

# **CONCLUSIONS**

**International University College of Turin**

**Independent Policy Report**

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# CONCLUSIONS

## **Abstract**

The law, in order to be able to govern finance (and more generally the economic system) should be based on a collective, public political authority. It should not be functional to the profit motive of any private individual or corporation. It should be structured to serve the public good. It should find its life in the public spirited justice motive of each and every individual in different societies. The nature of law as a public good is perhaps its only universally-recognized structural character. The privatization of law at the service of narrow special interests is a degeneration that must be cured. Either the law is a public good serving the public interest or it is not law. The legal standards for the 21st century must be a public good produced by a highly-inclusive global political process. Accordingly, it is imperative to re-think access to the public and common resources, starting from the “commons”. Not only individuals but also communities have rights; not only humans but also nature has rights, as recently recognized by Article 10 of the Ecuadorian Constitution of 2008.

Both law and the economic system must be understood as deeply political artifacts, through which human forces driven by particular - most often - opposite interests shape their future. The attempt to maintain some financial stability through the legal system is the purpose of a system of global legal standards for the 21st century. This crisis puts us in front of incontrovertible facts: we have just one planet; human societies are all interconnected; and no discrete human group no matter how rich, powerful or technologically advanced, can behave as if it were alone on earth, and as if the entire planet were the object of its ownership and sovereignty. The law, the economic system, or the financial system, are all means to allow the dignity and the gifts of humans as well as of nature to survive and prosper. The law should provide an order to all of this, or at least should not serve the disorder that precludes the ultimate end of a society based on peace and respect from being achieved.

## ***Conclusive remarks***

The law is not a technology. It is not a mere system of social engineering. It is not an abstract set of black letters that can be objectively followed or interpreted. The law lives an intimate, inextricable relationship with the society, the culture and the system of political economy it has to govern and from which it is governed. The law must be assisted by power in order to function as a vehicle to frame society and to materialize the collective will.

The global economic and financial system is not a technology. It is not an object of observation, which follows general scientific laws capable of being described by abstract models. The financial system is not a playground where the smartest guys in the room should be free to bet with other people's money.

Both law and the economic system must be understood as deeply political artifacts, through which human forces driven by particular - most often - opposite interests shape their future. Global finance is like war waged with different means. The attempt to maintain some financial stability through the legal system is the purpose of a system of *global legal standards for the 21st century*.

Such a proposal, brave and ambitious, must however face the challenge of real life - of the concrete circumstances of the current phase of development. Above all it has to prove its own good faith. The political economy of the current times has entered a phase of crisis serious enough to force even the most powerful among the political actors to second-guess most of the ideology of the end of history. This report has attempted to assist in a process of self critique that must be fully carried out as a pre-condition to look for some new global order through the law.

We had no claim whatsoever of being complete. Our task was only to expose from the perspective of the "real life of the law" a variety of false assumptions, of concrete problems in the chaotic global legal architecture. We have also pointed at some priorities that cannot be procrastinated if capitalism credibly wishes to be the human social system for a future. These priorities, particularly the immediate and complete remission of the debt of poor countries, are the fundamental test of the good faith in attempting to re-establish a global order through the law.

To understand how the political economy of the law might develop after the crisis, we should be aware of where we are coming from. Historical memory of the past is essential to imagining a long-term future. The eternal present is one of the components of the disordered present.

In a famous book of some years ago, Michel Albert claimed that the end of the Cold War would have opened a competition between two different conceptions of capitalist development, European Social capitalism and what he called the Neo-American model. The end of history was characterized by the triumph of the latter. The historical development of the European capitalist system (which deserves attention as the most advanced experiment in legal integration of foreign sovereigns) seems to confirm the triumph of privatized corporate capitalism as a deep aspect of the current era - the single most important aspect that has determined the global financial crisis.

We observe in fact a clear partition of post-World War II European economic history into two distinct phases. The first goes from about 1950 through the 1970s. The second arrives to the current day. The main feature of the first

period was mixed economy, within which strong states interacted with weak, still mostly local, markets. The second period has been characterized by an integrated market economy within the hegemony of private corporate actors. All European countries, albeit differing in speed and intensity, have designed and implemented major structural reforms since the mid-1980s, thus favoring these actors. This period has featured weaker states and stronger corporate actors. Even evaluated in its own terms, it would be difficult to consider this historical unfolding as a progress or an evolution. Remarkable growth rates and almost full employment rates were the characteristics of the first phase, known as the Golden Age. By contrast, sluggish performance in terms of both output and employment, have dominated the second phase. Average real GDP growth in European countries was 4.6% in the period between 1950 and 73 and a mere 2% in the period between 1980 and 2001. Exceptionally low unemployment rates prevailed in the first period, while the highest rates of unemployment ever experienced since the Great Depression characterize the present. In a recent book, Robert Reich offers a similar picture of the United States, the center and “context of production” of the worldly dominant model. In the crib of the Washington Consensus we must appreciate an incremental decline of the institutional structures of a capitalist system respectful of public order, and the triumph of a corporate super-capitalism whose social and even economic performance is nevertheless quite poor. Reich also points at an earlier Golden Age.

Under these conditions it is very tempting to point at the golden past as humanists pointed at ancient Greece. Such an approach would be reactionary and as such utterly unrealistic. The current crisis deeply questions the paradigm of the end of history, an ideal convergence of all the countries of the world towards a model that Guy Debord very critically named the “integrated spectacle” born from the ashes of the bi-polar world. We cannot indicate one or the other model of development of the past as a recipe for the future. They were both an expression of the same logic of physical exploitation of the world that it is the necessity of our time to overcome. But we must learn from past mistakes as well as from the best ideals and practices that the past conveys to us. The future is not in a single thought, neither in politics nor in the law. The future belongs, if at all, to pluralism, hybridization, dialogue and mutual respect.

This crisis puts those of us who still have not understood it in front of incontrovertible facts: we have just one planet; human societies are all interconnected; and no discrete human group no matter how rich, powerful or technologically advanced, can behave as if it were alone on earth, and as if the entire planet were the object of its ownership and sovereignty. We can guarantee a future for our species only if we are humble enough to tap every legal and institutional experience that may propose some reasonable solution for the complex aggregate of issues that must be approached. This attitude would be the

only hope to solve for the first time in history (within history, not outside or at the end of it) the daunting problem of a sustainable society where the necessary conditions exist for the ideals of “liberté, égalité, fraternité” to unfold.

The law, the economic system, or the financial system, are all means to allow the dignity and the gifts of humans as well as of nature to survive and prosper. The law should provide an order to all of this, or at least should not serve the disorder that precludes the ultimate end of a society based on peace and respect from being achieved.

Another crucial point that we have emphasized in this Report is that the law, in order to be able to govern finance (and more generally the economic system) should be based on a collective, public political authority. It should not be functional to the profit motive of any private individual or corporation. It should be structured to serve the public good. It should find its life in the public spirited justice motive of each and every individual in different societies. The nature of law as a public good is perhaps its only universally-recognized structural character. The privatization of law at the service of narrow special interests is its single most important degeneration supported by the ideological construction of the end of history. This degeneration must be cured. Either the law is a public good serving the public interest (i.e. the interest of stability, order and justice towards everybody that enters in contact with it) or it is not law. The legal standards for the 21st century must be a public good produced by a highly-inclusive global political process. Otherwise, they are not going to be law, but just another source of disorder and plunder.

The knowledge of the past and the critical appreciation of the present can bring us into the future. A future that itself must belong to everybody - and no one should live in the illusion that it can be privatized in the interest of some (the rich and the powerful market-dominant minority). Global law cannot be seen as an end in itself, but as a means to protect interests that humankind collectively decides are worth of protection. This approach is reflected in the fundamental claim of this Report for a new broader vision of the commons and of the public goods.

It is imperative to re-think access to the public and common resources, starting from the “commons”. Not only individuals but also communities have rights; not only humans but also nature has rights, as recently recognized by Article 10 of the Ecuadorian Constitution of 2008. Hence, a reflection is urgent on the process of progressive corrosion and reduction of common resources worldwide, and the recurrent privatization of public goods through sale or private management that seems to be a structural consequence of the global triumph of corporate capitalism at the end of history. In fact, as long as the State was holding a dominant role in the essential public services, it was not of immediate need to distinguish common from public goods. However, starting from the 1990s, the situation changed when the management of these goods gradually passed to

private entities (corporations) in many countries, leaving in the hands of public institutions (only if at all) the formal ownership of the goods, and an undefined and most always weak power of control and external regulation. As a consequence, almost everywhere, the dominant interpretation of competition and efficiency has marginalized the interests of the local territories and communities, and the social aim of public services; it has emphasized growth and development offered by multinational corporate and financial investments in complete oblivion of their social costs.

To be sure, both in industrial and in poor countries, the possibility to realize big business in situations of natural monopolies, through the exploitation of the goods of collective property and the involvement of multinational corporations is very attractive for the political elites. The weakness of the present regulatory framework and global institutional systems is in no little part caused by an outdated conceptual framework, which is unable to respond to the new demands of an ordered management and regulation of collective long-term interests of communities and future generations. It is thus necessary to define new categories capable to take into consideration the rights of human civilization as a common good in the broadest sense.

In the outlined perspective, the “Commons” are goods that, beyond their property title might be public or even private (think of a forest), fulfil by natural vocation social and economic and survival interests of the very same community of humans and nature. Hence, commons belong to all individuals, and the law must protect and preserve them for the benefit of future generations. There are daunting legal issues open to preserve goods that are predominantly of the natural and cultural heritage, like the rivers, streams and springs, lakes and other waters, air, parks, forests and wooded areas, mountainous areas of high altitude, glaciers and perennial snows, beaches and stretches of coastline declared an environmental reserve, wildlife and flora, and finally archaeological, cultural, environmental and other protected landscape areas.

In other words, all such and other commons, beyond the title of property, are characterized by a destination of general utility. Therefore, they are goods instrumental to the achievement of economic-social and territorial cohesion and the fulfilment of fundamental rights. As a result, the sound management of these goods should be able to “enrich” the community and territory of reference within the logic of solidarity and social justice.

Most often private or public economic, financial and development activity endangers the commons. To be apt to serve the needs of the 21st century, global legal standards must be capable of protecting the commons by developing within their structure a grammar capable of handling these very concrete issues - always serving as a reminder that one world is a gigantic common and the final tragedy is a most likely possibility.