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## **GLOBALIZATION, THE MARKET, THE EUROPEAN COMMUNITY A NEW ECONOMY, NEW SOCIETY, NEW DEMOCRACY**

### ABSTRACT

The high-tech revolution, which took place during the early eighties, produced, in less than 20 years, institutional and structural changes which go beyond any possible prediction. In this context the e-commerce triggered so many radical innovations that we may speak in terms of *new economy* (at least as far as many different fields are concerned). These innovations have already determined, in turn, an upsetting not only in the labour market, but also in cultural production and in the organization of scientific research, in psycho-relational settings and in interpersonal communication. All that has lead to a re-thinking of the legal and institutional background, as well as a confrontation among scholars of different matters, and it might be the most appropriate way to enhance a rather interdisciplinary approach towards these issues, without expecting any definite solutions.

### *From Global Economy to Global (Democratic) Government?*

Globalization is a contradicting concept which risks becoming an ideal type without there being, scientifically speaking, a serious and acceptable convergence neither of identification elements nor of analytical approaches useful for testing the alternative between recognizing the

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effective “new thing” or bringing it back to customary complex conceptuals like ‘internationalization’ (both of the economy and culture), ‘international relations’, ‘international economic material constitution’.<sup>2</sup> All this acts like a thermometer whose role is to measure the active changes of consolidated systems, such as the nation-state and its corresponding civil society, productive systems, social classes, labour market, information devices (or the ‘computer revolution’), and the monetary system.

What’s important here is not solving the problem of a standard and determinable use of the polysemic and controversial concept of globalization, but realizing that by now what dominates is an approach that I refer to as the “how/if” method, in the sense that it’s not only the economists but also scholars of international relations, and (even if a little at a time) also jurists who are starting to suggest, through their analyses, the complete and general effectiveness of an economic system made global which is able to make the concepts of state, economic planning, protectionism, social status obsolete. Especially when we are dealing with concepts which involve the public, as well as public function, and obviously the pre-eminence of political mediation,<sup>3</sup> these seem to become obsolete.

Therefore, it’s not by chance that the USA is the first to carry out a curricular reform of juridical studies in the ‘global playing field’,<sup>4</sup> a method where the jurist too (like other experts in social sciences) can move about in order to facilitate the process of globalization, removing therefore the normative obstacles in commerce and bringing institutional structures into harmony, “reacting in the same way as a person who makes an investment which is headed abroad”<sup>5</sup> (*sic!*), playing the role of a globalization mandarin. It’s natural that even in this field, just as A. Blackett emphasizes, different points of view are possible, as are different solutions: from the perspective of

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2 See: P. PICONE, “International Law of Economy and the Economic Constitution of the International Legal Order”, P. PICONE, G. SACERDOTI, *The International Law of Economy*, Milano, 1982.

3 See: C. AMIRANTE, “I servizi pubblici fra ordinamento comunitario e ordinamento interno: regole di mercato e funzione sociale”, in S. GAMBINO (ed.), *Stati nazionali e poteri locali. La distribuzione territoriale delle competenze*, Rimini, 1998, p. 307. For further reading on the transformation of the nation-state as a market regulator and on the new international political-economical context See: O. SCHACHTER, “The Decline of the Nation-State and its Implications for International Law”, in: *Columbia J. Trans’l Law* (36) 1997, p. 7.

4 According to the expression in J. ATTANASIO, *The Globalization of the American Law School*, in *J. Leg. Ed.* (46), 1996, p. 311.

5 Quoted in A. BLACKETT, *Globalization and its Ambiguities: Implications for Law School Curricular Reform*, in *Columbia J. Trans’l Law* (37) 1998, p. 57.

creating the 'well-trained post-modern lawyer' to one where there is a critical analysis of a new political-institutional background, which leads to an understanding rather than a conforming to contextual hermeneutic tendencies of a new law and of the new role of the jurist in the global community.<sup>6</sup>

What strengthens the doubts towards heuristic ability in the globalization concept is the common consideration of a process of open conflict between both continental economic and infracontinental organizations such as the North American Free Trade Agreement (NAFTA, the most important one of all), not to mention the Andean Common Market (ANCOM), the Common Market of the Southern Cone (MERCOSUR), the Central American Common Market (CACM), the Caribbean Common Market (CARICOM) and the so-called "Group of Three" (G3); belonging to the Canadian-American area is the Canada-USA Free Trade Agreement (CUFTA); in Asia, AFTA has geo-economical relevance. Finally, as far as other continents are concerned, it's best, before this essay goes beyond length, if I limit myself to mentioning only the Asiatic Free Trade Agreement (AFTA) and the European Free Trade Association (EFTA), that is to say the 'European Economic Area', and of course, mainly the European Union. Neither can one forget that before a non casual crisis of the UN and of the Charter which many authors should value as the new global constitution,<sup>7</sup> old forms of economic relations (unilateralism, bilateralism and protectionism) have survived today, and they represent highly practicable roads for those countries that are politically and militarily stronger, and are, at any rate, dominant in a certain geopolitical area.<sup>8</sup>

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6 Ibidem.

7 On the subject, See: B. FASSBENDER, *The United Nations Charter as Constitution of the International Community*, in *Col. Trans'l L. Rev.* (36) 1998, p. 529. Very interesting, besides the discussed (and also argumentable) central thesis of the essay, especially if one thinks of the widely dominating doctrinal conviction not based on law which is found in the Charter, of the absolute functional weakness of the International Court of Justice for the analysing of possible ways through which principles, means, and methods of constitutionalism condition both the normative and organizational level of the international community.

8 In 'glocalization' literature, even if this term, too, marks a very recent revolution, two main methods of analysis can already be identified. On one hand, by supporting itself upon the revival of particularisms and of nationalisms (not to mention on organized forms of ethnic violence and racism which are unfortunately increasing in a terribly pervasive way), there is the method that tends to highlight high social costs that globalization determines by its impact on national politics and on a 'welfare state' which has become extremely weak and re-dimensioned (this is Bihr's, Gorz's, and Hirsch's thesis, not to mention others, who insist on the consequent need of the state to regain a position which at least guarantees independence towards supranational economy-based

While on the subject, keep in mind another phenomenon which is hard to detect if and in what way it's an effect or a consequence of globalization, if it causes the loss of identification elements for individuals and groups, and in what way this, too, is a consequence, in the same way that globalization is, of economic and institutional changes that have been unfolding since 1989. The subject is very important because it constitutes one of the two main themes and is the main object of this research: federalism, from the moment that, even beyond 'explosive' situations (like the dissolution of the URSS and of the Yugoslavian Federation), and with its own particular eziogenesis could be revived in more than one federal system — and particularly in cases like Canada — as well as a strong request for the guarantees of constitutional independency, or even secession. The coexistence of such processes that appear antinomic, on the one hand globalization and on the other the obvious return of the forms of particularism and of localism, which often lead into secession, are melted together in an expression widely used in Anglo-Saxon literature, as in German literature: *Glocalization—Glocalisierung*.

However, especially if one considers the fact that the NAFTA is thought of as a point of reference for the development of a big economic-political Pan American area in order to fully carry out a plan called *Free Trade of the Americas* (FTAA),<sup>9</sup> a tendency towards geopolitical competition between two economic blocks, the Pan American and the Pan European, is still in full evolution and clearly stands out.

With regards to this, there have been many attempts in identifying this phenomenon especially under the profile of an historical study. This study contains the steps towards the development of the internationalization process of the economy, towards which, during an 'end-of the-century'

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politics, as well as a central role in the promotion of social development). On the other hand, there is a study which is mainly economy-based of those (like Boba, Chesneaux and Turchetto) who, focusing on the structural contradictions of accumulation mechanisms on a global level, and particularly on the tendency of the multinational enterprises to export, decenter and... localize product models (the so-called 'global localization'), creating therefore temporary areas of a protected market, with disturbing effects on a social, environmental and labor level, basically demystify the ideology of the global market and redimension the true capacity of those innovations which are connected to globalization, bringing them back instead to forms of social conflict which become more and more dramatic.

9 Springing from a summit in Punta del Este in Uruguay in 1967, the debate on the FTAA continued into the summit in Miami in 1994, in the hope of launching more solid initiatives on a continental level by the year 2005. For further reading on this subject, See: F.J. GARCIA, *Americas Agreements. An Interim Stage in Building the Free Trade Area of the Americas*, in *Columbia J. Trans.'l L.* (35) 1997, p. 65 and on.

debate, a consideration was made on the constant growth and on the centrality of international relations that, according to a widespread opinion among supporters of supranational organizations based on a cosmopolitan creed, is said to characterize an entire century. In particular, at least four components fit for outlining a description of the processes being carried out were emphasized: the financialization of the economy, the transnational diffusion of technology (especially computer science) and of information, the transformation of productive processes and the so-called hypercompetition, neocontractualism.<sup>10</sup>

But in reality, what has been and what is still missing even now is an interdisciplinary approach<sup>11</sup> that does not underestimate neither the evident phenomena of economic, social, cultural, and institutional internationalization, nor the changes in the role of the institutions, starting from the nation-state, without of course neglecting the complex networks between old and new institutions, both national and supranational, which, according to many authors, is one of the most original and determining characteristics of the new political-economic assets.<sup>12</sup>

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10 See: P. BAIROCH, R. KOZUL-WRIGHT, *Globalization Myths. Some Historical Reflections on Integration, Industrialization and Growth in the World Economy*, UNCTAD, Geneva, 1996; on various aspects of the 'globalization' phenomenon see also G. ARRIGHI, *The longth XX century*, New York 1996, P. MOREAU DEFARGES, *La Mondialisation [Globalization]*, Paris 1997; I. RAMONET, *Geopolitica del caos [Geopolitics of Chaos]*, Trieste 1999; N. CHOMSKY, H. DIETERICH, *La società globale. Educazione, mercato, democrazia [The Global Society. Education, Market, Democracy]*, Celleno 1997. For a more specific reference to institutional aspects D. HELD, *Democracy and the Global Order*, Cambridge 1995, IBIDEM, "Democracy: From City-states to a Cosmopolitan Order?", in *Political Studies* 1992, p. 10 and on, E. KAPSTEIN, *Governare l'economia globale. La finanza internazionale e lo stato [Governing the global economy. International Finance and the State]*, Trieste 2000, J. H. DUNNING, *Multinational Enterprises and the Global Economy*, Wokingham 1993, I. WALLERSTEIN, *Geopolitica e geocultura. Saggi sull'evoluzione del sistema-mondo* Trieste 1999, D. ARCHIBUGI, D. BEETAM, *Diritti umani e democrazia cosmopolitica [Human Rights and Cosmopolitan Democracy]*, Milano 1998, A. MINC, *La mondialisation hereuse* Plon 1997, S. CASSESE, *Nazioni senza ricchezza. Ricchezza senza nazione*, Bologna 1996, M. ALBERT, *Capitalismo contro capitalismo [Capitalism versus Capitalism]*, Bologna 1993, M. REGINI, *Modelli di capitalismo. Le risposte europee alla sfida della globalizzazione*, Bari-Rome 2000.

11 A. von BOGDANDY, *A Bird's Eye View on the Science of European Law: Structures, Debates and Development Prospects of Basic Research on the Law of the European Union in a German Perspective*, in *European Law Journal*, Vol. 6, n.3-2000.

12 For example see: A. PREDIERI, *Euro, poliarchie democratiche e mercati monetari*, Torino 1998, especially chapter III (on State Factor of the Economy and Politeia at the Present Time, p. 76 and on) and chap. IV (on "Losing, Transferring, Negotiating, Rectifying" as Key Words for the Present Day State, p. 92 and on). On so-called 'globalism', that is to say, the internationalization of managerial-institutional models, See: K. OMAHE, *La fine dello stato-nazione [The End of the Nation-State]*, Milano, 1996, S. BOBA, "Mai dire globale", in *Alternative*, 7, January 1997, p. 19.

Finally, it cannot be denied that the word 'globalization' by now has been entered in the dictionary and in the minds of the people. Its unquestioned polysemy suggests all the complexity (but also the vagueness and, might I add, the ambiguity) of all the ongoing changes not only economic but also institutional and political-cultural; we need to nonetheless assume that 'globalization' is not a neutral word, but a term driven with categorical implications, project elements, ideological messages—and even utopia.<sup>13</sup>

The problems that globalization (or, if you prefer, the recent acceleration of internationalization processes) both in the exchanges and in their juridical-institutional regulation, arouses today in states and in their constitutional systems, are of a different range and of a complex nature.

Here, the attention of many scholars (whose number keeps increasing) is towards a supranational institution model which is different from continental unions of the 'traditional' type. This concerns the economic settlements under which the adhering states agree to subordinate their economic policies (which in the first place are commercial) to an articulation of rules emphasizing the contents as well as procedures, apt to leading commerce and investments in a pervasive way, which in the end culminates (regarding its more general political-economic policies and its functional and structural aspects)<sup>14</sup> in a complex series of both provisions and restraints set by the WTO.

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13 The ambiguities of this term are discussed in A. BLACKETT, *Globalization and Its Ambiguities...*, op. cit., p. 60, and in R. COOMBE, *The Cultural Life of Things: Anthropological Approaches to Law and Society in Conditions of Globalization*, *Am. J. Int'l L. & Pol'y* (10) 1995, p. 883. The utopic aspect of globalization is well highlighted in S. AMIN, "Processi della mondializzazione" ["Globalization Processes"], in *Alternative Europa*, n. 3/1998, p. 32, which stigmatizes the belief (a la Von Hayek) in a world made up of individuals who do not belong to any social class or to any nation, who have no religion or nationality, individuals who, on the market, sell or buy forced labour, initiatives, products. In this way, the states are none other than mere "irrational relics of the past". All this leads to a false paradox: from the moment in which capital triumphs in all areas on a worldwide scale, and does not run into anymore obstacles of some importance that force it to adapt itself, there is no acceleration in capitalistic growth and accumulation, but, on the contrary, the system goes into a crisis, blocking itself in a terrible stagnation... "what the plan at issue shows is nothing but an unrealistic utopia" (ibid, p. 34). More in general, and from another point of view, if Peter Martin, the chief editor of the *Financial Times* is happy to state that "the liberal economy of the market is naturally global and constitutes what is more than achieved in the human adventure" and that "abandoning globalization would only mean questioning again fundamental democratic rights and in particular a sacred right for all, that is the right to peacefully mind one's own occupation" (P. MARTIN, [A Moral Duty], in *Le Monde Diplomatique*, n. 6/1997,) the editorial staff of *Le monde diplomatique* could easily reply that it's democracy that's "the principal victim of free trade and of globalization" (B. CASSEN, *La democrazia prima dell'ingranaggio* [Democracy Before the Workings], ibid.)

14 And that is why the GATT was left aside and replaced by the more pervasive WTO, rooting itself into the Bretton Woods agreements.

This 'second generation' of treaties, which came about the Second World War, has replaced the first one and therefore has generated tasks and functions of 'constitutional' nature for the adhering states, and has led some scholars into making the study extreme and in to identifying a "new constitutionalism" in the law of the supranational commercial agreements in the phases of globalization and of the "new international economic order".<sup>15</sup>

The lack of clearness in WTO pertaining firstly to its complex and controversial nature (political, legal institutional, bureaucratic) comes from the bad knowledge of WTO, particularly in Europe, where it didn't fit into neither the economical nor the political science debate.

There ambiguities find an evident exponential peak when dealing with the opposition between the ones who believe that WTO is a sort of proto-constitution of the world economic and social system, and those who reduce its importance emphasizing its structural and functional fragility (because of its quality of intergovernmental consulting committee).

It is an ambiguity that becomes clearer as far the use of the word governance in this context is assumed under a very reductive significance, that doesn't seem to cover the whole globalising dimension of WTO. Otherwise, a more deepened analysis show the undoubtable political-juridical nature of the WTO.<sup>16</sup> Although in this core of doctrinal issues there are scholars who insist on the political-institutional aspects, by accepting the idea that "globalization must be regulated by institutions that are of an ultra-national or semifederal kind",<sup>17</sup> and other ones who assert the need of a legalisation that merely comes along movements of privatisation, in which the dimension of the WTO bargaining processes is put in perspective as a

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15 S. CLARKSON, *The Meaning of Continentalism and Globalism for the Nation State: Nafta and the Wto as Canada's External Constitution*, Report presented at the International Congress of the Italian Association of Canadian Studies based on the theme "Canada: the Cultures of Globalization" (Bologna, 11 September 1999, in print). Here, however, besides the typologies of the economic agreements analyzed in this essay, of which the EU and NAFTA (obviously) make up very interesting prototypes, the reference is also made to the World Trade Organization (WTO) and to the Multilateral Agreement on Investments (MAI), settlements which are capable of conditioning and 'dominating' development policies of those nations that are less competitive on an international level, thanks to foreign debt methods and to the restraint of orders.

16 J. L. MORTENSEN, *The Institutional Requirements of the WTO in an Era of Globalisation: Imperfections in the Global Economy Polity*, in *Europe. Law J.*, 2/2000, pp. 176-204.

17 A. TITA, *Globalisation: a new political and economic space requiring supranational governance*, in *J. of World Trade*, 1998.

marginal, unexpressed aspect. As if “a self-contained legal system which produced justifications for economic power politics”.<sup>18</sup>

It is better for us to give up further considerations, but emphasizing the alternative between a ‘minimal’ legal solution (in which the private form “is essentially identical to political capture”, or... as you like: “the use of government policy instruments for private objectives”),<sup>19</sup> and an opposite solution consisting in the constitutional set of rules in order to subordinate the private egoism to the necessity of a real market competition that enhances the levels of democracy.

In reality, today, what is being taken away from the sovereignty of nation-states are the areas which are strategically fundamental to the economy, that is to say the financial monetary areas and, mainly, the whole sector of the market and the intermediation. But the new supranational transfer of power appears however to be capable of producing important effects on the entire political-institutional system of a given state, thus creating a kind of ‘free zone’, both in the market and in competition, in which the basic principles of the constitution have a limited effectiveness and the protection of both social rights and work conditions are subordinated to other hermeneutic principles, such as efficiency, competition, flexibility, and the efficiency of the so-called “organization-nation”. The new financial powers shirk the sovereignty of the nation-states, their law regulations and codes of behavior.

Besides wondering if the global order of economic accumulation and of technological forces and its main moving spirits (i.e. transnational enterprises and capital market operators, especially of financial nature which are more and more connected to computerized processes) are generating ‘global’ political institutions for the regulation of operations<sup>20</sup>, we need to emphasize that the so-called ‘new international law order’, provoked by globalization phenomena of markets and institutions, has a rather wide influence on international relations and on the international law order; the impact between supranational economic organizations and nation-state is revealed as even more direct and determining.

By now, more than a decade has passed since studies on the market and on its main components (beginning with multinational corporations, defined as both *stateless corporations* and *transnational corporations*), even in the variety of views and methodological approaches, have revealed the

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18 See: MORTENSEN, op. ult. cit.

19 Loc. cit.

20 S. CLARKSON, op. cit.



common crisis of the nation state, of the social and the political state, and lastly, of the contemporary forms of democracy. The will to put aside (or at best to radically reduce) the role of regulation and of intermediacy of the state and its bureaucratic devices, generally becomes a necessary counterpart to the internationalization (as well as to the globalization) of the market. This is a perspective where whoever insists on the irremissibility of the state role—which goes from the regulation and redistribution to the promotion and support of economic and occupational development, from conflict mediation to the guarantee of freedom and of political, economic and social participation—risks being considered a defense of egotistical-corporative positions, that is destined to obstruct the unstoppable journey towards the “peoples’ community”.<sup>21</sup>

In fact, on both levels, what is carried out is a centralization of executive functions that, not by simple chance, in Europe as well as in the individual member states, despite the temperaments derived from a co-deciding process, it’s also the deputized power that has final say in legislative matters, establishing the general contents of community policies, being at the same time the main protagonist of the choices to be made when the Treaties need to be renewed. And this is why the European Union is considered a particularly efficient example of a ‘post parliamentary government’, in the quality of a “political system where government leaders explain neither their actions nor their public policies to citizens”. This is a situation that is made worse by the coincidence which sees the loss of this notion (not to mention the practice) held by the opposite political parties, since in the community

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21 This is a perspective that starts to circulate in Italy, for example in the works of Archibugi-Beetham and Ferrajoli. In international literature, next to critical opinions that often come from different political, economic and philosophical views (besides Amin, naturally we may add Amoroso, Arrighi, Gorz, Guehenno, Held, Hirsch, Latouche, Ramonet, Zolo, Wallenstein) there are some ‘enthusiastic’ supporters of universalization-globalization, such as A. Minc, T. Ohno, P. Martin, and others who, following the footsteps of P. Samuelson and M. Friedman, are the leaders of a tendency ever more in expansion, particularly among the scholars of the latest generation. Who dramatically emphasizes the fragility of the hypothesis that would like to see the elimination of the role of regulation and of conflict mediation, and of the proportion of economic and social development (masked by the state) for all, are S. AMIN, *Il capitalismo nell’era della globalizzazione. La gestione delle società contemporanee* [Capitalism in the Globalization Era. The Management of Contemporary Societies], Asterios, Trieste, 1997 (a highly recommended book because it faces the globalization problem in the most general terms and also because it analyses single ‘regional’ situations, in particular the case of the European Union, p. 133 and on), and J. HABERMAS, in his most recent text, *La costellazione postnazionale* [The Postnational Constellation], Milan, 1999. What has also been spoken greatly about is a “land party” as opposed to a “globalization party”, the latter being the one which obviously prevails, and which is characterized by its out-and-out neoliberal orthodoxy (according to Mayer’s observation).

“there are no *élites* that offer alternative plans or that compete amongst themselves in order to win the popular support on a European standard”.<sup>22</sup>

From the moment that the crisis of the classic forms of government (that is to say the *government* pertaining to the Anglo-Saxon tradition), substituted by the *governance*, cannot be understood without contextually reflecting upon the inadequacy generally acknowledged by the supranational forms of regulation and management of economic-political choices, it has become a wide-spread conviction that by now “reinventing democracy”<sup>23</sup> cannot be postponed.

Though the ‘continental’ effects of economic globalization appear different in the different geopolitical contexts, the negative influences on democratic governments, and therefore on the delicate balance of federal systems, are unquestionable and to some extent comparable.

It’s only natural that an author like John Dunn,<sup>24</sup> among the many who ‘celebrate’ 1989 as the year of the epochal turning point, has serious doubts as to whether it is possible, in the new context of internationalization in which “democracy is by far the dominant system”, for the representative democracy to be able to legitimize the political authority, as well as doubts as to what the relationship between the actual functioning of the economy and the actual space reserved for the governments’ political action really is today. This writer asks himself further questions, such as if it is possible for a democratic government to “protect the interests of the wealthy by favoring the poor” or vice versa; how often and for how long “the modern populations are forced to accept millions of unemployed and neglected citizens as a price for higher living standards for their own children and grandchildren”; or how

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22 T. R. BURNS, S. ANDERSEN, L’unione e la politica postparlamentare [Union and Postparliamentary Politics], in *Il Mulino*, 3/98, p. 419. Regarding the European Parliament and its role, see also, in Italian, G. RESS, *Parlamento e democrazia in Europa* [The Parliament and Democracy in Europe], Napoli 1999, edited by R. Miccù.

23 P. HIRST, S. KHILNANI (ed.), *Reinventing Democracy*, Oxford 1996, p. 6, and in the same text, besides the introduction, the essays by T. Wright, B. R. Barber, A. Barnett, and in particular I. Harden, “Democracy and the European Union”, p. 132 and on.

24 J. DUNN, *La democrazia. Storia di un’idea politica dal VI secolo ad oggi*, Venice, 1995, whose methodological approach has the merit for leading us to believe that the coming of the global era, exactly in the way it seems to mark the unquestionable (and unquestioned) triumph of democracy, always makes citizens, leaders and scholars, face with necessary radicality, the new challenges that democracy has to live up to, while identifying, along with the options, the suitable means for carrying them out in a circular process in which, to Dunn, the relationships between science, knowledge and democracy would be easily understood and easily compatible only in the times of Ancient Greek democracy (ibid, p. 306).

much the modern government must limit itself in “promoting the market as an pseudoegalitarian arena in which families are able to use their cumulative and comparative advantages”; and instead how much a government must do “in order to guarantee equal economic opportunities to all citizens, making them really equal amongst themselves, without weakening the market’s capacity for increasing wealth”<sup>25</sup>...this seems to confirm that whoever takes democratic concepts and social democracy seriously, will never be able to believe that an ample and irreversible internationalization of the market and of competition is automatically translated into a technical-bureaucratic grid (or rather a *network*) which it itself is capable of promoting and canalizing what used to be the valuable requirements and the means for guarantees in the democratic area.<sup>26</sup>

If in this core of problems which are increasingly complex in the globalized world, and which have a difficult solution, another very important matter is issued. That is to say that the science/knowledge dialectics corresponds to a need on behalf of the citizens for being well prepared in order to actively participate in the decision making, or at least in the choose of future leaders. This produces doubts as to whether it’s wise to ‘narcotize’ the traditional institutions of the contemporary constitutional state—as obsolete and imperfect as they may seem—in order to place one’s trust largely on supranational economic organizations in which the concentration of decision-making powers and functions are in the executives’ hands. Therefore there is a corresponding delegation that favors the technobureaucratique *élite* or *ad hoc* committees of which the most significant example is the European Commission.<sup>27</sup>

These doubts are shared by those scholars and by those experts of the European Community, who, by proposing solutions to the great challenges of the future (from the impact with the growing international economic competition to economic and social cohesion, to the issues of diversity and complexity, till the enlargement of the political agenda and to the crux of democratic legitimization) express more than one doubt as to whether the

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25 Ibidem, p. 301.

26 Stimulating to this current debate is the recent essay by R. DAHL, *Sulla democrazia* [On Democracy], Rome-Bari, 1999, with the identification of the challenges offered today to democracy in the context of the globalized economy and of the world system, which springs from the impact between the state and the new market order and so is by far more important.

27 ...in which, through definition, the options of the economic-bureaucratic contents should prevail over the political options, in procedural contexts in which transparency, publicity, participation, and inspection (both internal and external) are absolutely not given enough room.

new *governance*<sup>28</sup> category is appropriate for the reconciling of the control of complex *networks* of institutions and commercial, financial, economic and social relationships that have been set up by globalization, with the demands of democracy, of participation, and protection of rights.

Actually, similar to the term globalization, the word *governance*, which, as it sometimes happens with terminological innovations that seem to be able to describe and to re-include new and important phenomena, also aims at containing and representing, in a plastic manner, a proposal of a political-bureaucratic solution to the current processes of reduction and control of the complexities which spring from the crisis of the territorial state and from the multiplication of supranational relations and organizations. Just as the concept of governability, introduced by the Trilateral in the 1970's, has come to gradually substitute the concept of democratic government (making the reasons for efficiency and for the cheapness of politics prevail over every other type of social orientation), so has *governance* emerged as a "motto that characterizes the international public order, consciously distinct from *government*, and consciously identified with that group of phenomena that are thought to define the international situation at the end of the twentieth century: globalization, interdependency, the sovereignty crisis, the obvious and progressive pointlessness of the United Nations institution, the arising of an international civil society".<sup>29</sup> To conclude, if there is no passing from *governance* to a "European government" which is able to complete (or to accomplish!?) a supranational government structure that is efficient and democratic (as is hoped in the recent "Europe 2020" report by the College of Europe), that is to say a structure characterized by at least an introduction of a European Constitutional Charter and by a common system of defense, there looms the risk that is even too tangible—in a perspective of uncertainty emphasized by the enlargement of the EU—that intense moments of re-nationalization may come back, along with the risk that dangerous contrasts and conflicts may again 'catch fire'.

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28 Also defined as an "exertion of power in a variety of institutional contexts whose effect is leading, checking, and regulating the activities in the individual's interest, an individual in the quality of citizen, voter, worker" (Robinson), or rather, in more general and abstract words, in order to re-include "any aspect of the organization and of the functioning of political, economic and social entities"; on this subject See: J. MONAR, The Future of European Governance, Final report on the "Europe 2020" project, by the College of Europe.

29 D. KENNEDY, New Approaches to Comparative Law: Comparativism and International Governance, in Utah L. Rev. (2), 1997, n. 4, p. 545.

*Hi-Tech Revolution, Information Market, E-Commerce:  
the Case of Europe in the Larger Context of Globalization*

As far as the European Union is concerned,<sup>30</sup> it is “seeking to forge ever closer links between the States and peoples of Europe, to ensure economic and social progress; in accordance with Article 14(2) of the Treaty, the internal market comprises in area without internal frontiers in which the free movements of goods, services and the freedom of establishment are ensured; the development of information society services within the area without internal frontiers is vital to eliminating the barriers which divide the European peoples” (art 1 directive 31/2000).

This EU strategy is based on the conviction that e-commerce allows to reach four basic objectives:

1. “significant chances of employment”,
2. “development... of european enterprises, particularly in small and medium enterprises”, enhancement of the “competitiveness of european production” on international competition,
3. provision of equal prioritarian access to Internet, setting idoneous conditions and rules.

1. As far as the issues of employment opportunities are concerned, on one hand we have to point out the greatest problems that the member states of the EU, whereas the Union itself as a common challenge (monetary, economic) have to face in the XXI century; on the other hand, we will focus our attention to matters that somehow go beyond the apparently mere technical-commercial problems arisen with the development of the e-commerce (such as the role of the State as intermediate operator and regulator, and the more and more frequent feedbacks of new economy onto the organization of the society and the democracy itself, starting from the issue of the so called electronic democracy).

Effectively, the issues pertaining to the e-commerce can outline a real turning point in the processes determined by the hi-tech revolution, that involves new chances in work and new forms of labour (from the sc. tele-labour to the web-operators, from the large series of financial intermediators to the multitude of different legal-economic advisors, etc.).<sup>31</sup>

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30 This section of my paper is firstly addressed to issues concerning the methodological and theoretical framework of the well known Directive 31/2000.

31 In the Common Law tradition, in the field of Electronic Data Interchange agreement (EDI), a new profession is emerging: the so called “cybernotary”, that is to say a notary with a great knowledge of international law and acquainted with technological instrument,

In the mean time, if we only go further into our analysis, as it has already occurred in the first phases of “robotisation” of the industrial production, we can observe that the new economy determines the destruction of labour-force in the re-modernized sectors, as well as in the processes of informatization of the business administration, that clearly have a labour-saving destination. Not to mention the Public Administration as a whole and the specific sector of public services.<sup>32</sup>

Anyway, these “employment opportunities do have a social impact on different series of workers, divided as for age, competences, flexibility so that the ongoing processes of technological innovations imply the stressing and accelerating problem of flexibility, in which the social guarantees and protection are lower, and decreasing”.

2. We can ask ourselves whether the new economy, generated by the arising of Internet and the planetary distribution of the new technology of information and intermediation, is only an instrumentary, whenever complex and richer, alternative to the old economy, or an authentic revolution, as many seem to believe.<sup>33</sup>

Is it just a confrontation between old and new economy? One has to just use traditional methods to evaluate the real incidence (in mere quantitative terms) of such innovative processes? Or is it something completely different?

There are many signals that confirm the need to avoid a simplistic solution (which would merely enforce consolidated certainties of large sectors of scientists and economic analysts) consisting in defining new economy<sup>34</sup> as a phenomenon of financial speculation.

The impact of high-tech revolution doesn't limit itself only to the new economy, but it involves radical changes in large sectors of social and political life, that go beyond economics, from scientific research to educational and occupational formation, from public administration to the true style of political institutions, to the mean style of political communication and to politics.

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so that his role could be suitable in making telematic exchanges, available, and in contributing to the connection of different cultures. See: T. BARASSI, *The Cybernotary: Publik Key Registration and Certification, Authentication of International Legal Transactions* ([www.abanet.org/scitech/ec](http://www.abanet.org/scitech/ec)).

32 See: L. VANDELLI, *The Administrative Reforms in Italy: Experience and Perspectives*, Clueb, Bologna 1999.

33 G. MERLI, *E-Biz, Come organizzarsi per la net economy*, Milano, novembre 2000, p. 51.

34 What is new economy at least? As far as its origin is concerned, it can be easily seen as the combination of 5 trends: globalization, convergence, e-business/internet, high-tech revolution, new financial reality (dot.com enterprises, new start-up, trading on line, etc.).

Take a look at some other current trends from the top countries online and the anticipated trends for the next few years. The reason they are important is that in business-to-consumer markets you need to compare the costs versus the benefits of localizing a site or providing additional language options. On the other hand, for the business-to-business system, you need to consider who are your trading partners. This consideration determines whether you should localize or provide additional languages on the site.

IDC Research has reported that Internet use in China is expected to surge to 9.4 million users by 2002, up from 1.4 million in 1997. China's Xinhua news agency announced in January of 1999 that there were 1.5 million Internet users in China at the end of 1998. More than 84 percent of these users were under the age of 35. China has 14,000 Internet Service Providers, with 3550 in Beijing, according to Xinhua. The Computers Industry Almanac notes that there were 1.58 million Chinese online at the end of 1998.<sup>35</sup>

While on the topic of economics, it could be interesting to recall the recent scheme drafted by J. Galbraith. In such a context, but in an opposite cultural point of view, in fact, Galbraith has developed a quantitative analysis that aims to divide US economy in four sectors.

The first one produces high technological machines, while the second one produces means of production of consumer goods and then the third one is the consumers sector. Finally, the author points out another sector, in which high technology is not required, and which offers different services like cleanings, caretakers, janitors, etc. In the consumer goods area, technology is used not only to increase production, but also as a means of competition with wage.

The dynamics of the consumer goods area depends on the trend of the demand and especially on the growth of the final demand. This also produces effects where machines are supplied to enterprises of the second area (consumer goods), while public services workers of the services sector (the 4<sup>th</sup>), need to be protected by adequate laws in order to reach adequate levels of guarantees.<sup>36</sup>

The experience undergone so far allows us to point out two considerations: on one hand we have the emergence of small enterprises, with elevated skills of concurrence and competition, and significant positive feedback on occupation<sup>37</sup> (factors involving not only the US but also Europe, especially the Netherlands). On the other hand, we face the dramatic reduction of occupation and the progressive weakening of the labour force in those areas that the high-tech impact made obsolete. In reality, it is not by

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35 S. KORPER, J. ELLIS, *The E-Commerce Book. Building the E-Empire*, San Diego, 2000.

36 J. GALBRAITH, *Created Unequal: The Crises in American Pay*, New York: The Free Press, 1998.

37 J. RIFKIN, *The age of access*, Penguin Putnam, 2000.

chance that the impact of high-tech revolution allowed Tiscali to capitalize as much as Fiat itself did.

Thus far, the effects on the market and concurrence seem to be extremely significant, in the sense that they allow that small joint ventures or companies (that are able to propose and produce innovation, both in production and distribution) and, in favourable conditions as far as the economic cycle are concerned, as well as territorial, infrainstitutional and institutional as whole, infrastructural, could acquire the advantages necessary for a rapid and successful expansion.

It is still uncertain whether this kind of innovations, as apologetes of new economy believe (unless state does undertake public investments or inhibitory rules) would guarantee a perfect concurrence.

Firstly, because it appears untrue that the origin of hi-tech revolution does not require state investments (as has taken place in the US with the creation of science and technological parks).

Secondly, we cannot assume that the market system guarantees concurrence (see point C), given that oligopoly and monopoly in the most advanced sectors of new economy naturally inhibit concurrence and circulation of innovations.

3. The largest doubt more frequently brought into question by newspapers and science reviews, is whether the foundation and growth of cyberspace, has to be held by market system and by technological-commercial competition (that is to say by market forces) or does it have to be regulated by the State, as regulating operator, fixing rules, limits of access and professional deontology.

Anyway, as many observers have already noticed, the combined action of government control, on one hand, and stateless corporations, involves an exasperated control (though invisible to the most) on many aspects of social, economic and individual life. The consequence would be that the web becomes something that differs from equality and freedom.<sup>38</sup>

In effect, we can observe that there exists a different approach in the US and Europe: in the US the internet-explorers do not seem to be worried about the protection of their own personal data, as the enterprises provide two different levels of protection; otherwise in Europe the so called "surfers" do not trust the machinery of the system.

L. Lessig (prof. at Stanford University), one of the greatest experts in legal problems of Hi-tech industry, believes that the US has more than one

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38 L. LESSIG, Gefahr für die Freiheit, interview appeared on Die Zeit, n. 46, 9 nov. 2000, 42.



thing to learn from Europe, although he believes that US judiciary protection seems to be more efficacious.

Rather, what is more complex is the issue concerning the struggle against monopoly. In this field to be avoided is that monopoly and large oligopolios inhibit concurrence and technical innovation itself, e.g. the well-known cases of Microsoft and AOL-Time Warner seem to confirm. In these cases, in fact, it seems clear that the access to the web should not be without control, leaving the monopolist the uncontrolled chance of giving itself limits, prices and conditions of entrance.

The enforced legal framework concerning the market and concurrence has to be applied even to on-line activities (especially commercial transactions), but the objective link between on-line transactions and “offline” opportunities, and the experience of the so called “phone freaking” or “net phreaking” (something which is still uncertain in judicial cases) show that there are important issues to be faced and resolved.

A serious confrontation between those who believe that a non-ideological scientific screening of effectiveness of any self regulation attitude of market (similar to the American model) and the enforcement of legal system control (chosen by European countries and the EU) are of some interest for other countries, and is fundamental.

As a matter of most recent norms are the main example of a serious process of common understanding undertaken by the member states of EU, focusing firstly on competitiveness (both internal and external) of european enterprises in the new globalized world and secondly on its impact onto the labour market.<sup>39</sup>

In the EU meeting in Lisbon (23/24.3.2000), entirely focused on the new economy, the final report is complex and comprehensive,<sup>40</sup> and it is even more ambitious than the “information highway” program (the so called *National Information Infrastructure*) undertaken by Clinton and Gore, and followed (in some way) by the new government.

In a context in which there are 15 different research programs (without mutual coordination) in the EU, in Lisbon a new start of a common scientific project was proposed in order to fill the gap between the US and

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39 We just can think of the phenomenon of the s.c. “macrosweating labour” in Indonesia and Filippine, deriving from the game of the local sub-furnitures and differenziate productive forms. See: J. E. Stiglitz, Some lessons from the East Asian Miracle, the World Bank Research Observer, Aug. 1996.

40 F. RAMPINI, New economy: una rivoluzione in corso, Roma-Bari 2000, 73.

Europe, as well as a series of development programs focusing on the venture capital (entrusting the European Bank of Investments an important leading role).<sup>41</sup>

Anyway, the fuel of the new economy will be based on reforms and innovations, so that they can promote wider horizons of information development and factors including learning processes in schools of different degrees. This could reduce school drop-outs within the year 2010; furthermore this could include continuous formation processes and education, as well as for adults.<sup>42</sup>

### *In Lieu of a Conclusion: Problems and Perspectives*

The new economy – new society – new democracy framework is emphasized in the most recent study on the present phase of globalization. While the apologetes of the new economy believe that it ensures a progressive democratic expansion (limiting its own costs) of the access to services and benefits, and guarantee naturaliter concurrence, equal participation and an adequate consumers protection.

On the other hand, the ‘enemies’ of the new economy, after minimizing the chances of social innovation, throw themselves into the task of identifying fiscal, legal, administrative, territorial and criminal boundaries. This would risk destroying what apologetes assume to be the so called “hen that lays golden eggs”.

The liberal economists, the leading supporters of globalization, point out the virtuous circle of expanding trade, investment and economic growth around the globe.

Others, instead, claim to have a parallel coevolution and a consistent expansion both of the investment network, production and distribution of commodities and services, as well as the blending of rules-institutions-laws, in order to bring security to the market access, while maintaining an adequate degree of democracy.

The highly-polarised setting described below, we face different *Welthanschaungen* delocated in two continental and economical areas: Europe and the Americas. It's not by chance that under the levels of the

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41 F. RAMPINI, op. ult. cit.. A strategy that clearly indicates a relevant cultural gap, if regardind US solutions, which limit state intermediation by providing fiscal treatings in advantage of the private operators.

42 G. ALTANA, Mondializzazione e intervento statale nell'economia. Verso un governo mondiale dell'economia, in Aff. Soc. int., n. 2-2000.

WTO and (for instance) the NAFTA, the three partners (US, Canada, Mexico) undertake trade and commercial transactions without specific limits, strengthening an effective integration of labour and food markets, without the need of a large institutional framework.

In this sense, before the spreading of new economy and e-commerce, these states follow and practice the philosophy of free trade, recurring to only criminal legislation as security reserve. Even if we consider, for instance, the scale economies, originated by the links and phone-web users, that somehow caused conflicts and struggles among public and private consumers and among the states, we should realize that those conflicts were not able to upset a solid liberist tradition.

Returning here to European experience<sup>43</sup> we cannot avoid emphasizing that the way that has been chosen is not that of a complete trust towards private operators and trade forces, but that of developing and meanwhile supporting economic growth and the public access. This strategy involves a trend in which economic and social political integration are considered two faces of the same coin.

This European approach shows the advantage of inhibiting a pragmatism (derived from utilitarianism) that obeys Public Administrations and politics in order to adequate themselves, step by step, to rules set by Market regulation and its latest material and immaterial highways. The governance of globalization, especially on a continental level, requires pervasive legal expertise, access to scientific resources, and permanent political representation. In other terms, a basic core of good government.

But, as the disappointing conclusion of the meeting of Nice clearly confirmed, a process of constitutionalization obviously meant the fixing of fair rules of the game, and that this stop-and-go process is considered by democratic forces potentially able to allow an adequate and balanced development of the three factors representing the core of this paper, Economy, Society and Democracy, in a world in perpetual change. This is the way in order to avoid a technological blackout that will enlarge the gap between techno-elites and the citizens, more and more far from the decisions-making processes, and becoming terminals of issues which they could refer to, compelled to be for in a passive way, following the unfortunate tradition of plebiscitarianism.

*Original in English*

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43 In reality, the main experience of civil networking and informatization of Public Administration took place in the US since the introduction of the web and the HTML in the late 80s .

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**GLOBALIZACIJA, TRŽIŠTE, EVROPSKA ZAJEDNICA – NOVA EKONOMIJA,  
NOVO DRUŠTVO, NOVA DEMOKRATIJA**

**REZIME**

Revolucija koja se odigrala tokom osamdesetih godina u oblasti visoke tehnologije dovela je za manje od 20 godina do institucionalnih i strukturnih promena koje se nisu mogle predvideti. U ovom okviru elektronska trgovina je podstakla pojavu tako velikog broja radikalnih inovacija da mi sada možemo govoriti o novoj ekonomiji (barem što se tiče mnogih različitih oblasti). Ove inovacije su dovele do pometnje ne samo na tržištu rada već i u oblasti kulturnog stvaralaštva i organizacije naučnog rada, u odnosima u psihološkoj ravni i u međusobnoj komunikaciji. Sve to je dovelo do preispitivanja pravne i institucionalne osnove, kao i do sukobljavanja među naučnicima oko različitih pitanja, što je možda najprikladniji način da se unapredi jedan više interdisciplinarni pristup ovim pitanjima, pri čemu se ne očekuje da će se doći do konačnih rešenja.

Autor ukazuje da predmet najnovijih studija o sadašnjoj fazi globalizacije predstavljaju okviri nove ekonomije – novog društva – nove demokratije. Zagovornici nove ekonomije veruju da se njome obezbeđuje progresivna demokratska ekspanzija (kojom se ograničavaju njeni troškovi) pristupa uslugama i dobiti, garantuje prirodna konkurencija, jednako učešće i odgovarajuća zaštita potrošača. »Neprijatelji« nove ekonomije, pak, minimizirajući šanse za društvene inovacije, prihvataju se zadatka da ustanove fiskalne, zakonske, administrativne, teritorijalne i granice kriminala. Ovim se rizikuje da se uništi ono što zagovornici nove ekonomije prihvataju kao »kvočku koja nosi zlatna jaja«.

Liberalni ekonomisti, vodeći zagovornici globalizacije, ukazuju na viciozni krug ekspanzivne trgovine, investicija i privrednog rasta na celoj zemaljskoj kugli. Drugi, pak, tvrde da mogu da obezbede paralelan zajednički razvitak i stalnu ekspanziju kako investicione mreže, proizvodnje i raspodele robe u usluga, tako i povezivanje pravila, institucija i zakona, da bi se obezbedila sigurnost pristupa tržištu, a da se pri tome održi odgovarajući stepen demokratije.

Zbog postojanja veoma polarizovanih struja, suočavamo se sa različitim pogledima na svet podeljenim na dva kontinenta i dve ekonomske zone: Evropu i Ameriku. Nije slučajno da pod okriljem STO i, na primer, NAFTA tri partnera - SAD, Kanada i Meksiko - obavljaju trgovinu i trgovinsko poslovanje bez specifičnih ograničenja, jačajući postojeću integraciju tržišta rada i hrane, a da pri tom ne postoji potreba za uspostavljanjem čvršćeg institucionalnog okvira.

U ovom smislu, pre širenja nove ekonomije i elektronske trgovine ove države slede i praktikuju filozofiju slobodne trgovine, uz samo ona ograničenja koja nameću krivični zakoni, što služi kao rezerva iz bezbednosnih razloga. Ako, na primer, razmišljamo o ekonomijama obima koje su stvorili korisnici veza i telefonskih web mreža, a koje su nekako prouzrokovale sukobe i borbe među javnim i privatnim korisnicima i državama, trebalo bi da shvatimo da ti sukobi nisu mogli da uzdrmaju čvrstu liberalnu tradiciju.

Vraćajući se na evropsko iskustvo ne možemo a da ne podvučemo da put koji je izabran ne sadrži u sebi potpuno poverenje u privatne preduzetnike i trgovce, već je to taj kojim se razvija i podržava privredni rast i opšti pristup tržištima. Ova strategija uključuje

pravac na kome se ekonomska i društveno-politička integracija smatraju dvema stranama istog novčića.

Ovaj evropski pristup pokazuje prednost suzbijanja pragmatizma (proisteklog iz utilitarizma) koji podrazumeva priklanjanje zahtevima državnih vlasti i politike, a sve u cilju da se oni prilagode, korak po korak, pravilima koja se postavljaju regulacijom tržišta i njegovim najnovijim materijalnim i nematerijalnim smernicama. Upravljanje globalizacijom, naročito na kontinentu, zahteva veliku stručnost u oblasti prava, pristup naučnim izvorima i stalno političko predstavljanje. Drugim rečima ono mora da sačinjava srž dobre vlade.

Kao što je razočaravajući zaključak sastanka u Nici potvrdio, proces konstituisanja očigledno podrazumeva ustanovljavanje fer pravila igre i da proces »stani i idi » demokratske snage posmatraju kao onaj koji je u stanju da omogući odgovarajući i uravnotežen razvoj tri faktora koji predstavljaju srž ovog članka, a to su ekonomija, društvo i demokratija, u svetu koji se stalno menja. Ovo je pravi put kako bi se izbegao tehnološki mrak kojim bi se povećao jaz između tehno-elita i građana, sve udaljenijim od procesa donošenja odluka, na kojima bi se završavala pitanja na koja mogu da se pozovu, bivajući primorani da se na jedan pasivan način slažu sa njima, sledeći tako nesrećnu tradiciju plebiscitarizma, zaključuje autor.