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LARUFFA EDITORE
via dei Tre Mulini, 14
89124 Reggio Calabria
tel.: 0965.814954
www.laruffaeditore.it
segreteria@laruffaeditore.it

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DIRITTI, RELIGIONI E CULTURE

a cura di
Cattedra di Law and Religion,
Università SAPIENZA

In questo fascicolo, la Rubrica presenta una riflessione di Vincenzo Pacillo sul diritto canonico quale tradizione vivente e ne discute la consistenza anche attraverso la distinzione analogico/digitale, argomentando per la prima invece che la seconda e come patrimonio culturale immateriale.

Come Pacillo ben dimostra, il pluralismo rimane nota essenziale per il diritto, in qualsiasi sua espressione, e il diritto canonico si presenta quale cantiere fecondo per discutere della scienza giuridica oggi.

Vincenzo Pacillo è professore ordinario di Diritto e Religione presso l'Università di Modena e Reggio Emilia. Ha ricoperto incarichi di insegnamento e ricerca presso l'Università di Berna e la Facoltà di Teologia di Lugano in Svizzera, l'Università di Leicester e De Montfort University nel Regno Unito, e l'Università di Istanbul in Turchia. Dirige ORFECT, Centro di Ricerca sulla Libertà Religiosa nella Giurisprudenza della Corte Europea dei Diritti dell'Uomo.
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Canon Law between Analog and Digital: Intercultural Constructivism, Intangible Heritage and the Legal Imagination of the Catholic Tradition

Vincenzo Pacillo[*]

1. Introduction

The suggestion that canon law might be described as a "digital" legal system — as recently proposed in an attempt to rethink its structural features[1] — is both intriguing and revealing. It invites us to reconsider the epistemological coordinates of a tradition that, at first glance, appears resistant to codification, algorithmic precision, and procedural determinacy. But rather than rejecting this interpretive move, this article seeks to explore what is at stake in such a qualification. What does it mean to call a legal system "digital"? And what do we risk overlooking when applying this framework to canon law?

The analog/digital distinction should not be read as a hierarchy, in which analog forms of law are seen as pre-modern or inefficient, and digital ones as their rational culmination. Instead, it reveals a tension — and perhaps a generative one — between two forms of legal rationality. In this sense, canon law may be said to preserve a juridical imagination that resists binary simplification. Its modes of reasoning are analogical, its aims pastoral, and its language deeply embedded in symbolic, narrative, and theological frameworks.

From the legal perspective of theory of communicative action[2], canon law can be understood not primarily as a system of commands, but as a form of normative discourse embedded in the lifeworld — a communicative structure sustained by interpretation, community-based reasoning, and the co-production of meaning. In this setting, norms are not mechanically applied but articulated through *aequitas canonica* (cf. CIC

* *Università di Modena e Reggio Emilia.*

[1] R. Santoro, P. Palumbo, F. Gravino, *Diritto canonico digitale,* Napoli, 2024.

[2] J. Habermas, *The Theory of Communicative Action, Volume 1, Reason and the Rationalization of Society,* Boston, 1984; T*he Theory of Communicative Action, Volume 2, System and Lifeworld: A Critique of Functionalist Reason,* Boston, 1987.

1983, can. 19), *epikeia,* and pastoral discretion. These are not marginal correctives to a rigid legal machine, but intrinsic devices through which canon law preserves its orientation toward mutual understanding and its openness to justificatory discourse.

Such a juridical anthropology places the person — as a communicatively competent actor — at the center of the legal act, rather than subordinating them to the mere functionality of procedural rules. This marks a sharp contrast with the systemic logic of economic and bureaucratic regulation, which Habermas associates with "steering media" governed by instrumental rationality. Here the Habermasian distinction between law as institution (part of the lifeworld, morally justifiable) and law as medium (functionally oriented toward systemic efficiency) becomes less a rigid separation and more continuous dialogue. Canon law exemplifies a legal order in which the institutional dimension — grounded in moral-practical discourse — and the medium dimension — responsive to organizational and procedural needs — remain structurally coupled. In resisting the complete "colonization" of its normative space by systemic imperatives, canon law also reveals, in Ricca's semiotic perspective, its role as a complex symbolic device: a repertoire of signs and interpretive practices that mediate between religious meaning and juridical form, enabling the translation of theological narratives into normativity without exhausting their semantic depth[3].

This translation process involves both "spoken" and "mute" dimensions of the law — the explicit textual sources, but also those silent components that are indispensable for law to "speak" meaningfully to its addressees[4]. In the Catholic legal experience, the mute dimension includes ritual practices, embodied gestures, the tacit authority of tradition, and the cultural presuppositions that shape the reception of the norm in diverse ecclesial contexts. These unspoken elements are not ancillary; they are constitutive of the communicative force of canon law. To make them visible is to recognize that its normative vitality depends on the interplay between the articulate word of the legislator and the silent, performative background of Catholic life.

Seen from this socio-semiotic angle, canon law itself becomes an intercultural space of law: a site where the expressed and the silent, the doctrinal and the customary, the textual and the performative, co-gene-

[3] M. Ricca, *Intercultural Spaces of Law. Translating Invisibilities*, Cham, 2023, p. 146.
[4] P. Heritier, *The Figure of the Unknown within Sacco's Theory,* in "International Journal of Semiotics of Law" 37, 2024, pp. 1700 ff. https://doi.org/10.1007/s11196-024-10165-9.

rate meaning. Its legitimacy is thus inseparable from the Catholic Church's capacity to integrate articulated norms with their mute foundations — a constant interplay in which interpretation is always also an act of cultural translation within the global, culturally plural body of the Catholic Church.

What they value is not merely a system of norms, but an analogical legal culture: a mode of reasoning and decision-making that resists digital flattening. The digital, in its legal translation, implies a procedural system of logical exclusions and pre-codified outputs. The analogical, by contrast, is defined by symbolic depth, continuity of tradition, and interpretive elasticity. Canon law's structure embodies this logic: it seeks harmony over strict categorization, spiritual discernment over algorithmic neutrality, and the salvation of souls (*salus animarum*, can. 1752 CIC) over systemic consistency.

In this light, canon law is not simply "pre-digital"; it is structurally analogical. Its interpretive processes — grounded in analogy, equity, and the principle of epikeia — offer a model of legal reasoning that preserves meaning without reducing complexity. This is particularly evident in its norms on mixed cases (*res mixtae*), its concept of public order (*bonum commune ecclesiae*), and its traditional emphasis on internal forum solutions. Such practices demonstrate a juridical rationality that is deeply hermeneutic, dialogic, and embedded in the symbolic life of the Church.

But canon law is also an evolving tradition — one that adapts and responds to cultural and historical transformations. This dynamic is central to its recognition as a form of immaterial cultural heritage. According to the Faro Convention and the 2003 UNESCO Convention, heritage is not defined by its antiquity or its monumental status, but by the ongoing relationship between a community and its traditions. Canon law scholars are not simply guardians of the past; they are custodians of a normative memory that is constantly reinterpreted and transmitted. Their work constitutes a form of juridical craftsmanship, similar in function to the artisans recognized by UNESCO as "transmitters of intangible heritage"[5].

This recognition entails consequences on both the cultural and legal planes. As noted by Zagato, the notion of patrimonialization in the legal domain opens a path toward the constitutionalization of cultural identity through soft law and intercultural legal mechanisms. The juridical tradition of canon law thus becomes a place of mediation between eccle-

[5] N. Fojut, *The philosophical, political and pragmatic roots of the convention*, in VV. AA., *Heritage and Beyond,* Council of Europe Publishing, Strasbourg, 2008, pp. 13-22.

siastical specificity and public law pluralism. Its analogical form allows it to participate not in opposition to, but alongside democratic legal systems — as a partner in the construction of a juridical pluralism rooted in shared responsibility[6].

Furthermore, this recognition invites us to consider the role of canon law in contemporary legal constructivism. If law is not simply imposed but constructed — through dialogue, intercultural translation, and symbolic negotiation — then the analogical method of canon law becomes not an exception, but an exemplar. It models how law can remain consistent without becoming inflexible, how identity can be preserved without exclusion, and how heritage can function as a resource rather than an obstacle in modern societies.

The aim of this article is to demonstrate that the analog/digital distinction should not be read as a hierarchy, but as a dynamic tension — and perhaps a generative one. Canon law, precisely because of its analogical nature, offers a counterpoint to the technocratic and procedural drift of modern legal systems. In a legal landscape increasingly shaped by computational logic, binary classifications, and efficiency-based frameworks, the canon law tradition recalls a different juridical anthropology — one grounded in interpretation, narrative, symbolic mediation, and discernment.

This interpretive dimension is not a marginal feature. It is intimately tied to how religious freedom itself must be understood: not merely as the autonomy of the subject, but as the protection of an objectively situated act, to borrow a formulation from Habermas. In the expression "everyone has the right to freely profess their religion," the term freely does not simply qualify the individual, but rather the form of expression — its ritual, its temporality, its grammar. It is not enough to be free in general; one must be free to act within a given tradition, through its own codes, forms, and authoritative structures.

From this perspective, canon law is not simply a theological or disciplinary system. It is a normative architecture that makes possible the cultural transmission of religious meaning. It mediates between the divine and the historical, the immutable and the contextual, offering juridical form to religious experience, and in the same time it preserves an immaterial tradition, it operates intergenerationally, and it constitutes

[6] L. Zagato, *The Notion of "Heritage Community" in the Council of Europe's Faro Convention. Its Impact on the European Legal Framework*, in N. Adell, R. Bendix, C. Bortolotto, M. Tauschek, (eds.), *Between Imagined Communities and Communities of Practice*, Göttingen, pp. 141-168.

a space of legal meaning-making that transcends national boundaries while remaining locally anchored. In this light, the analogical nature of canon law is not a residue of pre-modern legal thinking, but a vital resource for pluralistic legal governance. It shows us that legal form can be relational rather than mechanical, symbolic rather than code-like, and that normativity can serve as a bridge between identity and coexistence[7].

2. The analog/digital dichotomy

The analog/digital dichotomy is marked by contrasting dynamics between two opposing forces, a "dialectical tension" or "systemic conflict" that ontologically structures these two systems of representation. The first of these dynamics is *Loss vs. Preservation*[8]. In the analog world, the passage of information from one medium to another has always carried with it a faint erosion, a small and inevitable wound. Every time a photograph is copied, a vinyl recorded onto cassette, or a reel duplicated, something is lost: a shimmer dulls, a hiss intrudes, a shadow deepens where once there was light. The copy, however faithful, wears the memory of being a copy.

Digital technology, by contrast, offers a different promise — a promise bordering on the metaphysical — that of transmission without loss. In principle, one can create a perfect twin of the original, a file that, bit for bit, is indistinguishable from its source. Yet it is precisely this perfection that unsettles the question of fidelity: if the copy is materially identical, what remains of the distinction between original and replica? Philosophy, particularly in the Platonic tradition, has long placed the original on a pedestal, as the perfect form of which all instances are but imperfect shadows. In the digital realm, however, the Platonic hierarchy falters. Walter Benjamin's celebrated meditation on *The Work of Art in the Age of Mechanical Reproduction* spoke of the aura of the original — that unique presence bound to its history, to the here and now of its existence. In analog culture, the aura was preserved by the imperfections of reproduction: the gap between original and copy reaffirmed the former's singularity. But in the digital sphere, where copies can be absolutely identical, the aura seems to dissipate. The original survives less as a tangible

[7] O. Condorelli, *A proposito di diritto canonico e culture giuridiche. Nel centenario del Codex iuris canonici del 1917,* in "Ius Ecclesiae", 2020, pp. 741–762; C. Fantappie, *Il diritto canonico nella società postmoderna*, Torino, 2020, pp. 1–15.

[8] P. Conway, P*reservation in the digital world,* Washington, 1996.

object than as an abstract notion, an article of faith.

This tension between loss and preservation is not confined to the arts or to technology. Religious legal systems have known it for centuries. Here, the "original" is not an image or a melody, but the sacred law — the divine *logos* fixed in scripture. Such systems rest upon the conviction that the original text is immutable, and that any loss in its transmission threatens the very legitimacy of the law. In this respect, they resemble the digital ideal: the sacred text must be reproduced and transmitted without degradation. And yet, unlike the digital file, the sacred original does not risk having its aura erased by perfect replication. Quite the contrary: its aura is the source of the system's authority, and every act of interpretation is weighed against the danger of introducing a distortion, a background noise in the sacred signal.

Canon law offers a particularly revealing example. Here, the challenge is to translate divine norms into human legal contexts without allowing human contingencies to corrode their meaning. This is not unlike the challenge of digital reproduction: to preserve, without loss, what is regarded as a perfect source. The Catholic Church has developed intricate mechanisms to ensure this fidelity — the weight of Tradition, the deliberations of Councils and synods, the interpretative authority of the Magisterium. These function like the checksum algorithms of the digital world: tools designed to detect and correct deviations, to guarantee that the norm remains identical to its point of origin.

But the analogy is not without limits. In the digital realm, the dream of perfect transmission is haunted by the reality of discretization — the breaking down of continuous reality into discrete units. A photograph, no matter how sharp, is still a grid of pixels; a high-resolution audio file is still a sequence of samples, however closely spaced. The process of quantization introduces an ontological change: continuity is replaced by a mosaic of discrete states.

This is the second tension: continuity versus discretion. In the analog world, phenomena like light, sound, or movement present themselves as continuous flows. The digital world must fracture these flows into bits, pixels, and samples to make them processable. Even at the highest resolutions, a gap remains between the continuous phenomenon and its digital representation — a gap filled, if at all, by the human mind, which reassembles the fragments into an apparently seamless whole. But the holistic quality of the analog is, in some measure, irretrievably lost.

And here the analogy with canon law returns in a different key. The

divine message, in its theological self-understanding, possesses an ontological continuity: it is eternal, immutable, all-encompassing. Yet to govern the life of the Church, this continuity must be broken down into discrete, applicable norms — a process that inevitably transforms it. In canonical terms, there is *jus divinum*, the law believed to be of divine origin and therefore immutable, and *jus ecclesiasticum,* the law created by the Church to respond to historical and practical needs. *Jus divinum* embodies continuity; *jus ecclesiasticum* embodies discretion.

Interpreting canon law, then, is an exercise in translating the boundless continuity of the divine into the bounded categories of human legislation. The risk, as in digital quantization, is that the process strips away nuances and depth. No matter how refined the interpretative machinery, some of the original's richness may escape the net of discrete formulation. Just as no number of pixels can fully contain the play of light on a face, no code of norms can entirely capture the plenitude of the divine message.

Thus, both in the digital domain and in religious legal systems, fidelity to the original involves a paradox. Preservation requires transformation; continuity can only be maintained by breaking it into parts. And in each case, the act of transmission — whether from negative to print, from scripture to canon law — is also an act of re-creation, where the original is both preserved and, inevitably, remade.

3. The problem of reduction

The issue of reduction represents a crucial theme in both the digital and legal contexts: while in the former it manifests through the need to fragment the continuity of the real into discrete units that allow computational processing, in the latter, reduction translates into the process through which the complexity of human experiences is transformed into norms and principles. We can thus speak of two distinct yet interconnected dimensions of law: the analog dimension, which seeks to preserve the continuity and fluidity of legal experience, and the digital dimension, which instead reduces complexity to discrete categories, fragmenting, multiplying, and technicalizing sources and/or their interpretation to make the legal system manageable in the face of complexity.

According to Corey J. Maley[9], this process of reduction is not an abso-

[9] C. J. Maley, *Analog and digital, continuous and discrete,* in "Philosophical Studies" 155, 1, 2011, pp. 117-131.

lute impoverishment but a transformation that enables the management of complexity in computational terms. Digital reduction, therefore, becomes an essential tool for addressing the enormous volume of data that the modern world must confront, transforming the infinite variability of the continuous into discrete and manageable units.

The analog dimension of law is based on a conception in which moral and social experience is seen as continuous and fluid, a set of relationships that cannot be fragmented without losing part of their original meaning.

Seen from a certain angle, law is a vast memory machine. It tries to keep the weave of concrete life intact — the accidents, the nuances, the threads of circumstance — while also tying them to principles that, like constellations, float above the mess of events and pretend to be eternal. But when the time comes to act, to judge, the law must perform an operation of reduction. It has to cut the continuous cloth into neat, usable patches: discrete categories that can be handled in the small theatre of a courtroom.

Take, for example, the notion of moral damage in civil law. In its native form moral damage is a knotted skein of emotional pain, psychological issues, the shadows cast by humiliation or loss: it is as dense and unquantifiable as grief itself. Yet, in order to enter a legal file, this experience must be domesticated into criteria: the measurable degree of suffering, the causal link between act and harm, the corresponding sum of money deemed to repair it. The original human fact is not destroyed by this reduction, but reconfigured into a language the law can speak — one that courts can weigh, compare, and, in principle, apply uniformly[10].

There is a curious analogy here with the digital world, and Maley has pointed it out: to turn the continuous flow of sound or image into discrete data requires an act of technological interpretation. The recording device, the software, the algorithm — all make choices about how the phenomenon will be represented and stored, and those choices shape what will later be seen or heard. Law, too, must translate — and in doing so, it must interpret. To turn human conduct or suffering into a norm, there must be a preliminary operation: to strip the event of its infinite particulars and wrap it in the finite fabric of legal categories. And then, when the judge applies the category, there is a second act of interpretation, trying to coax back some of the original complexity — the smell of

[10] E. Del Prato, *Le basi del diritto civile*, IV ed., Torino, 2021, pp. 610 ff.

the fact, as the civil lawyers used to say — from the abstract skeleton of the rule.

But here as in the digital domain, the interpretation is bound by the prior reduction. Just as a low-resolution image cannot yield details that were never captured, a norm reduced to formal categories sets the boundaries within which interpretation can move. This is not a defect of the system; it is the price of its operability. Without such reduction, there would be no shared frame of reference, no coherence, no predictability in judgment.

The reduction is never neutral. It directs interpretation; it shapes the terrain of legal possibility. Consider the principle of good faith in pre-contractual liability. In the chaos of human negotiations — hesitations, smiles, half-promises, gestures that say one thing and mean another — good faith appears as a vague but powerful ideal: mutual fairness, loyalty to the other's trust. Articles 1337 and 1338 of the Italian Civil Code take this volatile substance and crystallise it into rules of conduct. These impose obligations even before a contract exists: do not deceive; do not lead the other to rely on an agreement you will never conclude; if you do, you may owe damages.

Once reduced to a rule, good faith gains clarity but loses breadth. Judges must apply an abstract criterion to the messy reality of a negotiation, and in doing so they navigate between two shores: on one side, the protection of legitimate reliance; on the other, the freedom to walk away from a deal. The reduction is what makes the journey possible; the interpretation is what keeps it honest.

Here, too, the digital metaphor holds. A photograph reduced to pixels can still be beautiful, but the resolution limits what it can reveal. A legal norm reduced to formal categories can still do justice, but it cannot contain the whole life of the fact. That missing richness is the inevitable price of making principles work in practice.

In the end, law lives in suspension between two impulses. Its "analog" impulse tries to preserve the unbroken continuity of human experience; its "digital" impulse compels it to break that continuity into operational units. This is not a contradiction to be resolved, but the very dynamic that keeps the legal system alive: a constant oscillation between the world as it is lived and the world as it must be judged. Reduction is the hinge between them — the act that makes law possible, that allows it to be both faithful to life and capable of governing it, even if it must sacrifice some of the music of the original score.

4. Constructivism and Reduction as a Functional Necessity in the Secular State in The perspective of Intercultural Law

The reduction of moral and existential experience to principles and rules endowed with normative structure is not, therefore, an impoverishment but a necessary form of organization. In the context of the secular state, reduction allows for the construction of a rational and coherent normative foundation based on practical and plural considerations: it is not about reducing the complexity of moral experience or the demands of justice, but about making them accessible and applicable within a legal system founded on principles of reasonableness and equality. In secular law, principles are not given naturally or immutably but are constructed through deliberative and democratic processes involving citizens and institutions. In this sense, reduction is an act of mediation that translates the complex needs of society (the multiplicity of values) into norms that can be shared and respected by all (principles).

Carla Bagnoli emphasizes[11] that secular norms are not discovered as natural or objective facts, but are the product of constructive activity by rational agents within a normative community. Hence, norms must be justified through deliberation and practical reasoning, which take into account moral plurality and the necessity of finding shared principles in a complex society: according to Bagnoli, this constructive process allows for the respect of individual autonomy and public rationality, two fundamental elements of a secular state.

Even in a constitutional democracy, Robert P. George[12] reminds us, one cannot entirely banish the idea that some moral goods and evils are absolute, pre-political, grounded in the ontological solidity of natural law. For him, such truths stand before us like mountain ranges: one may chart them, dispute their contours, but not wish them away. Yet this view has long been challenged by Habermas and Rawls, who invite us to move the gaze from the eternal to the procedural — to norms born not from immutable axioms but from the messy workshop of public reason, hammered out among free and equal citizens. In their account, norms are not found; they are made. And because they are made in history, they must be remade, continuously, if they are to remain alive.

[11] C. Bagnoli, *Ethical Constructivism,* Cambridge, 2022.

[12] R. P. George, *Natural Law*, in "The American Journal of Jurisprudence", 52, 1, 2007, pp. 55–75.

But here a problem emerges. A secular dialogue between civil and religious authorities — a genuine bilaterality — cannot survive on legal constructivism alone, at least not in its classical, procedural form. To insist that norms are nothing but procedural artefacts risks amputating them from the deep symbolic reservoirs in which communities, religious or otherwise, ground their own sense of justice. Norms, to have weight, must speak in languages older and richer than the minutes of an assembly: they must resonate in the semiotic landscapes — the vocabularies of myth, ritual, and collective memory — through which people articulate their identity. Law, if it wishes to remain more than administrative scaffolding, must recognise this cultural situatedness of its own meaning.

Here Knott's reflections on visibility and invisibility become pivotal[13]. For legal meaning, too, is a matter of spatial politics: what is brought into the open, what remains "behind closed doors," and how these boundaries are negotiated. In late-modern societies, religious communities are not merely passive objects of state strategies of diversity management. They possess their own agency, devising tactics to make themselves more visible or to remain under the radar, depending on the risks and opportunities of the moment. Their symbolic capital is not static; it moves across the thresholds of public space, sometimes occupying it boldly, sometimes withdrawing into protected enclaves.

Seen corologically — that is, in terms of how law inhabits space — the dialogue between state and religion is not conducted on a neutral tabletop but in an uneven terrain, full of gates, walls, sightlines and blind spots. Norms, like religious communities, are positioned within regimes of (in)visibility: they can be made present to the senses and to public attention, or be present without attention, or absent yet insistently remembered, or absent and forgotten. A law that aspires to democratic legitimacy must be able to move within these regimes, translating the idioms of one legal–symbolic world into another without erasing their contours[14].

Tillich's theology of the history of religions, read through this spatial

[13] K. Knott, *The Tactics of (In)Visibility among Religious Communities in Contemporary Europe,* in C. Bochinger, J. Rüpke, *Dynamics of Religion: Past and Present*, Berlin/Boston, 2017, pp. 47-68. https://doi.org/10.1515/9783110450934-004.

[14] M. Ricca, *How to Make Space and Law Interplay Horizontally: From Legal Geography to Legal Chorology*, 2017. Available at SSRN: https://ssrn.com/abstract=2926651 or http://dx.doi.org/10.2139/ssrn.2926651.

lens, adds a further dimension. Religious traditions are not inert monuments; they are dynamic, symbol-generating processes. They respond to the *kairos* — the charged moment in history — by reframing their symbols, adjusting their narratives, engaging with the stranger. Normativity, in this light, is not only constructed but performed; not only deliberated but enacted in the interplay of symbols across spaces. A canon lawyer negotiating the boundary between *jus divinum* and *jus ecclesiasticum* is not unlike a community leader deciding whether to place a festival procession in the open square or to keep it within the courtyard: in both cases, the decision is a semiotic act, positioning meaning in relation to visibility, risk, and recognition.

From this follows a redefinition of autonomy. It is not the solitary self, disencumbered, choosing from nowhere. It is the person — and the community — as bearer of traditions, symbols, and inherited grammars of meaning, participating in the public sphere not by shedding these affiliations but by making them legible to others. Procedural inclusion alone is insufficient; the polyphony of culturally embedded rationalities, including religious ones, must be allowed to sound within the legal order. This does not diminish the secular state's neutrality; it deepens it, turning it from a void emptied of values into a host of many normative worlds, engaged in the difficult craft of translation.

In such a vision, law is not a sealed code but an open text, one that must constantly negotiate its place in a shifting spatial and symbolic environment. Bilaterality, here, is not merely an institutional arrangement but a practice of mutual visibility — sometimes clear, sometimes oblique — in which each side accepts the other's right to appear, to speak, and, when necessary, to retreat[15].

[15] As Basira Hussen observes, the principle of bilateralism in the Italian constitutional system—rooted in Articles 7 and 8—should not be reduced to a rigid procedural arrangement, but understood as a dynamic mechanism for safeguarding the autonomy of religious communities while ensuring the State's equidistance and neutrality. This requires a continuous negotiation of its meaning and scope in light of pluralism, transparency, and inclusivity, avoiding the political discretion and formalism that risk turning it into an exclusionary device. Such a view converges with the present assumption that bilateralism is "not merely an institutional arrangement but a practice of mutual visibility... in which each side accepts the other's right to appear, to speak, and, when necessary, to retreat," and with the idea of law as "an open text" that must "constantly negotiate its place in a shifting spatial and symbolic environment." Both perspectives reject a static, sealed conception of legal norms and instead envision bilateralism as an iterative, dialogical process aligned with the Rawlsian requirement of public reason

5. Reduction, Co-construction and Constructivism in Canon Law

What now demands careful reconsideration is whether the constructivist approach to normative reduction — especially when revisited through the lens of intercultural legal theory — can be meaningfully applied to the legal experience of religious rights, and in particular to canon law, understood not merely as a regulatory apparatus, but as a form of intangible cultural heritage. This reframing allows us to explore how such an application might reshape the analog/digital dichotomy in juridical thought.

Canon law is not only a system of norms grounded in ecclesiastical authority; it is a living tradition transmitted through centuries by a community of interpreters who engage in symbolic mediation, doctrinal elaboration, and pastoral discernment. This community — composed of historians, jurists, ecclesiastical practitioners and theologians — may be properly identified as a heritage community in the sense of Article 2(b) of the Faro Convention: a collective of people who "value specific aspects of cultural heritage which they wish, within the framework of public action, to sustain and transmit to future generations." The interpretive practices, theological structures, and hermeneutic methods that characterize canon law represent, in this light, a form of juridical craftsmanship analogous to the "transmitters of intangible heritage" recognized under the 2003 UNESCO Convention.

Within this patrimonial framework, legal constructivism acquires new depth. It is no longer just a procedural or deliberative paradigm, but becomes a mode of engagement with legal traditions as culturally situated, symbolically dense, and historically layered. Intercultural legal constructivism does not flatten diversity into formal equivalence, but instead invites a dialogical encounter between normative worlds. It recognizes that law is also made of stories, rituals, values — that is, of inherited grammars which shape how normativity is experienced, interpreted, and lived.

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and reflective equilibrium, where norms evolve through mutual adjustment between constitutional principles and lived social realities. B. Hussen, *Rawlsian constructivism and the challenge of the principle of bilateralism in the relations between the Italian Republic and religious denominations : toward an inclusive model,* in "Il Diritto Ecclesiastico", 1, 2025, pp. 133-167.

The analog/digital dichotomy is thus re-inscribed within this patrimonial logic. While digital legalities tend to favor abstraction, binarism, and algorithmic determinacy, analogical legal traditions — such as canon law — preserve a space for discretion, contextual meaning, and symbolic translation. This analogical form, far from being a relic, becomes a juridical virtue: it allows canon law to function as a flexible medium of normativity, attuned to spiritual depth, cultural memory, and the pastoral care of souls (*salus animarum*, can. 1752 CIC).

Moreover, the patrimonial nature of canon law, when interpreted through intercultural constructivism, highlights its potential contribution to legal pluralism. Rather than being a closed normative system, it becomes a resource for democratic legal cultures striving to reconcile coherence with diversity, tradition with participation, and universality with contextual sensitivity. Hence, heritage communities cannot be defined by rigid identity markers, but by voluntary affiliation and the active transmission of cultural value. In this sense, the community of canon law scholars constitutes not just an epistemic network, but a symbolic collective, whose role in the legal ecosystem is both cultural and civic.

Canon law, with its analogical structure and the slow breath of a heritage community behind it, refuses the neat geometry of the digital mind. Where digital clarity thrives on closure and binarism, the canonical imagination prefers curves to straight lines, memory to code, and interpretation to rigid execution. It behaves less like a spreadsheet and more like a living language — one that carries accents, idioms, and the sediment of centuries, requiring not only reading but listening, not only application but care.

An intercultural constructivism that wishes to be true to itself must make room for this kind of normativity. Not to romanticize it, as if the past were immune to error, but to see in it a form of legal imagination and cultural inheritance no less vital than any parliamentary statute or constitutional court ruling. Indeed, canon law, understood as a dynamic piece of intangible heritage, does more than fit the constructivist framework — it widens it. It shows how law can be carried across generations not by coercion or calculation, but by the ethical loyalty of a community that has decided, again and again, to keep its legal meaning open, analogical, and alive.

On the surface, the temptation is to classify canon law — with its divine revelation, its immutable principles — alongside the "digital": a closed system, resistant to modulation, founded on truths immune to

deliberative change. Yet if one looks more closely at the synodal process, at the practice of inculturation, at the pastoral discernment that turns up like a recurring motif in ecclesiastical history, a different picture appears. Here is a law that knows how to move without losing its centre, that translates itself into different tongues and gestures without ceasing to be itself. From an intercultural legal perspective, these are not modern concessions, but the natural movement of a juridical tradition that has always understood itself as relational, aware of context, and oriented toward the salvation of concrete persons in concrete histories.

Pio Fedele and Eugenio Corecco[16] stand as two sentinels at the gate of this tradition. Fedele, wary of the importation of secular categories, insisted that the Church's legal order was of another species entirely: no marketplace of subjective rights, no theatre of private autonomy, no Enlightenment social contract. To treat canon law as a negotiable construct was, in his view, to misrecognize its origin in divine will and its function as the guidance of souls. Corecco, while sharing this wariness, framed the matter more explicitly in epistemological terms: canon law, he argued, is an *ordinatio fidei* — an ordering of faith — and as such cannot be detached from its theological horizon without ceasing to be what it is. Faith and law are bound together here in a way unknown to the secular order; the recognition of divine principle and its application in norm are two movements of the same act.

Such unity changes everything. In secular law, norms are the offspring of deliberation, their legitimacy drawn from collective consent, their life subject to revision. In canon law, legitimacy flows from above, from a truth that does not ask permission to be true. Authority here is not the revolving stewardship of elected offices, but a vertical line of interpretation, from the Pope and bishops downwards, ordered on the principle of the unity of Head and Body — the mystical and the juridical superimposed.

There is also a distinction within the canonical edifice itself. At its core lie the norms directly drawn from divine law — matters of faith, sacraments, morality — which are absolute, non-negotiable, immune to historical weather. Around this core lies the more flexible ring of organisational and pastoral norms: discipline of clergy, parish structures, resource management. Here synodality and pastoral care work like join-

[16] P. Fedele, *Discorso generale sull'ordinamento canonico*, Padova, 1941; E. Corecco, «*Ordinatio rationis*» o «*ordinatio fidei*»?, in "Communio", 36, 1977, pp. 48-69.

ts and hinges, allowing movement without dismemberment. Through synods, voices are gathered; through pastoral discernment, norms are adapted to circumstances, always with an eye on the good of souls.

And there are old instruments for this elasticity: *epikeia*, dispensations, the internal forum. These are not loopholes, but the juridical equivalents of architectural features designed to absorb stress without collapsing — devices that let the law bend where it would otherwise break. They operate within the heritage logic of canon law: avoiding rigid applications that would harm, without touching the immovable foundations.

Seen in this light, canon law is less a fortress than a walled city, whose gates can open to the winds of history while its foundations hold. It is, in UNESCO's sense, an intangible cultural heritage: a web of doctrines, norms, interpretive habits, and pastoral arts transmitted across centuries by a community that recognises itself in them. The Faro Convention's "heritage community" is visible here in full: bishops and canon lawyers, but also lay faithful, participating in the preservation and reinterpretation of a juridical culture that is theirs.

Synodality, then, is not a contradiction of hierarchy, but its internal conversation; pastoral adaptability is not capitulation, but the law's own way of remaining humane without ceasing to be divine. The immutability of principles and the adaptability of application are not in tension; they are the double helix of the canonical tradition.

In an age where law is increasingly digitized, abstracted, and detached from the slow work of communal memory, canon law offers an alternative paradigm: analogical, symbolic, and rooted in relationship. It reminds us that law can be a form of cultural transmission, a vessel of shared memory, and a practice of justice shaped by care. To live under such a law is not merely to follow rules, but to inhabit a tradition — to be part of a conversation between centuries, in which the words are fixed, but the tone, the pace, and the gestures are always new.

6. Conclusions

We began with what seemed a simple provocation: could canon law, with all its theological gravity and centuries of accrued form, be meaningfully described as "digital"? But such a question, once asked, refuses to stay in its box. It led us into the deeper architecture of canonical norms, into the way they breathe in relation to theological truth, and into thei

a dialogue with other, plural legal orders. Once viewed through the lens of intercultural constructivism, even the vocabulary of "analog" and "digital" loses its innocence. It turns out to be less a neutral taxonomy than a pair of competing visions of law itself — what it is, how it works, what it is for.

What emerged instead was not a binary verdict but a portrait. Canon law is an analogical system, in the old rhetorical sense of *analogia* — a web of correspondences and mediations. It does not run on the yes/no of a switch, but on the slow arc of interpretation; not on the closure of code, but on pastoral discernment; not on mechanical repetition, but on symbolic reasoning. It has its own form of internal pluralism, the capacity to hold together universal norms and their local transfigurations without tearing the fabric. Its coherence lies not in rigid codification but in its skill at preserving meaning across difference, negotiating justice without surrendering truth.

Seen in this light, canon law is not anti-modern; it is anti-reductive. It reminds us that law is more than scaffolding for command — it is also tradition, narration, and the weaving of memory. In religious contexts, normativity must be protected not only as a private liberty but as a cultural agency, the power of a community to live and transmit its own grammar of meaning. Its analogical form is not a sign of incompleteness, but a deliberate stance: an acknowledgment that religious norms are born in history, nourished by community life, and rooted in the existential texture of human meaning.

This shift of perspective has implications beyond the walls of the catholique Church. If religious freedom means the right to act in and through one's tradition — not merely to shelter abstract beliefs — then all the religious legal systems are not eccentric relics but part of the intangible heritage of democratic life. Canon law becomes a test case, not for what it believes, but for the cultural-juridical form it embodies: a tradition that can keep its inner coherence while taking part in the intercultural work of building shared norms.

The canon law community itself is, in this sense, a heritage community in the Faro Convention's meaning — even if international law has yet to name it as such. Bound by immutable doctrines, yes, but alive in its work of safeguarding, reinterpreting, and transmitting a juridical tradition both spiritually grounded and socially inhabited. To see its cultural status is to admit that law, too, can be a vessel of memory, a

bearer of meaning, a shared responsibility.

In an era of rising proceduralism and "if/then" governance, canon law offers a counterpoint. Its order is not the binary logic of code, but the layered logic of symbol. Its precision is not algorithmic but pastoral; its rationality not mechanical but teleological. The *salus animarum* — the good of souls — is not a variable to be solved but a horizon to be kept in view. This keeps it outside the reach of purely digital models: its form is hermeneutic rather than formalistic, narrative rather than instant.

Even the techniques that give canon law its elasticity — *epikeia*, dispensation, synodality, the relevance of internal forum — are not procedural afterthoughts. They are part of its very craft, the joints that let the structure absorb the pressures of human difference without fracture. In the terms of the Faro Convention and the 2003 UNESCO Convention on intangible heritage, they are inherited methods of working meaning into norm, passed down in a chain of custody that is intellectual, pastoral, and communal at once.

Re-read in this key, constructivism becomes more than a theory of procedural openness. Under an intercultural reading, it is a method of co-constructing norms through cultural translation, symbolic negotiation, and a refusal to strip traditions of their depth in the name of universality. It offers the conceptual space to recognise religious legal systems not as archaisms to be tolerated, but as living contributors to our common legal imagination. From this vantage point, the attempt to brand canon law as "digital," in the sense suggested by Santoro, Palumbo and Gravino, even vey interesting, feels like a flattening. Codification and central governance may produce a surface resemblance, but the underlying logic runs on a different current. Its method is analogical, its language symbolic, its temporality layered and ritualised. It works not in the flash of instant execution, but in the long patience of historical consciousness and the deliberate pace of discernment.

And so, if the state learns to move beyond a minimalist liberal tolerance toward an interculturally conscious legal posture — one that engages religious normative traditions as forms of heritage — a deeper pluralism becomes possible. In such a landscape, bilateralism is not a grudging concession or a matter of formal treaties, but a principle of co-construction: mutual recognition, symbolic reciprocity, and dialogue written into the legal fabric.

This model does not weaken constitutional secularism or equality; it

clarifies them. Secularism is not the negation of difference, but the institutional condition for its expression—a grammar in which distinct normative voices can be translated rather than muted. Justice, accordingly, ceases to be a geometry of abstract sameness and becomes a patient negotiation among plural, historically thick legal grammars within a shared civic space.

Placed in that light, canon law becomes exemplary rather than exceptional: precisely because it holds together immutability and adaptation, universality and contextuality, hierarchy and synodality, it shows how a religious normative system can inhabit the common space without claiming to exhaust it. Canon law, seen this way, is not simply a code; it is a cultural form—a repository of symbols, arguments, and procedures in which a community's "ultimate concerns" sediment into institutional practice[17].

Here the *forum internum* is decisive—not a sacral alcove insulated from law, but the place where law learns to speak across difference.

Modern criminal law, born from the exaltation of the *forum externum*, narrowed responsibility to external conduct (with intention trimmed to bare *dolus* and *culpa*), then smuggled "motives" back at the sentencing stage. Ricca shows[18] how that genealogy depends on the very *forum externum/forum internum* interplay that canon law never wholly abandoned—indeed, re-purposes: the interior forum is where flexibility, equity, and pastoral discernment can operate without collapsing into arbitrariness. In other words, the *forum internum* is a juridical space of translation: a site where universal norm and singular life meet without either being absorbed by the other.

Semiotically, this matters. Canonical norms are not only prescriptive rules; they are signs whose observance enacts meanings. Sacramental law (marriage, orders) prescribes procedures, but also signifies truths about the Church, human relations, and mission. In the *forum internum,*

[17] According to Maria d'Arienzo, the relationship between canon law and history can be framed — with emphasis on the term canon law — not so much in relation to the internal development of its systematics and the principles structuring the Church's legal institutions, but rather in terms of its actual capacity to respond to the demands of contemporary society, and thus its ability to generate "innovation" in relation to "tradition." M. D'Arienzo, *Diritto canonico e storia. I paradossi interpretativi tra tradizione e innovazione,* in "Diritto e religioni", 1, 2018, pp. 70- 71.

[18] M. Ricca, *Simmetrie rovesciate della secolarizzazione,* in "Diritto e Religioni", 2021, n. 1, pp. 484 ff.

that sign-work is explicit: confession, counsel, and discernment function as interpretive devices through which immutable claims are rendered meaningful to concrete consciences. Trust here is not sentiment; it is a juridical technology: the penitent entrusts a conscience, the minister receives it under a duty to listen and translate; the result is not an exemption from law but an interiorization of law—the norm becomes a freely embraced orientation rather than an external weight. Ricca's point is that this is not an evasion of objectivity; it is an alternative to objectivism—one that modern systems quietly rely on whenever they try (and often fail) to "humanize" sanctions after the fact. If we accept that, canon law is not a museum piece; it is juridical heritage that stays alive by being practiced. Its community of bearers keeps it open to reinterpretation, dialogue, and contextual application. Recognizing this community (in Faro's Convention sense) is not confessional favoritism; it is a civic bet on plural rationalities that can contribute to public reason.

That is why the *forum internum* is not marginal; it is a model. It shows how a legal tradition can mediate between permanence and change, universal claim and local texture—without surrendering either. It is also why canon law's analogical tools (dispensations, *epikeia*, pastoral forums) should not be caricatured as leniencies; they are forms of juridical care, structured ways to honor both norm and person. In democratic settings, this offers a template: legal pluralism need not be a threat to equality if the secular order understands itself as a grammar—a set of procedures and fora that make translation possible, within limits that protect all.

To see canon law as intangible heritage is to invite democratic orders to think of justice as more than procedure—as a relational practice of translating diverse normative universes into a common civic idiom. Ricca's prism helps here: it reveals the incompleteness of secularization, the persistence of Christian legal theologies within modern law, and, crucially, the necessity of the f*orum internum* as a juridical environment in which conscience and authority meet without domination. A secularism that recognizes and hosts that work does not abdicate; it matures.

In this perspective, canon law stands not outside the contemporary legal landscape but within it—as a dynamic juridical heritage and a community of legal meaning that keeps alive the analogical mode of law as discernment, transmission, and responsibility. Far from being a competitor to equality, it can be a partner in the civic labor of negotiating

normativity across differences—translating without erasing, binding without blinding.

Abstract
Questo articolo contesta la riduzione del diritto canonico a un sistema giuridico "digitale", sostenendo invece la sua struttura fondamentalmente analogica e il suo status di forma di patrimonio culturale immateriale. Attraverso la lente del costruttivismo giuridico interculturale, esamina come il diritto canonico resista alla codificazione binaria e preservi un'immaginazione giuridica radicata nell'interpretazione, nella mediazione simbolica e nel discernimento pastorale. Facendo ricorso alla semiotica, al diritto interculturale e ai quadri concettuali della Convenzione di Faro e della Convenzione UNESCO per la salvaguardia del patrimonio culturale immateriale, l'articolo colloca il diritto canonico come pratica di "comunità patrimoniale", sostenuta da una rete di canonisti, giuristi, teologi e fedeli impegnati nella sua trasmissione. La dicotomia analogico/digitale viene utilizzata per esplorare le tensioni tra continuità e discretizzazione, conservazione e trasformazione, mostrando come il diritto canonico equilibri principi divini immutabili e norme pastorali adattive attraverso meccanismi quali l'epicheia, le dispense e il foro interno. Ridefinendo il diritto canonico come tradizione vivente impegnata in una traduzione simbolica e normativa, l'articolo ne dimostra il potenziale contributo al pluralismo giuridico democratico, proponendo la bilateralità come principio di co-costruzione fondato sulla visibilità reciproca e sulla traduzione culturale. In tal modo, presenta il diritto canonico non come una reliquia della governance premoderna, ma come un partner giuridico attivo, capace di arricchire gli ordinamenti giuridici secolari contemporanei.
Parole chiave: Diritto canonico, Patrimonio culturale immateriale, Bilateralità, Costruttivismo giuridico interculturale, Tradizione vivente.

Abstract
This article challenges the reduction of canon law to a "digital" legal system, arguing instead for its fundamentally analogical structure and its status as a form of intangible cultural heritage. Through the lens of intercultural legal constructivism, it examines how canon law resists binary codification and preserves a juridical imagination rooted in interpretation, symbolic mediation, and pastoral discernment. Drawing on semiotics, intercultural law, and the frameworks of the Faro Convention and the UNESCO Convention for the Safeguarding of Intangible Cultural Heritage, the article situates canon law as a "heritage community" practice, sustained by a network of canonists, jurists, theologians, and faithful committed to its transmission. The analog/digital dichotomy is used to explore the tensions between continuity and discretization, preservation and transformation, showing how canon law balances immutable divine principles with adaptive pastoral norms through mechanisms such as epikeia, dispensations, and the internal forum. By reframing canon law as a living tradition engaged in symbolic and normative translation, the article demonstrates its potential contribution to democra-

tic legal pluralism, proposing bilateralism as a principle of co-construction grounded in mutual visibility and cultural translation. In doing so, it presents canon law not as a relic of pre-modern governance, but as an active juridical partner capable of enriching contemporary secular legal orders.
Keywords: Canon law, Intangible cultural heritage, Bilateralism, Intercultural legal constructivism, Living tradition.

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Questo fascicolo

Il fascicolo si apre, per la Rubrica "Diritti umani, oggi", con una riflessione sui diritti umani e sull'applicazione delle sanzioni a Francesca Albanese.
La Rubrica "Economie, politiche e società" si occupa di un pedagogista calabrese che ha dato un importante contributo alle scienze pedagogiche, Francesco Paolo Scaglione.
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Chiude il fascicolo la consueta rubrica "Normativa, giurisprudenza e prassi internazionale" dedicata a discutere la Direttiva 1226 del 2024 in materia di definizione dei reati e delle misure restrittive dell'Unione europea e le sfide per gli Stati membri.

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