic institutions—often more directly and deeply than they affect dispersed shareholders. Yet these constituencies have no formal standing in corporate governance, even when their speech, livelihoods, and political rights are at stake.

At the same time, the mechanisms by which shareholders are supposed to exercise discipline are weakened in platform contexts. Information asymmetries make it difficult for investors to perceive the democratic and systemic risks associated with algorithmic architectures or data practices, which rarely appear in standard financial reporting. Collective action problems inhibit coordinated shareholder responses even when concerns are recognised. Dual-class share structures at major platforms concentrate voting control in founders and insiders, rendering outside shareholders effectively voiceless on core governance questions (REDDY, 2021, p. 24).

Regulatory strategies face parallel limitations. Traditional administrative models assume that regulators can understand regulated activities, promulgate clear rules, and monitor compliance through audits, inspections, and adjudication. But platform operations depend on large-scale machine-learning systems that are dynamic, opaque, and often not fully interpretable even by their designers. Jurisdictionally bounded regulators struggle to oversee firms whose infrastructures operate globally and shift rapidly. Notice-and-comment rulemaking and ex post adjudication are ill-

matched to environments where harmful effects emerge from complex, real-time interactions of code, content, and user behaviour.

Suzor's account of lawlessness in platform governance highlights how these companies have deliberately exploited contractual and jurisdictional design to insulate themselves from both public and private law: terms of service that can be unilaterally revised, arbitration clauses that foreclose collective redress, and jurisdictional arbitrage that fragments regulatory authority (SUZOR, 2019, p.137). Users face network effects and switching costs that make exit unrealistic, while governments confront technical opacity and economic dependence that limit their willingness and ability to regulate.

In that sense, this article argues that constitutional stakeholding offers a way to address this governance gap by creating binding democratic accountability for corporations that exercise configurational power over essential infrastructures. Constitutional stakeholding does not rest on managerial benevolence or voluntary corporate social responsibility. Nor does it call for abandoning core features of corporate law wholesale. Instead, it proposes that when clearly defined thresholds of systemic impact are crossed, affected publics acquire enforceable governance rights grounded in constitutional principles rather than in shareholder status.

Three claims structure the argument. First, when corporations control the architectures through which citizens access information, participate in political life, and coordinate economic activity, their decisions become constitutionally significant. The legitimacy of such decisions cannot rest solely on the consent of capital providers; it must also reflect the interests of those whose basic conditions of existence are configured by these platforms. Secondly, in a polycrisis environment characterised by cascading risks, platform governance is itself a site of systemic risk production and mitigation (LAWRENCE et al., 2022). This justifies heightened forms of accountability and participation akin to those applied to other systemically important institutions. Thirdly, constitutional stakeholding can be implemented through legal mechanisms that operate largely within existing institutional frameworks rather than requiring an entirely new constitutional order.

On this basis, the article develops three concrete legal mechanisms intended to embed constitutional stakeholding within platform governance. Mandatory tri-partite governance committees give binding decision-making power, in defined domains, to bodies composed of corporate representatives, civil society organisations, and affected community members selected through stratified random sampling

(MCGAUGHEY, 2016; GORWA, 2022). Algorithmic constitutional review requires pre-deployment democratic impact assessments, public comment, and independent expert evaluation for high-impact algorithmic systems, as well as ongoing monitoring and stakeholder feedback, building on emerging work on AI accountability and algorithmic impact assessment (RAJI et al., 2020; KOENE et al., 2019; CRAWFORD, 2021; KATZENBACH; ULBRICHT, 2019). Enforceable charter provisions write explicit democratic commitments into corporate constitutions, protected by supermajority amendment rules and enforceable through stakeholder derivative suits and regulatory safe harbours (BELINFANTI; STOUT, 2018, p. 624).

Taken together, these mechanisms aim to transform configurational power from a largely private, discretionary prerogative into a form of authority that is at least partially answerable to constitutional norms. They also speak directly to broader debates on constitutional design under conditions of systemic risk, the role of deliberative mechanisms in legitimating sustainability transitions, and the compatibility of behavioural governance with rights-respecting frameworks.

The remainder of the article proceeds as follows. Chapter two develops the theoretical foundations, situating platform power within traditions of constitutional thought and elaborating the notion of configurational power as a mode of functional sovereignty. Chapter three examines the 2024 U.S. election as a case study in configurational power during democratic crisis. Chapter four sets out the three-pillar framework of constitutional stakeholding in detail, and Chapter five explores implementation pathways through securities law, corporate law, and market-based mechanisms. The central question throughout is whether, and how, constitutional democracy can reassert meaningful control over the private infrastructures that now organise its conditions of existence.

2. CONSTITUTIONAL STAKEHOLDING

Constitutional stakeholding begins from a simple but unsettling observation: existing corporate governance theories were built for firms that make products and offer services, not for entities that effectively govern the conditions of democratic life. Contractarian and shareholder-primacy models assume that corporate power is bounded by markets, regulation, and exit. Even most versions of stakeholder theory assume that stakeholder interests can be accommodated within managerial discretion. None of these frameworks squarely confront the situation in which private corporations

exercise power functionally equivalent to public authority over essential democratic infrastructures.

This article develops constitutional stakeholding as a response to that gap. It departs from conventional stakeholder approaches in three ways: it treats certain forms of stakeholder participation as enforceable democratic rights rather than managerial options; it links those rights to systemic impact thresholds rather than assuming they apply to all corporate decisions; and it insists on binding institutional mechanisms, rather than aspirational principles, as the vehicle for accountability. The underlying question is straightforward: when private actors control infrastructures through which citizens access information, participate in political discourse, and coordinate collective action, particularly under conditions of cascading crises, what kinds of governance arrangements are necessary to align such power with democratic values without collapsing corporate autonomy or economic viability?

2.1. PLATFORM POWER AS META-INSTITUTIONAL POWER

The largest technology platforms occupy an institutional position unlike that of traditional firms. They do not operate within existing markets so much as constitute the markets' underlying architecture. Their services have become essential to communication, commerce, and knowledge production. Minor algorithmic revisions can trigger major political and economic consequences from amplifying or marginalizing social movements to redirecting the flow of global trade. In this respect, platform companies exercise a form of meta-institutional power: they define the frameworks within which other institutions, public and private alike, must operate. They do so not by wielding formal public authority but by controlling the architectures through which crucial social and political activities are mediated. Their influence is exercised through code, interface design, ranking systems, and terms of service that together constitute a privately authored normative order.

This functional sovereignty has several dimensions. First, platforms engage in quasi-legislative rule-making. Terms of service and community standards define permissible speech, acceptable conduct, data practices, and dispute resolution procedures for billions of users who have no realistic capacity to negotiate these terms. Application programming interfaces and technical protocols establish gatekeeping conditions for third-party access, akin to licensing regimes. Content policies, often

articulated in constitutional language, regulate expression in ways that directly impact freedom of speech, association, and assembly.

Secondly, this rule-making is backed by private enforcement and adjudication. Moderation systems implement platform rules at a scale and speed that no public regulator can match. Recommendation algorithms, ranking systems, and feed curation continuously enforce platform values and commercial priorities by amplifying some voices and rendering others effectively invisible. Zuboff states that behaviour is shaped and steered by surveillance, prediction, and reinforcement rather than by explicit commands (ZUBOFF, 2019, p. 352). Internal appeals processes provide adjudicatory fora that mimic public-law procedures but remain dependent on corporate grace, with no independent constitutional mandate.

These features give platforms a form of constitutional power. They shape the structural preconditions of democratic life: who can speak, who can be heard, what information circulates, which publics form, and which political projects become thinkable. Yet they exercise this power through private legal forms, often invoking constitutional rights such as the First Amendment to resist democratic oversight (BALKIN, 2020, p. 2015). The result is a constitutional inversion in which entities that perform public functions are treated as private actors for purposes of accountability.

2.2. FROM STAKEHOLDER THEORY TO CONSTITUTIONAL RIGHTS

Stakeholder theory, in its classic form, cannot resolve this inversion. Freeman's seminal formulation proposed that corporations should be managed in the interests of all those who can affect or be affected by the firm's objectives (FREEMAN, 1984, p. 25). This insight was normatively important and empirically attractive, but the framework remained fundamentally voluntarist. It depended on enlightened management and the belief that considering stakeholder interests would, in the long run, coincide with shareholder value. It did not generate enforceable rights, and it left open the question of who counts as a stakeholder and how conflicts among stakeholders should be resolved.

Subsequent work on political corporate social responsibility, especially by Scherer and Palazzo, sharpened the critique. They argued that multinational corporations increasingly exercise political authority, which provide public goods, setting labour and environmental standards, and shaping human rights practices in spaces where state capacity is weak (SCHERER; PALAZZO, 2011, p. 908). In such

contexts, legitimacy cannot be grounded solely in profitability or efficiency. It must derive from democratic principles such as participation, transparency, and accountability. Yet Political CSR has largely remained at the level of normative aspiration. It calls for deliberation and stakeholder dialogue but offers few concrete mechanisms to ensure that corporations actually share power with affected publics or accept binding constraints on their discretion.

For platform corporations exercising constitutional power, these limitations become acute. Voluntary stakeholder engagement is structurally inadequate when users cannot exit, alternatives do not exist, and harms manifest as systemic distortions of the informational and political environment rather than as discrete injuries. Bridoux and Stoelhorst underscore the difficulty of designing arrangements that are both normatively credible and operationally workable in such settings (BRIDOUX; STOELHORST, 2014, p. 107). Without legal rights or institutional leverage, stakeholders remain supplicants in systems where management ultimately decides which voices to hear.

Constitutional stakeholding responds by shifting the register from ethics to rights. Stakeholder participation is reconceived not as a managerial virtue but as a democratic entitlement that activates when certain conditions obtain. When private regimes (such as multinational corporations or transnational networks) exercise power that affects fundamental rights, constitutional norms do not vanish; they migrate into these regimes as internal constraints (TEUBNER, 2012, p. 141). Constitutional stakeholding operationalises this move for platforms by specifying when and how constitutional norms including participation, accountability, non-domination must be built into corporate governance structures.

This requires two conceptual moves. First, the notion of stakeholding becomes conditional rather than universal. Not every corporate decision automatically triggers constitutional obligations; instead, only those actions meeting systemic impact thresholds require a constitutional form of stakeholder participation. These thresholds include, but are limited to, control over electoral information flows, the reliance of essential public services upon platform infrastructure, or demonstrated cascade risks spanning multiple domains. Secondly, participation is institutionalized through legally binding mechanisms. These mechanisms encompass mandatory governance committees endowed with genuine decision-making authority, algorithmic constitutional review involving both pre-deployment and ongoing oversight, and

charter-level commitments that are enforceable via legal means. In this manner, stakeholder theory is not abandoned; rather, it is effectively constitutionalized.

The normative ground for this transformation lies in public reliance. When platforms become essential infrastructures for participation in economic, social, and political life, affected publics develop reliance interests that are qualitatively different from ordinary consumer preferences. Drawing on traditions associated with public utilities and benefit corporations, scholars such as Mayer and Belinfanti & Stout argue that corporate purposes can legitimately be expanded to incorporate such public interests without destroying the firm's capacity to create value (MAYER, 2018; BELINFANTI; STOUT, 2018, p. 281). Constitutional stakeholding builds on this insight but insists that such expansion, in the context of configurational power, must be accompanied by corresponding rights of participation and contestation.

3. CONTENT MODERATION DURING ELECTORAL CRISIS

Moments of democratic fragility reveal configurational power at its starkest. Elections compress political time, heighten informational vulnerability, and render even small adjustments to digital architectures disproportionately consequential. The 2024 U.S. election became a defining illustration of how platform design decisions can shape democratic trajectories, often without public deliberation or institutional constraint. Examining this episode helps illuminate why existing oversight mechanisms struggle to address the forms of influence wielded by major digital intermediaries during crises (PERSILY; TUCKER, 2020, p. 204).

3.1. THE 2024 U.S. ELECTION CASE STUDY

From early 2024 through the general election cycle, the major platforms introduced rapid and far-reaching alterations to their moderation systems. Although framed as ordinary policy updates, these changes substantially reconstructed the informational environment at precisely the moment when citizens rely most heavily on stable and trustworthy channels of communication. The absence of legislative authorization, judicial review, or public consultation underscored the unilateral character of configurational power.

Meta's January 2024 decision to dismantle its professional fact-checking infrastructure and replace it with a crowdsourced "Community Notes" model exemplified this shift. What appeared to be a mere policy pivot in fact reconfigured the epistemic machinery through which political claims would be evaluated (DOUEK, 2021,

p. 37). Professional fact-checkers, trained in journalistic standards and accountable to identifiable institutions, were replaced by a system dependent on user consensus. In polarized informational environments, such consensus can easily mirror existing divisions, amplifying rather than correcting falsehoods. The timing intensified the stakes: the change took effect as primary contests began, at precisely the moment when clarity, not experimentation, was most needed. Though publicly justified as an expansion of "free expression," internal accounts later suggested that engagement metrics and cost considerations outweighed concerns about electoral misinformation (GILLESPIE, 2018, p. 176).

X pursued a parallel reconfiguration by converting its verification system into a subscription product. Verification, once a mechanism for identity authentication that helped users discern credible voices, became available to anyone willing to pay a monthly fee (KAYE, 2019, p. 18). In doing so, the platform collapsed essential credibility signals into a market for visibility. Bad actors could purchase legitimacy, automated accounts could mimic authentic ones, and public officials lost a key tool for distinguishing their communications. The results became visible almost immediately: fabricated accounts impersonating candidates, election officials, and news organizations proliferated, their purchased checkmarks carrying algorithmic weight that previously attached only to authenticated public figures.

These interventions did not operate in isolation. Meta's retreat from professional fact-checking facilitated the circulation of false claims; X's commodified verification ensured that fabricated content could travel with enhanced credibility. The combined effect was not merely an increase in misinformation but a deeper erosion of shared epistemic foundations necessary for democratic deliberation (SUNSTEIN, 2017, p. 13). The platforms, each pursuing their own optimization logics, generated a fragmented and destabilized informational landscape.

Coordination failures further compounded these dynamics. No mechanism existed for platforms to share intelligence about emerging threats. When a foreign interference campaign surfaced on one service, others remained unaware. Extremist content suppressed in one environment migrated seamlessly to others. Each platform executed its own crisis response, while electoral vulnerabilities reverberated across the broader digital ecosystem (HOWARD; WOOLLEY; CALO, 2018, p. 81).

3.2. CURRENT OVERSIGHT INADEQUACY

The 2024 cycle also revealed the limits of existing oversight mechanisms namely, platform-internal, governmental, and international. None were designed to engage configurational power's scale, speed, or opacity. As an example, Meta's Oversight Board was often invoked as a counterweight to platform arbitrariness, yet its institutional design constrained its relevance. During the 2024 election, it reviewed a vanishingly small portion of platform decisions. More significantly, the Board's mandate excluded the architectural features that structure information flow: recommendation systems, ranking decisions, and algorithmic amplification (KADRI; KLONICK, 2022, p. 37). It could adjudicate individual removal decisions but not the systemic design choices that determine what billions of users encounter. Even when the Board identified structural concerns, its recommendations remained advisory. Meta implemented them selectively.

Governmental oversight fared no better. The European Union's Digital Services Act promised enhanced transparency and systemic risk assessments, but its enforcement mechanisms remained embryonic during the U.S. electoral season (BRADFORD, 2020, p. 67). In the United States, no federal agency possessed clear statutory authority to regulate platform moderation practices. State-level investigations encountered immediate First Amendment obstacles, as courts interpreted platforms' editorial discretion as constitutionally protected (BALKIN, 2020, p. 72). The state action doctrine ensured that even quasi-governmental influence over public discourse remained outside constitutional scrutiny.

Capacity constraints further weakened regulatory interventions. The Federal Election Commission employed a handful of analysts to monitor political advertising across platforms serving hundreds of millions of users (FOWLER; RIDOUT; FRANZ, 2016, p. 446). State election officials had neither the technical expertise nor the staffing required to track cross-platform misinformation campaigns. Meanwhile, academic and civil-society researchers faced increasing barriers as platforms restricted data access under the banner of privacy and proprietary protection (FLEW et al., 2021, p. 129).

The temporal dynamics of elections intensified these governance failures. False information spread faster than fact-checking organizations could respond. Influence operations evolved faster than platform countermeasures. Disinformation surged in the final days before voting, when correction was practically impossible (ALLCOTT; GENTZKOW, 2017, p. 211). Oversight mechanisms built for deliberative, retrospective

evaluation proved ill-suited for environments where influence operates at scale, automatically, and in real time.

The international dimension added further complexity. Influence operations moved fluidly across borders, exploiting jurisdictional gaps that national governments were poorly equipped to navigate (BRADSHAW; HOWARD, 2019, p. 4). Democratic states attempted to regulate platform behaviour through disparate and sometimes conflicting frameworks, while malicious actors leveraged the global reach of digital infrastructures to evade accountability. No international institution existed to coordinate platform governance during elections.

These failures were not anomalies but manifestations of a structural mismatch. Oversight mechanisms grounded in transparency, procedure, and public accountability confront a form of power defined by opacity, automation, and private discretion. The architecture of electoral oversight presumes that influence is legible and traceable; configurational power operates precisely by rendering influence invisible and embedding it in the everyday experiences of digital users. As long as this asymmetry persists, elections will remain vulnerable to platform decisions that reshape democratic possibilities without democratic authorization.

4. THREE-PILLAR FRAMEWORK

If configurational power now structures the conditions under which democratic life unfolds, then constitutional responses must reach inside the governance of the corporations that exercise it. The challenge is not simply to regulate platforms from the outside, but to embed constitutional accountability within the institutional core of entities that function as quasi-sovereign actors. The question, put bluntly, is how to create democratic control over private architectures that shape public life without collapsing existing corporate and legal frameworks.

In this context, this section develops a three-pillar framework aimed at that problem. It operationalises constitutional stakeholding through three interconnected mechanisms: mandatory tri-partite governance committees, algorithmic constitutional review, and enforceable charter provisions. Each pillar addresses a different accountability gap including internal decision-making, algorithmic design, and corporate purpose and enforcement, while reinforcing the others. Together, they aim to transform configurational power from an unconstrained private prerogative into a

democratically contestable authority, without relying either on purely voluntary corporate ethics or on rigid, prescriptive regulation.

4.1. MANDATORY TRI-PARTITE GOVERNANCE COMMITTEES

The first pillar responds directly to the fact that platform governance decisions with constitutional implications are currently taken inside corporate hierarchies that answer primarily to shareholders. Mandatory tri-partite governance committees would introduce constitutional stakeholding into that structure by giving institutionalised voice to those most affected by configurational power.

The committees can be designed on a three-way model: one-third company-appointed board or senior management representatives, one-third civil society actors (including NGOs, academic experts, and rights organisations), and one-third members of affected communities. The latter group would be selected through stratified random sampling, drawing on the mini-publics tradition in deliberative democracy to ensure that representation is not limited to self-selected advocacy groups or corporate invitees(SMITH; SETÄLÄ, 2018). In practice, sampling frames would be tailored to the platform's reach: for general-purpose platforms with large penetration, from the broader population; for specialised infrastructures (for example, education or health), from directly affected user communities. This design reflects codetermination insights, demonstrating that including non-shareholder constituencies in corporate governance can increase legitimacy and long-term value without destroying business viability (MCGAUGHEY, 2016, p. 136), and adapts them to the broader set of stakeholders identified in platform governance scholarship (GORWA, 2019, p. 854).

The committee's authority would be triggered not for routine commercial decisions, but for decisions with constitutional salience including major changes to ranking and recommendation systems, content-moderation architectures, data infrastructures, or interface designs that structure public discourse or access to essential services. Triggers combine quantitative thresholds (for example, changes affecting more than a defined proportion of a jurisdiction's population or a platform with dominant market share in critical information services) with qualitative criteria focused on core democratic functions (elections, public health, financial inclusion, education). This is consistent with work arguing that stakeholder participation becomes democratically necessary when corporate decisions create structural dependencies over fundamental interests.

Once activated, committees would have binding powers in a limited constitutional domain: to require impact assessments, to demand mitigation measures, and, in exceptional cases, to veto or suspend high-risk changes absent compelling justification. Emergency protocols would allow for accelerated procedures when imminent threats to democratic processes emerge, such as coordinated disinformation campaigns or systemic failures in electoral information systems, but subject to ex post review and strict criteria, reflecting institutional design work on emergency governance that cautions against normalising emergency powers while recognising the need for rapid response in crises. Therefore, the aim is not to turn corporate boards into parliaments, but to ensure that when platforms exercise power tantamount to public authority, those affected are institutionally present in the decision-making process (SERGAKIS; KOKKINIS, 2020, p. 454).

4.2. ALGORITHMIC CONSTITUTIONAL REVIEW

The second pillar takes seriously the idea that algorithms function as a kind of private legislation: they set default rules and patterns of visibility that shape behaviour at scale. If constitutional democracies subject public rule-making to review ex ante and ex post, a parallel structure is needed for algorithmic systems whose effects are constitutional in substance, if not in form.

Algorithmic constitutional review has two components: pre-deployment assessment and ongoing monitoring. Pre-deployment, platforms would be required to conduct structured democratic impact analyses for systems likely to affect public discourse, access to information, or fundamental rights. These analyses would address not only technical performance and individual fairness, but also systemic effects on pluralism, autonomy, and deliberation. They would be published for a formal public comment period and subjected to independent expert evaluation. This responds to what Raji and co-authors describe as the AI accountability gap, in which ethically branded internal processes rarely block the deployment of harmful systems in the absence of binding procedures (RAJI et al., 2020, p.34), and draws on emerging work on algorithmic impact assessments as a structured tool for anticipating socio-political harms (KOENE et al., 2019).

Because algorithmic systems adapt over time and interact with changing social environments, constitutional review must extend beyond initial approval. Ongoing monitoring would require regular (for example, quarterly) constitutional audits, real-

time tracking of key indicators (such as the diversity of information exposure or patterns of disparate impact), and institutionalised channels for stakeholder feedback. This reflects critical research on AI that emphasises the situated, material nature of algorithmic systems and the gap between laboratory assumptions and real-world operation. It also aligns with socio-technical approaches that understand algorithms as part of broader assemblages of norms, practices, and interactions, and thus as requiring governance frameworks that track these relational dynamics rather than only internal model properties (KATZENBACH; ULBRICHT, 2019, p.1). Importantly, algorithmic constitutional review is not a purely technocratic exercise. It is designed to plug into the tri-partite governance committees: pre-deployment assessments, audit findings, and stakeholder feedback become inputs into committee deliberations, ensuring that technical evaluation is situated within a broader constitutional conversation about acceptable risks and trade-offs.

4.3. ENFORCEABLE CHARTER PROVISIONS

The third pillar recognises that participatory and procedural reforms are fragile without a binding normative anchor. To resist drift back toward purely shareholder-centred governance, platforms exercising configurational power would adopt enforceable charter provisions that define and entrench their constitutional obligations. These constitutional purpose clauses would specify, in relatively concrete terms, the platform's commitments to democratic values: for example, maintaining conditions for viewpoint pluralism, protecting equal access to key communicative functions, and avoiding discriminatory or manipulative uses of data. They operationalise corporate purpose debates that argue corporations should be structured around defined public-oriented goals rather than an unqualified mandate to maximise shareholder value, and draw on work showing how purpose-built forms (such as benefit corporations) can embed legally cognisable duties to non-shareholder constituencies while preserving managerial flexibility (BELINFANTI; STOUT, 2018, p.579).

To give these commitments legal bite, charter provisions would be coupled with enforcement mechanisms and amendment safeguards. Supermajority requirements, for instance, a 75% shareholder vote to weaken or repeal constitutional clauses would protect against opportunistic rollback in response to short-term commercial or political pressures. Stakeholder derivative suits would allow certain categories of affected groups and civil society organisations to enforce charter obligations on the

corporation's behalf, adapting insights from corporate law on the role of derivative litigation in policing managerial misconduct and protecting the firm's long-term interests (ARMOUR; GORDON, 2014, p. 35). Regulatory safe harbours could further incentivise adoption by offering procedural deference or reduced compliance burdens to firms that demonstrably adhere to certified constitutional governance standards, consistent with broader proposals for using safe harbours to align market incentives with sound risk management (SCHWARCZ, 2017, p. 2). Charter provisions, in this model, do not replace external regulation but create an internal constitutional layer: they bind corporate actors to democratically salient obligations, provide legal hooks for courts and regulators, and anchor the work of governance committees and algorithmic review in a publicly articulable normative framework.

Taken together, these three pillars seek to rebuild constitutional capacity in a domain where public law has been largely absent. Mandatory tri-partite committees internalise democratic stakeholding within platform governance; algorithmic constitutional review aligns the tempo and objects of oversight with the realities of algorithmic power; enforceable charter provisions supply the legal backbone that allows these institutional forms to endure. None of these mechanisms, on its own, is sufficient to domesticate configurational power. But in combination, they sketch a path by which private architectures that now structure public life might be brought, at least in part, within the orbit of constitutional democracy.

5. IMPLEMENTATION PATHWAYS

The constitutional stakeholding framework developed above remains abstract unless it can be anchored in existing legal and institutional architectures. The implementation challenge is structural: platforms exercise configurational power across jurisdictions, while most available tools—corporate law, securities regulation, and investor governance—are still organised around single firms and single states. This section sketches plausible pathways for embedding constitutional governance into current systems rather than imagining a wholesale replacement of existing regimes. The core claim is that reform will proceed, if at all, through overlapping transformations in disclosure rules, fiduciary norms, and market practices rather than through a single legislative moment.

5.1. SECURITIES AND DISCLOSURE PATHWAYS

Securities regulation offers the most immediate foothold for constitutional stakeholding, because it already treats governance quality and risk management as material to investors. Over the past decade, disclosure regimes have expanded beyond traditional financial metrics to encompass sustainability, human capital, and cybersecurity (FISCH, 2019, p. 923). Constitutional governance of platforms is analogous: algorithmic failures, democratic harms, and crises of legitimacy generate regulatory, reputational, and systemic risks that diversified investors cannot ignore (ARMOUR; GORDON, 2014, p. 36).

A securities-law route would not dictate substantive outcomes but would require platforms to disclose, in standardised form, their governance architectures: the composition and authority of tri-partite committees; the existence, scope, and findings of algorithmic constitutional review; the content and amendment rules of constitutional purpose clauses; and the processes for stakeholder engagement. This kind of regime builds on the insight that disclosure can catalyse shareholder coordination and activism by rendering otherwise opaque practices visible and comparable (FISCH, 2019, p. 923).

Materiality doctrine provides the doctrinal hinge. If investors reasonably view democratic risks and algorithmic failures as affecting firm value or portfolio-level stability, then information about constitutional governance mechanisms is not a matter of ordinary business but a material governance variable. Recent debates over ESG and AI-related proposals already show that investors and regulators increasingly treat non-traditional risks as falling within the ambit of informed investment decision-making (LIPTON et al., 2022). In that context, constitutional stakeholding can be framed not as an ideological project but as a governance response to systemic risks that standard board structures are ill-equipped to manage.

Disclosure, on this model, is not an end in itself. It enables institutional investors, proxy advisors, and beneficiaries to differentiate between platforms that have internalised constitutional governance and those that have not, and to target engagement, voting strategies, or divestment campaigns accordingly. It also provides informational infrastructure for regulators considering more intrusive interventions and for courts evaluating whether boards have met evolving oversight obligations.

5.2. CORPORATE LAW EVOLUTION

Securities law can require visibility but cannot, on its own, specify how platforms ought to be governed. That task falls, in large part, to corporate law. Yet corporate law has historically been built around a narrower problem: how to structure relationships among shareholders, managers, and creditors in firms assumed to have limited social functions. As Greenfield and others have argued, that assumption is increasingly untenable for large corporations whose decisions have public-regarding consequences (GREENFIELD, 2006, p. 1043).

For platform companies, the central question is whether constitutional stakeholding can be accommodated within existing fiduciary frameworks or whether new forms are required. One route is interpretive: to understand directors' and officers' duties as including the management of systemic and democratic risks as part of their obligation to promote the long-term value of the corporation. On this view, boards that implement tri-partite committees, algorithmic constitutional review, and constitutional charters are not "sacrificing" shareholder value for stakeholder interests but engaging in rational risk governance in firms whose business models create externalities at constitutional scale (LIPTON, 2022; ARMOUR; GORDON, 2014).

Delaware corporate law already contains doctrinal tools that can support such an evolution. The business judgment rule gives boards latitude to adopt governance innovations, including stakeholder-oriented structures, so long as they can be justified in terms of corporate benefit. Recent jurisprudence expanding oversight duties to officers, and recognising that boards must attend to compliance and risk in areas central to the firm's operations, can readily be extended to algorithmic and constitutional risks for platforms whose core product is informational architecture (ARMOUR; GORDON, 2014).

A more ambitious route, discussed in U.S. debates around the Accountable Capitalism Act, is federal chartering of large corporations that exercise quasi-public functions, with statutory requirements for stakeholder representation and public-interest purposes (BARTLEY, 2018, p. 145). In principle, such a regime could hard-wire tri-partite governance committees and constitutional obligations into the corporate form of systemically important platforms. In practice, the political obstacles to federal chartering are formidable, and state competition for incorporations creates strong path dependencies.

Between these poles lies a more incremental path: adapting existing alternative forms, such as benefit corporations, to the specific challenges of platform governance. Benefit corporation statutes already recognise that firms may pursue a general public benefit alongside profit and impose reporting obligations on social and environmental performance. Constitutional stakeholding could be inserted into this framework by specifying democratic and informational commitments as part of the corporate purpose and by tying benefit reporting to algorithmic and governance practices. However, the vagueness and weak enforceability of many benefit corporation regimes suggest that platform-specific variants with more robust stakeholder enforcement and governance mandates would be necessary. In all of these variants, the key move is conceptual: to treat democratic and constitutional impacts not as extra-legal CSR concerns but as central objects of fiduciary attention in firms whose business models necessarily reshape public space.

5.3. MARKET-BASED AND HYBRID MECHANISMS

A third implementation pathway operates through markets and hybrid governance arrangements rather than through formal legal change alone. Even without immediate statutory reform, investors, insurers, and other counterparties can create incentives for platforms to adopt constitutional stakeholding voluntarily, especially when such adoption is framed as risk mitigation and governance quality rather than as an externally imposed political agenda.

Institutional investors, especially those with diversified, long-horizon portfolios, have an interest in mitigating systemic harms that any single firm might rationally externalise. Constitutional failures in platform governance—electoral destabilisation, breakdown of shared epistemic foundations, cascading legitimacy crises—pose precisely such portfolio-level risks. The analysis of systemic harms and shareholder value suggests that internal governance solutions may be necessary where external regulation is incomplete or slow (ARMOUR; GORDON, 2014). In this light, constitutional stakeholding appears as a form of internalised regulation that sophisticated investors might rationally demand.

Proxy advisors and stewardship codes can reinforce this trajectory by treating constitutional governance structures as markers of board quality and risk management, much as they already do with audit committees, independence standards, or climate oversight. Disclosure of tri-partite committees, algorithmic review,

and charter provisions then becomes the informational basis for voting guidelines and engagement priorities.

At the same time, hybrid mechanisms can link market and legal incentives. Regulatory safe harbours, for instance, could offer reduced supervisory intensity or procedural deference to platforms that meet certified constitutional governance standards—fully functioning tri-partite committees, rigorous algorithmic constitutional review, and enforceable charter provisions. Schwarcz has argued that safe-harbour designs can align private incentives with public objectives in domains where full command-and-control regulation is impractical (SCHWARCZ, 2017). Applying this logic to platform governance would reward early adopters and create competitive pressure on laggards without prescribing detailed substantive outcomes.

Taken together, these pathways suggest that implementation will not proceed along a single axis. Securities law can make constitutional governance visible and salient to investors; corporate law can legitimate it within fiduciary discourse and, in some cases, mandate it; market and hybrid mechanisms can generate incentives that move practice ahead of formal law. None of these routes is sufficient in isolation. But in combination, they can begin to close the gap between the scale of configurational power and the currently anachronistic toolkit of constitutional democracy.

In short, the ambition of constitutional stakeholding is not to abolish private ordering, but to ensure that when private architectures shape the basic conditions of collective life, they do so under structures of accountability recognisable as constitutional. Implementation will be uneven, contested, and incomplete. Yet absent such pathways, constitutional democracy risks remaining a spectator to the reconfiguration of its own conditions of existence.

6. CONCLUSION

This article has argued that large technology corporations exercise *configurational power* that existing corporate governance frameworks cannot adequately conceptualise or constrain. Contractarian and shareholder-primacy theories presuppose firms whose externalities can be contained through exit, regulation, or liability; platform corporations, by contrast, shape the basic conditions under which billions of people access information, participate in public discourse, and organise collective action. Under polycrisis conditions, this power acquires constitutional significance.

In response, the article has developed *constitutional stakeholding* as a governance paradigm that treats certain forms of stakeholder participation as enforceable democratic rights, triggered by systemic impact thresholds and embedded in binding institutional mechanisms. The proposed three-pillar framework aims to subject quasi-sovereign corporate authority to constitutional-style constraints without abandoning core features of corporate law or business judgment. Tri-partite committees introduce structured, power-sharing arrangements between boards, civil society, and affected communities for decisions that meet defined systemic thresholds. Algorithmic constitutional review treats high-impact digital systems as a form of private legislation requiring ex ante and ongoing democratic oversight. Constitutional purpose clauses, entrenched in corporate charters and enforced through derivative actions and regulatory safe harbours, provide a durable normative anchor for such practices.

The contribution to corporate law and governance is twofold. First, the article shows that democratic accountability mechanisms need not be external impositions on corporate autonomy; they can be understood as institutional responses to systemic and constitutional risks that sophisticated shareholders in diversified, long-horizon portfolios have strong reasons to internalise. Properly framed, constitutional stakeholding is not a departure from fiduciary duty but a way of reconciling that duty with the realities of platform power and systemic risk. Second, it translates abstract debates in real entity theory, republican non-domination, and deliberative democracy into a concrete legal design agenda for firms whose operations now occupy a constitutional register.

At the same time, the analysis has been explicit about its limits. Constitutional stakeholding cannot, by itself, restructure markets, empower workers, redesign data economies, or resolve jurisdictional fragmentation. Questions of antitrust, labour law, privacy, and global coordination remain indispensable and cannot be displaced onto corporate governance. What the framework offers instead is a form of strategic incrementalism: a set of tools that can be deployed now, within existing legal and market infrastructures, to reduce the arbitrariness of configurational power and to create openings for broader democratic contestation.

The broader normative claim is that corporations, once they exercise quasi-sovereign authority over essential infrastructures, become unavoidable sites of democratic struggle. The choice is not between a purely private sphere of corporate ordering and a purely public realm of constitutional politics. It is between allowing

platform governance to remain a domain of largely unreviewable private prerogative, and reconstituting it, imperfectly, partially, and incrementally, as a field in which democratic norms of participation, justification, and accountability have institutional force. Constitutional stakeholding does not promise to resolve all tensions between capitalism and democracy, but it does offer one plausible route by which corporate law can contribute to the preservation of democratic self-government in an era increasingly defined by private control over the conditions of collective life.

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