Oñati Socio-Legal Series (ISSN: 2079-5971)
Oñati International Institute for the Sociology of Law
Antigua Universidad s/n - Apdo. 28
20560 Oñati - Gipuzkoa (Spain)
opo@iisj.es / http://opo.iisj.net

Law and justice in the society of economic inequality

OÑATI SOCIO-LEGAL SERIES VOLUME 12, ISSUE 6 (2022), 1547–1568: LEGAL CULTURE AND EMPIRICAL RESEARCH
DOI LINK: HTTPS://DOI.ORG/10.35295/OSLS.IISL/0000-0000-0000-1312
RECEIVED 3 NOVEMBER 2021, ACCEPTED 25 APRIL 2022, FIRST-ONLINE PUBLISHED 4 OCTOBER 2022, VERSION OF RECORD PUBLISHED 1 DECEMBER 2022

SERGIO MAROTTA*

Abstract

In a comprehensive analysis of the concept of legal culture, legal systems are influenced by the impact of social forces. From the socio-legal perspective, the law reflects the morphology of existing social relations. If it is true that today's society is characterized by forms of increasing economic inequality. In that case the parallel crisis of the State determines the weakening of the forms of intervention aimed at realizing social justice. In the contemporary age, collective decisions are the result of democratic procedures and the legitimate forms of intervention are realized through state law. However today there is a tendency to replace the classic parameter of social justice with that of economic efficiency, while forms of social reaction to the growth of inequality seem to be absent. Furthermore, the law has so far shown a certain weakness with respect to the economy: through a process of "juridification", the juridical space has been used as an "infrastructure" to instrumentally spread the economic method. The law, therefore, risks being the product of a society in which political power does not exist by itself but is only a function of economic power.

Key words

Inequality; institution; social justice; efficiency

This article is the result of a research carried out in the context of PRIN 2017 "The transformations of democracy: actors, strategies and outcomes of opposing populism in political, juridical and social arenas" (2017JEZ4NP_003). The Author likes to thank Deborah De Felice, Carlo Pennisi, Vicente Riccio and Francesca Vianello for organizing the workshop on "Legal Culture and Empirical Research" of 20th-21st May 2021, in collaboration with the Oñati International Institute for the Sociology of Law, where a first version of this paper was presented. The Author is also grateful to Leire Kortabarria for her kind help in reviewing and publishing this article.

* Sergio Marotta is Professor of Sociology of Law at University of Naples Suor Orsola Benincasa, Italy. He is the Director of the Master's Degree in Business and Public Communication. His main research interest focus on the relationship between law and society in the context of globalization and post-globalization. He is currently dealing with the critical relationship between citizenship and governance of water resources in Italy (http://www.unisob.na.it/universita/areadocenti/docente.htm?vr=1&id=73). Contact details: Via Suor Orsola, 10, 80132 Napoli (Italy). Email address: sergio.marotta@unisob.na.it

Resumen

En un análisis exhaustivo del concepto de cultura jurídica, los sistemas jurídicos reciben la influencia del impacto de las fuerzas sociales. Desde la perspectiva socio-jurídica, el derecho refleja la morfología de las relaciones sociales existentes. Si es cierto que la sociedad actual se caracteriza por formas de desigualdad económica creciente, entonces, la crisis paralela del Estado determina el debilitamiento de las formas de intervención dirigidas a hacer realidad la justicia social. En la época contemporánea, las decisiones colectivas son resultado de procedimientos democráticos, y las fuerzas legítimas de intervención se hacen realidad a través del derecho estatal. Sin embargo, hoy en día hay una tendencia a sustituir el parámetro clásico de justicia social por el de eficiencia económica, mientras formas de reacción social al aumento de la desigualdad parecen brillar por su ausencia. Más aún, el derecho ha mostrado, hasta ahora, cierta debilidad con respecto a la economía: mediante un proceso de "juridificación", el espacio jurídico ha sido utilizado como una "infraestructura" para extender instrumentalmente el método económico. El derecho, por tanto, está en riesgo de ser un producto de una sociedad en la cual el poder político no existe por sí mismo, sino que es una función del poder económico.

Palabras clave

Desigualdad; institución; justicia social; eficacia

Table of contents

> Le premier qui ayant enclos un terrain, s'avisa de dire, ceci est à moi, & trouva des gens assez simples pour le croire, fut le vrai fondateur de la société civile. Que de crimes, de guerres, de meurtres, que de miseres & d'horreurs n'eût point épargnés au genre humain celui qui, arrachant les pieux ou comblant le fossé, eût crié à ses semblables: Gardez-vous d'écouter cet imposteur; vous êtes perdus si vous oubliez que les fruits sont à tous, & que la terre n'est à personne!
>
> (J.J. Rousseau, *Discours sur l'origine & les fondemens de l'inégalité parmi les hommes*, 1755)

1. Introduction

Jean-Jacques Rousseau in the mid-eighteenth century in his *Discourse on the Origin and Basis of Inequality Among Men* recalled that the foundation of inequality lies in the act of arrogance of those who seize that which in nature belongs to everyone. But the gesture of enclosing land is not sufficient to establish a new balance in society: on the other hand, there must be people who are simple and naive enough to believe in the good reasons of those who have taken possession of common things.

Inequality, according to Rousseau, does not exist in nature but is the result of the construction of political and legal systems that have been able to provide, more or less rapidly, a justification for its existence and transformation during the various historical periods.

The Genevan philosopher did not limit himself to affirming the "artificial" origin of inequality but had to deal with the legal culture of his time, which had elaborated "multiple definitions of natural right, almost always 'in perpetual contradiction between them', and in general cleverly constructed 'by way of almost arbitrary convenience', in favour of logic of domination" (Rousseau 1755 cited Ferrone 2012, p. 223). In other words, Rousseau had to make a huge effort of reflection to "preliminarily liquidate the old conception of natural right by reinterpreting its cognitive vocation in the new guise of human science, as well as inventing from scratch the new "political right" of the enlighteners. The title of his brilliant and fortunate libretto explicitly went in this direction: *The Social Contract. Or Principles of Political Right*" (Rousseau 1762 cited Ferrone 2012, p. 250). According to Rousseau "political right" is a new kind of science that aims to investigate the true nature of political power and reveal the logic of domination that hid behind unjust laws. The new "political right" was necessary to establish a universal equality of rights through citizen participation in reaching a decision on the contents of the laws (Ferrone 2012, p. 251, Rousseau 2020, p. 57).

This article intends to provide a very general, critical (Goldthorpe 2000), and normative framework for the social sciences in general, and the sociology of law specifically, regarding a key topic: the relationship between law and justice in a society characterized by economic inequality. Thus, it is the role of the critical theory of law, which analyzes the relationship between law and economics, to investigate the reasons why law has adapted to the dictates of the market (Somma 2018) to the point of becoming a real "code of capital" (Pistor 2019) that has lost sight of the reasons for justice and the role of guaranteeing the public interest.

This article aims to demonstrate, on a theoretical level, how in the current historical contingency the prevalence of the economic sphere in determining political equilibrium and collective decisions has broken the privileged relationship built over the course of

the modern age between politics and law, transforming political law from the main tool employed to combat existing inequality in society, into a complex instrument of justification, reproduction – and often a real multiplier – of inequality.

The gap between equality and inequality is certainly linked to a static observation of society as a whole and of the condition of each individual, but we must not be deceived: when we tackle the issue of inequality, passing from the life of the individual to the functioning of society as a whole, inequality is not given in nature, but produced. The gap between equality and inequality increases or decreases according to the rules established in the field of economic regulation and the effective realization of rights, despite the ability of those in power to hide this evidence behind the rhetoric of natural law in the past, and of human capital, of the self-made man, of solidarity and of private virtues today.

Nowadays we find ourselves in a somewhat similar situation compared to that faced by Rousseau in the eighteenth century but the roles have been reversed: the inequality present in society no longer finds its justification in natural law and its foundation in social and political conflict, but rather in the concentration of material wealth in the hands of a minority of the population induced by the market economy in a way that is, at least apparently, spontaneous and non-conflictual and therefore, considered legitimate. The function carried out by natural right up to the eighteenth century in favour of the holders of power to justify the social and political inequalities of the time is now carried out by the dominant economic theories that consider an unequal distribution of incomes and assets guided by the laws of the market to be physiological and just and apparently endowed with the characteristic of neutrality. Thus, the laws marked by so-called economic rationality have replaced the ideal reasons for equality within the "political right" of eighteenth century.

Nowadays "political right" has become the main instrument of justification for inequality considered as a spontaneous product of market action just as natural right had been until the Enlightenment.

After all, the representation of the economy as a fundamental activity of man, as it is linked to the reasons for material survival and its biological reproduction, found its definitive consecration in the course of the second half of the nineteenth century in Marx. In the preface to his writing entitled: *For the critique of political economy*, the German philosopher was able to affirm that the anatomy of civil society is to be found in the laws of political economy (Marx 1970). Marxism, therefore, would consider economic relations as characterized by a sort of primacy over other social relations since they are intimately rooted in the underlying structure of the social organization constituted by its economic structure, while law would be "reduced" to the role of superstructure.

The growing isolation of economic science from the social context, a phenomenon which Karl Polanyi (2019) had already addressed in the last century and which Thomas Piketty (2014) has revisited today, and the contemporary obstinacy of the political classes not to address the issue of the negative consequences on social relations and on the environment resulting from the application of some dominant economic theories, ends up restoring centrality to the concept of "legal culture". So today, completely rethinking the reasons for the law and, in general, its regulatory dimension and function within

society, has become a pressing matter, particularly in order to rethink the function of what, starting with Rousseau, is defined as "political right".

The normative dimension and its genesis within society must be deeply rethought once and for all, overcoming the logic of legal formalism and revisiting the interaction of the law with areas of social activity other than the economy. In this way it will also be possible to bring the reasons for social justice back to the forefront so they may prevail over those of justice artificially created by the market for the sole purpose of justifying the reasons for inequality. Only in this way will it be possible to build a juridical culture no longer flattened on the reasons of the economy, a culture that can restore to law its constitutional functions. The latter can represent the main instrument for the realization of forms of justice understood as balancing and correcting social inequalities and, in general, the imbalances whose origins lie in some dominant economic theories. This way of understanding the law, in particular public law, has been contested by some neoliberal theories which, starting with Hayek, have criticized not only social constitutionalism but the very idea that the legal system is free to establish the content of the law aiming at the realization of an idea of justice (Hayek 1982).

In a nutshell, the socio-legal approach based on the concept of legal culture could lead to the elaboration of a new "political law" of the third millennium, even if not necessarily of state origin, which would reshape the place the economy occupies in society. In this way, the law will once again be able to amass the reasons for equality alongside those of respect for individual and collective freedom.

2. Market society and inequality

Most economic and sociological literature has widely described contemporary society as a society characterized by high economic inequality, and a high concentration of income and wealth in a small minority of the population.

In particular, Thomas Piketty's monumental research has provided a vast amount of data and a long-term time series from which we can see that "the history of the distribution of wealth has always been deeply political, and it cannot be reduced to purely economic mechanisms" (Piketty 2014, p. 20).

The problem posed by Piketty, from the perspective of economics as a science, deeply rooted in the social context, is to "avoid the endless spiral of inequality while safeguarding the forces of competition and the incentives for the production of new primary accumulations" (Piketty 2019, p. 921).

Piketty openly professes to be a socialist but, even on the liberal tradition side, economist Paul De Grauwe recognises that the most dangerous internal limitation of the market is precisely the accentuation, beyond all limits, of inequality in material wealth. In the long run, this can constitute a real wall against which the market as we know it today is destined sooner or later to break (De Grauwe 2017).

In contemporary economic literature we must also mention, among others, the works of the Nobel Laureates for Economics Joseph Stiglitz (2012, 2015) and Amartya Sen (1995, 1997, 2010) who, with different theoretical perspectives, dealt with the economic consequences of inequality and the problem of poverty and therefore, with ways that might correct them.

But today the problem of poverty is even more complex than it once was because there is a tendency to unload the reasons for inequality on the individual. In fact, we are witnessing a real paradox that Pierre Rosanvallon defined the "Bossuet paradox", according to which the rejection of the *status quo* of society is accompanied by a form of acceptance of the mechanisms that generate it. And this situation causes a sort of contemporary schizophrenia in which

> When we condemn global situations, we look at objective social facts, but we tend to relate particular situations to individual behaviours and choices. The paradox is also related to the fact that moral and social judgments are based on the most visible and extreme situations (such as the gap between rich and poor), into which individuals project themselves *abstractly,* whereas their personal behaviour is *concretely* determined by narrower forms of justification. (Rosanvallon 2013, p. 6)

Oliver Bennet, at the beginning of the third millennium, spoke of "cultural pessimism" when describing the condition of today's individual, who would be characterized by ways of reasoning conditioned by psychic disorders of a depressive and anxious type. The condition of the individual today would be characterized by a real pathological tendency consisting in the tendency to compare oneself to others in unfavourable terms and to internalize a sense of inferiority (Bennet 2001).

These conditions, therefore, lead to the acceptance of inequality created by the only freedom of choice, that is, the freedom practised in the market according to mainstream economic theory, attributing the failure to achieve success and material wealth to one's own inability.

According to Piketty, in order to preserve the social balances in force during different historical eras, different political theories have been constructed to justify inequality. Piketty himself states that he has "tried to show how the sources and methods of the various social science could be used to analyze the history of inequality regimes in their social, economic, political, and intellectual dimensions" (Piketty 2019, p. 1039).

Piketty's perspective is based on the study of social inequalities induced by differences in the distribution of income and patrimonial wealth and their justification. However, there is no doubt that over the course of history, even recently, there has been constant pressure within the public sphere, at times stronger, at times weaker, calling for a remedy to social inequalities. These forces, born in the social and political sphere, have found in law the most suitable instrument to transform the drive towards equality into a concrete reality. What has been seen is that law and economics, on the one hand, relate to the same social facts but, on the other, have developed at a different pace over the course of history and generated contradictions and contrasts that Piketty interprets as inequalities. The law, for its part, can slavishly reflect and reproduce these inequalities in the regulatory sphere or, on the contrary, try to remedy them.

From the perspective of socio-legal studies and, in particular, the approach based on the concept of legal culture, the subject of this work, it is a matter of understanding how dominant economic ideas have influenced legal culture. According to Pietro Barcellona, culture is:

> the form in which the interpenetration between the great value options takes place, on which each era calls each of us and the whole of society to pronounce, and the theoretical path through which these options take the form of a general social theory.

> For this reason, culture cannot identify itself with a specific specialization or competence, nor with a specific political-social practice, nor with the answer to a single specific problem: it is the image of the world, the answer to who we are and who we are the one for the other that each society gives itself, in each epoch. (Barcellona 1994, p. 43; my translation of the Italian edition)

The concept of legal culture in Lawrence Friedman's opinion, is as a category into which a considerable number of different facts can be placed (Friedman 1975).

Among these facts, there is one that is certainly determined by the laws of the market economy, which is the proven increase of inequality in material wealth. Not by chance, Friedman also deals in depth with the allocative function of law, which he describes as a form of rationing in the use of resources that is decided by the political system and implemented through the instrument of law (Friedman 1975).

On the other hand, as Alberto Febbrajo points out, quoting Friedman himself,

> one of the clearest definitions of the concept of legal culture refers to the set of 'ideas, values, expectations, and attitudes oriented towards the idea of law and the practice of legal institutions'. (Febbrajo 2018, p. 71; my translation of the Italian edition)

If we consider law precisely as the product of the interaction between law and society, then we observe what Alberto Febbrajo himself defined as

> the circular crypto-functionalism of every socio-legal construction that sees in the social order the product of the legal order and in the legal order the product of the social order. (Febbrajo 2018, p. 72; my translation of the Italian edition)

In this sense, the development within society of social action that is strongly conditioned by the economic dimension manages to permeate the legal dimension, both at the moment when new institutions specifically dedicated to the control of economic activity are created, such as the birth of independent authorities, and in the transformation of existing systems. They change their function to a purely regulatory one, renouncing the pretension of governing social behaviour without however renouncing a connection, at least theoretical, with the abstract principles that characterise their identity.

In this regard if one considers that the concept of justice continues to represent a kind of internal ideology of legal systems, and if one considers the fair/unfair dichotomy, then the prevalence of the economic dimension in legal culture ultimately leads to a shift from an abstract ideal of "social justice" to a more concrete concept of "market justice".

As Wolfgang Streeck pointed out, "market justice" refers to a quantitative figure of marginal productivity, i.e., the market value of the last added unit of the production factor and keeps any ideal value out. In contrast, "social justice"

> is determined by cultural norms and is based on status rather than contract. It follows collective ideas of fairness, correctness and reciprocity, concedes demands for a minimum livelihood irrespective of economic performance or productivity, and recognizes civil and human rights to such things as health, social security, participation in the life of the community, employment protection and trade union organization. (Streeck 2014, p. 58)

It is as if the overlapping of the fair/unfair dichotomy alternative with the purely economic useful/useless dichotomy, has led to the economy really crushing the law.

So, according to the Italian jurist Aldo Sandulli (2018), law and in particular, administrative law, has been able to provide the most effective infrastructure to spread the economic method within the legal system through the phenomenon of "juridification", which has affected both strictly economic profiles and political profiles. In other words, administrative law provided the legal instruments for the economic method to become stronger in the legal system even at the expense of any idea of social justice.

Two complementary factors must also be considered, which further complicate matters: on the one hand, the crisis of the centrality of the relationship between law and politics and, on the other, the crisis of the centrality of the State as the main or exclusive producer of legal norms. The first phenomenon is determined by an even more accentuated specialization of the functions that lead to the normative self-production of each sphere of social activity. The second is determined by the fragmentation of the legal system into a series of institutions that are outside the orbit of the State and do not recognise in the State either the systemic nature of environment or the political nature of hierarchical superordination.

In this framework, what is being undermined, as Niklas Luhmann had already theorised, is the relationship between decision-makers and the beneficiaries of decisions based on the classic combination of the political system and the legal system founded on and ordered by a constitution.

In other words, if on the one hand the law is no longer able to absorb social change through procedures due to an excessive acceleration of change itself, on the other, the multiformity of change undermines the centrality of the State by creating new institutions both below and above the State dimension.

These phenomena have already been described in sociological literature, for example by Saskia Sassen, who speaks of a reorganisation of institutions in new, more suitable dimensions than those previously observed as national ones. Sassen defines this phenomenon as "re-scaling".

The size of the national state is no longer the optimal one for the organization of economic activity. Moreover, before the rise of the national state there were different types of scalarities, with governance systems that could also be non-homogeneous.

On the legal level, Sassen identifies the phenomenon of the genesis of a new normativity:

> This new institution order has normative authority – a new normativity that is not embedded in what has been and to some extent reminds the master normativity of modern times, *raison d'ètat*. Instead, this normativity comes from the word of private power yet installs itself in the public realm. (Sassen 2007, p. 40)

3. The question of efficiency

As Bruce A. Ackerman pointed out in the mid-1980s, the central problem of the new theory of law was emerging under the name of *Law and Economics*. It seems both a general theory and a movement with the final goal of reshaping legal culture by placing the economic concept of efficiency at the centre of law: "Behold the promised demonstration: the economics of civil procedure suggests that the spirit of the Common

Law is nothing other than the pursuit of Economic Efficiency itself!" (Ackerman 1986, p. 935).

Ackerman reminded us that the efficiency of which that school of thought spoke was economic efficiency. There were two versions to the theory: a "hard" line born at the University of Chicago that held that the perspective of economic science was the only one that could give meaning to law; and a "soft" one born at Yale Law School that held that economics should be inserted into legal discourse alongside traditional theories to give a new impulse to legal studies (Ackerman 1986).

What is certain is that the theory called "Law and Economics" in its "hard" form has become dominant all over the world: as the French jurist Alain Supiot affirmed at the beginning of the third millennium, the Law and Economics movement is on the verge of converting jurists to an idea that Marx had not been able to convince them of: the idea of the need to make Law rest on its "true" foundations, namely the economic ones (Supiot 2007).

From a different point of view, Gunther Teubner points out that the contemporary economic theories converge in one direction intending to replace the concept of justice with that of efficiency:

> the theory of transaction costs, the theory of property rights, public choice and the economic analysis of law are different schools of thought of economic theory, which wish to replace the asphyxiating concept of justice with the idea of efficiency in the legal system. (Teubner 2016; my translation of the Italian edition)

However, for Teubner's mentor, Niklas Luhmann, a precondition for the complete positivisation of law is that the political subsystem surrenders its leading position to the economy: "that is, it subordinates itself to the problems posed in the first instance by the economy" (Luhmann 1990, p. 142). But even if we follow Luhmann's approach, we have to consider that the Welfare State with its administrative organization has not been able to cope with the heavy burden it has shouldered since the Second World War. This is because public administration has been given a series of decision-making possibilities of a political nature. The initial idea was that the burden of political decision-making could be placed on political parties and parliaments, but this kind of approach ended up undermining the party form itself and blocking the effective functioning of public administration.

The successive shift in the meaning of efficiency from a legal-administrative dimension to an exclusively economic dimension changed the very approach to the organisation of public administration. The efficiency of the administration was originally not based on the rules of the market, but on the professionalism of the civil servants, a role to which access was – and still is – based on public selection structured around the special nature of the function to be performed. In other words, public administration efficiency in the classic sense consisted in the promptness of the administrative procedure and the certainty of the response in light of the rules of the procedure itself. The neutrality of the law served to ensure that the outcome of the proceedings was acceptable and just according to a criterion of social justice.

The development of the administrative reform processes of the last forty years has determined the transition from a classical "Weberian" notion, according to which "what

is 'legal' for that very reason must be considered efficient", to the conviction that "only what is efficient can be considered legal" (Ursi 2016, p. 25). In a nutshell, it moved from efficiency as a legal concept to efficiency as an economic concept.

Based on the theoretical identification of administrative efficiency with economic efficiency, and because efficiency is essential for public institutions and for the satisfaction of citizens' needs, over the last forty years entire sectors, previously directly managed by the Public Administration, have undergone liberalisation and privatisation.

The legal meaning of efficiency, which basically consists of moral and professional motivation, has been transformed into an economic meaning, which is completely different. Fundamentally, it is the maximization of results with the minimum effort and therefore, it is the spending review, the economic control of management and so on. Efficiency for economic science corresponds to the efficiency of business organization and is substantially different to that of the public administration. In short, in the end the new concept of efficiency only serves to replace the traditional model of State organization with the organization of industrial and commercial enterprises and, in the long term, to replace the State with enterprises even in the management of political power.

4. The capture of normativity in the "economic society"

At the end of the last century the progressive crisis of the state monopoly in the production of norms, and the transformation of the state from an actor of economic processes to a simple regulator, opened up a new space that was gradually filled by the subjects present in the field, on the assumption that each social actor also intended to use the instrument of law to consolidate or expand their power within society.

From the point of view of the formal sources of legal norms, the state crisis has given rise to a new hierarchy, which today sees the contract alongside or even before the state law as the foundation of the norm. It is the phenomenon widely described in legal literature as a new lex mercatoria, produced mainly by the self-organization of its own operating rules at the hands of the main actors in the various economic sectors (Teubner 2002, Catania 2008).

From the socio-juridical point of view, understood here as the interconnection between law and society, the crisis of the state has opened up an enormous space characterized by the presence of social actors other than the state, individuals, and groups, but also institutional actors who compete dynamically for the field.

It was Pierre Bourdieu (2017) who applied his concept of field also to the legal one, understood as "that space that is created through the definition of a network of relationships, which exists as long as the effects that constituted it continue to persist" (Rinaldi 2017, p. 18; my translation of the Italian edition). In the legal field, the actors who compete for domination confront each other.

If the state in the modern age has conquered and firmly held onto the monopoly of the legal field, its crisis gives space back to the other forces at stake.

On the other hand, the modern concept of neutrality of the legal norm, which finds its very solid theoretical foundation in Kelsen's and Weber's work, has made the legal field

a field of choice for the affirmation of an instrumental rationality that has found its main reference in the economic cost / benefit calculation. Thus, as Pietro Barcellona wrote,

> the peculiarity of modern society and its institutions therefore does not lie in the various functions of law and economics, but in the fact that it assumes economic functionality as a general presupposition of human action, and not as a particular dimension of it. (Barcellona 1994, p. 54; my translation of the Italian edition)

In the absence of a concept of the State as a subject entitled to the elaboration of collective and general interests, Pietro Barcellona's analysis is still relevant, according to which

> 'modernity', due to its peculiar constitution of a 'society of individuals', must then represent the social sphere as a mere functional connection of singular actions 'acted' by the sole motive of satisfying economic needs, and, that is, as a mere 'economic society' or, better, as a mere generalization of economic action. (Barcellona 1994, p. 55; my translation of the Italian edition)

In the "economic society", the space left free by the progressive retreat and transformation of the state is not an empty space but is occupied by the acting subjects, who tend to use normativity as an instrument for the expansion and consolidation of their power.

Thus, the legal field is occupied by rules whose content is imposed by companies as the main economic actors, and which correspond to partisan interests that arise in the private sphere and tend to impose themselves on the rest of society. In other words, a phenomenon not dissimilar to that described by the "capture of the regulator" occurs in law in general. In those fields of economic activity where appropriate independent regulatory authorities are established, such as in telecommunications, or in the banking or stock exchange sectors, as Joseph Stiglitz reminds us, economists often encounter the phenomenon of regulatory capture which is also defined as "normative capture". This capture of the regulator may be the result of the direct interests of those engaged in the regulated sector, who often switch from private economic activity to activity on behalf of the regulator, or it may be the result of the regulator's mindset being captured by the subject of his work. In this case Stiglitz speaks of "cognitive capture", which he describes as a sociological phenomenon (Stiglitz 2012).

It is this aspect of "cognitive capture" that can be applied to the capture of the right that the strongest social actors use to achieve their particular aims. If then, as argued by both Pietro Barcellona and Alberto Febbrajo, in the perspective of the interaction between law and society, a functionalistic explanation tends to prevail that ends up establishing the economy as a driving force, it is not surprising how the normative contents in a market society can be fully identified with those of the dominant economic theory.

In this way, as Colin Crouch pointed out years ago, the government becomes a kind of institutional idiot, since its forever misinformed moves are anticipated and therefore belittled by the shrewd players in the market (Crouch 2004). If the government becomes a kind of idiot, the law of state origin becomes the main tool in the hands of those who are able to exert the strongest pressure to make their own profit.

5. Legal culture between social justice and inequality

Inequality is a classic *topos* of political and juridical theory. However, its meaning has not remained unchanged over time. After a long and rugged journey that began during the French Revolution, crossing worker and peasant movements of all latitudes up to the Universal Declaration of Human Rights in 1948, the promise of equality has finally become an inescapable theme in theory and in government action. Legal culture has developed the tools to reflect on this.

Today, the debate surrounding inequality is inextricably linked to the critique of the social system where inequalities are generated. Indeed, it is since the modern era that equality has spread beyond the right to vote and political representation, becoming a claim in the field of economics. This can be read from different theoretical perspectives. First and foremost is the liberal one that sees John Rawls and his theory of justice as one of its main theorists. For Rawls and his school, economic inequalities can only be justified if they bring benefits even to the poorest, according to the so-called maximin principle of game theory (Rawls 1971).

Most progressive theories have revised the Marxian paradigm of the relationship between structure and superstructure. Certainly, the economic system is not the only one in which inequalities are generated, but it is the one where they are most difficult to tackle. It is no coincidence that, according to Nancy Fraser, what has characterised progressive neo-liberalism is a coherent combination of civil rights claims and support for economic globalisation. However, according to Fraser, capitalist injustice does not only arise from capital exploitation of the working class, but in a broadened view of capitalism it also produces non-economic inequalities that are based on four preconditions without which the current economic system could not exist as such: the exploitation of social reproduction and domestic labour, the plundering of wealth across the globe for racial reasons, the despoilment of the gifts of the earth i.e. natural resources, and the exploitation of a large amount of public goods produced by states (Fraser 2020).

Other authors start from the critique of cognitive capitalism, which is capable of exploiting the general intellect produced by social cooperation, valorising it as commodities, goods, and services. Moreover, cognitive capitalism returns to land, real estate, and financial rent as a form of accumulation that tends to replace that of traditional surplus value made by corporate profit. In this scenario, it is necessary to find instruments to affect the inequalities, taking into consideration that they emerge inside and outside the relationship between capital and labour typical of the Fordist era.

From a post-Marxist perspective Antonio Negri radicalises the attempt to use Universal Basic Income (Van Parijs and Vanderborght 2017) as a tool for liberation "from work" and not only "through work" (Hardt and Negri 2004, Negri 2017, Pisani 2022). This approach has been the subject of much criticism: it is capable of improving the negotiating power of underpaid workers (Fumagalli 2013), but it is not able to structurally affect the relationship between capital and labour, and the general economic, safety and regulatory conditions; it has no answers on how to finance such a huge amount of public spending without affecting essential public services. In short, this approach risks considering the State as a mere money provider, bringing it dangerously close to neo-liberalism. Nevertheless, the theme of universal income captures a central

aspect: in the financialisation of capitalism it is impossible to create equality without redistributing income beyond the classic relationship between capital and labour.

Universal income is then necessary, but not sufficient (Piketty 2021). One strategy could then be to multiply income policies, as happened during the pandemic crisis that made the condition of non-work generalised. One proposal in this sense is the "creativity and care income" (Micciarelli and D'Andrea 2020). This proposal aims to create time windows for unconditional income for certain categories of workers, discredited as such and subject to hierarchical and market subordination (as is often the case for cognitive workers); moreover, the proposal aims to finance not only individuals, but also certain host institutions understood as spaces of collective care of citizenship (urban commons, associations, and cultural institutions), thus encouraging the sharing of the means of production and breaking the individualisation that income policies may otherwise generate.

In any case, the answers that are central to inequality require a new and deeper commitment to legal culture. Nevertheless, as Gunther Teubner argued a few years ago, "the sociology of law has no idea of justice" (Teubner 2008, p. 17). The German sociologist and jurist meant that socio-legal studies deal with concrete cases of injustice in relation to gender, race, poverty, and standards of living, but have not developed a specifically socio-legal theory of justice. On the other hand, Teubner himself complained of the danger of the idea of leading the whole of society towards a single idea of justice, as law has tried to and still tries to do today.

However, since the 1970s, the political system has brought into the legal system the effects of the widening of social inequalities generated within society, reversing a historical path that had seen the system of political decisions generally oriented towards using law as the main instrument for reducing inequality.

The prevalence of neo-liberalism as the dominant theory in political economy brought about a different balance between economics, politics, and law. Hence, what appears to be an imbalance in favour of the economy, was already contained in both liberal and socialist traditions, albeit for two substantially different reasons. For liberalism, this is determined by the compression of the various freedoms on the freedom of economic initiative and business; for socialism, it is determined by the characteristic of considering the economic structure as the fundamental structure of society. Thus, economic activity organised in neo-liberal forms appeared as the environment that most conditioned both individual and collective action. On the other hand, it is true that the main schools of political thought of the last three centuries (the liberal, democratic, and socialist), do not necessarily differ but rather end up integrating with each other. And this happens even more easily if the main problem remains that of material survival, the use of resources, and the distribution of material wealth.

So, it is no coincidence that, from an alternative perspective to neoliberalism, Thomas Piketty seeks to clarify that inequality is not economic or technological but is, first and foremost, ideological, and political and that, therefore, the economy is by no means a spontaneous activity but is also the result of precise political choices (Piketty 2019).

The economic system dominated by the idea of the market succeeds in producing material prosperity but is unable to redistribute wealth, according to an idea of social justice that considers the different aspects of inequality.

Pierre Rosanvallon pointed out the widespread temptation to naturalise inequality and justify it, noting that a society of generalised competition is incapable of being accompanied by a theory of justice, or rather, has made the idea of inequality right, hooking it either to meritocratic rhetoric or to that of evaluation. For the French scholar, it would be better to develop and optimise categories of relationships in which the ability to create community and to return to forms of widespread solidarity could take place (Rosanvallon 2013, p. 243).

What is our role then as social researchers concerning the problem of justice? How do we address the problem of justice in a society characterised by inequality; an inequality which has its origin in the market economy and is constantly reproduced by a legal system that is crushed by economic rules?

What do we need to study to understand how economic inequality and its mechanisms have been naively imported into the legal system?

Specific cases to be studied are, for example, those of the balanced budget, introduced into the Italian Constitution in 2012; the austerity policies that have imposed linear cuts in public spending; and the consequences of interpretation of efficiency only in economic terms as in the case of management of essential public services (Marotta 2015).

All this has done nothing but multiply inequality and de facto depower the decision-making capacity of the law.

What has happened in recent years does not differ much from what Jürgen Habermas described as the "crisis of rationality of mature capitalism". It consists of the impossibility of finding a synthesis between the autonomous private decision on investments and a shared and generalised form of public interest.

This happens, according to Habermas, as a result of the profound transformation of the public sphere generated above all by the "privatism" of citizens «that is political abstinence combined with an orientation towards career, leisure and consumption». In other words, for Habermas, the bourgeois public sphere changed its nature at the end of the last century. On the one hand, citizens began to devote themselves mainly to their individual careers and private happiness while, on the other hand, democratic procedures, with their formal neutrality, no longer managed to generate the necessary force to limit the autonomous choices of the market. Habermas believes that the conditions are created for the loss of the sense of a political synthesis between different interests, which is the deepest meaning of true substantial democracy (Habermas 1979).

From a different theoretical perspective, Claus Offe, analysing the functions of domination of the state apparatus in late-capitalist societies, spoke in the 1970s of the birth of a new concept of politics defined as technocratic. In this type of politics, the aim

> is no longer the realization of just and legitimate forms of life, but the preservation of social relationships that now boast their own functional efficiency as the only basis of justification. (Offe 1977, p. 61; my translation of the Italian edition)

With hindsight, we could say that once privatised, the public arena has been captured by economic forces with a real re-functionalisation inspired by a different logic and values from those elaborated by the political system over the centuries.

New powers within society have invaded the political sphere, thus controlling the production of state law at the source, or directly replacing the state as autonomous sources of the law. In other words, we have witnessed a "capture" of the juridical by economic power in a form not dissimilar to that outlining the capture of the regulator. The latter should remain independent and a third party to carry out their function but ends up being conditioned by the activity of the regulated subjects.

The challenge we are facing, also and above all for legal culture, may be that of a new institutionalisation that mainly concerns the legal dimension and is not limited to a defensive use of the law but can select the form that the legal is taking within society and identify a new emerging juridicality. The main characteristic of this new juridicality could be to take note of the inequalities that exist in society and to make sure that we reserve the possibility to choose from among these inequalities. If the analysis is reduced to inequality in material and financial wealth, juridicality loses one of its reasons for meaning, namely its ability to synthesise.

In short, this new juridicality has the task of drawing out a new possible balance from the analysis of existing social inequalities and asymmetries.

6. Conclusion

In the last three centuries, equality between people has existed in the West, together with the founding dimension of freedom, and law has been the main tool for trying to achieve this. It was precisely the tension between freedom and equality that guided the construction of the rule of law as we understand it today.

The Welfare State of the *Trente Glorieuses* years following the Second World War made objective steps forward in the realization of material equality and in the redistribution of wealth. It did so through legislation that limited economic power and intervened directly in economic activities to ensure well-being and full employment. It is no coincidence that the post-World War II constitutional pacts sought to hold together the freedom of private economic initiative with social utility and respect for human dignity by entrusting law, in the form of state law, with the task of determining "the appropriate programs and controls because public and private economic activity can be directed and coordinated for social purpose" (art. 43 Italian Constitution of 1948).

Two parallel phenomena began in the 1970s: on the one hand, the process of dismantling welfare and the simultaneous expansion of the market economy, while on the other, a process of concentrating wealth into the hands of a few caused precisely by the rules of the market economy. In a recent volume, Marco D'Eramo, referring to a passage from Aristotle's Politics, argued that, starting from those years, there has been a real latent war of the rich against the poor, of the dominant against the dominated. The ultimate reason for this war lies precisely in the excess of inequality: "the dominated rebel because they are not equal enough, the dominants revolt because they are too equal" (D'Eramo 2020, p. 9; my translation of the Italian edition). The war of the rich against the poor was won by the rich, while the poor did not even fight because they did not understand the

danger or the immediate and direct repercussions on their economic and social condition and, ultimately, on their rights.

Today, inequality has reached the extreme dimension that Joseph Stiglitz referred to as the "great divide". The gap between the richest 1 percent and the rest of the population, made up of normal individuals, has become unbridgeable. The recipes with which we emerged from the global financial crisis of 2007–2008, and the crisis determined today by the COVID-19 emergency, do not seem to have changed the basic direction of the market economy; on the contrary, they have even increased the dynamics of the concentration of wealth into the hands of a few.

The inequality present in society takes us back to a condition not unlike that from which the West started at the beginning of the modern age with a society strongly conditioned by the imbalances caused by differences in economic and social conditions. The advent of the bourgeoisie to power with the Great Revolutions, and the invention of the rule of law and then the construction of the modern state, which had to achieve the ideal synthesis between culture and well-being equally distributed among all individuals, brought about undisputed progress with respect to the feudal society based on the concept of status. Subsequently, the direct intervention of the state in the economy in the years of the construction of the welfare state

> with the enhancement of work within capital, the empirical compromise between individuality, freedom and equality, and the direct intervention of public structures in the orientation of economic processes – had represented an important response to inequality. (Schiavone 2019, p. 303; my translation of the Italian edition)

The right arising from the law of the state was, therefore, the main instrument of the attempt to achieve substantial equality and limit the market economy in a world in which all individuals are considered, at least formally, free and equal by the founding constitutional pact that is the basis of the concept of the modern state. At the foundation of these structures of contemporary society there was, however, a sort of separation of law from the economy, which corresponded to a parallel distinction between political freedoms and economic freedom. According to the Italian jurist Francesco Galgano, this distinction occurred with the advent of the Enlightenment and the Industrial Revolution (Galgano 2005). This separation between law and economics then became accentuated precisely starting from the eighteenth century when a distinction also emerged between economic freedom and other more strictly "political" freedoms (Roncaglia 2005).

The economic globalization of the end of the last century, with the prevalence of a neoliberal conception of the economy, and the technological revolution, had the effect of putting together law and economy, economic freedom, and political freedom, resuming the path where the parenthesis of construction of the modern state in the dimension of nation states had interrupted it. The rapid spread among law scholars of theories inspired by the prevalence of economics over law, such as the one called "Law and Economics", has produced the limitless expansion of the space occupied by the economy in society, undermining the same social and cultural aspects of the compromise on which the social pact of the Welfare State was based.

It is therefore necessary to return to a full awareness of the fact that current economic inequality is the result of precise political choices, and not the result of a spontaneous economic structure that underlies society, as orthodox Marxists might think; nor is it the

fruit of freedom of economic initiative or freedom of enterprise, as conservative liberals and a large number of progressive liberals might believe. Only if ideologies, which intend to consider inequality as a social fact that cannot be eliminated, like a physiological fruit of social action, are not supported, will it be possible to restore meaning and function to law and, consequently, to the activity of jurists. This is because the essence of the jurists' activity was to attribute to the law the function of ordering and rebalancing social activities, also and above all outside strictly economic activities. Over the centuries, law has played, more or less consciously, an indirect allocative function through the ordering of the many and predominant social activities other than those directly related to the management of economic resources. And the law has also played, with greater or lesser intensity over the course of history, a specific direct allocative function, through public intervention in economic activities (Friedman 1975).

It is therefore necessary to return to placing the idea of equality at the centre of law so as to be able to solve the problems caused by an excess of concentration of wealth in the hands of a few, and to restore to law the function of allocating resources that it has lost to the exclusive benefit of markets and businesses. This could be possible by recovering the idea of the state as the main institution intended to realize the collective interest. A possible alternative to the state as a single entity with a plurality of purposes and with a claim to universality, as an "institution of institutions", may be the one recently proposed by the Italian philosopher Roberto Esposito who intends to recover the notion of institution "from below":

> The return institutions, in the twentieth century cultural scenario, do not pass through the state but through society. Not through Weber – still within the Hobbesian paradigm of order – but along the line that goes from Emile Durkheim to Marcel Mauss. (Esposito 2021b, p. 41; my translation of the Italian edition)

The institution seen from the side of society and not from the side of the state, from below and not from above, could be the structure that manages to overcome the flattening of the law on the laws of the economy, and hold together opposing and conflicting interests avoiding the manifestation of violence. Thus, a new phenomenon of institutionalization takes shape in society, a new institutional power that mainly concerns the legal dimension. As the philosopher Roberto Esposito clarifies, it is a real "instituting thought" that determines a real return to the institutions of which sociological science becomes the protagonist. Esposito traces the theoretical roots of this "instituting thought" to the theoretical lesson of Claude Lefort and to the institutionalist theory of Santi Romano. In particular, Santi Romano, going beyond Hans Kelsen's normativism and Carl Schmitt's decisionism, conceives the institution as a broader and more general category that is the result of the activity of all organized social forces (Esposito 2021a).

The institution understood as such, considers law as the primacy of the social relationship, just as Renato Treves (1993) taught in Italy, and thus succeeds in going beyond individual law and making the idea of a collective right prevail, which is placed between private law and public law and is continually reproduced by society and its change. Because, as Esposito argues,

> Rights do not inhabit an overlying sphere, only to be lowered into the jurisdictions. They are not out of history – in the nature or in the mind of the legislator – waiting to

> be historicized. They are the points of internal tension of the juridical system that at a certain moment break its formal links, effectively creating a new system. (Esposito 2021a, p. 145; my translation of the Italian edition)

In this delicate epochal transition, the concept of legal culture can once again be of great use in restoring that essential space to the natural plurality of areas of human activity, especially those that are not linked to the management of resources and the reproduction of the workforce, to go beyond the proprietary individualism that has permeated modernity and recover the deepest essence of the human being.

References

Ackerman, B.A., 1986. Law, Economics, and the Problem of Legal Culture. *Duke Law Journal*, 6, December, pp. 929–947.

Barcellona, P., 1994. *Dallo Stato sociale allo Stato immaginario: Critica della "ragione funzionalista"*. Turin: Bollati Boringhieri.

Bennet, O., 2001. *Cultural Pessimism: Narratives of Decline in the Postmodern World*. Edinburgh University Press.

Bourdieu, P. (with C. Rinaldi, ed.), 2017. *La forza del diritto. Elementi per una sociologia del campo giuridico*. Rome: Armando.

Catania, A., 2008. *Metamorfosi del diritto*. Rome/Bari: Laterza.

Crouch, C., 2004. *Post-Democracy*. Cambridge: Polity Press.

De Grauwe, P., 2017. *The Limits of the Market: The Pendulum Between Government and Market*. Oxford Scholarship Online.

D'Eramo, M., 2020. *Dominio. La guerra invisibile dei potenti contro i sudditi*. Milan: Feltrinelli.

Esposito R., 2021a. *Instituting Thought: Three Paradigms of Political Ontology*. Cambridge: Polity Press.

Esposito, R., 2021b. *Istituzione*. Bologna: Il Mulino.

Febbrajo, A., 2018. Cultura giuridica e vita del diritto. *In:* C. Pennisi *et al*., eds., *Amministrazione, cultura giuridica e ricerca empirica*. Santarcangelo di Romagna: Maggioli.

Ferrone, V., 2012. Il problema Rousseau e i diritti dell'uomo. La pratica politica dei diritti tra natura e cultura, individuo e comunità, "stato di pura natura" e società civile. *Studi Francesi. Rivista quadrimestrale fondata da Franco Simone* [online], 167(61-2), pp. 221–256. Available from: https://doi.org/10.4000/studifrancesi.3931 [Accessed 20 May 2022].

Fraser, N., 2020. What Should Socialism Mean in the Twenty-First Century? *Socialist Register,* vol. 56. Beyond Market Dystopia. New Ways of Living.

Friedman, L.M., 1975. *The Legal System: A Social Science Perspective*. New York: Russell Sage Foundation.

Fumagalli, A., 2013. *Lavoro male comune*. Milan: Bruno Mondadori.

Galgano, F., 2005. *La globalizzazione nello specchio del diritto*. Bologna: Il Mulino.

Goldthorpe, J.H., 2000. *On Sociology: Numbers, Narratives, and the Integration of Research and Theory*. Oxford University Press.

Hayek, F.A., 1982. *Law, Legislation and Liberty: A new statement of the liberal principles of justice and political economy*. London: Routledge.

Habermas, J., 1979. *La crisi della razionalità nel capitalismo maturo*. Rome/Bari: Laterza.

Hardt, M., and Negri, A., 2004. *Multitude: War and Democracy in the Age of Empire*. London: Penguin Books.

Luhmann, N., 1990. La positività del diritto come presupposto di una società moderna. *In:* N. Luhmann, *La differenziazione del diritto*. Bologna: Il Mulino.

Marotta, S., 2015. El derecho de la crisis entre justicia social y justicia del mercado. *Soft Power. Revista euro-americana de teoría e historia de la política*, 2/2, pp. 123-139.

Marx, K. (with M. Dobb, ed.), 1970. *A Contribution to the Critique of Political Economy*. Moscow: Progress.

Micciarelli, G., and D'Andrea, M., 2020. Music, Art, the Power and the Capital: a Theoretical Proposal for an Income of Creativity and Care. *In:* M.F. De Tullio, ed., *Commons: Between Dream and Reality* [online]. Creative Industry Košice. Available from: https://culturalfoundation.eu/wp-content/uploads/2021/03/Commons.-From-Dream-to-Reality.pdf [Accessed 20 May 2022].

Negri, T., 2017. Hamon e il reddito di cittadinanza. *EuroNomade* [online], 10 February. Available from: http://www.euronomade.info/?p=8790 [Accessed 20 May 2022].

Offe, C., 1977. *Lo Stato nel capitalismo maturo*. Milan: Etas Libri.

Piketty, T., 2014. *Capital in the twenty-first century.* Cambridge, MA: The Belknap Press of Harvard University Press.

Piketty, T., 2017. *Capitale e disuguaglianza: Cronache dal mondo*. Florence/Milan: Bompiani.

Piketty, T., 2019. *Capital and Ideology*. Cambridge, MA: Harvard University Press.

Piketty, T., 2021. Un reddito di base e un'eredità per tutti. *Internazionale* [online], 5 June. Available from: https://www.internazionale.it/opinione/thomas-piketty/2021/06/05/reddito-base-eredita [Accessed 20 May 2022].

Pisani G., 2022. A justification of basic income beyond a theory of justice. *Oñati Socio-Legal Series* [online]. Available from: https://doi.org/10.35295/osls.iisl/0000-0000-0000-1265 [Accessed 20 May 2022].

Pistor, K., 2019. *The Code of Capital: How the Law Creates Wealth and Inequality*. Princeton University Press.

Polanyi, K. (with M. Cangiani, ed.), 2019. *L'obsoleta mentalità di mercato. Scritti 1922-1957*. Trieste: Asterios.

Rawls, J., 1971. *A Theory of Justice*. Cambridge, MA: Harvard University Press.

Rinaldi, C., 2017. Una sociologia delle imposture legittimate. La costruzione del campo giuridico. *In:* P. Bourdieu (with C. Rinaldi, ed.), *La forza del diritto: Elementi per una sociologia del campo giuridico*. Rome: Armando, pp. 7–57.

Roncaglia, A., 2005. *Il mito della mano invisibile*. Rome/Bari: Laterza.

Rosanvallon, P., 2013. *The society of equals.* Cambridge, MA/London: Harvard University Press.

Rousseau, J.J., 1755. *Discours sur l'origine & les fondemens de l'inégalité parmi les hommes*.

Rousseau, J.J., 1762. *Du contrat social ou principes du droit politique.*

Rousseau, J.J., 2020. *Il contratto sociale.* Introduction: A. Burgio, Commented by A. Marchili, Trans.: J. Bertolazzi. Milan: Feltrinelli.

Sandulli, A., 2018. *Il ruolo del diritto in Europa*. Milan: Franco Angeli.

Sassen, S., 2007. *A Sociology of Globalization*. New York/London: W.W. Norton & Co.

Sen, A., 1995. *Inequality Reexamined*. Cambridge, MA: Russell Sage Foundation/Clarendon Press.

Sen, A., 1997. *On Economic Inequality*. Oxford University Press.

Sen, A., 2010. *The Idea of Justice*. London: Penguin Books.

Schiavone, A., 2019. *Eguaglianza. Una nuova visione sul filo della storia*. Turin: Einaudi.

Somma, A., 2018. Diritto e capitalismo. Leggi dello Stato e leggi del mercato nella costruzione della soggettività neoliberale. *In*: M.G. Bernardini and O. Giolo, eds., *Le teorie critiche del diritto*. Pisa: Pacini.

Stiglitz, J., 2012.*The Price of Inequality: How Today's Divided Society Endangers Our Futures*. New York/London: W.W. Norton & Company.

Stiglitz, J., 2015. *The Great Divide. Unequal Societies and What We Can Do About Them*. New York/London: W.W. Norton & Company.

Streeck, W., 2014. *Buying Time. The Delayed Crisis of Democratic Capitalism*. London/New York: Verso Books.

Supiot, A., 2007. *Homo Juridicus: On the Anthropological Function of the Law*. London/New York: Verso Books.

Teubner, G., 2008. *La giustizia autosovversiva: formula di contingenza o di trascendenza del diritto?* Naples: La Città del Sole.

Teubner, G., 2016. I rapporti precari tra diritto e teoria sociale. *Annali dell'Istituto Italiano per gli Studi Storici*, 28, 2014/2015. Bologna: Il Mulino.

Treves, R. (with A. Carrino, ed.), 1993. *Il diritto come relazione. Saggi di filosofia della cultura*. Naples: Edizioni Scientifiche Italiane.

Teubner, G., 2002. Breaking Frames: Economic Globalisation and the Emergence of Lex Mercatoria. *European Journal of Social Theory* [online], 5(2), 199–217. Available from: https://ssrn.com/abstract=893143 [Accessed 20 May 2022].

Ursi, R., 2016. *Le stagioni dell'efficienza. I paradigmi giuridici della buona amministrazione*. Santarcangelo di Romagna: Maggioli.

Van Parijs, P., and Vanderborght, Y., 2017. *Basic Income: A Radical Proposal for a Free Society and a Sane Economy*. Cambridge, MA: Harvard University Press.