Chapter I

LABOUR LAW'S PERSPECTIVE IN THE GLOBAL DIMENSION

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SUMMARY: 1. The effects of globalization on legal systems. – 2. Competition between orders and free trade. – 3. The diversification of regulatory models in the global space: inter-normativity and co-regulation. – 4. Social justice and fundamental social rights. – 5. Globalization's "regulatory trilemma". – 6. Social justice and the reform of capitalism. – 6.1. The post-national constellation. – 6.2. The perspective of de-globalization. – 6.3. National regulatory measures. – 7. The firm as an actor of regulation and Corporate Social Responsibility. – 8. The regulatory role of national and supranational courts. – 9. A new global issue: labour and ecology. – 10. Towards a "global labour law". – 11. Others new global issues: Artificial Intelligence and Platform Work. – 11.1. Artificial Intelligence. – 11.2. Platform Work. – Essential bibliography.

1. The effects of globalization on legal systems

The key issue of our age persists on being globalization challenging law, in its various components and its national, international and supranational dimensions. Further, this challenge involves also social regulation systems in search of a difficult synthesis between the values of a deterritorialized market and a legal sphere that is trying hard to despatialize itself. The evolution of late-capitalism and the change of organizational processes according to neoliberal logics mark the extent of such challenge, which consists in the growing gap between an "economic order" based on the mercantile value of the world and an "institutional dimension" of the market, with its regulatory issues and weaknesses both at local and "global" level.

The history of the complex relationships between economy, politics and (national and international) law of the last thirty years highlights the need to rethink the regulatory systems of economy, as it no longer is simply international (as it happened in the era of the first globalization) but global. Global comes from Globe, that is Earth. Unlike the concept of "international", which refers to the State-national location of a (social, cultural, economic, etc.) phenomenon in a relationship of mutual interdependence between nations, what is global affects the entire Earth. The economy is global, and not simply international, if it concerns the whole world, and not

just two or more countries in relation to each other. Warming is global because it affects the entire globe and affects all countries on Earth (albeit with more devastating effects for the poorest). The Covid-19 pandemic is global as it affects all peoples on Earth. In the same way, law is global to the extent that it goes beyond the borders of the national State, it becomes transnational and creates (or tries to create) a universally applicable regulative "system". This is what happened with the *lex mercatoria,* autonomously produced by the entrepreneurial class, and this is happening, with greater difficulty, for the protection of rights and common goods, such as for example the protection of the environment, health and human rights (global by definition, that is relating to every human being living on Earth, without any distinction). Not to mention social rights: in the case of labour law, therefore, a truly "global" regulatory system should be capable of universally reflecting, in regulatory terms, the values of social justice and achieve a more equitable distribution of resources in the world.

Economic globalization, as it affects the whole planet, is a source of risk for all the people in the world. From the financial crisis of 2008 (due to the deregulation of the financial market) to the health crisis of 2019 (due to an ecologically unsustainable social-economic model), we have been going through an unprecedented dimension of global interdependence of social, epidemiological, health and environmental risks. These persisting crises are less and less controllable – although being often predictable. They determine the existence of a sort of generalized "State of exception" which calls for the need to reconstruct the links between political decision, economy governance and regulation through the law in order to reduce the dangerous *governance gaps* of the boundless global economic space. The ultimate goal of such reconstruction would be adding ecological and social features to the rational goal-oriented action typical of capitalism (according to the new paradigm of "sustainability").

As we will see, in this attempt to govern globalization we are facing an oscillation between the decline of State sovereignty in favour of new political-economic and political-institutional centers of power and the return State prerogatives against the endemic dissolution of democratic rules on the part of the cosmopolitan powers of the globalized economy. The outsourcing to countries with low social standards, social dumping and the growth of inequalities between the North and South of the world, the global value chains exploiting people in a "world-factory", are some of the effects of hyper-globalization, driven by market economy and by a market-oriented law totally disregarding the principles of social justice of the Philadelphia Declaration (see below, § 4) with a market-oriented law, which has lost scientific autonomy and axiological orientation.

The issues we are going to be dealing with in this handbook are therefore very complex. First, we are facing the loss of centrality of the more advanced labour law systems, whose continuous deregulation tends to be presented by national governments as the only rational response to increased international competition. On the other hand, we have the weakness of social protections of the most backward countries, exploited by this system being completely indifferent to social and environmental values, which seek to get a "comparative advantage" to compete on the market and attract foreign investment. In the face of this overall weakening of social law, the countries' last resort is to come up with a pragmatic and "erratic" construction of a reticular, transnational law. The latter should be equipped with different instruments with different regulatory "weight" (hard law but also soft law and other "deformalized" sources, extra-territorial jurisdictional processes, elaboration of "principles" capable of normatively transposing instances of the world of life, voluntary regulatory instruments of both private and public law, etc.) capable of imposing labour law's founding values: equality, freedom, dignity, solidarity, environment.

These values have shown their juridical and not only moral capability to acquire their own normative life and to become positive factors for rationalizing the economic sphere, while being immersed in a disenchanted world and accustomed to translating the polytheism of values into relativism, to the point of embracing the nihilism of market economy.[1] But these values of eco-social justice need social and institutional "bodies" to be carried forward, to effectively become part of the fundamental principles of a global law. However, the old twentieth-century institutions that supported interdependence in social matters (such as the ILO, WHO, FAO) have – through a process full of contradictions – been marginalized by the institutions of economy (WTO, IMF, World Bank). The latter in their turn are in a State of profound crisis and – far from expressing strong regulatory capacities – should be profoundly reformed, and put in close regulatory correlation with the social institutions to make them suitable for responding to the eco-social challenges of the "Anthropocene" (see *infra*, § 9). Even the European social model, while standing out with its extra-mercantile values as a real "beacon" within the economic cosmopolitanism risen to a global religion, has experienced a progressive loss of regulatory authority, which ended up serving economic imperatives and competitiveness of businesses, both in the internal market and in the relations with low-labour-standards countries.

The liberalization of markets on a global scale and the world-economy

[1] See M. CACCIARI, *Il lavoro dello spirito*, Adelphi, 2020.

driven by a total indifference to social values therefore come into conflict with national systems of labour law, tending to break the limit – as Supiot would say[2] – placed on economic rationality by market regulations respecting the personal and social values pertaining to the "old" international and European law and to the new forms of legality with a moral matrix.

2. Competition between orders and free trade

One of the first elements we should ponder on concerning globalization is the unprecedented asymmetry between a globally developed sphere of production and a State-centric sphere of jurisdiction, whose scope is within national legal systems.[3]

The nation-States – to date the most perfect form of public power – along with (labour) legal systems have now been experiencing a serious crisis of sovereignty (as well as legitimacy) for some decades, because of their inability to elaborate juridical norms able to govern the phenomena induced by globalization and to monitor their compliance. On the contrary, the powers of extra-State entities (from the International Monetary Fund to the World Trade Organization) are amplified, and, despite the difficulty of governing the processes of globalization, they are able to absorb the regulatory powers of the States in economic and financial matters.

The current labour legal systems – still firmly based on the principle of territorial localization of the *nomos*[4] – had to face regulatory competition triggered by international economic competition, the transformation/decomposition of capital and business into global networks of value, the creation of transnational legal modalities, such as the *lex mercatoria*, informed by a pure instrumental rationality functional to global economy. Within the absence of robust instruments of juridical extraterritoriality, weakened by the nation-State crisis and by the predominance of economy over politics, legal systems have found in international labour law one of the few resources to grasp on. While imperfect in terms of enforcement, international labour law is still able to guarantee the values of social justice, challenged by globalization and its main vectors of development: international trade, the financialisation of the economy, the geographical mobility of capital and of multinational companies.

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[2] A. SUPIOT, *La sovranità del limite. Giustizia, lavoro e ambiente nell'orizzonte della mondializzazione*, Mimesis, 2020.

[3] On this issue, see A. PERULLI, *Diritto del lavoro e globalizzazione*, Cedam, 1999.

[4] See C. SCHMITT, *Il nomos della terra*, Adelphi, 1991.

The rules of international labour law as being devoid of *erga omnes* effectiveness have succumbed to economic cosmopolitanism. Therefore, the construction of a new world order – as theorized in the 20th century – from the interdependence between national States and founded on peace, human rights and economic development, has gradually dissolved in the face of the new financial interests which demanded deregulation, labour flexibility and social competition, privatization of power and disintermediation from representation and public regulatory function. As a result, labour legal systems have gone through strong turbulence, where nation-States, putting forward "*à la carte* law",[5] participate in a large regulatory self-service where each actor is free to choose its level of protection based on the attractiveness of foreign direct investment.

The economy turning from international to global led twentieth-century nation-States to lose their role as controllers of economic-social processes and guarantor of basic social justice. Regulatory competition, law shopping and social dumping are, at the same time, causes and effects of economic hyper-globalization, and will lead to substantial changes in the regulation of economic phenomena on a global scale. In fact, one of the first paradigms used to explain regulatory change in the era of globalization was offered by the theory of competition between legal systems.[6] This theory states that when a production factor – say capital – has become mobile, firms tend to migrate towards systems with more efficient rules, according to the economic analysis of law. Therefore, not the rules expressing the most advanced and refined legal culture, but those that best respond to market needs. Even the national sovereign powers therefore have good reasons (in a purely utilitarian sense) to adopt rules that make their territory economically and juridically attractive: a *nomos* of the land capable of attracting capital in search of the most convenient productive location. In this perspective, legislators themselves take on the role of economic operators acting on a very particular market, that of legal rules: in a situation of reciprocal competition not governed by rules and therefore risking legislative dumping.[7]

Alongside the paradigm of regulatory competition, we have the free-trade model, promoting the liberalization of trade and the integration of markets not only on a macro-regional but global scale, whereby each country breaks down its business borders in order to maximize their competi-

[5] M.R. FERRARESE, *Poteri nuovi*, il Mulino, 2022, p. 34.

[6] See A. ZOPPINI (ed.), *La concorrenza tra ordinamenti giuridici*, Laterza, 2004.

[7] See A. SUPIOT, *L'Esprit de Philadelphie. La justice sociale face au Marché total*, Seuil, 2010.

tive advantage.[8] This perspective of trade liberalization has played a fundamental role in the affirmation of hyper-globalization neglecting the compliance with social (and environmental) rights, because the latter represent a possible limit to the development of international trade. In fact, as we will see in Chapter III, with the historic 1996 WTO Singapore Ministerial Declaration, the member countries affirm that they "We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question". This guarantee of comparative advantages of countries with low social standards is the icon of a regulatory competition between not only juridical but social systems, with results of social dumping affecting relations between States and competition between companies in the scope of international trade rules.

As competition is extended to social norms, companies (especially multinationals) practice law shopping, assisted in the search for the most favourable law both by less virtuous States (willing to practice forms of regulatory and social dumping in order to attract foreign capital) and by international organizations (such as the World Bank, which every year publishes, within the framework of its *Doing Business programme*, an evaluation report on national laws based on criteria of economic efficiency).[9]

3. The diversification of regulatory models in the global space: inter-normativity and co-regulation

In this globalized world, where economy applies the principles of unlimited expansion on a global scale (freedom of trade, freedom of competition, freedom of establishment, etc.) without taking into account the social aspects of growth, it was inevitable to get to an endemic social crisis, with growing social imbalances, inequalities and poverty. Any reflection on the issue of international labour regulation can only start from the new and recurring economic, social and health "crisis" produced by global capitalism, not to mention the geo-political crisis the world is going through following the Russian aggression against Ukraine. These actual "global" crisis, which have ultimately proclaimed the unsustainability of consolidated liberal economic models, have many roots and many causes, the main one being the progressive dismantling of the regulation system conceived after the 1929

[8] See A. LYON-CAEN, A. PERULLI, (eds.), *Liberalizzazione degli scambi, integrazione dei mercati e diritto del lavoro*, Cedam, 2005.

[9] See IEG World Bank Group, *Doing Business indicators and Country Reforms*, January 20, 2021.

Great Depression. The current crisis prove that the myth of the "invisible hand" – the market independently achieving development – is fallacious, and that the vision of a self-regulating system must be abandoned in favour of an institutional regulation of the market.

So far, a ruthless globalization seemed to have defeated the role of public regulation. However, nowadays there is growing need for hetero-regulation of economic processes, of behavioural norms for economic action. What's more, the compliance with the latter should grant economic actors "democratic citizenship". The underlying theme of these global crisis is undoubtedly that of rules and regulation in the difficult relationship between market and law and between economy and ethics. This phenomenon is confirmed by the rampant illegality of and within the markets, implemented with particular arrogance and self-referentiality by economic actors. In the USA, in Europe, in Asia, we have seen a soaring number of trials against companies accused of corruption, of fraud against the State, of fraud against other private individuals, of embezzlement against consumers and shareholders, of systematic violations of human rights. A widespread "irresponsibility" in the behaviour of economic actors representing, in hindsight, the direct consequence of a-moral economic rationality, governed by individual interests. [10] This vision of the economy and the market has become generalized at the supranational level, stressing the tendencies towards de-regulation of the markets (labour markets in particular) in all advanced capitalist countries.

The market, while being based on a legislative order within the national States (and in the supranational dimension of the EU itself) is extending on a global scale, due to the absence of any limit to the movement of capital, goods and the international provision of services. A Total Market includes all products of the planet: each country opens its commercial borders in order to exploit its own competitive advantage, even creating free-trade zones – actual spaces devoid of law – where politics and market suspend law and social rights, thus creating a sort of "State of exception" in the name of free trade. [11]

In this era of hyper-globalization, the diversification of regulatory models and the sophistication of regulatory techniques affect the nature, scope

[10] See L. GALLINO, *L'impresa irresponsabile*, Einaudi, 2009.

[11] Since 1998, the ILO Committee on Freedom of Association has examined many cases involving *Export Processing Zones* in relation not only to the denial of trade union association and collective bargaining rights, but also to wages and working conditions, health and security, to social security: see ILO, *Committee on Employment and Social Policy, Employment and social policy in respect of exporting processing zones (EPZs)*, Geneva, March 2003; see also *Trade Union manual on Export Processing Zones*, ILO, 2014.

and content of regulation. Regulatory systems that have evolved in the shadow of State law and the principles of command and control see the growth of non-imperative soft laws. The latter are sometimes devoid of legally enforceable rights and sanctions that can be imposed, but nonetheless endowed of a certain regulatory effectiveness, elaborated and adopted by non-institutional economic actors (companies) in a voluntary self-regulation perspective (we are thinking, in particular, of the diffusion of the codes of conduct of multinationals as tools used by companies to self-define their own rules of conduct).

The public dimension of law and regulation, as a paradigm referring to the traditional formation of law defined by sovereign authorities, is still present in the traditional hard forms of command and control. However, it is giving way to new expressions of normalization and forms of privatized guarantees elaborated by private actors (primarily multinational companies), which take place within a weak legal framework. Such expressions are giving rise to partial and specialized legal systems, dominated by authorities and "private governments", aliens to State-national legislation, or connected somehow to supranational regulatory mechanisms.

In this context that some define as "post-law" in order to underline the overcoming of the modern continental conception based on State power and the pre-eminence of the legislative power,[12] it is crucial to reflect on the construction of a new regulatory mix capable of responding to the challenges that economic globalization, sustainable development and human and labour rights place to economic and social systems. These challenges can be faced (in terms of value orientations) by revitalizing the axiological dimension of law, in all its forms (State and extra-State, public and private, hard and soft) and spatial-territorial components (national, supra-national and international). Such process should lead to a "global" labour law, capable of providing regulatory responses to the demand for social justice which, alone, can counteract the absolute domination of economic hyper-globalization. In this perspective, what stands out is the function exercised by the law in a global context, that is its ability to penetrate the global space by articulating and "putting forward" new forms of juridical regulation, and not so much its belonging to a specific legal order, its international nature, or its extraterritorial vocation.

In order to develop this global legal normativity, it is necessary to have new regulatory techniques suited to the complexity of the phenomena and the "nature of the things" to be regulated. Globalization, as a pervasive and diffusive economic phenomenon producing effects on several areas and

[12] G. ZACCARIA, *Postdiritto. Nuove fonti, nuove categorie*, il Mulino, 2022.

subjects, leads to the development of the principles of regulatory interdependence and regulatory hybridization as a disciplinary function. These principles are able to translate the factual interdependence of socio-economic phenomena into inter-normativity,[13] and to exploit the techniques of co-regulation, hybridizing regulatory fields and models hitherto placed within opposing coordinates, or mutually indifferent (such as in the case of the environment, see below, § 9).

The first perspective (inter-normativity) takes advantage of the effect of simultaneity and syncretism of global phenomena. Not only does inter-normativity invite us to conceive a common regulatory space, where the pressure on regulatory competition would be lesser, but also to stress the need for integration of the sectoral disciplinary strategies and the regulation objects. The construction of horizontal connections between different bodies of rules (connecting regimes) is a perspective that has long been studied as a response to the drawbacks of the accentuated sectoral nature of regulation and the lack of general principles and rules. A typical example of connecting regimes is the linkage between business activity and human rights, or between international trade and non-trade issues, environmental issues and social rights, health and food standards, etc.

For example, the preamble of the GATT-WTO agreements sets the goal of sustainable development in order to protect the environment and it allows to waive the principles of free trade in the name of environmental protection pursuant to art. XX GATT. Further, such preamble leads to consider international trade in a perspective that is not "clinically isolated" from the principles of public international law pertaining to the protection of non-economic goods, such as work, health and morality, in the light of the idea of normalization. Another example: the code of conduct of a multinational company in social and environmental matters makes it possible to integrate exogenous concerns into corporate behaviour. In this way, the company voluntarily takes responsibility for the "negative externalities" which otherwise would have to be dealt with by society as natural and inevitable effects of the economic dynamics, combining the company's interest in production and the collective interest in the protection of common goods. An international convention against the exploitation of workers claiming the items sold on the market should be manufactured by socially responsible companies – without the use of child labour and respecting fundamental social rights – will help to regulate unfair competition between economic actors and to ensure respect for the fundamental rights of individuals.

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[13] The theory of internormativity is developed by M. DELMAS-MARTY, *Les forces imaginantes du droit*, vol. II, *Le pluralism ordonné*, Seuil, 2006.

Related to inter-normativity is co-regulation. It is a regulatory model that overcomes the rigid dichotomies of the regulatory tradition (public/private, law/contract, State/market, hard law/soft law) in favour of an eclectic combination and integration of the characteristics of each conceptual pair, and of each related regulatory model. If inter-normativity therefore creates bridges between different but interrelated spheres and levels of regulation, co-regulation creates bridges between devices, tools and regimes of regulation. The result of co-regulation is a hybrid model, putting forward important methodological implications in the direction of a definitive overcoming of the dogmatic barriers erected by the positivist tradition between the concepts of law, norm and normalization. In this perspective, the positivist principle excluding other categories of (social, moral, technical, etc.) norms from the juridical sphere is re-considered in the light of the idea of "normalization", representing the meeting point between norm and normativity. If the law, in its regulative-normative function, provides pre-existing norms with legal form (juridification), it offers a model to socially recognized norms. In this perspective, law is not an autonomous element of normalization, while the relationship between what can be defined as legal and what is not acquires greater criticality, along an increasingly less clear separation axis between normative facts. We are thus faced with an unprecedented idea of progressiveness and gradation of normativity: a situation where the creative process of rules is iterative and circular, making it difficult to establish any definitive distinction between what is normative and what belongs to other regulatory spheres (ethics, morals, etc.).

First of all, according to the co-regulation model, the distinctions between hard law and soft law are greatly reduced, just as the discretive logics between systems are reviewed in the light of a more advanced legal pluralism. Moreover, the focus of the analysis shifts from the creation of binding rules for the actors (criterion of legal efficacy) to the ways certain rules concretely influence the actors (criterion of legal effectiveness). Co-regulation achieves the simultaneous or incremental integration between hard and soft normative dimensions and between (national, international, supranational, transnational) levels of regulation. In this perspective, at least five regulatory mechanisms, or categories of tools, can be identified. Each category may be delineated in different ways and may be simultaneously or serially combined: 1) regulation, referring to the traditional formation of law, defined by public authorities, with or without the cooperation of private actors, assisted by sanctions; 2) the instruments (incentives) of economic regulation, regarding market conditions and its regulation, or based on positive or negative sanctions to influence the behaviour of the actors (subsidies, ecotaxes, social clauses, etc.); 3) self-regulation mechanisms, allowing associa-

tions of private actors to self-regulate the behaviour of their members, for example by adopting codes of conduct, technical standards, "normalization" devices, etc.; 4) voluntarism, understood as a mechanism of self-regulation of individual private subjects who unilaterally undertake to comply with certain rules of conduct, regardless of sanctions; 5) regulation through information devices, which brings together tools such as training and teaching programmes, the publication of reports, product certification (through specific social or environmental brands, [14] etc.).

This set of tools is involved to different extents in the international regulation of the behaviour of economic actors and firms, in order to boost social values. By combining regulation and economic instruments, self-regulation and voluntarism, regulation and self-regulation, we achieve a global regulatory effect, bringing international law into relation with State law. Thus, to give an example, the principles of social responsibility of multinational companies in the field of human rights can also be invoked before a national judge as a supplementary function of international law for the interpretation of domestic law, whether it is labour law, environmental law or corporate law. [15]

Mechanisms of connecting regimes have long been operating within international law, where, in case of violation of the ILO core labour standards, we shift from moral suasion (typically implemented by the International Labour Organization) to monetary sanctions provided for by the commercial treaties with "social clauses", contained in the chapters of the agreements dedicated to Labour, Environment and Sustainability. This regulatory perspective aims at the progressive mutation of global capitalism in a sustainable sense, valorizing the models of connection between the regulation of international economic exchanges and the protection of fundamental labour rights. Such models mark an evolution in the historical paradigm of the social clause, following logics of greater effectiveness of the (procedural) tools, aimed at achieving a more advanced balance between global trade and labour rights.

Other examples of co-regulation as a "bridge" between hard and soft law and between national and transnational contexts arise from the practices of "transnational collective bargaining", where specific global trade union agreements assume the nature of a collective agreement at enter-

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[14] See A. PERULLI, *Brevi note sulla certificazione di conformità sociale dei prodotti*, in *Diritto delle relazioni industriali*, 1, 2000, p. 27 ff.

[15] See on this topic M.V. ZAMMITTI, *L'impresa socialmente responsabile: un primo itinerario di giurisprudenza, anche in prospettiva comparata*, in *il Quotidiano giuridico*, 2021.

prise level, in compliance with national and international legislation and/or practices, conveying codes of conduct, declarations of intent, principles, commitments to comply with the ILO core labour standards, assisted by mechanisms for monitoring and verifying their application (see below, Chapter V).

4. Social justice and fundamental social rights

Before globalization disrupted the international economic and social order built during the twentieth century, the concept of Social Justice represented a goal pursued through the mutual recognition of nation States in their effort to adopt "a truly human working regime", as expressed in the ILO Constitution of 1919. Social justice is the powerful axiological reference that opens the second section of the Philadelphia Declaration of 1944: "lasting peace can be established only if it is based on social justice" (for further details see Chapter II). The ILO Constitution had already defined, in general terms, the goals to be pursued through international labour legislation, including social justice and the consolidation of international peace. The goal of social justice, traditionally the prime driver of international labour legislation, was mentioned in three different ways in the Preamble of the 1919 Constitution. Presented as a prerequisite for the universal peace that the League of Nations intended to establish, it was indirectly mentioned through a reference to the unjust social conditions existing in the various countries. [16]

Social justice can be defined as "the fair and proper administration of laws conforming to the natural law that all persons, irrespective of ethnic origin, gender, possessions, race, religion, etc. are to be treated equally and without prejudice". The Philadelphia Declaration's most explanatory provision of Social Justice is contained in the following principle: "(a) all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity". According to the Declaration, both national and international political actions must aim at the goal of social justice: "(b) the attainment of the conditions in which this shall be possible must constitute the central aim of national and international policy; (c) all national and international policies and measures, in particular those of an economic and financial character,

[16] V.Y. GHEBALI, *The International Labour Organisation, A Case Study on the Evolution of U.N. Specialised Agencies – The International Organization and The Evolution of World Society*, vol. 3, Chapter 3, M. Nijhoff, 1988, p. 62.

should be judged in this light and accepted only in so far as they may be held to promote and not to hinder the achievement of this fundamental objective". The same objective of social justice constitutes the cornerstone of the recent 2008 ILO Declaration ("ILO Declaration on Social Justice for a Fair Globalisation"), which contains a strong call to the need to reaffirm the values of social justice in the context of globalization.

The idea of social justice concretely lies in fundamental social rights, which play a guiding role in advanced democracies. Rooted in the Constitutional Charters issued after the Second World War, social rights have found their guarantee in the principle of sovereignty and legality of the nation-State, determining the transition from the classical liberal State (rule of law) to forms of social and progressive democracy (social State).

Globalization has changed this structure, undermining the very existence of social rights based on the State-national paradigm ("ordering" and "localization"). It consequently led to the formation of "large economic spaces" beyond State territorialities, where free economy can thrive alongside the political-State boundaries typical of international law. In this context, social rights, no longer being functional to the dynamics of the global market, tend to dissolve, as it happens in the "symbolic places" of globalization, from free export zones to global value chains.

It is difficult to tackle this social rights crisis with a normative logic based on Universal Declarations, while it is undoubtedly useful to take advantage of more limited supranational systems (such as the EU, which, however, is unprecedented in the world scene), whose rules are directly applicable within domestic legal systems.

The 1944 Philadelphia Declaration, where the ILO's member States renewed their commitment to recognizing the value of work and the goal of social justice, and the Bretton Woods agreements were implemented around the same time, guaranteeing three decades of balanced expansion of social capitalism. These agreements represented forms of Keynesian control by States over national economies and capital flows. Capitalism therefore found in Bretton Woods the special compromise between politics and economy, between State and market, which governed the world in the international era preceding globalization.

This order within the relationship between State, capitalism and democracy is in some ways outdated. On the one hand, economy parting ways with democracy has paved the way for a model of capitalist growth where politics have proved to be unable to stop globalization. On the other hand, the recognition of social complexity – an expression of democratic polytheism – disappears in the populist myth, leading to the crisis of all the actors and all the functions that mediate between civil society,

the world of work and the government, such as trade associations, trade unions and NGOs.

With the advent of neo-liberalism, the Bretton Woods system was practically dismantled, and a process of hyper-globalization put social systems into competition and progressively reduced social rights in advanced countries. The relationship between State, capitalism and democracy was disrupted in Western countries, while Eastern capitalism (not only the Chinese's, but also that of Eastern Europe) has started thriving without a rule of law and a pluralist democracy. [17]

During the twentieth century the primacy of the national State went hand in hand with the affirmation of representative democracy. The value of representation, the secularization of powerful theological traditions, was born out of the aversion for any pre-established hierarchy, and culminated with the democratic awareness of the polytheism of values. Among these democratic values we have the social value of work and of the human person, the value of social citizenship as an expression of freedom and of "recognition" (*Annerkennung*): what Amartya Sen has defined as capabilities, which make freedom "objective", real. Paired with State capitalism, democracy served as the engine of economic and social progress. By redistributing parts of the capitalist market economy's revenues downwards – both through industrial relations and through the welfare State – democracy decisively contributed to raising people's living standards and thus provided legitimacy to the market economy, stimulating economic growth and ensuring a sufficient level of aggregate demand.

The State and representative democracy have therefore led to capitalism being able to integrate the idea of social justice into its dynamics: the State and representative democracy have functioned as factors of re-balancing in the capital/labour relationship, as confirmed by the income inequality curves and the capital/income ratio in the 20th and 21st centuries. [18]

Today we live in a global techno-economic world, but we don't have a community, a global *civitas*. [19] The constitutive factors of the last century's social justice (State, capitalism and democracy) may now no longer be combined in a single large social contract on a global scale. According to the economist Dani Rodrik, a "regulatory trilemma" has gained prominence within the new conformation of capitalism, to such an extent as not

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[17] F. BAFOIL, *Emerging Capitalism in Central Europe and Southeast Asia. A Comparison of Political Economies*, Palgrave Macmillan, 2016.

[18] T. PIKETTY, *Capital in the Twenty-First Century*, Harvard UP, 2014.

[19] See P. PERULLI, *Il debito sovrano. La fase estrema del capitalismo*, La Nave di Teseo, 2020.

to allow for the simultaneous pursuit of democracy, the sovereignty of national States and economic globalization. If we want to push globalization further, we have to give up the nation State, or democratic politics. If we want to maintain and deepen democracy, we have to choose between the nation State and international economic integration. And if we want to preserve the nation State and self-determination, we have to choose between greater democracy or greater globalization.

5. Globalization's "regulatory trilemma"

In order to understand the reason for these three rigid alternatives, it is necessary to deeply analyze the fundamental political trilemma of the world economy. The three domains – nation States, democratic politics and economic integration through globalization – are linked in pairs and for each pair we have an example that helps us understand the consequences of each of the three outputs.

If we wanted to protect the national State and provide it with great economic integration, we would find ourselves in the so-called scenario that Thomas Friedman had in mind when he coined the term "golden straitjacket".[20] This expression is a metaphor that describes the scenario of a highly globalized economy without transaction costs, with States not imposing any type of limitation on the exchange of goods, services or capital. In such a scenario, totally governed by economic forces of a liberal nature, the competition between nation States in order to acquire ever greater market shares is enormous: because of this, States will do anything to attract international investors, trying in every way to place as few barriers as possible to the economy and to be more attractive (according to the paradigm of regulatory competition, see above, § 2).

Under these conditions, States will only implement policies aiming at attracting investments and a greater inflow of capital, thus focusing on a high-value currency, a government with little interest in interfering in economic matters, low taxes, deregulation, privatization and openness to investment in all internal sectors. Describing this condition, Friedman writes: "As your State enters the golden straitjacket, two things tend to happen: your economy grows and your political strength shrinks". Along these lines, it easy to explain the loss of the possibility of influencing with political choices – and therefore the limitation of democracy. Once the rules of the game no longer depend on democratic decisions but depend on global

[20] T.L. FRIEDMAN, *The Lexus and the Olive Tree: Understanding Globalization*, Farrar, Straus and Giroux, 1999.