THE LIMITS OF JURISDICTION IN THE TECHNOLOGICAL ERA AND INTERNATIONAL CO-OPERATION IN THE EFFECTIVENESS OF FUNDAMENTAL RIGHTS

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Abstract: This paper examines how the advent of the technological society has reshaped the traditional limits of jurisdiction, focusing on disputes that arise in virtual environments and exploring the role of international co-operation as an ally in enforcing fundamental rights, such as access to justice. It first revisits the concept of jurisdiction and its contours, emphasising that each sovereign State is autonomous in exercising jurisdiction within its territory. It then shows how the expansion of the Internet has transformed relationships between parties and broadened territorial competence for hearing and deciding cases. The study also approaches international co-operation as an alternative for resolving conflicts of competence between two sovereign States, demonstrating that concurrent international jurisdiction can be overcome to achieve greater effectiveness of fundamental rights at the international level. The research addresses two core questions: (1) How are the limits of jurisdiction characterised in the face of technological expansion? (2) How can international co-operation assist in resolving concurrent international jurisdiction to ensure the effectiveness of judicial decisions and fundamental rights? Deductive and comparative methods are employed through bibliographic and documentary analysis. Finally, the paper demonstrates how concurrent international jurisdiction over a dispute can be surpassed through international co-operation, promoting the effectiveness of fundamental rights without infringing the sovereignty of each jurisdiction when disputes arise in virtual settings.

Keywords: International jurisdiction; International co-operation; Procedural law; Internet; Limits of jurisdiction.

INTRODUCTION

In today's technological society, the expansion of the internet and the advent of e-commerce have transformed relationships between parties, bringing countries and their populations closer together and consequently shrinking borders and distances. International relations and transactions have therefore increased, compelling the law to adapt to this new reality. Commercial transactions that once took place solely within a single territory have likewise expanded and become international.

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This change in factual reality required procedural law to keep pace, because events that previously unfolded in person have spread and now give rise to disputes in the virtual world. The most striking procedural alteration concerns the virtualization of case files, which enables more automated procedural activity and broadens access to court records, allowing parties to consult their cases from anywhere with internet access.

With judicial proceedings now virtualized, any qualified individual can file a lawsuit anywhere in the world so long as they have internet access, mirroring the expansion of consumer markets, which let anyone purchase any product anywhere online.

Many procedural rules once limited the progress of lawsuits to the place where the legal fact occurred; however, as relationships have moved from the physical to the virtual sphere, disputes have also migrated online. Given territorial-competence rules, how are the limits of jurisdiction defined amid technological expansion? How can international co-operation assist concurrent international competence in enforcing judicial decisions and fundamental rights?

This essay aims to revisit the concept of jurisdiction, outlining its contours in view of each sovereign State's autonomy to exercise jurisdiction within its territory, and to show how the internet's growth has altered relations between parties and expanded territorial competence for analysing and deciding cases. Finally, it addresses international co-operation as an alternative when two sovereign States are both competent to try a case, showing that concurrent international jurisdiction can be overcome to achieve greater effectiveness of fundamental rights at the international level.

A deductive and comparative method will be employed, through bibliographic and documentary analysis, to examine the concept of jurisdiction, its territorial limits, and how technological advances and the internet's expansion have influenced disputes in our technological society, as well as the alternatives for resolving conflicts of international competence in matters subject to concurrent jurisdiction so as to maximise the enforcement of fundamental rights.

Ultimately, after the analysis set out above, the essay seeks to offer a plausible solution to a recurrent contemporary issue: when concurrent international competence exists over a dispute arising in the virtual environment, international co-operation proves to be the path to effective protection of fundamental rights without infringing the sovereignty of any jurisdiction.

Moreover, by foregrounding the practical tensions between sovereignty, territoriality, and the borderless nature of online interactions, the study underscores the urgency of redesigning procedural mechanisms to guarantee timely and meaningful relief for parties engaged in cross-border disputes. In

this respect, it argues that only a coherent framework—one that blends harmonised jurisdictional criteria with streamlined co-operative instruments—can preserve both the integrity of national legal orders and the universal promise of fundamental rights in an increasingly digitalised landscape.

I. THE LIMITS OF JURISDICTION AND CONCURRENT INTERNATIONAL COMPETENCE UNDER THE BRAZILIAN CODE OF CIVIL PROCEDURE

Before addressing the limits of jurisdiction, it should be noted that jurisdiction is regarded as one of the means of resolving disputes, just like self-help and self-composition in their various forms, exemplified here by mediation and conciliation techniques[1].

Considering that in self-help conflicts are resolved through private violence and through the parties' own actions in composing the dispute, there is an imbalance between them, since the stronger party prevails over the weaker one. However, the creation of jurisdiction prohibited self-help, allowing it only in exceptional cases[2].

Thus, the protection of rights came to be treated as an exclusively State function, linked to the exercise of State power. This State function devoted to the protection of rights is called jurisdiction[3]. It originated in Roman law[4],

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[1] Souza, André Pagani de, Andrea Boari Caraciola, Carlos Augusto de Assis, Luís Eduardo Simardi Fernandes, and Luiz Dellore. *Teoria geral do processo contemporâneo.* 5th ed. São Paulo: Atlas, 2021, 7.

[2] Some relevant examples of possible uses of self-help can be found in the criminal law defence of legitimate defence set out in article 23 of the Penal Code, in the prompt repossession (desforço incontinente) allowed in possessory actions under article 1,210 § 1 of the Civil Code, and, more recently, in the authorisation granted to the Public Treasury to freeze assets in order to collect tax debts.

[3] As Arenhart, Marinoni, and Mitidiero state when discussing the "contemporary conception of jurisdiction," "the judge's function is not merely to issue the legal norm, but rather to give concrete protection to substantive rights, if necessary through enforcement measures." Marinoni, Luiz Guilherme, Sérgio Cruz Arenhart, and Daniel Mitidiero. *Novo curso de processo civil: teoria do processo civil.* Vol. 1. São Paulo: Revista dos Tribunais, 2015, 157.

[4] Concerning the monopoly of jurisdiction, it may be said that "The monopoly of jurisdiction is the natural result of the formation of the State, bringing consequences both for individuals and for the State itself. For the former, it definitively eliminated the possibility of immediate reactions by any rights-holder; consequently, they are prevented from acting privately to achieve their interests. For the latter, the monopoly created the duty to provide effective judicial protection to anyone who seeks it. The sum of these two consequences produces, for everyone in the community without distinction, a promise of protection for all who need justice; thus, once the State monopolised the distribution of justice, it assumed, as a direct consequence of that monopoly, the obligation to guarantee and assure protection to those individuals who require it." Ribeiro, Darci Guimarães. *Da tutela jurisdicional às*

delegating to the State the role of resolving conflicts and forbidding citizens and institutions to use their own coercive means.

Jurisdiction concerns the State's power-duty to guarantee every citizen the resolution of their disputes before the courts and is characterized as a function that is both exclusive and proprietary to the State. Jurisdiction, however, must not be confused with competence, which is the criterion for distributing among the organs of the Judiciary the activities pertaining to the exercise of jurisdiction.

According to Chiovenda's classical theory[5], jurisdiction is characterized by substitutivity—that is, the State replaces the parties in determining which of them is right and, on that basis, takes concrete measures to satisfy that party[6].

Although it is a complex and, above all, controversial concept[7], it must be recognized that this State function is dedicated to protecting substantive law and essentially involves two duties: the power to decide[8] and the power to enforce. Through the exercise of jurisdiction, by means of judicial proceedings[9], the State protects substantive rights, recognizing them and giving them concrete effect[10].

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formas de tutela. Porto Alegre: Livraria do Advogado Editora, 2010, 36-38.

[5] Chiovenda, Giuseppe. *Principios de derecho procesal civil. Tomo I.* Translated by José Casais y Santaló. Madrid: Editora Reus, 1922, 349.

[6] Yarshell, Flávio Luiz, and Adriano Camargo Gomes. "Internet e limites da jurisdição: uma breve análise à luz do direito processual civil." In *Direito, processos e tecnologia*, edited by Paulo Henrique dos Santos Lucon, Erik Navarro Wolkart, Francisco de Mesquita Laux, and Giovani dos Santos Ravagnani. 1st ed. São Paulo: Thomson Reuters Brasil, 2020, 22-23.

[7] For an analysis of the different concepts of jurisdiction: For an analysis of the different concepts of jurisdiction: Couture, Eduardo Juan. *Fundamentos del derecho procesal civil*. 4th ed. Buenos Aires: IBdeF, 2009; Silva, Ovídio A. Baptista da, and Fábio Luiz Gomes. *Teoria geral do processo civil*. São Paulo: Editora Revista dos Tribunais, 2000; Allorio, Enrico. *La cosa giudicata rispetto ai terzi*. Milan: Dott. A. Giuffrè Editore, 1992; Calamandrei, Piero. "Límites entre jurisdicción y administración en la sentencia civil." In: *Estudios de derecho procesal civil*. Buenos Aires: Editorial Bibliográfica Argentina, 1961; Carnelutti, Francesco. *Instituciones del proceso civil*, vol. I. Buenos Aires: Ediciones Jurídicas Europa-América, 1959.

[8] Contemporaneously, it must be recognised that this power to decide is not limited merely to resolving the specific case, but also involves "promoting the unity of the law through the formation of precedents." Marinoni, Luiz Guilherme, Sérgio Cruz Arenhart, and Daniel Mitidiero. *Novo curso de processo civil: teoria do processo civil.* Vol. 1. São Paulo: Revista dos Tribunais, 2015, 151.

[9] Procedure is generally viewed in the legal literature as the instrument through which the State exercises jurisdiction. Marinoni, Luiz Guilherme, Sérgio Cruz Arenhart, and Daniel Mitidiero. *Novo curso de processo civil: teoria do processo civil.* Vol. 1. São Paulo: Revista dos Tribunais, 2015, 440-441.

[10] Yarshell, Flávio Luiz, and Adriano Camargo Gomes. "Internet e limites da jurisdição: uma breve análise à luz do direito processual civil." In *Direito, processos e tecnologia*, edited

For this reason, judicial procedure is structured according to these duties; it is divided into fact-finding activities, which pertain to cognition, and enforcement activities. Thus, cognitive activity results, in specific situations, in protecting the substantive right through declaratory or constitutive judgments. In many decisions, however, enforcement activity is also required—when satisfaction of the right depends on practical acts that are not performed voluntarily, making forced action without or with the debtor's participation necessary[11]. In the first case, also called direct enforcement, the State undertakes "the steps that ought to be taken by the debtor," whereas in the second, also called indirect enforcement, it "compels, through psychological coercion or the promise of judicial reward, the debtor to perform the obligation."[12]

Although fact-finding and enforcement activities complement each other, it is clear that they are quite distinct, since the decisions arising from cognitive activities settle the controversy but are not to be confused with the real-world implementation of those decisions. This distinction is highly relevant to the establishment of national jurisdictional limits[13].

Carnelutti, limiting jurisdiction[14] solely to cognitive activity, held that jurisdiction cannot suffer temporal or spatial restriction in its exercise, as it has no logical limit. Nevertheless, one must not forget that any State may, in theory, hear any matter brought before its Judiciary. Carnelutti's idea therefore conflicts with the fact that every State enjoys autonomy in exercising sovereignty vis-à-vis other States, understood as "the power of full self-determination, subject to no other power, external or internal."[15]

A sovereign State's exercise of jurisdiction ends up being defined by territory[16]. This is evident because territory marks the limit for the lawful use

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by Paulo Henrique dos Santos Lucon, Erik Navarro Wolkart, Francisco de Mesquita Laux, and Giovani dos Santos Ravagnani. 1st ed. São Paulo: Thomson Reuters Brasil, 2020, 23-24.

[11] Yarshell, Flávio Luiz, and Adriano Camargo Gomes. "Internet e limites da jurisdição: uma breve análise à luz do direito processual civil." In *Direito, processos e tecnologia*, edited by Paulo Henrique dos Santos Lucon, Erik Navarro Wolkart, Francisco de Mesquita Laux, and Giovani dos Santos Ravagnani. 1st ed. São Paulo: Thomson Reuters Brasil, 2020, 24.

[12] Didier Jr., Fredie. *Curso de direito processual civil: execução.* Vol. 5, 8th rev., expanded and updated ed. Salvador: JusPodivm, 2018, 53.

[13] Yarshell, Flávio Luiz, and Adriano Camargo Gomes. "Internet e limites da jurisdição: uma breve análise à luz do direito processual civil." In *Direito, processos e tecnologia*, edited by Paulo Henrique dos Santos Lucon, Erik Navarro Wolkart, Francisco de Mesquita Laux, and Giovani dos Santos Ravagnani. 1st ed. São Paulo: Thomson Reuters Brasil, 2020, 24.

[14] Carnelutti, Francesco. "Limiti della giurisdizione del giudice italiano." *Rivista di diritto processuale civile* 9, pt. 1 (1931): 218–23.

[15] Mendes, Gilmar, Inocêncio Mártires Coelho, and Paulo Gustavo Gonet Branco. *Curso de direito constitucional.* 4th rev. and updated ed. São Paulo: Editora Saraiva, 2009, 848.

[16] Pontes de Miranda, Francisco Cavalcanti. *Comentários ao código de processo civil.*

of force and because a State's jurisdiction within its territory is exclusive, unless the State itself allows another jurisdiction or has been deprived of control over its territory[17].

The issue at hand is not respect for each State's sovereignty over its territory but rather the effectiveness of judgments in light of jurisdictional limits. A sovereign State's ability to enforce its own judgment outside its territory depends on another sovereign State. Conversely, nothing prevents the jurisdiction of a sovereign State from recognizing judgments rendered by another jurisdiction. Subject to each jurisdiction's rules, the State may homologate foreign judgments—under article 963 of the Brazilian Code of Civil Procedure—thereby allowing them to have effect in its territory and agreeing to enforce them[18].

Respect for each State's sovereign power does not exclude the possibility of recognizing judgments rendered by other jurisdictions, thereby permitting enforcement activity in another sovereign State. In other words, a State may decide matters related to another State provided that the latter's sovereignty is respected; what is forbidden is the performance of concrete acts of force on foreign soil, which requires subsequent homologation and acceptance of the judgment in that territory[19].

As shown above, the exercise of jurisdiction is closely tied to the idea of territoriality, as well as to the very notions of State and sovereignty. With respect to cognitive activity, territory is commonly used as a criterion to assess a court's interest in adjudicating; with respect to enforcement activity, territory represents the very limit on the exercise of force, since one State may not exert force in another's territory on pain of violating sovereignty[20].

Legal relations between persons in different countries are nothing new to

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Vol. 1. Rio de Janeiro: Editora Forense, 1947, 402.

[17] Yarshell, Flávio Luiz, and Adriano Camargo Gomes. "Internet e limites da jurisdição: uma breve análise à luz do direito processual civil." In *Direito, processos e tecnologia*, edited by Paulo Henrique dos Santos Lucon, Erik Navarro Wolkart, Francisco de Mesquita Laux, and Giovani dos Santos Ravagnani. 1st ed. São Paulo: Thomson Reuters Brasil, 2020, 24-25.

[18] As Barbosa Moreira explains, "it is not only enforcement, as is sometimes said with poor technique, that depends on that formality [homologation], but all the effects of the judgment (including ancillary ones)." Barbosa Moreira, José Carlos. *Temas de direito processual: quinta série*. São Paulo: Saraiva, 1994, 154.

[19] Yarshell, Flávio Luiz, and Adriano Camargo Gomes. "Internet e limites da jurisdição: uma breve análise à luz do direito processual civil." In *Direito, processos e tecnologia*, edited by Paulo Henrique dos Santos Lucon, Erik Navarro Wolkart, Francisco de Mesquita Laux, and Giovani dos Santos Ravagnani. 1st ed. São Paulo: Thomson Reuters Brasil, 2020, 25.

[20] Yarshell, Flávio Luiz, and Adriano Camargo Gomes. "Internet e limites da jurisdição: uma breve análise à luz do direito processual civil." In *Direito, processos e tecnologia*, edited by Paulo Henrique dos Santos Lucon, Erik Navarro Wolkart, Francisco de Mesquita Laux, and Giovani dos Santos Ravagnani. 1st ed. São Paulo: Thomson Reuters Brasil, 2020, 26.

private international law, as multinational companies had operated across borders before the technological boom. However, the proliferation of controversies with the expansion of the internet is notable, revealing that the difficulties in its relationship with national jurisdiction assume a different scale. One such difficulty is determining who has jurisdiction—i.e., legitimacy and competence—and over what subject-matter. A second issue is establishing which State has the capacity to impose and enforce a judgment, even when the dispute is clearly connected to the sovereign State's territory[21]. Hence, it is crucial to understand the relationship between cognitive and enforcement activities[22].

Under the Code of Civil Procedure itself, the limits of national jurisdiction are defined in articles 21 and 22, as well as in article 23[23], which concerns exclusive competence. These provisions confer legitimacy on the national jurisdiction to hear actions where the fact occurred in national territory, where the defendant is domiciled in national territory, where enforcement must be carried out in national territory, in maintenance actions where the creditor is domiciled in Brazil or the defendant has assets here, in

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[21] Kohl, Uta. *Jurisdiction and the Internet: Regulatory Competence over Online Activity.* New York: Cambridge University Press, 2010, 7.

[22] Yarshell, Flávio Luiz, and Adriano Camargo Gomes. "Internet e limites da jurisdição: uma breve análise à luz do direito processual civil." In *Direito, processos e tecnologia*, edited by Paulo Henrique dos Santos Lucon, Erik Navarro Wolkart, Francisco de Mesquita Laux, and Giovani dos Santos Ravagnani. 1st ed. São Paulo: Thomson Reuters Brasil, 2020, 26.

[23] "*Art. 21. Compete à autoridade judiciária brasileira processar e julgar as ações em que:*

I - o réu, qualquer que seja a sua nacionalidade, estiver domiciliado no Brasil;

II - no Brasil tiver de ser cumprida a obrigação;

III - o fundamento seja fato ocorrido ou ato praticado no Brasil.

Parágrafo único. Para o fim do disposto no inciso I, considera-se domiciliada no Brasil a pessoa jurídica estrangeira que nele tiver agência, filial ou sucursal.

Art. 22. Compete, ainda, à autoridade judiciária brasileira processar e julgar as ações:

I - de alimentos, quando:

a) o credor tiver domicílio ou residência no Brasil;

b) o réu mantiver vínculos no Brasil, tais como posse ou propriedade de bens, recebimento de renda ou obtenção de benefícios econômicos;

II - decorrentes de relações de consumo, quando o consumidor tiver domicílio ou residência no Brasil;

III - em que as partes, expressa ou tacitamente, se submeterem à jurisdição nacional.

Art. 23. Compete à autoridade judiciária brasileira, com exclusão de qualquer outra:

I - conhecer de ações relativas a imóveis situados no Brasil;

II - em matéria de sucessão hereditária, proceder à confirmação de testamento particular e ao inventário e à partilha de bens situados no Brasil, ainda que o autor da herança seja de nacionalidade estrangeira ou tenha domicílio fora do território nacional;

III - em divórcio, separação judicial ou dissolução de união estável, proceder à partilha de bens situados no Brasil, ainda que o titular seja de nacionalidade estrangeira ou tenha domicílio fora do território nacional".

actions where the consumer is domiciled in Brazil, and in cases where a forum selection clause designates Brazil. Article 23 expressly provides that, in actions involving assets located in national territory—in partition, division of property, and family actions involving such assets—Brazilian competence is exclusive.

Apart from cases in which Brazil has exclusive competence to hear the case, international competence is, as a rule, concurrent, because just as Brazilian law may hear actions listed in articles 21 and 22, another sovereign State with its own jurisdiction may also be competent, given the possibility that the act was committed or produced effects in another territory or that one of the parties is domiciled in another State.

Therefore, despite the competence of the Brazilian legal system, nothing prevents an identical action from pending in another legal system; the Brazilian system does not bar filing the same claim already pending elsewhere. One must note, however, that international *lis pendens* and connection may be provided for in international treaties and bilateral agreements, and only in such cases will an action brought abroad induce *lis pendens* and connection, by express provision of article 24 CPC.

Because international competence is concurrent, it is clearly possible for the same action, with the same subject-matter, parties, and cause of action, to proceed in two different jurisdictions. It is therefore necessary to analyse how territorial competence applies in the digital era, in which relations and business are conducted in the virtual environment.

II. TERRITORIAL COMPETENCE FOR INTERNET DISPUTES AND A RE-READING OF JURISDICTIONAL LIMITS

As noted above, international jurisdiction is concurrent—that is, a dispute may be filed in more than one jurisdiction (unless the matter falls under the exclusive competence of the Brazilian legal order) if the jurisdictional rules of each State allow the case to be heard.

Thus, the State, as the body responsible for exercising jurisdiction, provides access to the Judiciary[24] for those who seek it; according to Kazuo Watanabe, society, as the ultimate addressee of legal norms, is the final consumer[25]. Because the justice system must be designed with the user in mind, every measure must aim to ensure the fulfilment of all fundamental

[24] Watanabe, Kazuo. "Acesso à justiça e sociedade moderna." In *Participação e processo*, edited by Ada Pellegrini Grinover and Cândido Rangel Dinamarco, [pages]. São Paulo: Editora Revista dos Tribunais, 1988, 131.

[25] Watanabe, Kazuo. "Acesso à justiça e sociedade moderna." In *Participação e processo*, edited by Ada Pellegrini Grinover and Cândido Rangel Dinamarco, [pages]. São Paulo: Editora Revista dos Tribunais, 1988, 128.

rights, since mere access to the courts does not guarantee that the right claimed will be realised[26].

In Richard Susskind's view, virtual courts will soon be the norm, making the notion of "justice as a place" incompatible with an era in which jurisdiction is exercised in a virtual environment. Instead, we must think in terms of "justice as a service" that must reach the entire population[27].

All of this technological expansion reflects what Gilles Lipovetsky[28] calls a hyper-consumption society, whose chief trait is the heightened intensity and speed of consumer relations. The global consumer market stems from that hyper-consumption trend, in which goods and services become obsolete at an accelerated rate, generating a constant search for differentiated offerings, which multiplies macro-economic possibilities and requires consumers to seek adequate protection in ways that depart from conventional models[29].

Consequently, current private international law rests almost exclusively on formal autonomy of will, in a context where parties are keen to formalise agreements in which a person's identity is defined solely through consumption[30]. According to Claudia Lima Marques[31], private law's main function is to protect individuals against the challenges of today's massified, globalised, and digitalised society.

Since the Fourth Industrial Revolution[32], technology for automation and data processing through artificial intelligence has spread, intensifying consumer vulnerability in commercial relations[33]. The social function of

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[26] Wolkart, Erik Navarro, and Daniel Becker. "Da discórdia analógica para a concórdia digital." In *O advogado do amanhã: estudos em homenagem ao professor Richard Susskind*, edited by Bruno Feigelson, Daniel Becker, and Giovani Ravagnani. São Paulo: Thomson Reuters Brasil, 2019, 113.

[27] Susskind, Richard, and Daniel Susskind. *The Future of the Professions: How Technology Will Transform the Work of Human Experts.* Oxford: Oxford University Press, 2015, 99.

[28] Lipovetsky, Gilles. *A felicidade paradoxal: ensaio sobre a sociedade de hiperconsumo.* São Paulo: Companhia das Letras, 2007.

[29] Fachin, Luiz Edson, and Roberta Zumblick Martins da Silva. "Direito do consumidor, novas tecnologias e inclusão digital." *Revista de Direito do Consumidor* 139 (January–February 2022): 19–29. Accessed June 23, 2025. https://www.revistadostribunais.com.br/maf/app/widgetshomepage/resultList/document?docguid=I8408b7605e6e11ec9a489bc0f1efd6d0.

[30] Fachin, Luiz Edson. *Direito civil: sentidos, transformações e fim.* Rio de Janeiro: Renovar, 2015.

[31] Benjamin, Antonio Herman V., Claudia Lima Marques, and Leonardo Roscoe Bessa. *Manual de direito do consumidor*. São Paulo: Editora Revista dos Tribunais, 2017.

[32] Schwab, Klaus. *A quarta revolução industrial.* Translated by Daniel Moreira Miranda. São Paulo: Edipro, 2016, 113.

[33] Fachin, Luiz Edson, and Roberta Zumblick Martins da Silva. "Direito do consumidor, novas tecnologias e inclusão digital." *Revista de Direito do Consumidor* 139 (January–February 2022): 19–29. Accessed June 23, 2025. https://www.revistadostribunais.com.br/

consumer relations presupposes that individuals, as consumers, are vulnerable in today's transnational society, forcing a new reading of private law aimed at minimising the harm suffered by victims, granting greater powers and freedoms to individuals, and promoting a concept of equality and liberty tempered by fraternity. This means greater inclusion of people in markets, based on recognition of the consumer's role in society, as provided in article 5, XXXII of the Federal Constitution and in the heightened need for consumer protection in the marketplace, which are principal objectives of this new private law[34].

Because mass production, distribution, and consumption are global phenomena enabled by digital means, the differing material realities of sovereign States—cultural, market-based, or institutional—are expected to play a differentiating role in absorbing, implementing, and regulating these practices, thereby affording greater protection and enforcement of fundamental rights for those who are vulnerable in the broad sense of the term[35].

As stated earlier, Brazilian legislation clearly outlines the circumstances in which Brazilian courts are competent to adjudicate controversies. Within those scenarios, many acts can be committed online—for example, a defendant domiciled in Brazil may commit an illicit act of any nature in the virtual environment, or consumers domiciled in Brazil may have their rights violated.

Many of these claims, though properly processed and adjudicated domestically, will not be executed—i.e., enforced—in national territory, making it necessary to invoke another jurisdiction, namely the sovereign State where the judgment must be executed. In consumer actions, for instance, enforcement may need to be sought in the jurisdiction where the defendant company is based, or, in cases where the defendant is not domiciled in Brazil, one may have to approach the foreign jurisdiction to attach assets or compel personal compliance with the judgment.

The same dispute may still be brought in two different jurisdictions,

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maf/app/widgetshomepage/resultList/document?docguid=I8408b7605e6e11ec9a489bc0f1efd6d0.

[34] Fachin, Luiz Edson, and Roberta Zumblick Martins da Silva. "Direito do consumidor, novas tecnologias e inclusão digital." *Revista de Direito do Consumidor* 139 (January–February 2022): 19–29. Accessed June 23, 2025. https://www.revistadostribunais.com.br/maf/app/widgetshomepage/resultList/document?docguid=I8408b7605e6e11ec9a489bc0f1efd6d0.

[35] Fachin, Luiz Edson, and Roberta Zumblick Martins da Silva. "Direito do consumidor, novas tecnologias e inclusão digital." *Revista de Direito do Consumidor* 139 (January–February 2022): 19–29. Accessed June 23, 2025. https://www.revistadostribunais.com.br/maf/app/widgetshomepage/resultList/document?docguid=I8408b7605e6e11ec9a489bc0f1efd6d0.

which may cause problems for international recognition and enforcement of the judgment. As noted, conflicting decisions are not new, since cross-border relations—though once less frequent—already existed before the internet's expansion, and because, as a rule, international competence is concurrent. Therefore, considerable debate has arisen over the difficulties the internet imposes on jurisdictional conflicts in contemporary international law. A re-reading of certain concepts, including territoriality, is needed. As Dan Svantesson has argued, the principle of territoriality and the notion of territorial sovereignty are insufficient to analyse jurisdictional claims in the digital society[36]; in the same vein, Paul Berman[37] maintains that the concept of jurisdiction urgently needs redefining, as it can no longer rest on ideas of territoriality and sovereignty alone[38].

There is no doubt that jurisdictional conflicts in internet-related disputes have peculiarities that demand a different approach from traditional methods, because the virtual environment raises questions that are distinct from—and more difficult than—those faced by jurisdiction in the real, physical world. Hence the scholarly concern with constructing a new paradigm for addressing jurisdictional conflicts[39].

Conversely, some scholars argue that all the controversies arising in the virtual context were already present in traditional conflicts of jurisdiction[40].

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[36] Svantesson, Dan Jerker B. "A New Jurisprudential Framework for Jurisdiction: Beyond the Harvard Draft." *AJIL Unbound* 109 (2015): 69. Accessed June 23, 2025. https://www.cambridge.org/core/journals/american-journal-of-international-law/article/new-jurisprudential-framework-for-jurisdiction-beyond-the-harvard-draft/BA4AE9C46D9783ADC433C0C79B7B7E04.

[37] Post, David G. "Against 'Against Cyberanarchy.'" *Berkeley Technology Law Journal* 17 (2002): 1365–87. Accessed June 23, 2025. https://doi.org/10.2139/ssrn.334581.

[38] Yarshell, Flávio Luiz, and Adriano Camargo Gomes. "Internet e limites da jurisdição: uma breve análise à luz do direito processual civil." In *Direito, processos e tecnologia*, edited by Paulo Henrique dos Santos Lucon, Erik Navarro Wolkart, Francisco de Mesquita Laux, and Giovani dos Santos Ravagnani. 1st ed. São Paulo: Thomson Reuters Brasil, 2020, 42.

[39] Svantesson, Dan Jerker B. "A New Jurisprudential Framework for Jurisdiction: Beyond the Harvard Draft." *AJIL Unbound* 109 (2015): 69. Accessed June 23, 2025. https://www.cambridge.org/core/journals/american-journal-of-international-law/article/new-jurisprudential-framework-for-jurisdiction-beyond-the-harvard-draft/BA4AE9C46D9783ADC433C0C79B7B7E04.

[40] In this view, one begins with the premise that transactions in cyberspace are no different from transnational transactions in "real space." They involve people in real space within one jurisdiction communicating with people in real space within other jurisdictions in a generally legitimate manner that sometimes causes harm. There is no overarching normative argument that would exempt cyberspace activities from territorial regulation, and every reason to believe that nations can exercise territorial authority to obtain meaningful regulatory control over transactions in cyberspace. Goldsmith, Jack L. "Against Cyberanarchy." *University of Chicago Law School Occasional Paper* no. 40 (1999). Accessed June 23, 2025. https://chicagounbound.uchicago.edu/uclrev/vol65/iss4/2/.

Long before the internet's expansion and the advent of new technologies, the traditional notion of jurisdictional conflict—stemming from the sovereignty of authorities equally entitled to hear the same disputes—was already being confronted[41]. The fact that two or more States claim competence over an issue cannot be considered exceptional or extraordinary; rather, it is a legally possible and common situation in most transnational contexts, demonstrating that overlap between State jurisdictions already exists and that the greater challenge is how to manage such overlap[42].

It is not enough merely to invoke the sovereignty and territoriality of States; one must recognise that these frontiers no longer exist in certain areas and that the limits of jurisdiction must be re-examined so that justice-system users are not harmed by legal constraints. As noted, each legal system has its own rules of domestic competence and may hear cases that other sovereign States could also adjudicate. By fostering closer ties between different jurisdictions, it becomes clear that, beyond exercising sovereignty, the overriding concern should be resolving disputes swiftly and in a manner that respects fundamental rights.

III. INTERNATIONAL CO-OPERATION AS GUARANTOR OF FUNDAMENTAL RIGHTS IN CONTEMPORARY SOCIETY

It has been shown above that, as a rule, any jurisdiction has concurrent competence to resolve disputes that bear some connection to its State, a competence that expands when one considers conflicts conducted over the internet, which has given rise to greater awareness of various causes. Consequently, what was already possible—the issuance of multiple judgments by different jurisdictions—has become even more prevalent in the internet's multinational environment. Thus, beyond the conflict of judgments, which international jurisdiction must already address, another issue worthy of note concerns enforcement activity and the effectiveness of those judgments in the countries where they must take effect[43]—that is,

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[41] Goldsmith, Jack L. "Against Cyberanarchy." *University of Chicago Law School Occasional Paper* no. 40 (1999). Accessed June 23, 2025. https://chicagounbound.uchicago.edu/uclrev/vol65/iss4/2/.

[42] Yarshell, Flávio Luiz, and Adriano Camargo Gomes. "Internet e limites da jurisdição: uma breve análise à luz do direito processual civil." In *Direito, processos e tecnologia*, edited by Paulo Henrique dos Santos Lucon, Erik Navarro Wolkart, Francisco de Mesquita Laux, and Giovani dos Santos Ravagnani. 1st ed. São Paulo: Thomson Reuters Brasil, 2020, 43-44.

[43] Yarshell, Flávio Luiz, and Adriano Camargo Gomes. "Internet e limites da jurisdição: uma breve análise à luz do direito processual civil." In *Direito, processos e tecnologia*, edited by Paulo Henrique dos Santos Lucon, Erik Navarro Wolkart, Francisco de Mesquita Laux, and Giovani dos Santos Ravagnani. 1st ed. São Paulo: Thomson Reuters Brasil, 2020, 39.

whether it will truly be possible to obtain concrete legal relief given the multiplicity of jurisdictions involved.

First, it must be borne in mind that resolving the present jurisdictional conflict requires applying the principle of effectiveness—namely, the idea that the State should refrain from adjudicating a dispute if the judgment ultimately rendered cannot be recognised where it must exclusively produce its effects[44]. In other words, if a decision will take effect and be executed abroad, one must consider whether that decision can be accepted in the foreign State and, if any obstacle to enforcement exists, domestic jurisdiction should not be exercised[45].

The principle of effectiveness is therefore directly tied to enforcement activity and territory: once a State's sovereignty over its territory is recognised, it is clear that that State alone is entitled to use force to implement judicial orders within its borders. Where a foreign decision orders other acts, the acts of force of the issuing State must remain confined to its own territory[46].

According to Uta Kohl, these territorial limits on State coercion largely define the general regime of international competence, especially in the virtual context[47]. Undoubtedly one of the great challenges for international jurisdiction—particularly today, when disputes arise online—is enforcing decisions abroad, whether because of the volume of transnational issues or the myriad jurisdictions in which a decision might need to be executed. For that reason, it is not far-fetched to imagine that a State may lack the capacity to enforce a decision regarding foreign online activity, even though that decision produces effects within its territory, if the opposing party has no assets or domicile there[48]. Eduardo Talamini notes that virtual occurrences have expanded the transnational effects of judgments, making it necessary

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[44] Jatahy, Vera Maria Barrera. *Do conflito de jurisdições: a competência internacional da justiça brasileira.* Rio de Janeiro: Forense, 2003, 38.

[45] Yarshell, Flávio Luiz, and Adriano Camargo Gomes. "Internet e limites da jurisdição: uma breve análise à luz do direito processual civil." In *Direito, processos e tecnologia*, edited by Paulo Henrique dos Santos Lucon, Erik Navarro Wolkart, Francisco de Mesquita Laux, and Giovani dos Santos Ravagnani. 1st ed. São Paulo: Thomson Reuters Brasil, 2020, 39-40.

[46] Yarshell, Flávio Luiz, and Adriano Camargo Gomes. "Internet e limites da jurisdição: uma breve análise à luz do direito processual civil." In *Direito, processos e tecnologia*, edited by Paulo Henrique dos Santos Lucon, Erik Navarro Wolkart, Francisco de Mesquita Laux, and Giovani dos Santos Ravagnani. 1st ed. São Paulo: Thomson Reuters Brasil, 2020, 40.

[47] Kohl, Uta. *Jurisdiction and the Internet: Regulatory Competence over Online Activity.* New York: Cambridge University Press, 2010, 20.

[48] Yarshell, Flávio Luiz, and Adriano Camargo Gomes. "Internet e limites da jurisdição: uma breve análise à luz do direito processual civil." In *Direito, processos e tecnologia*, edited by Paulo Henrique dos Santos Lucon, Erik Navarro Wolkart, Francisco de Mesquita Laux, and Giovani dos Santos Ravagnani. 1st ed. São Paulo: Thomson Reuters Brasil, 2020, 40.

for those effects not to be confined to national territory and for their efficacy to be extended[49].

The virtual environment thus only accentuates disregard for rules and fundamental rights, as it erects barriers that hinder parties from approaching the courts to resolve their disputes. Given that access to justice is a fundamental right guaranteed to all, the obstacles created by international competence must be surmounted to secure every justice-system user full, effective access through due process and other fundamental rights. In view of the inherent conflict of international competence—concurrent, as discussed earlier—only two practical alternatives remain for obtaining and enforcing the relief sought: bring the action directly in the foreign territory to execute the judgment, or secure the co-operation of the jurisdiction where the judgment must be executed[50].

The first alternative violates sovereignty, since extending one State's power to enforce its decision deprives another of control over its territory[51], an approach that runs wholly counter to international law[52]. Brazil's Superior Court of Justice[53] has addressed the issue, ruling out the possibility of one State's use of force in another and explaining that co-operation is the remaining option[54].

This brings us to international co-operation. International co-operation is a mechanism of collaboration in globalisation, facilitating commercial, economic, social, and legal relations between the jurisdiction that exercised

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[49] Talamini, Eduardo. "Medidas coercitivas e proporcionalidade: o caso WhatsApp." *Revista Brasileira da Advocacia* 0 (January–March 2016): 17–43. Accessed June 23, 2025. https://aaspsite.blob.core.windows.net/aaspsite/2017/06/RBA0_Miolo.pdf

[50] Yarshell, Flávio Luiz, and Adriano Camargo Gomes. "Internet e limites da jurisdição: uma breve análise à luz do direito processual civil." In *Direito, processos e tecnologia*, edited by Paulo Henrique dos Santos Lucon, Erik Navarro Wolkart, Francisco de Mesquita Laux, and Giovani dos Santos Ravagnani. 1st ed. São Paulo: Thomson Reuters Brasil, 2020, 40.

[51] Kohl, Uta. *Jurisdiction and the Internet: Regulatory Competence over Online Activity.* New York: Cambridge University Press, 2010, 20.

[52] As held in the *Lotus* case: "The first and foremost restriction imposed by international law upon a State is that—failing a permissive rule to the contrary—it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial: it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention." (Permanent Court of International Justice, *S.S. Lotus* (France v. Turkey), 1927, P.C.I.J. (Ser. A) No. 10, 7 September. Available at: https://www.icj-cij.org/pcij/serie_A/A_10/30_Lotus_Arret.pdf. Accessed 23 June 2025.)

[53] Brasil. Superior Tribunal de Justiça. Reclamação nº 2.645-SP (2007/0254916-5). Relator: Ministro Teori Albino Zavascki. Brasília, 18 de nov. de 2009.

[54] Yarshell, Flávio Luiz, and Adriano Camargo Gomes. "Internet e limites da jurisdição: uma breve análise à luz do direito processual civil." In *Direito, processos e tecnologia*, edited by Paulo Henrique dos Santos Lucon, Erik Navarro Wolkart, Francisco de Mesquita Laux, and Giovani dos Santos Ravagnani. 1st ed. São Paulo: Thomson Reuters Brasil, 2020, 41.

cognitive activity and the jurisdiction that must execute the judgment. It occurs through direct assistance, letters rogatory, or recognition of foreign judgments.

Under Brazilian law, international legal co-operation is valid only via treaties to which Brazil is party and must follow the criteria set out in article 26 of the Code of Civil Procedure[55]. Accordingly, international co-operation must meet certain requirements: conformity with due process; equality of access to justice for nationals and foreigners; procedural publicity; the presence of a competent authority to transmit requests; and the spontaneous transmission of information to the foreign authority, as prescribed in article 26 and its subsections.

Although Brazil must ideally be a signatory to a treaty covering the situation, nothing prevents it from co-operating with States with which it has no treaty, since Brazilian law rests on the principle of reciprocity. Conversely, co-operation will not be admitted if it violates any fundamental right guaranteed by the Federal Constitution.

As already noted, *lis pendens* may arise in international competence, and this affects international co-operation. Lis pendens and connection may be alleged only where the judgment of one State must have res judicata effect in another; recognition is possible only when the jurisdiction involved is party to a treaty or bilateral agreement to which Brazil is signatory.

An example is the Bustamante Code, enacted by Decree 18.871 of 13 August 1929, resulting from the Havana Convention of 20 February 1928. Article 394[56] of that decree provides that *lis pendens* may be raised among

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[55] "*Art. 26. A cooperação jurídica internacional será regida por tratado de que o Brasil faz parte e observará:*

I - o respeito às garantias do devido processo legal no Estado requerente;

II - a igualdade de tratamento entre nacionais e estrangeiros, residentes ou não no Brasil, em relação ao acesso à justiça e à tramitação dos processos, assegurando-se assistência judiciária aos necessitados;

III - a publicidade processual, exceto nas hipóteses de sigilo previstas na legislação brasileira ou na do Estado requerente;

IV - a existência de autoridade central para recepção e transmissão dos pedidos de cooperação;

V - a espontaneidade na transmissão de informações a autoridades estrangeiras.

§ 1º Na ausência de tratado, a cooperação jurídica internacional poderá realizar-se com base em reciprocidade, manifestada por via diplomática.

§ 2º Não se exigirá a reciprocidade referida no § 1º para homologação de sentença estrangeira.

§ 3º Na cooperação jurídica internacional não será admitida a prática de atos que contrariem ou que produzam resultados incompatíveis com as normas fundamentais que regem o Estado brasileiro.

§ 4º O Ministério da Justiça exercerá as funções de autoridade central na ausência de designação específica".

[56] "*Art. 394. A litispendencia, por motivo de pleito em outro Estado contractante poderá*

signatory countries, covering a case of international *lis pendens*. Note that international *lis pendens* arises only in cases of concurrent international competence—that is, those under articles 21 and 22 of the CPC—and does not apply to article 23, which concerns matters of exclusive national jurisdiction.

Hence, in cases of concurrent international competence, the judgment that first becomes final abroad will prevail once *lis pendens* is raised; that foreign judgment may then be recognised in Brazil, provided it is rendered by a signatory country, so that it may take effect and be enforced domestically, since Brazil is party to the treaty in question.

Thus, *lis pendens* and recognition are matters of international co-operation: a judgment rendered in one jurisdiction will have effect in another through homologation under the procedure laid down and before the Superior Court of Justice.

International co-operation may be active or passive: it is active when the Brazilian judicial authority issues the request and passive when the Brazilian authority receives the request. Under articles 28 to 34 of the CPC, co-operation may take the form of direct assistance or, under articles 35 and 36[57], letters rogatory.

Direct assistance aims to carry out a measure not issued by a Brazilian authority; its use depends on compatibility with domestic law, meaning the foreign authority's decision must necessarily undergo deliberation in Brazil, pursuant to article 28, to ensure compliance with constitutional principles. Letters rogatory serve to effect service, summons, judicial notification, evidence-gathering, information requests, and enforcement of interlocutory orders, as provided in article 35. The Superior Court of Justice itself has jurisdiction over letters rogatory under article 36.

The CPC's co-operation procedure has reduced formalities, dispensing with authentication or other legalization of foreign documents whenever the request reaches Brazil through the central authority or diplomatic channels, thereby adding speed and effectiveness[58].

When legal requirements are met, international co-operation is the best means of enhancing the effectiveness of rights—especially fundamental rights such as access to justice, legal certainty, due process, and human dignity. If a party can litigate in its own jurisdiction, it will obtain a judgment in line with expected standards, without surprises. Where the jurisdiction in

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ser allegada em materia civel, quando a sentença, proferida em um delles, deva produzir no outro os effeitos de cousa julgada".

[57] Theodoro Jr., Humberto. *Curso de direito processual civil.* Vol. 56. São Paulo: Forense, 2015, 321.

[58] Theodoro Jr., Humberto. *Curso de direito processual civil.* Vol. 56. São Paulo: Forense, 2015, 326.

which that judgment must take effect co-operates, litigants will be treated with greater respect and procedural effectiveness will be ensured, in accordance with article 6(1) of the European Convention on Human Rights (Rome, 4 November 1950) and article 8(1) of the American Convention on Human Rights (San José, 22 November 1969), both of which require proceedings to be effective and completed within a reasonable time.

International co-operation, however, faces practical limitations. Consider countries, like Brazil, that require recognition of foreign judgments: it is hard to see how that model remains effective when a judgment must produce effects in many countries and therefore undergo numerous recognition processes. Beyond the hurdles already encountered in obtaining co-operation, issues of cost, risk of violating a country's public order, and communication problems may undermine the practical feasibility of international co-operation[59].

Nevertheless, in a context where crimes and acts are committed online by individuals located around the world, in wholly different jurisdictions, international co-operation remains the most viable and suitable means of ensuring everyone's fundamental rights—such as access to justice—are respected. Only international co-operation can enable a judgment to take effect and be enforced in the competent jurisdiction, all in line with due process, legal certainty, and procedural effectiveness.

CONCLUSION: THE WAY FORWARD AND THE "CENTRALITY" OF TECHNOLOGY

Thus, it is clear that procedural law has undergone profound changes with technological expansion and with disputes arising in virtual environments. The limits of jurisdiction, once well defined, no longer seem adequate, since they merely create obstacles for the litigant seeking the relief desired. With concurrent international competence and the possibility of examining a dispute from the standpoint of more than one jurisdiction, the effectiveness of judgments and of fundamental rights is jeopardised.

In view of this, as provided for in the Code of Civil Procedure itself, international co-operation is the legal alternative for resolving conflicts of competence generated by facts occurring in the virtual sphere—that is, on the internet. As has been shown, more than one jurisdiction may be competent to settle the dispute, but in most cases it will require the assistance of another

[59] Yarshell, Flávio Luiz, and Adriano Camargo Gomes. "Internet e limites da jurisdição: uma breve análise à luz do direito processual civil." In *Direito, processos e tecnologia*, edited by Paulo Henrique dos Santos Lucon, Erik Navarro Wolkart, Francisco de Mesquita Laux, and Giovani dos Santos Ravagnani. 1st ed. São Paulo: Thomson Reuters Brasil, 2020, 41-42.

sovereign State to give effect to and enforce the judicial order.

In this sense, international co-operation is nothing more than a support mechanism enabling foreign jurisdictions to give effect to extraterritorial decisions, since, without infringing any sovereignty or autonomy of another State, it seeks, through co-operation agreements and treaties, to implement measures in foreign territories that were not involved in the dispute. Given so many internet-based disputes, ranging from consumer relations to illicit acts, it is no surprise that challenges remain concerning the effectiveness of judgments, access to justice, and attainment of the relief sought by the claimant. When these issues are discussed, they concern the enforcement of fundamental rights—from respect for the weaker party, as in consumer cases, to the individual guarantees of every citizen. Indeed, access to justice itself and access to an effective process are fundamental rights that can be respected and realised only through the application of international co-operation.

Without any legal infringement, international co-operation respects the sovereignty of each jurisdiction and also observes the requirements of due process of law. Thus, regardless of which jurisdiction issued the judicial order, any decision may be executed, whatever the place where the enforcement acts must be carried out—even if there are several places where the decision must produce legal effects. All parties stand to gain: foreign jurisdictions, which end up strengthening ties, and the litigant, who will obtain the desired relief swiftly and effectively, even when the dispute originated on the internet.

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