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Freedom and Personal Autonomy as the Foundation of Private International Law and the Cornerstone of Individual Rights in the AI Era

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Abstract
An examination of private international law manuals and relevant legislation demonstrates that the autonomy of the will constitutes a fundamental epistemological principle underpinning the field. However, this freedom is neither absolute nor unbounded. The binding force of pacta sunt servanda, the limitations imposed by public law, the operation of mandatory rules (lois de police), the demands of public policy (ordre public), and the necessity of protecting weaker parties all constrain its exercise. In contemporary private international law, the principle has evolved into a pervasive and dynamic norm, deeply embedded in legal practice while continuously adapting to new challenges. In the emerging era of artificial intelligence, the autonomy of the will must be reaffirmed as a cornerstone of individual rights, ensuring the preservation of personal freedom amidst technological transformations.

Keywords
Autonomy of the Will; Private International Law; Kant; Artificial Intelligence; AI Act; European Union; Freedom

INTRODUCTION

Before commencing the present analysis, it is important to note that the words of Prof. Oriol Casanovas (1976) resonate strongly in this context. The caution and ambition expressed in his insightful publication on the will's autonomy are considered. The challenges and intricacies of this topic make it a particularly delicate subject within the Private International Law (PIL) field. Addressing such a vast and multifaceted issue in a limited space may seem presumptuous. The task becomes even more ambitious when aiming to liberate the autonomy of the will from the contractualist constraints to which it has traditionally been confined.

The purpose of this article is not to provide a comprehensive or exhaustive analysis of all dimensions and implications of the matter. Such an endeavor would require a much broader scope. Instead, the aim is to offer a broad and thought-provoking reflection, emphasizing the significant and potentially transformative impact that AI may have on the discipline. By considering these changes, the article seeks to contribute to a deeper understanding of the evolving landscape of PIL in the face of technological advancements while acknowledging the inherent complexities of such a discussion.

AUTONOMY

The starting point for the analysis is the etymological breakdown of the term "autonomy of the will." The term "autonomy" derives from the Greek nouns *autos* (self, same) and *nomos* (law), meaning living by one's laws. The addition of "will" refers to the desire or intention to act according to those self-imposed laws. When transplanted into the domain of private law, party autonomy is understood as the ability of individuals or entities to choose the court or the applicable law governing their legal relationships. While this principle establishes rights and obligations for the parties involved, it is not a source of PIL. Instead, the sources of PIL are found in treaties and statutes that permit party autonomy within the limits defined by those legal instruments (Oyarzábal 2023, 332).

The autonomy of the will is regarded as a foundational principle of PIL (Basedow 2011, 32). In this sense, it has been stated that the concept of liberty safeguarded by private law is nearly as ancient as PIL. Some scholars trace its origins to the Ptolemaic period in Egypt, based on studies of papyri used to preserve mummified crocodiles discovered in a cemetery in the province of Fayum. These papyri reveal a notable conflict rule: contracts between Egyptians and Greeks were governed by the law of the language in which the contract was written. This practice implied recognition of the autonomy of the will, as the choice of language determined both the jurisdiction and the applicable law (Casanovas 1976, 1018). Other authors point to Hellenistic times as the period when the conceptualization of what is perhaps the most widely accepted private international rule of our time began to take shape (Symeonides 2010, 514; Juenger 1993, 7-8; Gardeñes 2003).

The concept of autonomy was historically applied primarily to the political-public domain, particularly concerning sovereign states and city-states, emphasizing their capacity for self-legislation. This remains evident today, as seen in the designation of sub-state entities in Spain as *autonomous communities* and Greece as *nomoi*. The application of autonomy expanded significantly with the work of Immanuel Kant (1904), who extended the concept to constructing his theory of morality (p. 90).

In Kantian philosophy, the autonomy of the will is itself a law and is considered the foundation of morality. Kant's moral theory is characterized by adapting political and legal concepts such as law, legislation, and autonomy (Rear 2006, 121). Autonomy emerges as a third practical principle, following the two formulas of the Categorical Imperative: the formula of Universal Law and the Formula of Humanity (Rear 2006, 121).

Kant defines the autonomy of the will as "the property of the will by which it is a law to itself," viewing it as a form of self-legislation that safeguards a domain of discretion. This allows individuals to exercise judgment and make decisions based on their assessment of a situation within certain limits or guidelines (Kant 1904, 80). In legal contexts, autonomy implies the ability to act while adhering to overarching principles or rules, translating into an equivalence between *pacta* (agreements) and *lex private* (private law) (Casanovas 1976, 1019).

Scholars of PIL have naturally drawn upon Kant's work in exploring the autonomy of the will, its origins, and its epistemological conceptualization (Ranouil 1980, 9–10; Batiffol 2002, 95; Symeonides 2010, 330; Kohler 2013, 332). The principle of autonomy and its regulation, representing the translation of freedom into private law, have sparked significant philosophical debates between legality and legitimacy (Habermas 1987; Schmitt 2004; Kirchheimer 1987).

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These debates often center on the relationship between individual freedom and regulation, presenting an apparent dichotomy between law and freedom. This dichotomy leads to a reductionist axiom: where law exists, there is no free act (Batiffol 2002, 95).

However, those who reject a rigid divide between law and freedom argue that freedom can be realized even within acts that comply with legal norms. This perspective suggests that adherence to the law does not inherently restrict individual liberty but can instead express it (Batiffol 2002, 95).

Principle of Autonomy in PIL

In PIL, there has been an effort to extend the concept of freedom further, arguing that it inherently includes rejecting the authority of any positive law—essentially upholding the Kantian autonomy of the will. However, contemporary perspectives increasingly favor a more organic and cohesive view of the individual's role in society, which does not sharply separate the domain of law from that of freedom (Batiffol 2002, 96).

The pioneering epistemological construction of the autonomy of the will is often attributed to Charles Dumoulin, a 16th-century French legal scholar, who laid the groundwork for understanding this concept within PIL (Symeonides 2010, 514; Halpérin 2014, 463). Dumoulin's theory emerged from his analysis of the *De Ganay* case, where he argued that the matrimonial economic regime rested on a tacit agreement, thereby presuming the intention (will) of the parties (Casanovas 1976, 1003; Halpérin 2014, 463). However, modern scholars have criticized this attribution to Dumoulin. Dreyfus and Caleb acknowledge the role of will in legal acts, particularly in matrimonial agreements, but view it as intuitive and lacking significant practical consequences (Ranouil 1980, 11). Niboyet dismisses Dumoulin's contribution as a legal subterfuge (Ranouil 1980, 11; Niboyet 1927, 9-10), while Batiffol argues that the choice of matrimonial domicile law was imposed imperatively rather than being a self-evident principle based on logic or justice (Ranouil 1980, 11; Batiffol 2002, 23).

The autonomy of the will, rooted in legal doctrine, signifies that the will is both the origin and the standard of subjective rights, acting as a creative force in the formation of law. It became the cornerstone of the philosophy of legal individualism that dominated the 19th century (Ranouil 1980, 10). Until the 19th century, conflicts regarding contract law were rare. Most commercial contracts were governed by customary practices (*lex mercatoria*), and even international contracts posed few problems, as the principle of *locus regitactum* (the law of the place where the contract was made) provided a logical and legally certain solution (De Oliveira and Borger Prado 2019, 427).

During the 19th century, commerce and industry in Europe broke free from restrictive frameworks driven by liberal trends. Individual actors gained prominence in economic and political spheres, and state interventionism gave way to liberalism (Kohler 2013, 329). This shift was reflected in the autonomy granted to economic operators, particularly through contractual freedom, which allowed parties to define the terms of their agreements within the boundaries of mandatory legal provisions (Kohler 2013, 329).

The tension between the autonomy of the will and legal regulations became a central focus of internationalist doctrine (Kohler 2013; Ranouil 1980), particularly in analyzing the evolution of the principle during the 19th century. This analysis highlights the contributions of

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two pivotal figures, Friedrich Carl von Savigny and Pasquale Stanislao Mancini, whose contrasting views reflected broader philosophical and methodological differences in their approaches to PIL.

Savigny preferred the concept of "voluntary submission" over autonomy of the will to explain conflicts of law, particularly in contractual matters. He argued that the parties' autonomy was expressed through their choice of the connecting factor—such as the place of conclusion or performance of the contract—which designated the relevant legal jurisdiction (Kohler 2013, 329; Savigny 1849, 248). Savigny sought to identify the "seat" of each legal relationship, aiming to determine the legal territory to which it naturally belonged (Symeonides 2021, 49). He aimed to ensure that multistate disputes would be resolved consistently, regardless of where they were litigated (Symeonides 2021, 49). Although the German codification (EGBGB) of 1900 primarily consisted of unilateral rules, Savigny's advocacy for multilateralism proved influential in the long term (Symeonides 2021, 63-144).

On the other hand, Mancini placed individual autonomy within the context of cross-border private law relations. He emphasized the harmony between private freedom and the exercise of social power, arguing that state intervention should cease where individual freedom is harmless and legitimate (Mancini 1874, 221, as cited in Kohler 2013, 330). For Mancini, the autonomy of the will was a principle that should govern, as it posed no threat to state interests.

The 19th century is often regarded as the era of the establishment of the autonomy of the will, marked by liberalism and *laissez-faire* policies, which granted parties maximum freedom in contractual matters (Casanovas 1974, 1004; Symeonides 2021). In contrast, the 20th century saw the rise of state interventionism, which, while not entirely suppressing the autonomy of the will, imposed limitations to protect weaker parties. These limitations were based on public law principles, such as *lois de police* and *ordre public*, as well as mandatory rules, as seen in the Rome I Regulation and the Brussels I Recast Regulation (EU No 1215/2012).

These limitations should not be interpreted as diminishing the significance of the autonomy of the will. On the contrary, they strengthen the principle by ensuring fairness and protecting vulnerable parties. For example, the 1991 resolution of the *Institut de Droit International* on "the Autonomy of the Parties in International Contracts Between Private Persons or Entities" reaffirms the principle as a fundamental aspect of PIL, enshrined in various conventions and United Nations resolutions (Jayme 1991, Preamble). This underscores the enduring importance of the autonomy of the will in PIL, even as it adapts to new regulatory challenges in emerging areas.

METHODOLOGY

The methodology of this paper adopts an analytical and descriptive approach, aiming to examine the principle of the autonomy of the will within PIL and assess its adaptability in the era of artificial intelligence (AI). By analyzing historical and contemporary legal frameworks, the paper seeks to provide a comprehensive understanding of the challenges AI poses to this foundational principle.

The study utilizes a combination of primary and secondary sources. Primary sources include treaties, regulations — such as Rome I, Rome II, and Brussels I Recast — and legislative texts directly impacting PIL. These sources form the legal foundation necessary to evaluate the

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current state of the autonomy of the will. Secondary sources consist of scholarly works and interpretations by key jurists such as Savigny, Mancini, and others, whose contributions have significantly shaped the understanding of autonomy in international law.

The procedure systematically examines legal texts and doctrines to assess their effectiveness in addressing AI-related challenges. This includes a review of specific regulations and case law to understand the limitations imposed on the autonomy of the will and the potential need for new legal frameworks. The analysis is complemented by an interpretative approach, extracting underlying principles, limitations, and implications for the evolving landscape of PIL.

The paper employs a qualitative approach to data analysis, focusing on interpreting legal principles rather than quantitative data or empirical methods. A comparative approach highlights differences in legal perspectives across various jurisdictions and historical contexts. This comparative analysis helps identify gaps in the existing literature and potential areas for reform. By critically assessing the adequacy of current PIL frameworks, the paper aims to provide insights into how the principle of autonomy of the will can be preserved and adapted in response to emerging AI-related challenges.

STATE OF THE ART: AUTONOMY OF THE WILL AND ITS MODERN PROFILE

The Paradox of Autonomy of the Will

This section briefly examines the "paradox of the autonomy of the will." It systematically analyses the limitations on autonomy to protect the principle and equity within contractual relationships. While these limitations restrict autonomy in certain cases, they aim to ensure fairness and balance in legal agreements. The purpose of this analysis is to apply this rationale to the development of an appropriate response within PIL, particularly in addressing the emerging challenges posed by the rapid and exponential growth of artificial intelligence (AI). This response seeks to reconcile the need for individual autonomy in legal matters with the increasing necessity for regulation and oversight, given the transformative effects of AI on societal structures and legal frameworks.

Reviewing any PIL textbook reveals party autonomy's central and expansive role in today's discipline. Over the years, party autonomy has evolved from a limited principle applicable primarily to contractual matters into a cornerstone of modern PIL, influencing areas such as international commercial arbitration, family law, and even cross-border disputes involving torts or property. For instance, Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions, and acceptance and enforcement of authentic instruments in matters of succession, as well as the creation of a European Certificate of Succession, and Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law, and the recognition and enforcement of decisions in matters of matrimonial property regimes, illustrate this evolution.

The growing prominence of party autonomy reflects a broader shift toward empowering individuals and entities to shape their legal relationships across borders according to their preferences and needs, while operating within the frameworks established by national laws and

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international conventions. This evolution underscores the adaptability of PIL to the realities of globalization and the increasing complexity of transnational interactions. Due to space constraints, this section imposes a dual limitation: the first is "territorial," focusing on the European framework, and the second is "material," encompassing the principle of autonomy of the will in determining judicial jurisdiction and the applicable law in contractual and non-contractual matters.

Judicial Competence and Party Autonomy

As established by methodological casuistry in PIL, the analysis of the autonomy of the will begins with judicial competence, specifically how the autonomy of the will influences one of the most important dimensions of PIL. This approach considers that each court determines its competence based on its jurisdictional rules (Arenas García 2023, 43). International judicial jurisdiction differs significantly from domestic jurisdiction, as multiple judicial bodies within each national legal system have the authority to adjudicate different types of disputes (Fernández Rozas and Sánchez Lorenzo 2020, 54).

In establishing rules on international judicial jurisdiction, legislators consider the interests and legislative policy objectives relevant to each specific area or sector and fundamental guiding principles. One of the most significant of these is the principle of party autonomy, which allows the parties to designate the internationally competent courts through either explicit (Article 25) or tacit submission (Article 26). As mentioned before, this autonomy is not absolute; it must operate within a framework of legal limitations designed to ensure fairness, prevent abuses, and uphold the broader public interest (Vinaixa Miquel 2023, 72).

The Brussels I Recast Regulation

Regarding international judicial jurisdiction, in addition to domestic regulations, Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 (Brussels I Recast) governs jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Several EU regulations and multilateral conventions of notable significance must also be considered, each with a more sector-specific or *ratione materiae* focus. In some conventional texts, matters of international judicial jurisdiction are referred to as the "common regime of the member states" (Fernández Rozas and Sánchez Lorenzo 2020, 56-58).

The Brussels I Recast Regulation applies to civil and commercial matters, irrespective of the nature of the court or tribunal, but expressly excludes customs and administrative matters, as well as cases involving state liability and actions or omissions of the state in the exercise of its authority (*acta iure imperii*). Article 24 establishes jurisdiction in certain matters based on the principle of public or general interest of the State and the proximity of the dispute. This list of exclusive fora, understood as *numerus clausus*, applies regardless of the parties' domicile. The jurisdiction in the European Union varies depending on the nature of the case. Courts in the Member State where the immovable property is located (*forum rei sitae*) have jurisdiction over rights in rem and tenancies, except for short-term private leases of up to six months, where courts in the defendant's domicile may also have jurisdiction under certain conditions.

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Disputes concerning the validity, nullity, or dissolution of companies fall under the jurisdiction of the Member State where the company has its seat, as determined by private international law. The courts handle cases involving the validity of public register entries in the jurisdiction where the register is maintained. Intellectual property disputes related to registration or validity fall under the jurisdiction of the Member State where the right was registered or applied for. Lastly, the enforcement of judgments is the responsibility of the courts in the Member State where enforcement is sought (Brussels I Recast, Article 24).

Explicit and Tacit Submission

The Brussels I Recast Regulation recognizes party autonomy in determining the competent courts for potential legal proceedings, both explicitly and implicitly. Explicitly, before the procedure begins, Article 25(1) establishes that if the parties, regardless of their domicile, have agreed that a court or the courts of a Member State shall have jurisdiction over any disputes arising or that may arise in connection with a specific legal relationship, those courts shall have jurisdiction — unless the agreement is deemed null and void concerning its substantive validity under the law of that Member State.

Unless otherwise agreed by the parties, this jurisdiction shall be exclusive (Brussels I Recast, Article 25). The jurisdiction clause must be clear and precise to demonstrate the parties' consent reliably. The choice of courts may be general or specific, but clauses that do not explicitly identify the competent court are also valid. In such cases, it becomes necessary to interpret and supplement the parties' intentions (CJEU, 9 November 2000, C-387/98, *Coreck Maritime*; Vinaixa Miquel 2023, 81). The chosen courts must be those of a Member State of the European Union. However, Regulation 1215/2012 does not prohibit parties from submitting to the jurisdiction of a third-state court, subject to certain limitations (CJEU, 17 March 2016, C-175/15, *Taser International*; Vinaixa Miquel 2023, 81).

Once proceedings have commenced, tacit submission is also provided under Article 26. Aside from jurisdiction established under other provisions of the Regulation, a Member State's court shall have jurisdiction before a defendant enters an appearance (Brussels I Recast, Article 26). Tacit submission is derived from the interpretation of the parties' procedural conduct. Filing a claim demonstrates such intent, as does any action by the opposing party—except for lodging a jurisdictional objection based on lack of competence. Tacit submission is subject to two key limitations based on the nature of the dispute.

First, it is not applicable in cases under exclusive jurisdiction (Article 24 in conjunction with Article 26(1)). Second, in disputes arising from contracts involving weaker parties—such as insurance, consumer, or employment contracts—tacit submission is only valid if the court ensures that the weaker party has been properly informed of their right to contest the court's jurisdiction (CJEU, 20 May 2010, C-111/09, *CPP Vienna Insurance Group*; Vinaixa Miquel 2023, 85).

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Applicable Law and Party Autonomy

The second key aspect to examine within the PIL methodology is the applicable law and the role of party autonomy in its determination. The latest codified expression of party autonomy in European PIL is found in the European Union's Rome I Regulation of 2008 on the Law Applicable to Contractual Obligations, which replaced the 1980 Rome Convention, as well as in the Rome II Regulation of 2007 on the Law Applicable to Non-Contractual Obligations (Symeonides 2010, 522).

The Rome I Regulation establishes freedom of choice as a fundamental principle within the Uniform Rules of Chapter II. Article 3, titled *Freedom of Choice*, applies to all contracts and begins with clearly asserting the role of party autonomy in contractual matters: "The law chosen by the parties shall govern a contract" (Rome I, Article 3). This principle also appears in the legislation of the European states (Kohler 2013, 305). Article 3 specifically addresses conflictual autonomy, which relates to the parties' ability to choose the applicable law governing their contract. This differs from material autonomy, which refers to the freedom of the parties to determine the substantive terms, rights, and obligations within the contract itself. While conflictual autonomy concerns the legal framework that will regulate the contract, material autonomy focuses on the contractual content agreed upon by the parties (Suquet Capdevila 2023, 424).

The law chosen by the parties must fall within their material autonomy. It may include the law of a state, an international convention, soft law principles, specific international practices, or an INCOTERM (Suquet Capdevila 2023, 424). The principle of autonomy is further reinforced in Recital 11, which states: "The parties' freedom to choose the applicable law should be one of the cornerstones of the system of conflict-of-law rules in matters of contractual obligations" (Rome I, Recital 11). This recital emphasizes the importance of party autonomy as a fundamental principle in determining the applicable law for contracts within the European Union.

Given the scope of this paper, the primary focus is on the four more restrictive specific examples that follow Article 3. These apply to certain types of contracts — referred to as "special contracts" — namely, contracts of carriage (Article 5), consumer contracts (Article 6), insurance contracts (Article 7), and individual employment contracts (Article 8). In each case, one party (the passenger, consumer, insured, or employee) is typically in a weaker bargaining position than the other (Symeonides 2010, 522). In this regard, Recital 23 explicitly affirms a policy of protecting weaker parties, stating: "As regards contracts concluded with parties regarded as being weaker, those parties should be protected by conflict-of-law rules that are more favorable to their interests than the general rules" (Rome I, Recital 23).

EVIDENCE FROM THE CASE STUDY

The Role of Autonomy of the Will, PIL, and AI

After introducing evidence from modern regulations such as the Rome I and II Regulations and the Brussels I Recast Regulation, which impose limitations on the autonomy of the will to protect weaker parties and uphold public policy, the paper discusses how these regulations, while restricting autonomy in certain contexts, ultimately reinforce it by ensuring

fairness and legal certainty in cross-border contracts. For example, the Rome I Regulation explicitly upholds party autonomy by allowing parties to choose the applicable law in contracts, subject to certain restrictions to protect consumers and employees.

The paper presents a range of evidence to support its analysis of the autonomy of the will in PIL and the impact of AI. One key source of evidence is the examination of historical cases and doctrines that have shaped the principle of autonomy of the will. For instance, the paper references the Ptolemaic period in Egypt, where contracts between Egyptians and Greeks were governed by the law of the language in which the contract was written. This practice is cited as an early recognition of the autonomy of the will, highlighting the historical roots of this principle in cross-border legal relationships.

Additionally, the paper draws on the philosophical and legal theories of influential jurists such as Kant, Savigny, and Mancini. Kant's definition of autonomy as the ability of the will to be a law unto itself is used to illustrate the foundational role of this principle in both moral and legal contexts. Savigny's concept of "voluntary submission" and Mancini's emphasis on balancing individual freedom with state sovereignty are also discussed as part of the evidence in the case study. These perspectives underscore the longstanding tension between autonomy and regulation in PIL.

In addressing the impact of AI, the paper cites the European Union's AI Act (2024), which introduces a risk-based approach to regulating AI systems, including provisions that could affect the autonomy of contractual parties. The AI Act's emphasis on transparency and accountability in high-risk AI applications is highlighted as evidence of the growing need for regulatory oversight to balance autonomy with public interest. This section of the paper also examines the challenges posed by AI-mediated contracts and the adequacy of existing PIL frameworks to address issues such as jurisdiction, applicable law, and the protection of weaker parties in AI-driven transactions.

By integrating these historical, philosophical, and regulatory perspectives, the paper presents a comprehensive case study that illustrates the evolution and current challenges of the autonomy of the will in PIL. The evidence supports the argument that, while the autonomy of the will remains a cornerstone of PIL, it must be continuously adapted to address new technological challenges, particularly those posed by AI.

Legal Relationships in AI-Mediated Interactions

When users interact with AI systems such as Claude, ChatGPT, or DeepSeek, questions arise regarding the nature of the legal relationship established. Is it contractual or non-contractual? Which jurisdiction has competence, and which law applies? These questions fall within the domain of PIL and highlight the complex interplay between AI, party autonomy, and regulatory frameworks.

At the core of this discussion lies the role of autonomy of the will in the context of AI. The first step is to define AI and assess its implications for contractual and extra-contractual relationships. From a PIL perspective, analyzing the legal solutions that have emerged in response to similar or analogous developments is crucial. One key area of focus is electronic contracting—examining whether existing legal frameworks adequately address AI-mediated

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agreements, whether they provide sufficient legal certainty, and whether their analogical application to AI interactions is appropriate.

Beyond contract formation, a fundamental issue arises: should users engaging with AI systems be considered the weaker party? If so, does this necessitate limitations on party autonomy to protect individuals from potential imbalances in bargaining power, unfair terms, or unforeseen legal consequences? Addressing these concerns requires evaluating whether current PIL rules and consumer protection mechanisms are sufficient or if new regulatory approaches are needed to safeguard users in an AI-driven legal landscape.

Defining Artificial Intelligence

The first step in this analysis is to define artificial intelligence and assess its impact on the autonomy of the will. The European Union's AI Act (2024) does not provide a concise definition of AI, likely due to the wide range of tasks and outputs that AI tools can produce (May 2024, 1). Similarly, the lack of a precise definition is evident in the US Executive Order 13960 (Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government) and Section 238(g) of the National Defence Authorization Act of 2019.

According to the Encyclopaedia Britannica, "AI is the ability of a digital computer or computer-controlled robot to perform tasks commonly associated with intelligent beings, and the term is frequently applied to the project of developing systems endowed with the intellectual processes characteristic of humans, such as reasoning, discovering meaning, generalizing, or learning from past experience" (Copeland 2025, 1).

After stating its purpose (Article 1) and scope (Article 2), the AI Act includes a recital with 68 definitions. Among these, an AI system is defined as "a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments" (AI Act, Article 3). Many of these definitions are highly relevant to PIL and the broader objectives of the AI Act, which aims to improve the functioning of the internal market by establishing a uniform legal framework for the development, placing on the market, putting into service, and use of AI systems in the Union. The AI Act also empowers the AI Office to develop and recommend voluntary model terms for contracts between providers of high-risk AI systems and third parties that supply tools, services, components, or processes used for or integrated into high-risk AI systems. When developing these voluntary model terms, the AI Office must consider possible contractual requirements applicable in specific sectors or business cases (AI Act, Article 25).

The preamble of the AI Act narrows its purpose to improving the functioning of the internal market by laying down a uniform legal framework for the development, placing it on the market, putting it into service, and using AI systems. The question arises whether the regulations discussed in this paper and the specific principles of PIL can be applied analogically to the various dimensions affected by AI.

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Electronic Contracting and AI

PIL has addressed a related, if not entirely analogous, issue by conceptualizing a new subcategory of special contracts known as electronic contracts. While unification efforts exist in the form of soft law instruments, such as the UNCITRAL Model Law on Electronic Commerce, a fully harmonized legal framework for online commerce has yet to be established. This gap persists not only in terms of substantive law but also concerning procedural rules and conflict-of-law principles (Fernández Rozas and Sánchez Lorenzo 2020, 666). Consequently, the resolution of legal issues arising from electronic contracting over the Internet may begin with applying general legal principles (Fernández Rozas and Sánchez Lorenzo 2020, 666).

New technologies, particularly the Internet, enable the formation of a wide range of international contracts with online and offline obligations. This contractual diversity gives rise to distinct rules on international jurisdiction. Without a specific regulatory framework for cyberspace, the reliance on Online Dispute Resolution (ODR) mechanisms has become increasingly prevalent (Fernández Rozas and Sánchez Lorenzo 2020, 666).

Resolving disputes concerning judicial jurisdiction and applying general legal principles would not automatically lead to applying the Brussels I Bis Regulation, as referenced in Article 25(2). However, other jurisdictional frameworks present challenges stemming from cyberspace's unique complexities. Therefore, any legislative response must consider critical issues such as the difficulty in determining the defendant's domicile, the place of contract execution, and the location of contract formation (Fernández Rozas and Sánchez Lorenzo 2020, 667).

Determining the applicable law presents challenges like those encountered in establishing judicial jurisdiction. Applying the Rome I Regulation is relatively straightforward when the parties have expressly chosen the governing law (Fernández Rozas and Sánchez Lorenzo 2020, 667). However, complexities arise in commercial contracts that must be executed online, particularly those involving chatbot applications or AI-driven tools and platforms such as DeepSeek. In these cases, the lack of physical territorial connections complicates the application of traditional conflict-of-law rules.

The criteria for determining the residence or establishment of the characteristic performer should be the same as those applied to non-electronic contracts. However, when multiple connecting factors point to a jurisdiction different from the performer's formal place of establishment or habitual residence, this could justify the application of an alternative legal framework. Likewise, the electronic address's alignment with the website's targeted market could further support the application of a different legal framework (Fernández Rozas and Sánchez Lorenzo 2020, 667).

Addressing Legal Gaps Posed by AI

Applying the rules highlighted in this article could resolve some legal gaps that artificial intelligence (AI) poses. However, proposals for international AI regulation have not yet achieved significant success. Hundreds of technologists and researchers have warned about the dangers of AI in multiple open letters, with one published in late March 2023 advocating for a six-month pause on developing new AI models (Iyengar 2023). Despite these concerns, the third annual Global AI Summit in Paris failed to achieve consensus on establishing global governance for AI.

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Even the final statement, which emphasized "the need for […] cooperation on AI governance," proved too ambitious for the United States, the largest global AI player, and Britain, both of which rejected the final declaration (Quarles van Ufford 2025).

The Global Approach to AI Regulation

The global approach to AI regulation may continue to advance through the United Nations (UN) framework, building on the UN's 2024 initiative for technology governance, the Global Digital Compact. From a rigorous PIL perspective, regulation could be led not only by states and the European Union but also by international organizations such as the Hague Conference on Private International Law (HCCH) and the International Institute for the Unification of Private Law (UNIDROIT). The aim would be to draft a new and specific convention addressing the various aspects of AI that intersect with the core principles of PIL. Such a convention could provide a harmonized legal framework to address the challenges posed by AI in cross-border legal relationships.

The Impact of AI on Human Autonomy

The rapid development of AI has raised complex questions about its impact on human autonomy—constraining it in some instances while promoting it in others (Prunkl 2022, 26). In the context of this policy and governance debate, revisiting the works of Kant and re-engaging with historical debates, such as those of Savigny and Mancini, is not only valuable but essential. These jurists epistemologically and methodologically shaped the discipline of PIL, and their insights remain relevant in addressing the challenges posed by AI.

Revisiting the Origins of PIL in the AI Era

Applying Arenas García's predictions for globalization, the AI era appears to reposition PIL and the state in a manner reminiscent of a return to their origins (Arenas García 2007). The increasing complexity of transnational interactions driven by AI technologies necessitates evaluating traditional PIL principles, such as the autonomy of the will, to ensure they remain effective in a rapidly evolving legal landscape. This revaluation must balance the need for individual autonomy with the growing necessity for regulatory oversight to address the transformative effects of AI on societal structures and legal frameworks.

The challenges that the approval process that the Proposal for a Directive of the European Parliament and of the Council on adapting non-contractual civil liability rules to artificial intelligence (AI Liability Directive) experienced evidence of some of the difficulties that this topic generates despite the "lower" interventionist profile that the proposal had. Also, considering that the proposal aimed to promote AI uptake and address the risks associated with some of its uses by fostering excellence and trust. In the Report on AI Liability. As the same proposal mentions:

> Current national liability rules, in particular based on fault, are not suited to handling liability claims for damage caused by AI-enabled products and services. Under such rules, victims need to prove a wrongful action or omission by a

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person who caused the damage. The specific characteristics of AI, including complexity, autonomy and opacity (the so-called "black box" effect), may make it difficult or prohibitively expensive for victims to identify the liable person and prove the requirements for a successful liability claim (AI Liability Directive).

CONCLUSION

The foundational principle of autonomy of the will, which grants parties the freedom to select governing law and jurisdiction in cross-border legal relationships, has long served as a bedrock of PIL. Emerging from Enlightenment thought — particularly Immanuel Kant's philosophy of rational self-determination — and subsequently refined by 19th-century jurists such as Savigny and Mancini, this doctrine has provided essential coherence to transnational disputes involving contracts, torts, and personal status matters. However, the disruptive emergence of AI systems capable of autonomous decision-making presents novel theoretical and practical challenges that demand a fundamental reassessment of traditional PIL frameworks.

Contemporary AI applications — spanning algorithmic contract formation, automated tortious conduct, and machine-driven corporate governance — increasingly operate across jurisdictional boundaries without direct human intervention. This technological shift exposes critical doctrinal tensions regarding three key PIL considerations: legal subjectivity (whether AI systems can possess any form of legal personality), attribution of liability (particularly where machine learning produces unpredictable outcomes), and the determination of applicable law (when autonomous systems engage with multiple legal orders simultaneously). These challenges suggest that without substantive doctrinal evolution, PIL risks becoming misaligned with the realities of digital transnational interactions.

The path forward requires a dual approach combining institutional innovation and theoretical reconsideration. At the institutional level, developing a specialized international convention under the auspices of the HCCH and UNIDROIT appears imperative. Such an instrument would need to establish: first, a graduated classification system for AI legal status ranging from simple tools to advanced quasi-legal entities; second, modified jurisdictional rules accounting for distributed AI operations; third, conflict-of-law principles responsive to algorithmic decision-making; and fourth, safeguards preserving fundamental rights in automated legal processes. This regulatory framework should build upon existing digital governance models, including the EU's AI Act and data protection regimes while addressing the unique cross-border dimensions inherent to PIL.

Theoretical reconstruction proves equally vital. Kantian conceptions of autonomy require re-examination in light of machine agency, potentially distinguishing between human moral autonomy and functional decision-making capacity in AI systems. Savigny's venerable "seat of the legal relationship" doctrine may demand recalibration when applied to decentralized autonomous organizations (DAOs) or AI systems with no clear territorial anchor. Similarly, Mancini's nationality principle invites reconsideration of whether AI systems could develop analogous connections to specific legal regimes based on development, training data origins, or operational parameters.

This paper inquiry demonstrates that PIL's adaptation to the AI era must be forward-looking and historically grounded. By engaging in sustained dialogue with legal philosophy

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while developing pragmatic regulatory solutions, the discipline can maintain its essential functions of ordering transnational legal relations and protecting individual rights. The autonomy of the will — properly reconceptualized — can continue serving as a guiding principle, but only through thoughtful accommodation of technological realities. Future research should empirically examine how domestic courts and arbitral bodies are already confronting these challenges in practice. At the same time, further theoretical work remains necessary to fully reconcile traditional PIL doctrines with emerging forms of digital legal subjectivity. Ultimately, this evolutionary process will determine whether PIL retains its normative coherence and practical relevance in governing an increasingly automated global legal order.

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REFERENCES

1. Arenas García, Rafael. 2007. "El Derechointernacional privado (DIPr) y el Estado en la era de la globalización: la vuelta a losorígenes", in *Cursos de derecho internacional y relaciones internacionales de Vitoria-Gasteiz = Vitoria-Gasteizko nazioarteko zuzenbide eta nazioarteko herremanen ikastaroak*, [Lessons of International Law and International relations of Vitoria-Gasteiz] 19-94.
2. Arenas García, Rafael. 2023. "Sectors del Dret Internacional Privat I Fonts" [Sectors of Private International Law and Sources] in: Font, Albert, Josep Maria Fontanellas, Miquel Gardeñes, and Georgina Garriga (eds.), Lliçons de Dret Internacional Privat [Lessons of Private International Law] (Barcelona: Atelier Llibres Jurídics), 43-62.
3. Basedow, Jürgen. 2011. "Theorie der Rechtswahloder Parteiautonomieals Grundlage des internationalen Privatrechts." [Theory of Choice of Law or Party Autonomy as the Basis of Private International Law], in *Rabels Zeitschrift für ausländisches und internationales Privatrecht/The Rabel Journal of Comparative and International Private Law*, 32-59.
4. Battifol, Henri. 1938. *Les conflits de loisenmatiére de contrats.* [The Conflict of Laws in the matters of contracts] France: Libraire du Recueil Sirey.
5. Battifol, Henri. 2002. *Aspects philosophiques du droit international privé.* [Philosophical Aspects of Private International Law] France: Dalloz, 2002.
6. Casanovas, Oriol.1976. "La autonomía de la voluntad de Derecho Internacional Privado" [The Autonomy of the Will in Private International Law], in *Anuario de derechocivil* , no. 29.4, 1003-1020.
7. Copeland, B.J, 2025. "Artificial intelligence" entry at Encyclopaedia Britannica, available at: https://www.britannica.com/technology/artificial-intelligence (accessed 3 March 2025).
8. Council Regulation (EC) No. 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Brussels I), 2001 O.J. (L 12) 1.
9. De Oliveira Mazzuoli, V. and Boger Prado, G. 2019. "L'autonomie de la volonté dans les contratscommerciauxinternationaux au Brésil" [The Autonomy of the Will in international commercial contracts in Brasil], in *Revue critique de droit international privé*, núm. 2(2), 427-456 https://doi.org/10.3917/rcdip.192.0427.
10. Executive Order 13960 of 3 December 2020 Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government, Federal Register Vol. 85, No. 236 Tuesday, 8 December 2020, available at Federal Register: Promoting the Use of Trustworthy Artificial Intelligence in the Federal Government, (accessed 3 March 2025).
11. Fernández Rozas, José Carlos and Sánchez Lorenzo, Sixto. 2020. *Derecho Internacional Privado.* [Private International Law], España: Aranzadi.
12. Gardeñes Santiago, Miquel. 2003. "Reflexiones sobre los orígenes históricos del derecho internacional privado" [Reflections on the historical origins of Private International Law], in *Anuario Español de Derecho Internacional Privado,* Vol. III, 107-138.
13. Garriga Suau. Georgina. 2023. "ObligacionsExtracontractuals" [Extracontractual Obligations] in: Font, Albert, Josep Maria Fontanellas, Miquel Gardeñes, and Georgina Garriga (eds.), Lliçons de Dret Internacional Privat [Lessons of Private International Law] (Barcelona: Atelier Llibres Jurídics), 439-472

14. Habermas, Jürgen. 1987. "Wie Ist Legitimität Durch Legalität Möglich?" [How Is Legitimacy Possible Through Legality?] *Kritische Justiz*, vol. 20. 1, 1–16.
15. Halpérin, Jean-Louis. 2014. "L'autonomie Privée En France" [Private autonomy in France] in *Quaderni Fiorentini per la storia del pensiero giuridico moderno*, vol. 43.1, 461-480.
16. Iyengar, Rishl. 2023. "The Global Race to Regulate A.I.", *Foreign Affairs,* available at:https//foreignpolicy.com/2023/05/05/eu-ai-act-us-china-regulation-artificial-intelligence-chatgpt/ (accessed on 3 March 2025).
17. Jayme, Eric. 1991. "The Autonomy of the Parties in International Contracts Between Private Persons or Entities" in (Seventh Commission, Institut De Droit International Session of Basel – 1991), available at: http://www.idi-iil.org/en/publications/ii-lautonomie-de-la-volonte-des-parties-dans-les-contrats-internationaux-entre-personnes-privees/ (accessed 24 February 2025).
18. Juenger, Friedrich. 2021. *Choice of law and multistate justice*. Leiden: Brill.
19. Kant, Immanuel. 1904. *Grundlegung zurMetaphysik der Sitten*, [Groundwork of the Metaphysics of Morals] Theodor Fritzsch ed., Philipp Ditzingen: Reclam.
20. Kant, Immanuel. 1989*. Kritik der praktischen Vernunft*. [Critique of Practical Reason] Ditzingen: Reclam.
21. Kirchheimer, Otto. 1987. *Social Democracy and the Rule of Law*, Berg Publishers.
22. Kohler, Christian. 2013. *L'autonomie de la volonté en droit international privé: un principe universel entre libéralisme et étatisme*. [The Autonomy of Will in Private International Law: A Universal Principle Between Liberalism and Statism]. Leiden: Brill.
23. May, Keller. 2024: "What is Artificial Intelligence" available at https://www.nasa.gov/what-is-artificial-intelligence/ (accessed on 3 March 2025).
24. Niboyet, Jean Paulin. 1927. *La théorie de l'autonomie de la volonté*. [The Theory of the Autonomy of the Will] The Netherlands: Martinus Nijhoff.
25. Pereznieto Castro, Leonel. 2016. "La autonomía de la voluntadenel Derecho Internacional Privado." [The Autonomy of the Will in Private International Law] *BJV, Instituto de Investigaciones Jurídicas-UNAM*, 125-139.
26. Proposal for a Regulation of the European Parliament and of the Council Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act) and Amending Certain Union Legislative Acts, COM (2021) 206 final (21 April 2021)
27. Quarles van Ufford, Hermann. 2025. "Regulate or stagnate: Why the EU must lead on A.I." European Council for Foreign Relations, available at http://https//ecfr.eu/article/regulate-or-stagnate-why-the-eu-must-lead-on-ai/ (accessed on 2 February 2025).
28. Ranouil, Véronique. 1980. *L'autonomie de la volonté: naissance et évolution d'un concept*. [The Autonomy of the Will: birth and evolution of a concept]France: FeniXX,
29. Reath, Andrews. 2006. *Agency and Autonomy in Kant's Moral Theory: Selected Essays*. Oxford: Oxford University Press.
30. Regulation (EC) No. 864/2007 of the European Parliament and of the Council of 11 July 2007 on the Law Applicable to Non-Contractual Obligations (Rome II), 2007 O.J. (L 199) 40.
31. Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the Law Applicable to Contractual Obligations (Rome I), 2008 O.J. (L 177)6.

32. Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (Brussels I Recast), 2012 O.J. (L 351) 1.
33. Oyarzábal, Mario J. A. 2022. *The Influence of Public International Law upon Private International Law in History and Theory and in the Formation and Application of the Law*, Nijhoff: Brill.
34. Savigny Friedrich Carl. 1849. *System des heutigen römischen Rechts.* [System of the Modern Roman Law] *Der Band VIII,* Berlin: Veit & Comp.
35. Schmitt, Carl. 2004. *Legality and Legitimacy*. Duke University Press.
36. Siehr, Kurt. 2001. "Kant and Private International Law." *European Business Organization Law Review* 2, no. 3–4: 767–75.
37. Suquet Capdevila, Josep. 2023. "Obligacions Contractuals" [Contractual Obligations] in: Font, Albert, Josep Maria Fontanellas, Miquel Gardeñes, and Georgina Garriga (eds.), Lliçons de Dret Internacional Privat [Lessons of Private International Law] (Barcelona: Atelier Llibres Jurídics), 403-438.
38. Symeonides, Symeon. 2010. Party Autonomy in Rome I and II from a Comparative Perspective. Convergence and Divergence in Private International Law - *Liber Amicorum*, pp. 513-550.
39. Symeonides, Symeon C. 2021. Private International Law, Nijhoff. Brill.
40. Vinaixa Miquel, Mònica. 2023. "Competència Judicial Internacional" [International Judicial Jurisdiction] in: Font, Albert, Josep Maria Fontanellas, Miquel Gardeñes, and Georgina Garriga (eds.), Lliçons de Dret Internacional Privat [Lessons of Private International Law] (Barcelona: Atelier Llibres Jurídics), 63-98.