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WHICH KING, WHOSE SOVEREIGNTY? NOTES ON THE NATION-STATE IN TIMES OF GLOBALIZATION¹

ABSTRACT

One of the most prominent issues in contemporary social philosophy is the democratic institutionalization of social change. In the following paper, we analyze how such an objective must not overlook the changes wrought by globalization. To this end, we first present some of the critical responses to globalization presented by contemporary thinkers (Federici, Tomba, Srnicek). Next, we tackle the notions of the "diffuse regime of transnational power", "*lex mercatoria*" and "governance", and point out how these concepts are indispensable for a complete understanding of the present of capitalism in the areas of trade and economy.

KEYWORDS

globalization, transnational capitalism, *lex mercatoria*, governance

1. Introduction

It has become common within social theory to remark upon the profound changes stemming from the 2007-8 financial crash. While this analysis is surely pertinent, it is also true that we have not yet recovered from the effects of the crash. We still don't fully realize what we lost and as a society, still tend to hope that more prosperous times are yet to come. This optimism can also be seen in the hopefulness regarding new technological developments that will supposedly liberate us from the burden of work and solve our ecological crises. It is

¹ This paper has benefitted from the research granted by the Research Projects "Precariedad laboral, cuerpo y vida dañada. Una investigación de filosofía social" (*Labour Precarity, Body and Damaged Life*)-PRECARITYLAB, (PID2019-105803GB-I0), as well as AEOC9/21 *The Cultural Politics of Trust. Recognition, Institutions, Democracy*, and the Project for Teaching Innovation UCM 2023 n.º 52 "Precariedad, exclusión social y diversidad funcional (discapacidad): lógicas y efectos subjetivos del sufrimiento social contemporáneo (V)". I wish to thank the two anonymous reviewers for their remarks, which helped me outline the final version of this paper.

this same ecology, however, that lays bare the futility of our expectations and the myopia of our faith in technology. The more nature shows us that capitalism is simply unfeasible, the more anxious we feel about the future. We common citizens are willing to change our habits, yet deeply suspicious that our governments will be able to implement the necessary measures soon enough to avoid the most dramatic consequences of climate change. At the same time, many of us fear – some secretly, some openly – what these changes would entail, and desire the lifestyle we left behind. Behind, precisely, back in 2007.

One of the elements which has helped civilization resolve such monumental problems in the past is the venerable old Nation-State, a concept which has changed immensely in comparison with its traditional understanding. In Europe, the structure of the nation state is constituted according to EU legislation. Even outside of the EU, however, nearly every sovereign state must abide by the norms, treaties and rules of different international organisms (IMF, WTO, OCDE...) that limit and shape its scope of action. Not surprisingly, this context has favored the rise of populisms that promise simple solutions to an increasingly complex political situation.

In the following pages, we will examine some of the causes of the profound changes undergone by the Nation-State. As we will see, the pervasive feeling of national disempowerment is due to, among other factors, the changes resulting from the transition to a globalized economy.

Certainly, the arguments displayed in these pages are not novel. Our reflections follow those presented by authors like Brenner, Peck and Theodore (2010) on issues such as a) the new characteristics of the neoliberal state, b) changes to the status of the subject resulting from this new political background (Vázquez García 2021), c) the notion of government, including the transition from the welfare to the workfare State (Dean, 2009; Peck 2003) and d) the political principles of citizenship (Brown 2017). We also consider perspectives that e) analyze the changes in the State from a more traditional Marxist perspective (Kurz 2010) as well as those who have tried to f) revise its analysis taking into account its transformation (Jessop 2007). In order to connect our reflections with contemporary critical social philosophy, the first section of this paper explains some of the critical approaches developed by contemporary thinkers regarding the declining capitalist regime of power. Next, we will focus on the changes caused by the internationalization of the state, and clarify the notions of “diffuse regime of transnational power” and “*lex mercatoria*”. Using these concepts, we will reflect on the changes in power relations and the implications of these transformations for national, sovereign rule. Lastly, we will briefly explain the notion of “governance”, in hopes of shedding some light on the metamorphosis of the dynamics of power and their legitimacy.

2. Theory in Turbulent Times

Our main thesis in these lines is that the perceptible decline of the state is nothing but the empirical manifestation of the decadence of the capitalist system.

Following Streeck (2014), we understand that our present is fruitfully analyzed through the lens of *collapse*, that is, we assume that capitalism (as a general form of civilization) is falling apart. Whether we are around to witness its ultimate demise or not – historical changes are processes of *longue duree* – we accept this axiom theoretically. Analyzed through this lens, capitalism is seen as a social dynamic requiring the stable pillars of work, territory, democracy and productivity to grow safely – pillars whose strength has recently been called into question. The words of Streeck express the core of this thought nicely:

The image I have of the end of capitalism – an end that I believe is already under way – is one of a social system in chronic disrepair, for reasons of its own and regardless of the absence of a viable alternative. While we cannot know when and how exactly capitalism will disappear and what will succeed it, what matters is that no force is on hand that could be expected to reverse the three downward trends in economic growth, social equality and financial stability and end their mutual reinforcement. (Streeck 2014: 47)

Although one can argue that the definitive end of capitalism described by the German sociologist is still far away, his indication that at present there is no known system capable of offering robust economic stability is less up for debate². Precisely for this reason, the concern of a declining capitalist system is one shared by many social philosophers, even if they have not yet developed this concern into an explicit perspective. The belief that capitalism is no longer a viable system can also be seen in the increasing interest in alternative forms of property, such as the concept of the *commons* – a central issue in the thought of Silvia Federici (2019). In Federici's view, the recognition of the commons as a viable form of property distribution can be understood as “the recognition that life in a Hobbesian world, where one competes against all and prosperity is gained at the expense of others, is not worth living and is a sure recipe for defeat” (2019: 1). Furthermore, states Federici, the focus on the commons is a sign that more and more people are now aware that the transformation of our “everyday practices into a terrain of collective struggle is the only way to survive (economically and psychologically) in a society that systematically devaluates the life of an increasing number of people” (2019: 184). In this manner, the concept of the commons is useful to reflect upon the tension and unease that inhabits our reproductive processes, communal relationships, and, in general, our mere being. This range of problems has also been analyzed through the lens of Feminism and Feminist Economics (Bhattacharya 2017; Pérez Orozco 2014) and, of course, in writings on “precarity” and “interdependence” (Butler 2009; Lorey 2014).

2 A signal of change can be seen in the recent decision of the G-20 to set a 15% tax on transnational corporations' profits, a small step which may lead to improved social justice. V. OCDE (08/10/2021). International community strikes a ground-breaking tax deal for the digital age. <https://www.oecd.org/tax/international-community-strikes-a-ground-breaking-tax-deal-for-the-digital-age.htm>

Furthermore, the exploration of alternatives to capitalism has also flourished as a result of the shift towards a critical historical consideration of the past. Reflections on the political importance of history have long been the terrain of post-colonial and decolonial thinkers. One of the most prominent critiques expounded by these authors is the examination of the notion of “progress”, specifically in its linear understanding. As is well known, the traditional conception of progress situates colonized populations at the beginning of the “timeline” of progress, thus assuming they are “undeveloped” or “primitive” in comparison with Western populations (Grosfoguel 2008; Chakrabarty 2000). Unpacking the assumptions that lie behind those affirmations, these thinkers show how “progress” and “the forward movement of history” are concepts which, in a very Hegelian manner, are inextricably linked with the expansion of colonial capitalism and the process of expropriation of land and lives that have accompanied it since the 14th century (Dussel 1994). Further critical analysis of the meaning of these often unquestioned concepts is essential for reforming the philosophical tradition and allowing for a reinterpretation of the modern canon.

Even while assuming the close relationship between capitalism and colonialism, it is possible to discover historical examples of alternatives to capitalism even within the heart of the Empire –Europe. In his *Insurgent Universality* (2019), Massimiliano Tomba explores this past to bring to light examples of alternatives to the theoretical *koiné* of capitalist property (a property which is private, exclusive, and individual). In his book, Tomba explores examples such as the revolutions of 1793 in France, the Communards of Paris, the Zapatistas, or the famous episode of the Russian Commune³. Returning to historical alternatives to capitalism is more than a mere memory exercise (Tomba 2019: 226 ff.) Tomba claims that it also functions to denaturalize capitalism, enabling us to consider the individual and territory simultaneously. This conceptual move can help forge a more respectful relationship between humans and our environment by challenging the traditional Western conception of nature as a mere repository of raw material.

Finally, we must also mention the ways that social emancipatory theory has looked to the future for references, especially regarding technological development. The most famous theorists in this field are Srnicek and Williams, whose perspective on accelerationism (Srnicek, Williams 2015) furnishes an optimistic approach to the future in which a centralized, democratic-led control of technology may dissolve the capitalist relations of domination and exploitation and help disrupt the endless repetition of the valorization of value. Their analysis of platform capitalism (Srnicek 2017) further cements the profundity of their contributions, although some critics have posited that they seem to lack consideration for the environmental implications of technological development highlighted by numerous other authors (Fornillos 2018).

3 The Russian Commune led Vera Zassulich to write a letter to Marx that would be suspiciously overlooked by the Russian official theorists.

All these reflections constitute important points of departure to help imagine and develop a more sustainable, equitable, fair and desirable system. Of course, social philosophy tends to operate at a highly abstract level of thinking, hindering the possible institutionalization of these approaches –while its proposals are appealing on paper, we lack the concrete knowledge of how to make them real. We believe that this situation is due, in part, to the insufficient reflection on the concrete aspects of our political and social reality. We claim that a deeper comprehension of the concrete mechanisms of our institutional reality could help us conceive better, more feasible, alternatives, even if we must accept that this may entail less imaginative reflections. Furthermore, the critical reflection exercised by social philosophy may help other disciplines uncover those aspects of their reasonings which had previously escaped this analysis.

This kind of concrete, down-to-earth examination is precisely our task in the following section. In what follows, we argue that a return to the traditional conception of the Nation-State is not a viable alternative to capitalism. The COVID-19 pandemic provides a relevant example, in which many countries closed their borders in an effort to protect themselves⁴ by asserting the national, sovereign space – a tactic that ultimately proved futile, as it did not stop the virus’ global expansion. If anything, the pandemic showed us that in a globalized economy, commodities, viruses and people move around the world (some more fluidly than others), making it more and more difficult to determine their origin. It is evident that the state, while still maintaining its hold on important aspects of power, has undergone a process of disempowerment, directly aligned to the rise of an economy that distributes its production and distribution internationally. We dissect this process in the following pages.

3. Globalized Sovereignty: The Diffuse Regime of Power of the Transnational Sovereign.

To tackle the transformation of the state, we must first address the recent transformation of the economy, as both are closely related. The most striking transformation of the economy in the past and present century has been the globalization of production. The rise of globalization, in turn, is correlated with the introduction of Information and Communication Technologies (ICT’s), which have significantly reduced costs of production and distribution. These new communications technologies have both fragmented the fabrication process and spread it around the globe. In doing so, they have created Global Value Chains (GVC’s), which can be defined as the bonds between diverse economic actors that constitute a process of production “where the different stages of the production process are located across different countries” (OCDE 2021).

⁴ A quite complete listing of travel restrictions during the Covid-19 pandemic can be found here: Aljazeera (03/06/2020). Coronavirus: Travel restrictions, border shutdowns by country. <https://www.aljazeera.com/news/2020/6/3/coronavirus-travel-restrictions-border-shutdowns-by-country>

Furthermore, GVC's involve two processes that directly impact the place of production: *offshoring* – that is, the total relocation of factories– and *outsourcing* – externalizing secondary and auxiliary activities of the main company, such as the fabrication of components. This gives rise to our current situation, in which the manufacture of a single product is often carried out by many different companies in diverse countries: for instance, the famous company *Apple* claims to have more than 200 suppliers in more than 30 different countries⁵. It is important to note that this international distribution of the supply chain is effected in the service of “optimization” or, put more simply, the reduction of costs. The extremely competitive nature of contemporary capitalism and the threat of overproduction means that companies must develop different tactics to avoid losing out in the process of valorization (Kurz 2005: 81 ff.).

This new organization of the economy has global effects on both labor and geography. Today, we can speak of a global workforce that competes internationally in all sectors of the economy –both productive and reproductive– (Ferguson, MacNally 2015). Globalization has also affected the stability of the Fordist paradigm, which anchored labor to a specific geographic location and thus made the Nation-State the locus of the economy (Barcellona 2021: 265 ff.). It is here that the notions of “transnational sovereign” and “diffuse regime of power”, deeply bound up with the structure of the state, start to become relevant.

The notions of a “transnational sovereign” and “diffuse regime of power” were first explicitly developed by Juan Ramón Capella in his *Fruta Prohibida* (Capella 1997), although similar applications can be found in the concept of “Washington's Consensus” (Bidaurratzaga 2012). These ideas express shifting power relations as a consequence of the new mode of production, while also examining the set of policies required for its correct functioning. In a world where production takes place across several countries, there is little space for traditionally national aspects of production such as customs duties or monopolies over certain products. In their place, both public and private actors have begun lobbying for the interests of transnational corporations, producing regulations and norms that would otherwise be the result of the deliberation of national parliaments – and in turn, of the people they are elected to represent. The main objective of government thus becomes setting logistical and regulatory frame necessary for the functioning of transnational companies (Capella 1997: 309).

This objective requires fostering the smooth movement of commodities and capital between countries, as well as the harmonization of labor, environmental and sanitary regulations (Capella 1997: 310 ff.; Zelikovich 2016), which are increasingly subject to bilateral economic partnerships through Free Trade Agreements (FTA's) (Manero Salvador 2018). This alliance, more concretely, takes place between the following actors: i) transnational corporations and financial conglomerates, ii) international multilateral organizations founded after the Second World War, such as the WB, IMF, WTO and the OECD; iii)

5 <https://www.apple.com/supplier-responsibility/>

interstate organisms such as the G7 and G20, and iv) the military power of the USA, which maintains a great deal of influence through NATO. The international character of the partnership constitutes thus an “transnational sovereign” able to influence the policies of the Nation-States in fiscal, economic, and ecological matters (Capella 1997: 311). The difficulties in locating and identifying the concrete measures and actors of this new economic system (often concealed by the discourse of “efficacy”, “optimization” and “resilience”), justifies the globalized economy’s description as a diffuse regime of power.

The consequences of this new configuration are especially important in the legal sector, where *deregulation* and the propagation of *lex mercatoria* constitute the two most dominant features of the contemporary affairs in international economic justice. Let’s explain these in more depth.

The jurisdictional frame of the 19th and 20th centuries (Capella 1997: 318–320) was based on the imperative character of the Nation-State, and firmly anchored to geography – the system of sources of law, as well as judges (and their competencies) were determined by the State. The State, as the legitimate owner of the monopoly of violence, was the only actor able to enforce coercive action against those who had violated the rule of law. This all changes as a result of globalization. In a globalized economy, sources of law, jurisdiction, and enforcement are divided between the plurality of actors that comprise the transnational sovereign. Nation-states have transferred legislative, executive and judicial power to transnational organisms, signaling an important symbolic transformation in their sovereignty, as they no longer retain decisive power over certain matters, particularly those related to trade and commerce (Estévez Araújo 2006: 47). In a system of this kind (Capella 2005: 21), representative democracy takes place within narrower limits that, to a certain extent, inhibit its correct functioning –the *demos* cannot rule against the diffuse transnational sovereign. For this reason:

that *demos* of globalization is not called to exercise its will about issues that have been decided by that superordinate will [referred to the diffuse sovereign], but only, at the most, to formalize their acquiescence to that authority, that is superior to it. Not everything can be decided democratically, not if that goes against the political will of the diffuse sovereign. That is why the *demos* must spontaneously abstain itself from interfering. (Capella 2005: 21).

Thus, even though the Nation-State still retains some of its coercive capacity, it must share it with international organisms such as the EU, multilateral institutions like the WB and IMF, and – most importantly – transnational companies, whose interests are reflected in the conventional law of *lex mercatoria*. Let’s examine this last concept more thoroughly.

We can simply define *lex mercatoria* (Santos 1998: 110 ff.) as a form of transnational commercial law. This form of law, traditionally more susceptible than others to outside influence, frequently uses harmonisation (the creation of common legal standards) and convention to resolve conflicts. Its origins, which have been traced to the Middle Ages, first take their modern form in the 1930’s

(Estévez Araujo 2021). Nevertheless, its expansion and present configuration is closely related to the rise of transnational corporations, which bent regulations in their own interest by infiltrating the system of courts of arbitration. The historical context of imperialism and colonialism proved an especially propitious environment for the burgeoning influence of *lex mercatoria*. Dezalay and Garth (1996: 65 ff.) have shown that the rise of *lex mercatoria* as a functional, parallel system of justice has much to do with the conflicts that emerged in oil-producing countries during the 1970's. Many of these countries' political systems were still suffering the consequences of their former colonization and remained far from complete democracy. Given these circumstances, foreign investors sought to guarantee their expenditures by appealing to courts, as a way of ensuring that these unstable countries could be trusted enough to warrant the assumption of the risk. The need to arbitrate solutions between companies and states gradually came to constitute a parallel system of justice which, with the increasing power of corporations, ultimately tilted the whole judicial system in their favor.

Today, we can say that this new *lex mercatoria* “formalizes the power of transnational corporations availing themselves of the international customs and usages; of the norms of the Nation-State and the complex of trade contracts; of multilateral, regional and bilateral trade agreements, treaties and rules, of the decisions of courts of arbitration, and of the dispute settlement system of the WTO” (Hernández Zubizarreta 2012: 135). The deep interrelation of the Nation-State with the transnational sovereign has turned the former into to a “globalizing agent” (Bonet Pérez 2021) which is forced to contribute to the transition to a global market. The consequence has been a factual privatization of international commerce law (Estévez Araújo 2021). This is reflected both in the free determination of the law applicable to each contract – outside of any national regulations – as well as the extremely broad understanding of the notion of “expropriation”, meaning that any measure implemented by a Nation-State perceived as harmful to the interests of a transnational company can be denounced in the court of arbitration as a form of expropriation. This becomes even more alarming when taking into account the fact that these countries cannot appeal to those same courts of arbitration. The result, in practice, is that corporations can choose between two parallel systems of justice (national and arbitral), whereas nation-states are limited to their own structures. The asymmetry of power is evident, and – foreseeably – the mechanisms of arbitration have become highly attractive to foreign investors (Melero Alonso 2021).

On the other hand, deregulation, more broadly, refers to the general process of the privatization of the justice system. The last decades of the past century have seen a remarkable proliferation of different instruments of *soft law* to regulate diverse sectors. In contraposition to the national mechanisms of *hard law*, the notion of *soft law* refers to all those “guidelines, political declaratives or codes of conduct” (Bonet Pérez 2021) that, while setting a particular standard of behavior in one sector, are not legally binding. International commerce law is rife with this kind of legislation, which normally emerges as a consequence of

practice and the specific decisions of the organisms at stake (Bonet Pérez 2021). A prominent example of soft law is the discourse of Corporate Social Responsibility (CSR), which has sparked increasing interest in the last decades. This, “generally understood as being the way through which a company achieves a balance of economic, environmental and social imperatives”, is – as stated by their own delegates – nothing but a “management concept” (UNIDO 2021). More specifically (Hernández, González, Ramiro 2019: 46 ff.), CSR was born in the 90’s as an answer to the growing criticism of transnational corporations because of their harmful practices regarding human rights. It was a marketing operation that, at the same time, sought to avoid regulatory punishment through hard law mechanisms, that is, legally binding norms. Thanks to CSR, transnational corporations established a non-exigible, voluntary, self-regulated relationship with society. If we reflect on the nature of such a relationship, we can easily conclude that “self-regulation” and “non-exigibility” may be acceptable characteristics of a friendship, yet become much more questionable in the context of a company/society relationship. This becomes especially evident considering that the basis of this relationship is the unilateral aim of increasing company profits, which means the corporation (in the legitimate pursuit of its own interest) will likely value its profits above all ethical, environmental, and social consideration.

The expansion of this new legal framework is dangerous not only because of its clear bias in favor of the corporate interests; moreover, this fragmentation of the justice system conceals the diverse interrelations between different sectors (i.e. environmental and social law) and thus deprives the different actors relevant to the regulation in question from other perspectives that could be useful and beneficial (Bonet Pérez 2021).

Precisely as a response to the intricacy of different regulations and, more generally, to the increasing complexity of society, recent years have seen the introduction of mechanisms of *governance*. This elusive notion, increasingly present in the field of politics and economics, has thus become crucial to understanding the actual mechanisms of government and policy. In the following section, we will attempt a fuller understanding of this notion of *governance*, avoiding *a priori* judgements, and bearing in mind the different meanings of the concept.

4. Offers You Cannot Refuse: Governance and Legitimacy

As mentioned, the notion of *governance* has become increasingly relevant to diverse disciplines in recent years, often appearing in tandem with discussions of contemporary issues of multilevel responsibility in areas such as health services or the welfare state (Keohane, Victor 2010; Todt, González 2006). The expansion of the usage of the term is reflected in the fact that Van Kersbergen and Van Waarden (2004: 144–151) identify nine different meanings of “*governance*”, depending on whether it is used in the context of international relations, the public sector, or the private sector.

If we understand this term as an alternative to the concept of “government” (Nickel 2014: 185), we must understand *governance* as a form of rule which includes actors (or, “stakeholders”), from distinct sectors (economic, private, third sector) who have a legitimate interest in an industry subject to regulation through public policy. Its origins can be tracked back to the mechanisms of *soft law* mentioned earlier.

In this manner, *governance* is a hybrid, multi-jurisdictional, multilevel, pluricentric, often transnational form of rule that functions primarily through networks as opposed to hierarchies or exclusive leadership (Van Kersbergen, Van Waarden 2004: 151 ff.; Bevir 2012; Todt, González 2006: 214). Combining features from free market economics and well-established administrative instruments, this form of rule emphasizes processes and functions over structures. This focus on processes and functions, in turn, lends governance its characteristic openness, thus subjecting the relations between stakeholders to risks and contingency. According to some theorists (Keohane, Victor 2010), this openness makes governance especially appropriate for tackling international, multilateral issues such as global warming – whose vast complexity and myriad competing interests make it very difficult to agree upon a single solution, while, moreover, no country holds sufficient hegemony to impose their will on others.

The development of this new regime of *governance* must be understood within the frame of a present in which individuals and groups outside of government are becoming more active in the process of shaping our society (Bevir 2012). This is related to the expansion of actors in the third sector, but also to the rise of the economic power of multinational corporations and the explosion of advocacy groups that accompany this process. As can be imagined, this new structure implies a reduction of the political power of the State, as well as a juridification of social relations (Estévez Araújo 2018a: 173; Van Kersbergen, Van Waarden 2004: 153). The *locus* of negotiations shifts from parliaments to state agencies, prioritizing instruments such as contracts and covenants over public law. To a certain extent, we can qualify the emergence of *governance* as a consequence of a world in which the power of the Nation-State is greatly reduced, both inside and outside of its territories. On the one hand, the Nation-State is threatened from within by the increasing influence of organizations of civil society and the private sector. At the same time, the Nation-State’s power is diminished outside its borders as well, due to its inclusion in diverse transnational settings, the pressures of economic power, and the emergence of new global problems, such as terrorism or public health crises. (Bevir 2012). Given this state of affairs, the State’s role is reduced to the coordination of diverse actors, rather than directing operations on its own (Maintz 2006: 115). While, as previously stated, *governance* is already quite common among leading nations, Nation-States must still fulfill some institutional conditions in order to carry out its main functions (Maintz 2001: 3). Among these institutional conditions, we find i) functional dispersion of power – that is, there must be a balanced and differentiated relation between powers –, ii) the strong – but not authoritarian – presence of authorities within a given state, iii) the presence

of a well-organized civil society, as well as iv) sufficiently-financed public institutions devoted to the interest of public service.

As one of the leaders in neoliberal policymaking (Fernández Ortiz de Zárate 2018), it is within the structures of the European Union where the notion of “governance” has been tested with most enthusiasm, and where instruments of soft law such as the Open Method of Coordination are now common tools in the quotidian legislative process⁶. The Open Method of Coordination (OMC) was created by the Treaty of Lisbon (2007) to coordinate the different social politics of the members of the Union. Its appearance was an answer to the inherent problems with the constitution of the EU, born as a common market with insufficient political integration – something that continues to generate the majority of conflicts between members. In this context and according to the terms of the EU, the OMC was constituted as a common framework for cooperation monitored by the European Commission that seeks to identify, for a given matter: a) common objectives, b) the establishment of appropriate instruments for measuring compliance, and c) the comparison of the different EU countries’ performance on these measures (Nickel 2014: 187–188; EUR-Lex 2021). Although promising on paper, the results of the OMC have been questioned by some authors. For instance, a recent study denounced the OMC’s lack of effectiveness in one of its main objectives – reducing the level of poverty in the EU (Estévez Araujo, Toledano 2017). This failure could be seen as the result of the insufficient coercive power of the OMC, as well as the general paucity of a plural and diverse range of stakeholders able to effectively participate in the OMC.

Another important notion in this field is the concept of “metagovernance”, which “draws attention to the many different ways in which government agencies seek to influence interactive governance processes without reverting too much to classical forms of hierarchical command and control” (Sørensen, Turping 2018: 4). This form of governing, with roots in the New Institutionalism

6 Of course, a more intense activity in terms of legislation and parliamentary regulation does not equal a decrease in transnational corporative power. Although this issue exceeds the scope of these lines, the notion of “Transnational Capitalist Class” (TCC), as presented in Robinson (2004), is useful to understand that the subject of transnational capitalism is neither exclusively political, nor economical, but inherently diverse. As the author states: “The new global ruling bloc consists of various economic and political forces led by the TCC whose politics and policies are conditioned by the new global structure of accumulation and production. It is the logic of global accumulation, rather than national accumulation that guides the political and economic behavior of this ruling bloc. At the center of the globalist bloc is the TCC, comprised of the owners and managers of the transnational corporations and other capitalists around the world who manage transnational capital. The bloc also includes the elites and bureaucratic staff of the supranational agencies such as the IMF, the World Bank, and the WTO. The historic bloc also brings together major forces in the dominant political parties, media conglomerates, and technocratic elites and state managers in both North and South, along with select organic intellectuals and charismatic figures who provide ideological legitimacy and technical solutions” (Robinson 2004: 75–76).

of the 80's (Estévez Araújo 2018: 184) claims to make public policy-making more effective and democratic by influencing and coordinating the actions of different self-governing actors, instead of controlling them directly through a top-down hierarchy (Sørensen 2006: 102) According to Renate Mayntz (2001: 5 ff.), to implement this tool successfully, all actors, public and private, must retain a certain amount of power. Furthermore, the problem at stake must be of such a nature that neither public nor private actors are able to solve it on their own, and are thus forced to find a collective solution. In this sense, it is not surprising that these concepts can be connected to so-called "democratic experimentalism" (Estévez Araújo, Toledano 2018: 52), a method influenced by the philosophy of pragmatism.

Up to this point, we have stated the concrete features of this new form of governing in a merely descriptive way, without addressing the legitimacy these mechanisms of governance. However, as can easily be imagined, there are many criticisms regarding these new forms of governance.

Structurally speaking (Nickel 2014: 186–187), the diversification and fragmentation of regulatory regimes, combined with newer forms of cooperation – still lacking legally established public authorities, whose functions and powers are regulated by the law – is highly likely to favor decisions which may be less democratic than would be desirable. The growth of "experts" as "neutral", "apolitical" policymakers is another reflection of this situation (which also leads to the more fundamental questions: who can be considered an "expert"? Who decides what is "politically neutral" and what isn't?). In this context, governance claims to draw its legitimacy from the inherent rationality of the process of discussion (Estévez Araújo, Toledano 2017: 349). Both are criteria which we can define as *internal* to the very act of negotiation, reflective of governance's focus on process over structure.

Nevertheless, there are some conditions of governance which unavoidably demand the intervention of an *external* power in order to be guaranteed. One of these is the power balance of the actors at stake: without measures of equanimity, those participants with less financial and communicative resources are highly likely to be left unheard. Another important drawback lies in the predisposition of the participants. Social sciences have *de facto* assumed that, in the absence of institutions and/or regulations, actors tend to act by the rules of rational choice, a dynamic materialized in the figure of *homo economicus*. This model, as is widely known, presents humans as inherent seekers of their own benefit above all else, a character trait that makes altruist problem solving an unlikely outcome. In this situation, some authors (Maintz 2001, 2006) have spoken of "antagonistic cooperation" to define negotiations between competing interests, stressing that these relationships are more likely to be obstructed and produce less ambitious, weaker solutions, which ultimately do not resolve the conflict at hand. Both outcomes are challenges to modern governance that have already generated some proposed solutions, such as the establishment of *a priori* conditions to allow the implementation of governance processes to a given problem.

Additionally, as previously mentioned, we must also consider that many approaches to governance are influenced by Neoinstitutionalism, a theory that emphasizes the ethical abilities of the human species (Estévez Araújo 2018: 184 ff.) and their capacity to bend themselves to norms that regulate the common good. When considering this optimistic anthropology (which, we must emphasize, stands in stark contrast to the anthropological model of rational choice), we must bear in mind that i) the processes of governance are limited to the resolution of singular, particular problems, without the overarching goal of the common good; and that ii) despite governance negotiation strategies such as *peer reviews*, there is not yet a formalized protocol to foster a cooperative disposition among negotiators. The consequences of self-regulation in the recent past (for example, the role of banks and rating agencies in the 2007-8 crisis) are indicative of the limits of this approach and indicate that it should be avoided when possible.

As we have briefly discussed, the notion of *governance* offers a new perspective for social sciences that could foster more participative and horizontal modes of government. However, in absence of critical reflection, both its features of horizontality and participation – that seem so promising on paper – may end up working in favor of the powerful. This would factually legitimate the imposition of a renewed form of *iusnaturalism*, or the rule of the strongest. In this sense, the contribution of social philosophy is crucial to help unfold the ethical and political implications of this approach.

5. Conclusions

In this paper, we have analyzed some of the theories, notions and approaches surrounding the emergence of a globalized economy. Facing a world in a seemingly permanent state of crisis, we first showed some of the possible answers posited by social philosophy and its search for alternatives to the *status quo* in the past, present, and future of our society. Next, we focused on the decreasing power of the Nation-State, reflected by its dissolution into the “diffuse sovereign”, the *lex mercatoria*, and the new processes of *governance*. Here we demonstrated that every approach to the political constitution and the possibility of its transformation must consider transnational relations and those modes of governing that connect all countries. We also discussed how the new regime of international law is highly likely to conceal inequality and power imbalances between different actors. Moreover, in the absence of instruments ensuring that negotiations work towards the common good, the implementation of horizontal processes of policymaking may well end up serving the interests of the powerful. Overall, we hope to have made it clear that critical reflection is essential to highlight the possible democratic deficiencies of these new phenomena in politics, law, and social sciences. This makes the interdisciplinary thinking of social philosophy essential to any analysis of the present, ultimately – and most importantly – helping foster a more democratic society.

References

- Barcellona, Mario (2021), *Entre pueblo e imperio. Estado agonizante e izquierda en ruinas*, Trotta.
- Bevir, Mark (2012), *Governance. A Very Short Introduction*, Oxford: Oxford University Press. [Ebook]
- Bhattacharya, Tithi (ed.) (2017), *Social Reproduction Theory. Remapping Class, Recentering Oppression*, London: Pluto Press.
- Bidaurratzaga, Eduardo (2012), “Consenso de Washington”, in Juan Hernández Zubizarreta, Erika González, Pedro Ramiro (eds.), *Diccionario crítico de empresas transnacionales. Claves para enfrentar el poder de las grandes corporaciones*, Icaria, pp. 70–74.
- Brenner, Neil; Peck, Jamie; Theodore, Nik (2010), “Variegated Neoliberalization: Geographies, Modalities, Pathways”, *Global Networks* 10: 182–222. DOI:0.1111/j.1471-0374.2009.00277.x.
- Bonet Pérez, Jordi (2021), “Transformaciones contemporáneas del Derecho internacional público”, in José A. Estévez Araújo (ed.), *El derecho ya no es lo que era. Las transformaciones jurídicas en la globalización neoliberal*, Trotta, pp. 245–276. [Ebook]
- Brown, Wendy (2017), *Undoing the Demos. Neoliberalism’s Stealth Revolution*, New York: Zone Books.
- Butler, Judith (2009), *Frames of War. When is Life Grievable?*, London: Verso Books.
- Capella, Juan-Ramón (1997), *Fruta prohibida. Una aproximación histórico-teórica al estudio del derecho y del estado*, Trotta.
- . (2005), “Globalización. Ante una encrucijada jurídico-política”, *Anales de la cátedra Francisco Suárez* 39: 13–35. DOI: <https://doi.org/10.30827/acfs.v39i0.1026>
- Chakrabarty, Dipesh (2000), *Provincializing Europe. Postcolonial Thought and Historical Difference*, Princeton: Princeton University Press.
- Dean, Mitchell (2009), *Governmentality. Power And Rule In Modern Society*, SAGE.
- Dezalay, Yves; Garth, Bryant G. (1996), *Dealing with Virtue. International Commercial Arbitration and the Construction of a Transnational Legal Order*, Chicago: The University of Chicago Press.
- Dussel, Enrique (1994), *1492. El encubrimiento del otro: hacia el origen del mito de la modernidad*, UMSA. Facultad de Humanidades y Ciencias de la Educación, Plural Editores.
- Estévez Araujo, José A. (2006), “Crisis de la soberanía estatal y constitución multinivel”, *Anales de la cátedra Francisco Suárez* 40: 43–57. DOI: <https://doi.org/10.30827/acfs.v40i0.880>
- . (2018), “La legitimidad de la gobernanza”, in Norbert Bilbeny, (coord.), *Legitimidad y acción política*, Publicaciones de la Universidad de Barcelona, pp. 177–200.
- . (2021), “Las transformaciones económicas de la globalización neoliberal”, in José A. Estévez Araújo (ed.), *El derecho ya no es lo que era. Las transformaciones jurídicas en la globalización neoliberal*, Trotta, pp. 23–68. [Ebook]
- Estévez Araujo, José A.; Toledano, Joan Ramos (2017), “Globalización y lucha contra la pobreza”, *Derecho y Sociedad* 48: 347–362.
- . (2018), “La participación de los *stakeholders* en los procesos de gobernanza: mito y realidad. *Astrolabio*”, *Revista internacional de Filosofía* 22: 49–63. DOI: 10.1344/astrolabio2018.22.5
- EUR-Lex (2021), “Glossary of Summaries. Open Method of Coordination”, https://eur-lex.europa.eu/summary/glossary/open_method_coordination.html?locale=en

- Federici, Silvia (2019), *Re-enchanting the World: Feminism and the Politics of the Commons*, PM Press.
- Ferguson, Sue; MacNally, David (2015), "Precarious Migrants. Gender, Race, and the Social Reproduction of a Global Working Class", *Socialist Register 2015*, Merlin Press, pp. 1–23.
- Fernández Ortiz de Zárate, Gonzalo (2018), *Mercado o democracia. Los tratados comerciales en el capitalismo del siglo XXI*, Icaria.
- Fornillos, Bruno (2018), "La energía del litio en Argentina y Bolivia: comunidad, extractivismo y posdesarrollo", *Colombia Internacional* 93: 179–201. <https://dx.doi.org/10.7440/colombiaint93.2018.07>
- Grosfoguel, Ramón (2008), "Transmodernity, Border Thinking, and Global Coloniality. Decolonizing Political Economy and Postcolonial Studies. First published in Portuguese", in *Revista Crítica de Ciências Sociais* 80: 115–147; available and consulted: <http://www.eurozine.com/transmodernity-border-thinking-and-global-coloniality/>
- Hernández Zubizarreta, Juan (2012), "Lex Mercatoria", in Juan Hernández Zubizarreta, Erika González, Pedro Ramiro (eds.) *Op. Cit.*, Icaria, pp. 135–138.
- Hernández Zubizarreta, Juan; González Erika; Ramiro, Pedro (2019), "Las empresas transnacionales y la arquitectura jurídica de la impunidad: responsabilidad social corporativa, lex mercatoria y derechos humanos", *Revista de Economía Crítica* 28: 41–54.
- Jessop, Bob (2007), *State Power: A Strategic-Relational Approach*, Cambridge: Polity Press.
- Keohane, Robert O.; Victor, David G. (2010), "The Regime Complex for Climate Change", *Perspective on Politics*, 9: 7–23. DOI: 10.1017/S1537592710004068.
- Kurz, Robert (2005), *Das Weltkapital. Globalisierung und innere Schranken des modernen warenproduzierenden Systems*, Berlin: Tiamat.
- . (2010), "Es rettet euch kein Leviathan. Thesen zu einer kritischen Staatstheorie", *EXIT! Krise und Kritik der Warengesellschaft* 7: 26–74.
- Lorey, Isabell (2014), *States of Insecurity. Government of the Precarious*, London: Verso Books.
- Maintz, Renate (2001), "El estado y la sociedad civil en la gobernanza moderna", *Revista del CLAD, Reforma y Democracia*, 21 octubre.
- (2006), "Governance en el estado moderno", *Revista POSTdata: Revista de reflexión y análisis político* 11: 103–117.
- Manero Salvador, Ana (2018), *Los tratados de libre comercio de Estados Unidos y la Unión Europea*, Bosch Editor.
- Melero Alonso, Eduardo (2021), "El derecho administrativo español en el campo de poder globalizado", in José A. Estévez Araújo (ed.), *El derecho ya no es lo que era. Las transformaciones jurídicas en la globalización neoliberal*, Trotta, pp. 371–402. [Ebook]
- Nickel, Rainer (2014), "Gobernanza", *Eunomía. Revista en Cultura de la Legalidad* 7 (September): 184–190.
- OCDE (2021), Global Value Chains (GVCs) – OECD. <https://www.oecd.org/sti/ind/global-value-chains.htm>
- Peck, Jamie (2003), "The Rise of the Workfare State", *Kurswechsel: Zeitschrift für gesellschafts-, wirtschafts- und umweltpolitischen Alternativen* 3: 75–87.
- Pérez Orozco, Amaia (2014), *Subversión feminista de la economía. Apuntes para el conflicto capital-vida*, Traficantes de Sueños.
- Robinson, William I. (2004), *A Theory of Global Capitalism: Production, Class, and State in a Transnational World*, Baltimore, MD: Johns Hopkins University Press.

- Santos, Boaventura de Sousa (1998), *La globalización del derecho. Los nuevos caminos de la regulación y la emancipación*, Universidad de Colombia-Facultad de Derecho, Ciencias Políticas y Sociales-Instituto de Servicios Legales Alternativos (ILSA).
- Streeck, Wolfgang (2014), “How Will Capitalism End?”, *New Left Review* 87: 35–64.
- Sørensen, Eva (2006), “Metagovernance: The Changing Role of Politicians in Processes of Democratic Governance”, *The American Review of Public Administration* 36: 98. DOI: 10.1177/0275074005282584.
- Sørensen, Eva; Torfing, Jacob (2018), “Governance on a Bumpy Road from Enfant Terrible to Mature Paradigm”, *Critical Policy Studies* 12 (2): 1–10. DOI: 10.1080/19460171.2018.1437461
- Srnicek, Nick (2017), *Platform Capitalism*, London: Verso Books.
- Srnicek, Nick; Williams, Alex (2015), *Inventing the Future. Postcapitalism and a World Without Work*, London: Verso Books.
- Todt, Oliver; González, Marta I. (2006), “Del gobierno a la gobernanza”, *Isegoría* 34: 209–224.
- Tomba, Massimiliano (2019), *Insurgent Universality. An Alternative Legacy of Modernity*, Oxford: Oxford University Press.
- UNIDO (2021), “What is CSR?”, <https://www.unido.org/our-focus/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/corporate-social-responsibility-market-integration/what-csr>
- Van Kersbergen, Kees; Van Waarden, Frans (2004), “‘Governance’ as a Bridge between Disciplines: Cross-disciplinary Inspiration Regarding Shifts in Governance and Problems of Governability, Accountability and Legitimacy”, *European Journal of Political Research* 43: 143–171.
- Vázquez García, Francisco (2021), “Del *Welfare* al *Wellness*: las tecnologías de bienestar y el gobierno de las subjetividades en el liberalismo avanzado”, in Rodrigo Castro, Emmanuel Chamorro (eds.), *Para una crítica del neoliberalismo. Foucault y el Nacimiento de la biopolítica*, Lengua de Trapo.
- Zelikovich, Julieta (2016), “El régimen multilateral de comercio en los tiempos del ‘regionalismo del siglo XXI’: cinco escenarios para la agenda emergente”, *Confines* 12 (23): 85–103.

Klara Navaro Ruiz

Koji kralj, čija suverenost? Beleške o nacionalnoj državi u doba globalizacije

Sažetak

Jedno od najistaknutijih pitanja savremene socijalne filozofije odnosi se na demokratsku institucionalizaciju društvene promene. U tekstu se pokazuje zbog čega ovakav cilj ne sme da previdi promene koje je sa sobom donela globalizacija. U tu svrhu, prvo predstavljamo neke kritičke odgovore savremenih mislilaca na globalizaciju (Federiči, Tomba, Srniček). Potom analiziramo pojmove „difuznog režima transnacionalne moći“, „lex mercatoria“ i „uprava“, i ukazujemo na to u koliko su meri ovi pojmovi neizostavni za puno razumevanje kapitalističke sadašnjosti u oblasti trgovine i ekonomije.

Ključne reči: globalizacija, transnacionalni kapitalizam, lex mercatoria, uprava