

# Territorial and Geopolitical Discrimination: The Spatial Dimensions of Equality

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**Abstract:** *Territory* and *equality* are the main topics of this paper: the territory enjoys a “manifold epistemic status” that varies according to the vantage point of the science investigating it. The meaning here is that of “state sovereignty”, of a politically governed normative space, as opposed to the physical and geographical space of the Earth. The notion of *equality* is that of the rights of man, as enshrined in the more purely political and social interpretations of the American and French Declarations of 1776 and 1789. It is thus the modern equality before the law, in the historical sense that burst onto the world scene with the first French Constitutions. The essay will have to come to grips with the whole issue of *globalization*, and in particular with its economic and financial dimension, the yardstick by which the topics facing us are inevitably gauged. The weakened ties between the State’s territory and the economy have seriously undermined the State’s redistributive function and as a result, the space of state experience is “increasingly a battleground for inequalities”. From economic and financial globalization and its effects on the other two concepts – *territory* and *equality* – the analysis must begin, now that much of the “conceptual fog”, developed by Erhard Denninger, has cleared.

**Keywords:** Territory, Equality, Globalization, Discrimination

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## 1. Introduction

Before tackling the topic *territory* and *equality* and the title chosen to encapsulate the consequent remarks, a few words about the terms used are due.

First, the term *territory*. As Gino Scaccia has perceptively noted, the territory enjoys a “manifold epistemic status” [1] that varies according to the vantage point of the science investigating it. The meaning to have here is that of “state sovereignty”, i.e., the normative political space, as opposed to the physical and geographical space of the Earth. This is the meaning adopted by the legal doctrine that has taken shape around the conceptual paradigm of the nation-state<sup>1</sup>. The reasons for this choice stem from other factors taken into account together with this notion.

Second, and as a consequence, the *equality* is that of the rights of man, as enshrined in the more purely political and social interpretations of the American and French Declarations of 1776 and 1789. It is thus not equality in the state of nature (the so-called cosmopolitanism), but the modern equality before the law, in the historical sense that burst onto the world scene with the first French Constitutions<sup>2</sup>. And again, the equality is that on the social plane that the Italian Constitution contemplates in Article 3, indent 1, which calls for equal social dignity for all citizens, and in indent 2 of the same Article, which establishes that the Republic has the duty to remove all obstacles of an economic or social nature which constrain citizens’ freedom and equality<sup>3</sup>.

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<sup>1</sup> For a historical and theoretical reconstruction of the rise of the principle of nationality and how the Nation and the State came to be equated with each other, see for example Chabod, F. (1961). *L’idea di nazione* (Roma-Bari), 61; Tosato, E. (1990). *Stato (dir. cost.)*. Enc. del dir., XLIII (Milano), 763-764 in particular, and De Fiores, C. (2005). *Nazione e Costituzione* (Torino).

<sup>2</sup> For an overview of the idea of equality before the law and its philosophical underpinnings, see Oppenheim, F. E. (1968). *L’eguaglianza come concetto descrittivo*. Riv. it. di filosofia, 255ff.; Cerri, A. (1984). *Eguaglianza giuridica ed egualitarismo* (L’Aquila-Roma); Matteucci, N. (1989). *Dell’uguaglianza degli antichi paragonata a quella dei moderni*. Intersezioni; 203ff.; Dworkin, R. (1985). *A Matter of Principle* (Cambridge-Mass.); Bobbio, N. (1995). *Eguaglianza e libertà* (Torino).

<sup>3</sup> In the extensive literature on the topic, Esposito, C. (1954). *Eguaglianza e*

Third, the whole issue of *globalization*<sup>4</sup> must be analyzed together with its economic and financial dimension, the yardstick by which the topics to be addressed here are inevitably gauged. There can be little doubt that globalization has played havoc with the concept of territory (as state sovereignty) and is causing similar disruption to the concept (and practice) of equality in the senses mentioned above, both by increasing the inequalities between States, and above all by heightening the inequalities within States, which, as the literature tells us, are chiefly measured by means of indicators of income differences and the increase in poverty<sup>5</sup>.

## 2. The (Problematic) Intersections of Economic Globalization, National Territory and Equality

### 2.1. Loosening the Bonds Between the Economy and the State

That said, the analysis begins precisely from economic and financial globalization and its effects on the other two concepts, now that much of the “conceptual fog” that Erhard Denninger spoke of in 2003 annual conference has cleared.

This conceptual fog has often led us to confuse different planes of the same phenomenon – the economic and communicative planes, for example – making it seem that inequalities are not a “reality”, but a “perception”, fueled and amplified by communication in the global village.

Undeniably, the global flow of information draws attention to the phenomenon. But is equally true that, as Luciano Gallino, one of the scholars who has followed the issue most

closely, has pointed out, the increase in inequality since 1980 is no longer just an impression, but an acknowledged fact.

From that year onwards, Gallino points out that, the process of globalization has accelerated sharply, but the indicators used by pro-globalization analysts to measure its beneficial effects (economic growth, lower unemployment, higher productivity) have plummeted [2]. Moreover, as Gallino goes on to say, “several of its other effects must be borne in mind: the spiraling income inequality between the richest and the poorest strata of the world’s population (...) as well as the economic, social and cultural deterioration, and sometimes even the physical annihilation, of innumerable local communities, both because of urban sprawl, and because of their near-total dependence on international processes that globalization has locked them into, or transfers forced on them as part of modernization projects” [3].

The trends described by Gallino some twenty years ago seemed at the time to be virtually unstoppable. And so they turned out to be<sup>6</sup>. Today, according to the OECD, income inequality in its member states is higher than it has ever been in the last fifty years, and is still growing<sup>7</sup>. Even in the emerging economies (China, India), where millions of people have climbed out of extreme poverty, the benefits of growth are far from evenly distributed, and levels of inequality have grown apace<sup>8</sup>.

<sup>6</sup> That the problem is still very much on the agenda of governments and institutions worldwide is confirmed by the 2019 Nobel Prize in Economics, awarded jointly to Michael Kremer, Abhijit V. Banerjee and Esther Duflo for their studies on alleviating poverty. For the work of Banerjee, A. V.- Duflo, E. (2011). *Poor economics. A radical rethinking of the way to fight global poverty* (New York).

<sup>7</sup> “Income inequality in OECD countries is at its highest level for the past half century. The average income of the richest 10% of the population is about nine times that of the poorest 10% across the OECD, up from seven times 25 years ago. Only in Turkey, Chile, and Mexico has inequality fallen, but in the latter two countries the incomes of the richest are still more than 25 times those of the poorest. The economic crisis has added urgency to the need to address inequality. Uncertainty and fears of social decline and exclusion have reached the middle classes in many societies. Arresting the trend of rising inequality has become a priority for policy makers in many countries” in [oecd.org/social/inequality.htm](https://oecd.org/social/inequality.htm). On inequalities in the emerging economies, see Balestra, B. et al. (2018). *Inequalities in emerging economies: Informing the policy dialogue on inclusive growth*. OECD Statistics Working Papers, 13, from <https://doi.org/10.1787/6c0db7fb-en>. On the consequences of inequalities, see *In It Together. Why Less Inequality Benefits All*, from <http://dx.doi.org/10.1787/9789264235120-en>. On the relationship between inequality and population ageing, see *Preventing Ageing Unequally*, OECD, from <https://doi.org/10.1787/9789264279087-en>. On the relationship between inequalities and increased ill health, see *Health and Inclusive Growth*. [oecd.org/health/inequalities-in-health.htm](https://oecd.org/health/inequalities-in-health.htm). On the relationship between population growth, ageing and income inequality in Europe, see Dolls, M.-Doorley, K.-Paulus, A.-Schneider, H.-Sommer, E. (2019). *Demographic Change and European Income Distribution*. The Journal of Economic Inequality, from <https://doi.org/10.1007/s10888-019-09411-z>. The Melissa & Bill Gates Foundation’s 2019 Goalkeepers Report (published every year ahead of the United Nations General Assembly as a report card on the world’s progress towards the Sustainable Development Goals) notes that while almost all countries have made significant improvements in two key issues—reducing child mortality and increasing years of schooling—enormous inequalities persist, with almost half a billion people living in communities that still have no access to basic primary health care and education services.

<sup>8</sup> On the increase in poverty in the developing countries (with the exception of East Asia), see in particular Stiglitz, J. E. (2002). *Globalization and its Discontents* (New York), especially Chapter I (The promise of global institutions).

giustizia nell’art. 3 Cost. La Costituzione italiana (Padova); Paladin, L. (1965). Il principio costituzionale di eguaglianza (Milano), 317ff.; Rossano, C. (1966). Il principio d’eguaglianza nell’ordinamento costituzionale (Milano); Caravita, B. (1984). Oltre l’eguaglianza formale. Un’analisi dell’art. 3, comma 2 della Costituzione (Padova); Cerri, A. (1984). Eguaglianza giuridica ed egualitarismo (L’Aquila-Roma); Fioravanti, M. (1999). Il principio di eguaglianza nella storia del costituzionalismo moderno, in *Principio di eguaglianza e principio di legalità nella pluralità degli ordinamenti giuridici*. Atti del XIII Convegno Annuale AIC (Padova); Moscarini, A. (2001). Principio costituzionale di eguaglianza e diritti fondamentali, in Nania, R.-Ridola, P. (Ed.). *I diritti costituzionali* (Torino), 365ff.; Brancasi, A. (2002). Uguaglianza e disuguaglianza nell’assetto finanziario di una Repubblica federale. *Dir. pubbl.*, 909ff.; D’Aloia, A. (2002). Eguaglianza sostanziale e diritto diseguale. Contributo allo studio delle azioni positive nella prospettiva costituzionale (Padova); Pinelli, C. (2012). Dei diritti sociali e dell’eguaglianza sostanziale. Vicende, discorsi, apprendimenti, in Pinelli, C. (Ed.). *Nel lungo andare. Una Costituzione alla prova dell’esperienza* (Napoli), 396ff. In the more recent literature, the question of poverty is linked to inequality by Camerlengo, Q. (2019). *Il senso della Costituzione per la povertà*. Osservatorio costituzionale AIC, 1-2. For the connection between inequality and social immobility, see Groppi, T. (2019). *Diseguaglianze e immobilità sociale*. Quel che la Costituzione italiana ha da dire. *Astrid-Rassegna*, 15.

<sup>4</sup> For a review of the many complex aspects of globalization, see Zolo, D. (2007). *Globalisation: An Overview* (Colchester-UK). For the Italian-language literature, see the articles collected in Bilancia, P. (Ed.). *Costituzione economica, integrazione sovranazionale, effetti della globalizzazione*, from a Special issue of *Federalismi.it*, n. 5; Antonini, L. (2019). *Globalizzazione e nuove sfide per il costituzionalismo*, *Diritto pubblico*, n. 2, 319ff.

<sup>5</sup> On the “income method” of analyzing inequalities, see for example, Sen, A. (1981). *Poverty and Famines* (Oxford).

In other words, though the rise in the world's overall wealth has narrowed the gap between poor States and rich States (and it is possible to say today that the situation has improved on the whole, and millions of people have emerged from poverty), there has also been an unexpected downside: the increase in inequality within States<sup>9</sup>.

Although it is sometimes maintained that inequality is not important as long as the overall incidence of impoverishment is low [4], there is now a fairly general consensus that inequality brings innumerable distortions, slowing economic growth [5] and creating the conditions for political instability [6]: an unequal society, it is said, is not truly one, but two different societies [7].

While numbers and their combinations can be used and interpreted in a variety of ways<sup>10</sup>, one of the OECD's findings is something everyone can agree on, viz., that economic globalization and growing inequality go hand in hand<sup>11</sup>.

It should come as no surprise, then, that even those who believe that globalization is the only hope for the world's future and the wellbeing of the developing countries are willing to concede that the most pressing economic question associated with globalization is that of inequality<sup>12</sup>. The Indian author Parag Khanna, for example, admits with a healthy dose of intellectual honesty that "[g]lobalization and connectivity have improved the quality of life for billions of people even if they have also made high inequality inevitable"<sup>13</sup>.

This has enormous consequences across a range of sectors. From the standpoint of constitutional law of interest to us here, globalization has escalated the crisis of the Nation-State as a redistributive State. In other words, it made the difficulties of the major public institutions established after the Second World War all the more evident<sup>14</sup>. It is not the same as saying

that state sovereignty has suffered (as is often maintained rather superficially), given that there are still many state prerogatives over the territory, penal law being perhaps the most obvious example. Rather, it underscores a phenomenon that is undoubtedly significant: the weakening ties between the State's territory and the economy. The state is no longer the "place" *par excellence* of economic production, as it was in other periods of its lengthy and eventful history; no longer can it capture each and every economic phenomenon that unfolds within its borders.

And this is the true point where the issues of *territory* and *equality* intersect. The weakened ties between the State's territory and the economy have seriously undermined the State's redistributive function<sup>15</sup> and as a result, the space of state experience is "increasingly a battleground for inequalities, contrasts and questions of global justice" [8]. The market's predominance over the state, in Alessandra Di Martino's felicitous phrase, "is at the root of the growing difficulty encountered in achieving the normative plan for the constitutional capture of economic power" [9].

None of this is new. There is a parallel in other, remote, periods of the history of mankind which can conjure a powerful image of the redistributive State's slow unravelling: while the State loosened its grip on the *state territory*, growing numbers of individuals (single or collective) began to roam over the *global territory*, much like the "hunter-gatherers" that Jared Diamond tells us populated the globe before the "farmers" arrived on the scene.

The hunter-gatherers wandered in small bands and tribes searching for sustenance, taking whatever was useful and leaving behind what they did not need, without worrying about organizing themselves in any stable, lasting way. With their nomadic lives, the women of these tribes and bands could not afford to look after their children, and were often forced to abandon them.

With the arrival of the "farmers", Diamond notes, and the sedentary living that called for stable organizations, that it is possible to see the passage from bands to tribes and then to chiefdoms, and finally, around 3700 BC, to the rise of the first States in Mesopotamia [10].

The hunter-gatherers and the farmers had very different relationships with the territory: the former needed to conquer it; the latter to organize in stable, hospitable institutions.

Today, the hunter-gatherers' place has been taken by (among others) "speculative hot money" [11] which flows into and out of developing countries through short-term financial transactions. The abrupt outflow of this capital from these countries left behind collapsed currencies and sizable debt.

If the situation is this, or in other words if the States' loss of

<sup>9</sup> In this connection, a recent article by Alesina, A.-Giavazzi, F. (2019). Correggere la società ingiusta. Corriere della Sera, 27/10/2019, confirms the OECD data and discusses several other studies, concluding that the problem has now become "political".

<sup>10</sup> For an excellent summary of the stances that have been taken up regarding the question—which does not concern us here—of "whether" it is in fact important to deal with inequalities or, conversely, they are irrelevant, and thus of whether there is a good case for redistribution on a world scale, see Milanovic, B. (2005). *Worlds Apart: Measuring International and Global Inequality* (Princeton), 157ff.

<sup>11</sup> "The OECD analyses trends in inequality and poverty for advanced and emerging economies. It examines the drivers of growing inequalities, such as globalization, skill-biased technological change and changes in countries' policy approaches. And it assesses the effectiveness and efficiency of a wide range of policies, including education, labour market and social policies, in tackling poverty and promoting more inclusive growth" in [oecd.org/social/inequality.htm](http://oecd.org/social/inequality.htm). On the far from rosy outlook for human rights in a globalizing world, see inter alia, D'Amico, M. Rights, pending publication by Berkeley Press.

<sup>12</sup> In addition to having neglected to protect natural assets, as Bazoli, G. (2006) adds in *Mercato e disuguaglianze* (Brescia), 19.

<sup>13</sup> Khanna, P. (2016). *Connectography: Mapping the Future of Global Civilization* (New York), 384. On the two phenomena's dependence, see also, Gray, J. (1998). *False Dawn: The Delusions of Global Capitalism* (London) which argues that "To imagine that the social market economies of the past can renew themselves intact under the forces of downwards harmonisation is the most dangerous of the many illusions associated with the global market" (92); Ferrarese, M. R. (2019). *Percorsi della sovranità. Aggirandosi tra varie definizioni e sfaccettature*, *Nomos*, n. 2, 21-22.

<sup>14</sup> In this connection, essential highlights of the extensive literature include Giddens, A. (1990). *The Consequences of Modernity* (Stanford); Beck, U. (2003).

La società cosmopolita. Prospettive dell'epoca postnazionale (Bologna); Deaglio, M. (2004). *Postglobal* (Roma-Bari); Stiglitz, J. E. (2002). *Globalization and its Discontents* (New York); Ferrarese, M. R. (2000). *Le istituzioni della globalizzazione* (Bologna); Strange, S. (1996). *The Retreat of the State* (Cambridge).

<sup>15</sup> On the national states' role as the "midwives" of globalization rather than its "victims", see Antonini, L. (2019). *Globalizzazione e nuove sfide per il costituzionalismo*. *Diritto pubblico*, n. 2, 321.

sovereignty over their territories stimulates (or encourages or in any case does not prevent) the entry of the global hunter-gatherers (who are neither good nor bad, but simply do not aim at having a stable home organization in a territory), then Saskia Sassen is right when she suggests that the epochal transformation called globalization must engage “the most complex institutional architecture we have ever produced: the national state” [12] given that globalization is “taking place” inside the national states, and it is here that its effects rebound, here that “the most complex meanings of the global are being constituted” [12].

This is why the term *territory* is used in the sense of *state sovereignty*, of a politically governed normative space.

Depending on circumstances, in fact, the earth as the “mother of law” [13] can be the good mother that yields its fruits for nourishment, but it can just as easily become the earth that demands that its “solid ground [be] delimited by fences, boundaries, walls, houses and other constructs” [13] or even, in a visionary but problematic interpretation, the “space” of total human freedom touted by the digital Revolution.

For the purposes here, it could be possible to reformulate Sassen’s approach by asking the following questions: can “territories” be governed by an Authority in order to achieve equality, or does everyone have to resign once and for all to the reality of territories dominated only by the supply chains imposed by the digital revolution, where market forces—according to the advocates of globalization, at any rate—will ultimately produce wellbeing?

The issue is important, because the loss of state sovereignty over the economy presents us with two vastly different alternatives: the ideology of the globalization of rights (especially in jurisdictional terms), and the reemergence of nationalistic ideologies that call for the distribution of resources and the enjoyment of rights to be confined within the country’s borders.

In other words, this presentation’s underlying thesis is that the Nation-States’ waning economic power is not more than just a fact: it is also a problem. It once again unearths—and leaves, for the moment, unresolved—the hoary problem of *justice* that Keynes had tackled with his postwar anticyclical policies that assume that supply and demand for labor meet and interact, and the resulting redistribution policies take shape, in the national economic “space”. They assume, as Diamond might say, the “sedentary living” of the farmers rather than the hunter-gatherers’ rootless ravennings. Globalization has called all of this into question.

## 2.2. Economic Globalization as “Destiny”

It seems hard to deny that globalization has passed something of a point of no return on humanity’s path, inasmuch as the premises of globalization lie in the technological and IT revolution whose effects on the geography of borders are irreversible. Literally a new *Nomos* of the Earth, as Sergio Ortino pointed out some time ago, or rather, a *Nomos* with no Earth: “the cybernetic space like the space of the seas and the space of the nomad that can neither be occupied nor divided” [14] and while “in the *Nomos* that

arose with the first circumnavigation of the globe the European states were the protagonists of the new occupations and divisions, the *Nomos* that is taking shape on the threshold of the third millennium has single individuals as its protagonists” [14].

The expansion of connectivity, as Parag Khanna adds from the same perspective, “creates a world beyond” [15] and this is all for the better, as competition over connectivity is less violent than the great struggles that have bloodied the world and provides “an escape hatch from historical cycles of great power conflict” [15].

Economic globalization, moreover, is positive because it does not simply create markets. It is also the “process by which the social relations between human beings have tended to extend ‘globally’, to cover the territorial and demographic space of the entire planet” [16]. From this standpoint, it is undeniable that it has “enriched the world scientifically and culturally and benefited many economically” [17]. Likewise, this prevailing aspect of the phenomenon that is the global economy—as the precursor of increased productivity and overall wealth—is universally acknowledged to be both beneficial and irreversible. As Danilo Zolo notes, “No one can deny that the global consumption of commodities and services has risen considerably over the last fifty years” [18].

That said, it is equally undeniable that the central issue of the debate concerns what effect the globalization of companies and financial markets has “in terms of the generation of wealth and general well-being, and in relation to the problem of the redistribution of income” [18]. Undeniable, too, is Amartya Sen’s concise summation: “What is needed is a fairer distribution of the fruits of globalization” [19].

And it is here, on this ground where state or transnational sovereignty and equality intersect, that the advocates of globalization take up diametrically opposed stances, although both camps share the idea that the Nation-States, with their territorial limitations, have seen the last of their glory days.

## 3. The (Liberal) Advocates of Globalization: the “End” of the National States and the Global Market

From the “liberal” free market perspective (in a simplification that is entirely mine), the global economy can only be maintained if *ungoverned globalism* is maintained: from this perspective, all traces of protectionism in any shape or form must be eliminated [20]; the national states must be relieved of the pressures that force them to become dispensers of social support that ratchets ever upwards [21]. Likewise, the international organizations must subordinate their existence to the service of the market economy (as indeed they already do, at least in the case of the IMF) [21].

Thanks to connectivity, Khanna argues, it is possible to reimagine how life is organized, beyond States: “There is one—and only one—law that has been with us since we were hunter-gatherers, outlasted all rival theories, transcended empires and nations, and serves as the best guide to the future:

supply and demand” [22]. With connectivity, capitalism becomes “perfect” because supply of everything meets demand for anything: this is the “supply chain world” scenario, where chains of producers, distributors and vendors turn raw materials into goods and services delivered anywhere on earth. These global supply chains bring tremendous benefits to mankind in economic terms, even if they leave problems in their wake that are yet to be solved (inequality, environmental destruction, inequality, etc.).

But the solution to inequality is globalization itself.

If, in fact, most of the world’s population consumes rather than produces basic essentials such as food, water, healthcare or education that weak governments are unable to provide, then the only solution is even more globalization: “While their incomes [i.e., those of the wealthiest 1 percent and the other 99 percent] have diverged, capturing the benefits of wealth requires creating incentives for the 1 percent to invest its capital in more job-creating enterprises” [23]. The drawbacks of globalization, Khanna argues, must be put into the equation, and for the most part are unavoidable. In any case: “Too little trade is a much bigger problem than unfair trade (...) too little wealth creation is a much bigger problem than high inequality” [24].

What is of more interest here is that this perspective denies that globalization produces unbalances and inequalities. On the contrary, it holds that disequilibrium is largely to be blamed on the poor countries’ resistance to opening unconditionally to the global market<sup>16</sup>. The positive example held up in this connection is that of the so-called Asian tigers, who by embracing the market economy have entirely vanquished poverty, and are now models of economic and technological development.

#### 4. The (Non-liberal) Advocates of Economic Globalization and the Call for Worldwide Economic Governance

The “non-liberal” globalists, by contrast, are not resigned to the inevitability of distortions (inequality foremost among them) and are intent on finding virtuous institutional mechanisms.

According to Branko Milanovic, global equality is a true horizon. There is no room for equality that falls short of being global: both because the world is interconnected (and consequently everyone is aware of and affected even by distant inequalities, as if they were their own), and because migrations are inevitable and redistribution is thus everyone’s destiny.

As regards the awareness of inequality, Milanovic notes, history repeats itself: “when the industrial revolution was set

in motion, and nationalities were created out of hitherto stateless peasants, the issues of national inequality and poverty became much more present in peoples’ minds” [25], triggering, as known, those widespread phenomena that led to the birth of labor unions and political parties, as well as the first stirrings of the social State. In other words, inequalities cannot continue to rise without exploding at a certain point. Consequently, migrations will not stop, and indeed, the pressure to migrate will increase, making these inequalities ever more apparent. For this reason, “the governments of the rich countries, despite their fortress mentality, are fighting a losing battle because the economic incentives on the side of the out-migrants and those who can employ them in the rich countries are working against them” [25].

From a similar perspective, Stiglitz holds that “globalization itself is neither good nor bad” [26], as its outcomes show: excellent in the countries of East Asia, closer to an unmitigated disaster in African countries (Ethiopia, Kenya, Uganda, etc.). The experience of the United States during the nineteenth century can provide some guidance along the route to the governance of globalization. When transportation and communication costs fell, and new national companies started to do business throughout the country, the federal government did not leave the markets to develop on their own: it began to regulate the financial system, set minimum wages, and provided unemployment and welfare systems.

Governance of globalization would be possible, according to Stiglitz [27], changing the voting arrangements in the major transnational institutions, i.e., the IMF and the World Bank, giving more voice to the developing countries. This would lead these institutions to take a more comprehensive approach to development and providing aid (without conditionality), and, lastly, focus attention on debt forgiveness. Short of these fundamental changes, it would at least be necessary to demand greater transparency from these institutions: full and open debate could ensure that the data available to them as well as the interests that guide their decisions and consequently influence their work are subject to public scrutiny.

And what can the nations do in all this? They can choose: “it is the role of the political process—not international bureaucrats—to sort out the choices” [28], even though, as Stiglitz adds, the price they may have to pay is that their growth will be adversely affected. In short, embracing globalization means risking disenfranchisement; shunning it is also a risk, because it means fewer resources for redistribution.

Amartya Sen is less pessimistic about States’ ability to influence their own destiny: “Political and civil rights give people the opportunity to draw attention forcefully to general needs, and to demand appropriate public action” [29].

Demanding appropriate political action, then, is a fundamental part of the fight against inequalities and suggests that redistribution hinges on democracy, even if Sen maintains that it is not possible to rule out *a priori* that pressure can also be put on governments in authoritarian States.

What must be ruled out, on the other hand, is the idea that

<sup>16</sup> Harris, N. (1987). *The End of the Third World: Newly Industrializing Countries and the Decline of an Ideology* (London). A radical attack on this interpretation has been mounted by Hirst, P.-Thompson, G. (2000). *Globalization in Question. The International Economy and the Possibilities of Governance* (Cambridge-UK), especially 18ff, who maintain that the integration touted by the globalists is less than that which was achieved between 1890 and 1914, and in addition is limited to three blocs: North America, Western Europe and East Asia.

poor people do not care about democracy and rights and are willing to forgo them in order to escape economic poverty [30]. For Sen, in fact, “there is no basic conflict between promoting economic growth and supporting democracies and social rights” [31]. Essentially, social justice hinges on how well democracies work in effective practice, and this is a challenge that must be faced both by well-established democracies and by newer democracies [32].

How can this be reconciled with economic globalization?

Sen believes that this is to some extent a false problem, as globalization has always accompanied, albeit in different forms, the history of mankind: with the global spread of science, technology and mathematics around 1000 A.D., for example, knowledge that was well-established in China but practically unknown elsewhere was disseminated across the world, including Europe [33].

It would be useful to have an historical view of the link between inequality and globalization and this is clearly a point well taken, since scholars of such different stamp as Rosanvallon and Milanovic, for instance, date its modern genesis to the Industrial Revolution. According to these scholars, when equality burst onto the European scene, it seemed to have permanently altered the course of history, but the capitalist Revolution turned back the clock, grafting differences and inequality back onto the young revolutionized society [34].

If, then, the route towards economic globalization has already been laid down, resisting it would mean being condemned to persistent separatism and relentless autarky (as in the metaphor of the well-frog and the global world) [35]; above all, however, it would mean depriving the world’s poor of “the great advantages of contemporary technology, the well-established efficiency of international trade and exchange, and the social as well as economic merits of living in open rather than closed societies” [35].

Accordingly, the principal challenge relates to “inequality—international as well as intranational” [36]—and it is appropriate at the same time to think about “the practical need for extending the institutional provisions in the world and also of expanding enabling social institution within each country” [37]. To an ever-increasing extent, transnational institutions must become “non-market institutions” [38], extending access to education, microcredit and reforms as well as to the market economy. But what is essential is that “Decisions have to emerge at the social and political level about the uses to which the newly generated resources can be put” [39], in order to identify possible models for development. South Korea, for example, did much better than Brazil in channeling the resources generated by the market. By investing in education and health care, it achieved participatory economic growth and raised its people’s quality of life.

For Sen, then, global agreements do not trump local policy choices, which can still be made at the local political level.

Like Sen, Ulrich Beck also believes that globalization and social policies must find a way to live together, or rather, that local policies must find a way to “tame” economic

globalization: “Wouldn’t it also be time to introduce the so-called Tobin tax, proposed in 1978 by the Nobel prize winner, or in other words a minimal levy on financial transactions, corresponding to 0.5% of international currency transactions? In this way (...) national governments would also be able to cover the costs of the projects of the social state, which have now become unsustainable” [40]. Support for a worldwide solidarity tax has also been expressed by A. Baldassarre [41], who argues that such a tax ought to be managed by a World Agency for Global Development set up by the UN in order to issue non-repayable grants for development projects submitted by the poorest countries.

Two points should be made in concluding this brief summary of pro-globalization opinion.

The first is that economic globalization has not yielded the hoped-for results, or at least those that had been hoped for by its advocates, who are now wondering how its imbalances can be corrected. As regards the issues of interest to us here, it has not produced a globalization of rights, has not made the world more equal, and in fact has helped inequality to spread.

The second point is that the need to find ways of offsetting the potentially distorting effects of the ideal of equality as it is understood today—as a consequence of the erosion of state sovereignty—is as pressing as ever. In some respects, the focus has shifted for the better: while at the beginning of the twenty-first century there were those who believed that the national States might be able to “resist” advancing globalization, today the chief concern is how to correct the distortions it brings.

## 5. Responses to Economic Globalization: the Globalization of Rights and the Global *demos*

This concern with correcting distortions has been voiced by those who, albeit with different approaches and susceptibilities, champion the idea of a “global” *demos*<sup>17</sup>, as expressed in the supranational and international charters and declarations that have been adopted in the aftermath of the Second World War, from the United Nations Charter in 1945 and the Universal Declaration of Human Rights in 1948, to the European Convention on Human Rights in 1950 and, most recently, the Nice Charter in 2000<sup>18</sup>.

Francesco Rimoli notes, quite rightly, that the notion of the

<sup>17</sup> Essentially, this perspective tends to blur the distinction between citizens and foreigners as regards the enjoyment of rights (social rights in particular), abandoning the politico-communitarian aspect of citizenship in favor of the notion of “citizen of the world”. On cosmopolitanism and its various nuances, see Veca, S. (1990). *Cittadinanza* (Milano); Dahrendorf, R. (1988). *The Modern Social Conflict: The Politics of Liberty* (London); Ferrajoli, L. (1994). *Dai diritti del cittadino ai diritti della persona*, in Zolo D. (Ed.), *La cittadinanza. Appartenenza, identità, diritti* (Roma-Bari); for the *demos/ethnos* dichotomy, see e.g., Rusconi, G. E. (1994). *Ripensare la nazione. Tra suggestioni etnodemocratiche e costruzione europea*, in Luciani, M. (Ed.), *La democrazia di fine secolo* (Roma-Bari), 79ff.

<sup>18</sup> In particular, for the model of the United Nations Charter, see Salazar, C. (2001). “Tutto scorre”: riflessioni su cittadinanza, identità e diritti alla luce dell’insegnamento di Eraclito. *Politica del diritto*, 374.

global *demos* associated with advancing globalization is far from new: “at bottom, a universalism in the sense of creating a planetary community, subject to the same rules, runs through all of civilization (...): empires, the Catholic Church and similar institutions are only a few of the many examples that history gives us” [42].

And again, even if only for a brief moment in the history of revolution, the cosmopolitan idea of the Age of Enlightenment is a conceptual category that brooks no mention of “countries” and “citizens”, or even worse, “patriots” (“the public institute does not and cannot exist, for there is neither country nor patriot. The very words should be struck out of our language” expresses the disdain for these notions voiced in *Émile*), and makes Rousseau say in the Social Contract: “The first man who, having enclosed a piece of ground, bethought himself of saying *This is mine*, and found people simple enough to believe him, was the real founder of civil society. From how many crimes, wars and murders, from how many horrors and misfortunes might not anyone have saved mankind, by pulling up the stakes, or filling up the ditch, and crying to his fellows, ‘Beware of listening to this impostor; you are undone if you once forget that the fruits of the earth belong to us all, and the earth itself to nobody’”.

Seen in this light, citizen are citizens inasmuch as they are socially involved in a process of transformation. People, country and territory yield ground to an abstract and ideal vision of citizenship, decoupled from the physical territory (of origin and/or residence). Though they continue to connote citizenship, they are residual aspects that are far from central to the concept.

As known, these revolutionary conceptualizations were short-lived: the idea of citizenship as a “horizontal” means of political integration was promptly abandoned for the “unifying ideology centering on the principle of nationality” [43].

In more recent theorizations, the ideal of the global *demos* revolves around the universalization of the contemporary form of the open and cooperative constitutional State [44], as a response to the issues of peaceful worldwide coexistence as well as to the changes in international law that call not only for non-belligerence, but also for a shared belief in the values that will serve to construct that ideal that Friedmann was the first to sum up with the expression “from coexistence to co-operation” [45].

The return to Kantian cosmopolitanism takes place in many forms and through different theorizations<sup>19</sup>, but its ultimate goal is always to build reformed world institutions to safeguard peace and human rights.

Objections have been raised against various aspects of these theories, at least two of which should be mentioned here.

Some reservations concern whether or not universal human rights—considered by some to be a “myth” [46]—are even conceivable, while others point to the conceptual weakness of linking human rights so closely with the Western tradition,

accused of leaving little room for expansion and inclusion, and even being a possible source of fresh conflicts<sup>20</sup>.

Other counterarguments center on the negative repercussions of the idea of the sovereignty of the individual (who with globalization would at long last become citizen of the world) on the guarantee of rights. And it is possible to hardly find fault with Francesco Rimoli’s contention that the renewed cosmopolitanism creates an abstract universalist space, where the problem of rights—as Bobbio has noted—is not their *justification*, but that of *protecting* them [47]. As Bobbio emphasized, it is more a *political* problem than a *philosophical* one. Political in that, as the best-known analyses state, “the effective exercise of individual rights hinges on a distribution of economic resources, which should be available in proportion to the scope of the guaranteed rights” [47].

For that matter, even equality in the enjoyment of more specifically social rights is a “political” choice that requires a subject (which throughout modern history has been the national state).

By contrast, the cosmopolitanism of rights assumes a philosophical horizon but shuns the realm of political solutions.

The cosmopolitan described by Ulrich Beck is a telling example of this abstractness: “He is at home in all countries of the world. Wherever he goes he speaks English, in which he is fluent. Everywhere a hotel bed is waiting for him. He chooses the well-known hotel chains where he can be sure of uniform standards regardless of the location. In China he eats Indian food, in India French (...)” [48]. It must be admitted, though, that Beck’s polemical target is the fierce-faced nationalism of the States that strive to oppose the “invasion” of the global world and defend their own ethnic identity. And by the same token, Beck is well aware of the inequalities that can sprout in open societies, without sovereignty.

Nor, trying to follow the path that Alessandra Di Martino seems to favor, it is necessary to mention Amartya Sen’s theory of human capabilities and “freedom” as the driver of development [49], where the communities are not national but worldwide.

In reality, Sen does not take free humanity as his starting point, but the humanity that must be freed to develop its capabilities in planning the future. His concern is how to “free” those populations that globalization leaves behind (and not only them) from economic and social fragility. Once again, this raises the crucial question: in the global space (without territory and without state sovereignty), is this possible?

Accordingly, it is also unthinkable that the answer to inequalities can come from the Courts’ jurisdictional efforts to affirm human rights<sup>21</sup>. Here, the issue is not so much one of

<sup>19</sup> See the excellent analysis by Di Martino, A. (2010). *Il territorio: dallo Stato-nazione alla globalizzazione. Sfide e prospettive dello Stato costituzionale aperto* (Milano), 376ff.

<sup>20</sup> For this point and the extensive debate it has aroused, see the comprehensive analysis by Rimoli, F. (2005). *Universalizzazione dei diritti history givesbalismo giuridico: qualche considerazione critica*, in *Studi in onore di Gianni Ferrara* (Torino), vol. III, 342ff.

<sup>21</sup> As regards the doctrine, the approval of Protocol No. 12 supplementing ECHR 17 marked a decisive shift towards the cosmopolitanism of rights, as the Protocol introduced a general prohibition of discrimination, which thus becomes a parameter of legitimacy of all national and European legislation. For some critical reservations in this connection, see Salazar, C. (2011). *A Lisbon Story: la Carta dei diritti fondamentali dell’Unione europea da un tormentato passato ... a un incerto*

these Courts' "democratic" legitimacy, or even of the truly formidable contribution made by jurisprudential interpretation, but the fact that the phenomenon to be tackled and the goals to be reached are entirely disproportionate to the means at disposal. Consequently, "the international human rights regime may eventually become an acceptable and effective alternative to specific cases of judicial enforcement of citizens' rights", though it is important to be aware that "in most of the world, human rights are enforced through national law or not at all" [50]. In other words, the results achieved through jurisprudential efforts in individual cases must be stabilized through political action if they are not to come to naught.

In conclusion, the outlook for the global *demos* as an "institutional" response to economic globalization is complicated to say the least.

One particularly problematic aspect is that the notion of extending rights universally is rooted in the Western tradition. It thus has no parallel in large parts of the world, most notably in China, a power whose participation in a global *demos* would be indispensable, and which views the Western nature of these human rights as an insurmountable cultural obstacle.

Another far from insignificant problem is that the universalization of social rights (which is essential if substantive equality is to be achieved) has already failed internationally. The failure is there for all to see, and has to do with the unintended consequences—or rather, the heterogony of ends, in Wundtian terms—that have resulted from the approaches taken by a number of international institutions which set out to solve economic and social problems but gradually embraced free-market ideology. In this connection and in the light, for example, of the lamentable outcomes of the IMF's handling of aid to developing countries, it is only possible to agree with Stiglitz's remark that if Keynes could see what has become of the International Monetary Fund today, he "would be rolling over in his grave" [51]. Founded to correct market dysfunctions, the IMF is now the most fervent champion of market supremacy, cutting off aid to developing countries the minute they refuse to knuckle under to pure market laws.

In furthering the principles promulgated in the Treaty of Lisbon (the social market economy; respect for human dignity; equality; indivisibility of fundamental rights; solidarity)<sup>22</sup>, the role of the European Courts (and, for its part, of the Court of Justice) is one of those that could be called "buccaneering" jurisprudence that often leaves the underlying "political" question unresolved: as jurisprudence moves more decidedly towards the Europeanization of social rights, "will the national welfare models be able to cope with the rising number of demands put on them?" [52].

In conclusion, what has been called the "globalization of this aspect of the egalitarian spirit" [53] undoubtedly leads the international organizations to seek to combat the worst

"affronts to the human condition", but this is not the same as fighting to reduce inequalities. Indeed, "just a little over 1 percent of global output goes into sustaining 'human solidarity,' whereas democratic welfare states devote up to 50 percent of their output to either direct redistribution of wealth or provision of public services" [53].

## 6. The "Law of Peoples" for Transnational Justice

A very different response to the need to construct a model of justice (domestic and international) for a global world has been framed by John Rawls.

For Rawls, transnational justice and a just society are possible thanks to the "law of peoples" (meaning "the particular political principles for regulating the mutual political relations between peoples") [54].

Essentially, Rawls believes that it would be possible to apply the ideal of justice based on the idea of the social contract (and developed in his celebrated 1971 book, *A Theory of Justice*) at the international level by constructing a set of shared principles that go beyond the limited purpose of preventing "unjust" wars that had informed his earlier thinking. The law of peoples is motivated by two main ideas: the first is that the great evils of human history (wars, oppression, persecutions and poverty) follow from "political" injustice; the second and closely connected idea is that by following just (or at least decent) social policies and establishing just (or at least decent) basic institutions, these great evils will eventually disappear" [55]. But what are the foundations for extending the social contract to the global scale? There are two necessary conditions for such a conception to be realistic:

It must guarantee stability for the right reasons (which means "stability brought about by citizens acting correctly according to the appropriate principles of their sense of justice, which they have acquired by growing up under and participating in just institutions" [56]);

It must be workable and applicable to ongoing political arrangements.

Precisely for this reason, Rawls starts by theorizing the extension of the principles of the social contract among liberal democratic peoples, and then among those he calls "decent" peoples: not liberal, but that at least guarantee individual liberties. Rawls uses the term "peoples" rather than States to distinguish his thinking from that about "political states as traditionally conceived, with their powers of sovereignty included in the (positive) international law" [57], in order to highlight the people's "moral character" which is not moved solely by practical necessities or the so-called reasons of state.

Liberal peoples (unlike liberal States, which can put reasons of state above liberal ideals), in fact, are moved entirely by their conception of right and justice, and have a single aspiration: building a viable society of peoples.

Aside from denying an overlap between States and peoples and assigning preeminence to the latter in building a just

presente?, from [gruppodipisa.it](http://gruppodipisa.it).

<sup>22</sup> In this connection, see the detailed analysis in Biondi Dal Monte, F. (2012). *Lo stato sociale di fronte alle migrazioni. Diritti sociali, appartenenza e dignità della persona*, from [gruppodipisa.it](http://gruppodipisa.it) and Guazzarotti, A. (2012). *Giurisprudenza Cedu e giurisprudenza costituzionale sui diritti sociali a confronto*, from [gruppodipisa.it](http://gruppodipisa.it).



society, Rawls sees the peoples who take the leading role in this constriction as being in any case “liberal”, and consequently “their equality doesn’t mean, however, that inequalities of certain kinds are not agreed to in various cooperative institutions among peoples, such as the United Nations, ideally conceived. This recognition of inequalities, rather, parallels citizens’ accepting functional, social and economic inequalities in their liberal society” [58].

Very briefly stated, then (given that for the purposes pursued here it is opportune to boil Rawls’s insightful and highly analytical theory down to its bare essentials), the principle that guides the internal law of peoples and the international law of peoples is that that of *freedom* rather than *equality*.

In this sense, the law of peoples is a federative law (made up of agreements, including those for providing aid to the needy) but not a general principle that unfolds into a global system informed by the same values. The basis of justice is still contractual and negotiable.

Essentially, equality is not a theoretical value, even within the territorial confines of the law of peoples; rather, it means “a certain fair equality of opportunity, especially in education and training”, because otherwise “all parts of society cannot take part in the debates of public reason or contribute to social and economic policies” [59]. Too much inequality, in fact, undercuts the possibility of democratic peace.

And it is exactly here that the basic problem with this approach lies: the balance between freedom and equality, substantive democracy’s mainstay, shifts towards freedom alone, leaving equality to face globalization unaided.

## 7. “Global” Cities as Proving Grounds for Renewed Citizenship

An almost diametrically opposed viewpoint is taken by Saskia Sassen, who sees “cities” as the best institutional answer to the erosion that globalization has produced in the nation state and the concept of citizenship as the lynchpin of people’s rights. After the long historical phase that saw the ascendance of the national state, and now that “the national as container of social process and power is cracked” [60], the new forms of political geography will take root at the subnational level. But why cities and, above all, what is meant by city?

Sassen’s answer to the first question is certainly convincing if one thinks of what is going on today in the cities, even only within the limited horizon of a country. Even here, in fact, cities are becoming places where the reality of globalization takes tangible shape through increased immigration and poverty, but also through experiments staged by the actors of globalization. Cities, then, not as far tinier places of refuge, but as sites for the “contradictions of globalization”, and thus as prime locations for attempting to tackle the enormous problems that globalization brings. Consequently, the significance of the city is as “a setting for engendering new types of citizenship practices and new types of incompletely formalized political subjects” [61].

It should be pointed out that the city Sassen has in mind is

not the medieval city of Weber: “today’s citizenship practices have to do with the production of ‘presence’ of those without power and a politics that claims rights to the city” [61], quite different from the medieval city where the very word “rights” was nothing if not controversial. What the two settings have in common is that the *city* is where the political work of constituting the elements of *citizenship* takes place.

The answer to the second question hinges on a further factor that inevitably complicates Sassen’s reasoning, adding elements that are harder to decode institutionally. The cities Sassen deals with, in fact, are global in that they attract both the key sectors of global capital and an increasing proportion of the disadvantaged population, which undoubtedly makes them sites where all the forms of disadvantage are present to each other (thus generating operational openings). At the same time, however, it makes them either sites that cannot be territorially delimited in terms of political geography (as opposed to the functional geography championed by Parag Khanna), or places that are limited in number and thus unable to construct a general model.

Sassen herself, in any case, draws attention to how problematic the question is when she admits that the concepts thus fielded are ultimately too general, and it is by no means certain that they can be absorbed into distinct institutional forms. What is true, however, is that many of the dynamics of globalization “become legible in cities” [62], since “[t]hrough the thickness of daily life and local (...) politics, cities can accommodate and enable the unbundling of the tight articulation of the citizen and formal state politics” [62].

## 8. The Loosened Bonds Between the Economy and the National States

### 8.1. *The National States’ Weakened Sovereignty as a Given and as a Problem*

Incomplete and problematic, the answers outlined suggest that less enthusiasm is in order concerning the spontaneous virtues of economic globalization. Above all, however, they should lead us to ask whether the national states’ weakened sovereignty—chiefly as regards the redistribution problem—is not just a *given*, but is also a *problem*. Whether, in other words, the advocates of economic globalization should rethink “the most complex institutional architecture we have ever produced: the national state” [63], rather than theorizing its demise. Sassen’s insight has not gone unheeded, even if it might admittedly be something of a provocation to ask the theoreticians of globalization to rethink institutions that mirror those that globalization itself seeks to leave behind.

And in fact, even those who had expected the end of national states to bring only benefits<sup>23</sup> are finally beginning to realize how big this problem really is, and are now proclaiming that “globalization has reached levels of intensity

<sup>23</sup> One example being Beck, U. (2006). Critique of the national outlook and methodological nationalism, in ID., *The Cosmopolitan Vision* (Cambridge-UK), 24ff.

that (...) have hamstrung States in many options that they should be able to exercise more freely, in economic policies as elsewhere. Course corrections are thus needed in a line of global development which, though undoubtedly successful in many ways, as also shown itself to be seriously flawed, especially in terms of marked inequalities, financialization that has broken loose from the real economy, scanty investment and dwindling employment, and insufficient pay for many low- and medium-skilled jobs<sup>24</sup>.

The overarching problem, however, is that one should agree on the corrections. Because if their object is to identify other routes that hinge entirely on the benefits of globalization<sup>25</sup>, or if they assume that the solution lies in equally globalized institutions (world authorities, cooperation between States, and so forth)<sup>26</sup>, the sensation is that this is not the right approach to the question, at least from the standpoint of constitutional law and public institutional law.

In this connection, the line taken by Amartya Sen and Joseph Stiglitz, who argue that a balance should be found between the *worldwide dimension* of the actors involved (and of the most significant problems and issues, including that of inequality) and the *local territorial context* (which in the guise of the redistributive state was until recently people's primary reliance) can undoubtedly help bring the issue into focus. The question remains: how?

It can be stated that any attempt to identify routes must be grounded in a fuller understanding of what portions of national states' experience must be retained as an essential link with future development. "The 'new' in history", as Saskia Sassen reminds us, "is rarely simply *ex nihilo*. It is deeply imbricate with the past, notably though path dependence" [64].

Consequently, it is appropriate to understand which of the features of national states one cannot do without while facing the challenges that lie ahead. Chief among these challenges is that of inequalities, and intra-State inequalities in particular, as they can potentially undermine any form of peaceful coexistence, either within States or among them.

Following this path, it is essential to first bear in mind that the modern conception of sovereignty—as Massimo Luciani points out in *L'antisovrano e la crisi delle costituzioni* [65]—is intimately tied up with two preconditions (the notion that power is transferred from the people and the idea of the nation) which are entirely lacking in the way globalization unfolds through world Authorities imposed from above and uproots people from their physical locations and territories.

As regards the first aspect (the notion of power from the people), there is little point in questioning its relevance, especially in view of the many public demonstrations (from

the various counter-movements, to rallies for the environment or protests against unemployment) that cast a bright light on how dramatically topical it is<sup>27</sup>. There is no lack of ideas: from solutions that seek to put the weaker states on a more equal footing with the major powers that, heedless of their concerns, control the policies of the IMF and the World Bank<sup>28</sup>; to those that call for participatory techniques and a return to bottom-up consensus building [66]. It should also be emphasized that, regardless of the chosen route, this is an aspect of globalization that cannot be tackled except from a global perspective (or one that is *also* global): internal inequalities and global inequalities are now so interdependent that the problem must be addressed contextually on both levels. In this sense, the corrections that must be made in how international institutions (first and foremost, the IMF and the World Bank) interpret their role can contribute to solving global problems, but are also important as regards the effects that these institutions' behavior can produce within each country's borders. Some way of humanizing economic globalization, acknowledging a greater responsibility "of the rich world for the plight of the poor" [67] is essential, even though—as has often been noted—the arguments for this stance are for the most part purely moral.

The second precondition (that of belonging to the national state) brings us to issues that are incendiary to say the least, given that globalization may well have been the fuse that set off the wave of sovereignisms and nationalisms that have swept the world scene. In any case, it is clear that globalization's complete inability to provide people with "institutional" roots (as well as its utter indifference—rightly regarded as "morally objectionable"—for fragility<sup>29</sup>) makes it hard to believe that globalization can offer any kind of model for development in this area.

This, moreover, is an aspect that, unlike the first (the democratization of decision-forming processes) is difficult to address on a global scale because the two dimensions involved are now so far apart: the economy has become global, while the places where people live and work have remained local and "particular". Beck's picture of the cosmopolitan represents perhaps not even 1% of the world's population. The remaining 99% is obliged to stay put, probably for a lack of wherewithal, and, as witnessed by the near-daily drumbeat of tragic events (migrants drowned at sea, for example), if they leave home at all, it is not to travel the world but to flee a grim fate.

The individual, as Scaccia reminds us, "whose collective vision of the greater good and whose accountability in the endeavour of coexistence were grounded in a solid, earthly attachment to the *civitas*, can end up being deprived of the social protection, of that network of public and intersubjective solidarity that used to steady the precarious path of existence. Ultimately, the individual would end up being the subject of

<sup>24</sup> Ferrarese, M. R. (2019). Percorsi della sovranità. Aggirandosi tra varie definizioni e sfaccettature. *Nomos*, (2): 21-22. For the same scholar's views on the positive aspects of the end of state sovereignty, see Ferrarese, M. R. (2000). *Le istituzioni della globalizzazione* (Bologna).

<sup>25</sup> See section 2.2. above.

<sup>26</sup> See, for example, Marcelli, F. (2013). Razzismo istituzionale v. cittadinanza universale, in Marcelli, F. (Ed.), *Immigrazione, asilo e cittadinanza universale* (Napoli), who argues that it is important to go beyond the concept of citizenship, as it is not inclusive, and move towards some form of transnational state grounded in universal citizenship.

<sup>27</sup> On the connection between the wave of global protests and excessive global inequality, see e.g., Bortolotti, B. (2013). *Crescere insieme. Per un'economia giusta* (Roma-Bari), 3ff.

<sup>28</sup> See section 3 above.

<sup>29</sup> This is one of the foundational themes advanced by Singer, P. (2002). *One World: The Ethics of Globalisation* (New Haven).

an unprecedented level of freedoms and opportunities, and yet entirely free of bonds, alone in the empty space left by the delocalization of the law and the deconstruction of the State and of the sovereignty that used to be the founding principle of political unity” [68].

That this grounding, this attachment, was until the recent past solidly in the national state is undisputed. Even in times that were not so very far, when Guizot interpreted the protectionist spirit in France in the early 1840s, he framed it as a response to the social question: “protectionism claimed to offer an alternative to the growing inequality that accompanied the growth of the new industrial proletariat. It sought to construct a ‘national labor force,’ supposedly unified in its opposition to the centrifugal forces of the market” [69]. This was not just a question of cleaving to the Marxist ideology of labor (in the celebrated Discourse on Free Trade of 1948, Marx decried both the freedom of capital and protectionist conservatism), but also of the need to solve a problem of social justice within the State.

In this way, as Rosanvallon notes, “democratic equality began to understand itself in terms of membership in a distinctive protective community” [70]. Thus were forged the ideas of “egalitarian citizenship” and “national unity” that in 1892 enabled Barrès to be the first to use the term “nationalism” to denote a “type of *domestic politics*” [71].

In this regard, it is worth recalling the slide into xenophobic identity politics that this set off (“France for the French”, and “France invaded by foreigners”, as the headlines in *L’Idée nationale* screamed). But it was no more than a slide, a “former ideal [that] was somehow *perversely reconstituted*”<sup>30</sup>.

Moving past nationalism, then, did not mean moving past the State, but was part of the historical, political and intellectual journey towards the redistributive State. A journey that covered much of the same ground in most of the Western world, fueled by a different idea of equality and solidarity. A different assemblage, as Sassen would say, between Territory, Authority and Rights.

## 8.2. Threading the Straits Between Economic Globalization and Nationalism

If this is the premise to start from, the future ahead is hard to imagine without the prospect of *membership in territorially defined and sovereign communities*. This is because the solution to questions regarding income redistribution is on the one hand inextricably tied up with inclusion in a community, and on the other with the existence of a redistribution Authority.

This is true at the international level: the scholars looking for “global” solutions to ward off the perverse effects of globalization turn, consciously or unconsciously but rightly, to the idea of an international *community*, grounded in moral values, governed by *authorities* and aiming to correct the worst economic imbalances. These, in fact, were the motives

that led Keynes to invent the International Monetary Fund.

Similarly but more intensely, this is also true at the national level, given the loosening bond between the sphere of economic production and state control of the territory mentioned time and time again.

One of the best recent takes on the many problematic aspects of these questions is offered by Francis Fukuyama’s latest book, *Identity*, which asks how it is possible to thread the straits between globalization and nationalism and take a course that is not based only on the economists’ assumption that human beings are rational individuals who seek to maximize their material wellbeing, or in other words their utility. If it is important to properly interpret people’s behavior in the contemporary world, Fukuyama emphasizes, “we have to expand our understanding of human motivation beyond this simple economic model that dominates much of our discourse” [72].

To do so, it is necessary to admit that “Identity politics is rooted in a world in which the poor and marginalized are invisible to their peers, as Adam Smith remarked. Resentment over lost status starts with real economic distress, and one way of muting the resentment is to mitigate concerns over jobs, incomes and security” [73]. Accordingly, Fukuyama goes on to say, the next time you give money to a homeless person without making eye contact with him or her, you should consider that “you are relieving the material want, but failing to acknowledge the shared humanity between the beggar and you” [74]. The invisible also wants to be recognized, they want to feel they *belong to a community*.

Fukuyama also reminds us that even though it is “easier to talk about respect and dignity than to come up with potentially costly plans that would concretely reduce inequality” [75], state policies to promote equality are still possible and necessary. The Affordable Care Act—Obamacare—in fact, was a “milestone in U.S. social policy” [75]. Though its opponents tried to frame it as an identity issue crafted to appeal to black voters, it was in fact “a national policy designed to help less well-off Americans, regardless of their race or identity” [75]. And it was a policy that, in addition to solving a formidable problem, produced a firm sense of being part of the same community.

This is the crux: how individuals can recover a territorial dimension they can “*get their arms around*”,<sup>31</sup> a dimension they can trust with their talents or their fragilities. If there is not the courage to look this reality in the eye, economic globalism and nationalism—or sovereignism—will be trading taunts and blows in the world arena far into the future.

## 9. “Elective” Citizenship as an Institutional Structure

But what “institutional” structure can inherit the legacy of the national state without falling into the toils of the beast of nationalism?<sup>32</sup>

<sup>30</sup> Rosanvallon, P. (2013). *The Society of Equals* (Cambridge-Mass.), at 144. For nationalism’s transformation into ideology between 1880 and 1914 see, inter alia, Hobsbawm, E. J. (1987). *The Age of Empire. 1875-1914* (London and New York), 92ff.

<sup>31</sup> The happy phrase was coined by Drucker, P.F. (1993). *Post-Capitalist Society* (Oxford), 141.

<sup>32</sup> For a “positive” view of nationalism, see the thought-provoking book by Hazony,

A look at how the notion of citizenship developed in the twentieth century can probably give us some insights here.

The first is that Hanna Arendt's well-known statement about "the right to have rights" is not limited to the situation that Arendt describes in *The Origins of Totalitarianism* (the millions of human beings deprived of citizenship), but should also have "normative" scope: "any conception of citizenship that cannot be traced to a specific legal position in a particular and concrete political community is as senseless as it is dangerous, as it is tantamount to the absence (or the loss) of human rights as a whole" [76].

In this scenario, Marshall's view of citizenship as developing from the expansion of rights from the civil, to the political, and then to the social sphere [77] is undoubtedly a landmark in the history of the concept, though it is not possible to forget that this representation was and still is primarily sociological, because it posed (and poses) the problem of "what makes a citizen a real citizen"<sup>33</sup>.

Though individuals' full and equal enjoyment of rights in the civil, political and social spheres is equivalent to the formal recognition of rights and is the necessary condition for citizenship, it will be essential to ask: *who is recognized and who is the recognizer?*

Any theory of citizenship must first define the institutional organization of which the individual must be a citizen or member, and the criterion whereby inclusion/exclusion is determined from the normative standpoint.

Second, and as a result, the "normativity" of the concept of citizenship is all the more important when it is taken to mean a generator of "rights". As known, in fact, the concept can also be given other meanings (citizenship as legal status; as a form of political activity; as an expression of collective identity<sup>34</sup>), in which its normativity can be considered less decisive.

When someone talks about rights, on the other hand, normativity takes on a distinctive meaning: rights are either guaranteed or they are not. They are either "real" or they are not. This is especially true of social rights which, more than any others, depend concretely on certain preconditions.

This cannot be called overmuch into question by the

emerging international regime of human rights, whose stance, though different from the one just described, does not necessarily clash with it. Likewise standing on a different plane of reasoning is the idea of dual citizenship as a means of going past nationality, towards a postnational citizenship<sup>35</sup>. However many adherents it may have gained, though, this cannot be regarded as an institutional model, as the rationale behind it is often only economic and in many instances transient.

It is unlikely, then, that this can be the route to the idea of a *supranational normative citizenship* in the sense discussed above, even if much time has passed since the State could be considered the sole origin of positive rights, and that a supranational regime is now in force that contemplates a set of rules and procedures that incorporates legal norms and standards grounded in the moral content that all people must be recognized as having, simply because they are human beings.

As has been rightly remarked, in fact, "the main problem with the notion of transnational citizenship is that it risks overestimating the extent to which the international regime of human rights can actually protect individuals. The rights guaranteed by the regime are not self-executing: they are made available to individual only via their respective States, who after introducing them into their legal systems must also narrow the credibility gap between the promises these measures hold out, and the weakness or selectivity with which they are applied" [78].

It is precisely for this reason, as Enrico Grosso tells us, that the normative meaning of the notion of citizenship features "two fundamental elements: there is a vertical dimension that links the individual to the State through a relationship of subjection (...) and a horizontal dimension that makes the individual a member of a political community" [79]. Essentially, Grosso emphasizes, "subjection" and "participation" are the two elements that are universally acknowledged to constitute citizenship.

The emphasis is fundamental, because it clarifies the different levels of discourse that are and must remain distinct: transnational, cosmopolitan citizenships grounded in jurisdictional (and other...) roots cannot replace the hard core of the normative notion of citizenship which continues to be based on these two elements, as it has always been, both historically and rationally<sup>36</sup>.

Y. (2018). *The Virtue of Nationalism* (New York). The Israeli political philosopher contends that nationalism has its evolutionary origin in tribes held together by historical and religious bonds, shared customs and a common language who renounce their independence in order to live in peace and defend themselves from outside threats. The members of the nation feel that they are similar and are willing to resolve their conflicts through mediation, whereas empires, having no bonds of mutual loyalty, cannot tolerate internal disobedience if they are to remain united. Consequently, Hazony maintains, the nation is the best compromise between the need to keep peace and the ability to maintain identities and differences.

<sup>33</sup> Thus Rescigno, G.U. (1997). *Cittadinanza: riflessioni sulla parola e sulla cosa*. Riv. dir. cost., retraces the path laid out by Marshall which, he emphasizes, is a sort of "snapshot of how the condition of citizens developed from the world of the French Revolution and thereafter" (38).

<sup>34</sup> In recent decades there have been many attempts to define the basis of citizenship: legal status, possession of rights, political activity, or forms of identity. Essential contributions include W. Kymlicka, W.-Norman, W. (1994). *Return of the Citizen. A Survey of Recent Work on Citizenship Theory*. Ethics, 352ff.; Carens, J. (1996). *Culture, Citizenship and Community. A Contextual Exploration of Justice as Evenhandedness* (New York); Bosniak, L. (2000). *Universal Citizenship and the Problem of Alienage*. Northwestern University Law Review, 94 (3), 963ff.

<sup>35</sup> On dual citizenship as a way of going beyond the national state, see Soysal, Y. N. (1994). *Limits of Citizenship: Migrants and Postnational Membership in Europe* (Chicago).

<sup>36</sup> Accordingly, Paladin, L. (1965). *Il principio costituzionale d'eguaglianza* (Milano) notes that "a theory of the equality of citizens and foreigners which has long been propounded by a number of States and espoused by various international documents" holds that "all States, independently of their treatment of their own citizens, must provide an absolute guarantee of a constant minimum standard for all foreigners, or in other words that they at least be guaranteed—as called for by the UN Charter in several point—the enjoyment of human rights and fundamental freedoms". In connection with Article 10, indent 1 of the Italian Constitution, Paladin then points out that "from this standpoint as well, the provision in question gives concrete shape to the principle of equality, not—evidently—in a bootless attempt at leveling, but simply to prohibit arbitrary discrimination against any

Historically because, as Grosso notes, the horizontal dimension of citizenship that has been increasingly important from the French revolution onwards rests on its “political” nature. The Revolutionary notion of “citizen” departs from the notion of man who holds and enjoys “human rights”, because the effectiveness of the rights that stem from citizenship is linked to the citizen as a political subject<sup>37</sup>.

Citizen status is another matter, as here the elective notion (based on belonging to a “political” community) prevails over the ethnic notion (based on the *ethos* of the nation). The *ius soli* principle prevails over *ius sanguinis*, but *ius soli* necessarily relates to the concept of territory as state sovereignty announced at the outset.

As Rimoli rightly emphasizes, this is “maximally” true for human rights: the distinctive criterion of citizenship “ends by working as a selection factor for the *possible* as opposed to the actual implementation of guarantees that rights will be acknowledged”<sup>38</sup>.

## 10. Conclusions

And it is precisely here, on the “electivity” of citizenship, as opposed to both its global dimension (Beck’s citizen of the world or the multiple citizenship suggested by Khanna) and its ethnic dimension (the nineteenth century national citizen, now back in vogue), that it is important to bet if one does not want to remain forever caught between the rock of globalization and the hard place of nationalism.

The global space, where supply of everything meets demand for anything, produces or tends to produce total uprootedness and growing inequality. The answer cannot consist in recovering a lost sovereignty, because the problem lies deeper, as Fukuyama tells us, in the perennial Hegelian struggle for the universal “recognition” of the dignity of every human being, the cornerstone of the principle of equality.

A return to the national state cannot be the solution because it is too prone to fall—as it has indeed done—into the temptation of resuscitating the idea of a polity based on ethnic factors, given the enormous “hunger” for equality expressed by the swarms of invisibles adrift in the world, which has

pushed many States to haul up the drawbridge in a desperate attempt to save ... what?

This, then, is why Ulrich Beck’s suggestion that “Europe is the European answer to globalization” [80] because “the European Union is probably the most cosmopolitan structure there is” [80] should make us think.

Many arguments have been voiced in favor of such a course<sup>39</sup>, and many others have pointed to its conceptual and practical difficulties<sup>40</sup>.

For some time, however, Beniamino Caravita has been emphasizing that there is a great deal of Europe in Europe, much more than is generally thought [81]. Without seeking to downplay the obstacles standing in the way of the federalizing process [82], then, the union can build on solid ground.

All of the doubts and objections—and even the concrete difficulties—should pale before the “need” for the European construction as an “institutional” answer to globalization and nationalisms. It is a need, because the rationale behind choices often springs from the fear that the future will be just like the past. It was the fear of another Revolution fueled by the unsustainable inequality produced by nineteenth century capitalism’s untrammelled growth that convinced governments to enact redistributive reforms. The “reformism of fear”, as Rosanvallon [83] dubbed it, spread throughout Europe in response to the explosive growth of socialist parties and the increasing weight of the labor unions. In less than three decades, redistributive reforms were rolled out almost everywhere to forestall the specter of “social chaos”: tax reform, social protection and regulation of labor.

Here, prospects should rest first of all on *citizenship of the Union*, which, as Antonio Tizzano has pointed out, is the institution that more than any other is capable of “expressing the political meaning and ultimate aims of the European integration process”<sup>41</sup>.

physical person subject to our law” (208-210). It is thus always the national legislator who “grafts” international egalitarian provisions onto the national legal system.

<sup>37</sup> Belvisi, F. (1997). Cittadinanza in Barbera, A. (Ed.) *Le basi filosofiche del costituzionalismo* (Bari) notes that “the French revolutionaries have a nationalistic rather than purely individualist view of society and the State. Citizens are free and equal members of the nation in which the ‘principle of any sovereignty’ resides essentially (Article 3 of the Declaration of the Rights of Man and of the Citizen of 1789)”.

<sup>38</sup> Rimoli, F. (2005). Universalizzazione dei diritti fondamentali e globalismo giuridico: qualche considerazione critica, in *Studi in onore di Gianni Ferrara* (Torino), vol. III, 358. In the same sense and in connection with guarantees for social rights in the European Union, Salmoni, F. (2005). *Diritti sociali e Unione europea. Dall’ordinamento comunitario allo stato sociale europeo*, in *Studi in onore di Gianni Ferrara* (Torino), vol. III, 531ff argues that this prospect hinges on the passage from the Union of States to a European federal social state founded on a European Constitution “capable of taming the dominant economic claims by anchoring them in a broader political design that can also meet the growing demand for social protection” (573).

<sup>39</sup> Those in favor include Cassese, S. (2016). *Territori e potere. Un nuovo ruolo per gli Stati* (Bologna), 113, who lists the many features that the different States have in common: “a genetic code of shared cultural values and attitudes (rationalism, individualism, industrial market capitalism, the national state and nationalism, Christianity and representative institutions)”.

<sup>40</sup> For example, the shortcomings of a European demos detailed by Luciani, M. (1996). *L’antisovrano e la crisi delle Costituzioni*. Riv. dir. cost.; Azzariti, G. (2011). *La cittadinanza. Appartenenza, partecipazione, diritti delle persone*. Dir. pubbl., n. 2, 429, the lack of “originality” of the European legal system (Tomaselli, A. (2012). *Corte di Giustizia, primato del diritto e direttive dell’Unione Europea* (Roma), or the irreplaceability of States in safeguarding citizens’ rights Cassese, A. (2006). *Diritto internazionale* (Bologna), 16.

<sup>41</sup> In *Introduzione*, Moccia, L. (2010). *Diritti fondamentali e Cittadinanza dell’Unione europea* (Milano), 16. A similar viewpoint is expressed by Mangiameli, S. (2012). *Processi migratori, principi europei e identità dell’Europa*, in Ronchetti, L. (Ed.), *I diritti di cittadinanza dei migranti. Il ruolo delle Regioni* (Milano), 6, who maintains that European citizenship after the Treaty of Lisbon “is a significant element of unification, to some extent hampered by the nationalistic, less than generous and blinkered culture of the Member States”. In the vast literature on European citizenship, essential reading includes Adam, R. (1992). *Prime riflessioni sulla cittadinanza dell’Unione*. Riv. dir. int., 622ff; Meehan, E. (1993). *Citizenship and the European Community* (London); Cartabia, M. (1995). *Cittadinanza europea*. Enc. giur., vol. VI last ed. (Roma); Nascimbene, N. (1996). *Nationality Laws in the European Union* (Milano); Grosso, E. (1997). *Le vie della cittadinanza. Eterogeneità dei principi, pluralità delle forme* (Padova); Haberle, P. (1997). *La cittadinanza come tema di una dottrina europea della Costituzione*. Riv. dir. cost.;

If, indeed, citizenship is that inextricable mixture (a leavened dough, as Enrico Grosso describes it) of belonging and participation, it follows that it is itself a *process*, which can be made, and historically has been made by kneading together all of its basic ingredients. The lack of a *demos*, then, is not something that sentences us to never, ever being able to make a European citizenship.

Looking at the concrete historical development of citizenship legislation, Grosso notes, “we must conclude that (...) there tends to be a sufficiently clear idea of the political goal to be pursued and, ultimately, of the boundaries that will be put around the actual state community” [84]. Essentially, Grosso concludes, it is “ideologies” that give shape and substance to the boundaries of the community of citizens. And that substance is always moored in the “depth of the historical space of the literature, the sciences and the art that are specifically European and have been Europe’s cultural foundation—until now”<sup>42</sup>.

This is a compelling viewpoint: the idea of the political construction of the concept of citizenship can prevent nationalisms from advancing and plot the future course for the integration process. To do so, however, it must be a construction with a specific normative content<sup>43</sup> if it is not to fade into the vagueness—the normative vagueness—of transnational citizenship.

There can be no doubt that normative content of this kind has already been provided in the evolving interpretations of Article 17 of the Treaty on European Union (now Article 20 TFEU) connected chiefly (but not exclusively) with free movement<sup>44</sup>, especially as decoupled from the free movement

of goods, services and capital (as in *Zambrano v. ONEm*). It is also reflected in the Member States’ resolve to “establish a citizenship common to nationals of their countries” in order to create “an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity” (as stated in recitals 10 and 13 in the Preamble to the Treaty on European Union—TUE), or in the Union’s desire to “offer its citizens an area of freedom, security and justice without internal frontiers” (Article 3, clause 2, TUE).

The doctrine now taking shape here, moreover, has specified that one of the bedrock principles (by contrast with national citizenships) is that citizenship itself is not to be taken as a projection of markedly identity-based factors<sup>45</sup>, but as including different aspects (principally that of being a worker) [85]. It has also emphasized shared values (duty, right over might, love of freedom [86]) and the social dimension<sup>46</sup>.

This latter dimension is undoubtedly the one with the greatest deficiencies. The great European political project was not based on protecting social rights, but on the idea of putting an end to a period of war and schism. Though the ideas underlying the European Union and the eurozone were undeniably neoliberal, they nevertheless aspired to achieve a measure of justice: “these principles were supposed to lead to greater efficiency and stability; and everybody, it was presumed, would benefit from the enhanced growth” [87]. That these hopes have often backfired is painfully clear. It was thought, for example, that free movement throughout the Union would lead to an efficient allocation of labor and everyone would be better off. And instead, high debt burdens in several countries encouraged emigration, especially as young people moved in order to escape repaying the debts incurred by their parents. As a result, the tax burden on those who remain increased, pushing the more vulnerable into poverty.

To accomplish this political project, then, what is needed is strength of purpose (and not just economic strength) in order to temper the Union’s neoliberal foundations with a form of solidarity (European citizenship) that is essential if the project itself is to survive.

To conclude, it would be good to return to Jared Diamond, not only to frame legal evolution in perspective, but also to remind us of the river of history whose waters propel us along: “much of human history has consisted of unequal conflicts between the haves and the have-nots: between peoples with

Parsi, V. E. (Ed.) (2001). *Cittadinanza e identità costituzionale europea* (Bologna); Lippolis, V. (2006). *Cittadinanza dell’Unione*, in (S. Cassese, Ed.), *Dizionario di diritto pubblico* (Milano).

<sup>42</sup> Häberle, P. (1997). *La cittadinanza come tema di una dottrina europea della Costituzione*. Riv. dir. cost., 33. On the growing awareness of a shared European cultural foundation, see also the stimulating discussion in Turner, B. (2000). *Cosmopolitan Virtue: Loyalty and the City*, in Engin, I. (Ed.), *Democracy, Citizenship and the Global City* (New York).

<sup>43</sup> Unlike the canons of the so-called bottom-up “citizenship” (such, for example, as that proposed by Ambrosini, M. (2016). *Cittadinanza formale e cittadinanza dal basso. Un rapporto dinamico*. Società Mutamento Politica, n. 13, 83ff) which undoubtedly describes an existing situation but is of no help in defining specific institutional approaches, or that suggested by Triggiani, E. (2006). *La cittadinanza europea per la “utopia” sovranazionale*. Studi sull’integrazione europea, n. 3, 435ff, who argues that it is necessary to move past the anachronistic idea that nationality equals citizenship, and define the latter in terms of membership in a “community of purpose”, or again, that which gives rise to the social ties discussed by Greco, T. (2010). *Cittadinanza e legame sociale. Qualche spunto*, in Belloni, I.-Forlenza, R. (Eds.), *Questioni civiche. Forme, simboli e confini della cittadinanza* (Savigliano), 195ff.

<sup>44</sup> In the extensive literature see, recently, Condananzi, M.-Lang, A.-Nascimbene, B. (2008). *Citizenship of the Union and Free Movement of Persons* (Brussels); Rossi, L. S. (2008). *La cittadinanza dell’Unione Europea*, in Tizzano, A. (Ed.), *Il processo di integrazione europea: un bilancio 50 anni dopo i Trattati di Roma* (Torino); Mengozzi, P. (2010). *La cittadinanza dell’Unione e il contributo della Corte di Giustizia alla precisazione dell’identità europea*, in Baruffi, M. C. (Ed.), *Cittadinanza e diversità culturale nello spazio giuridico europeo* (Padova), 3ff; Morviducci, C. (2010). *I diritti dei cittadini europei* (Torino); Spinaci, S. (2011). *Libertà di circolazione, cittadinanza europea, principio di eguaglianza* (Napoli); Triggiani, E. (Ed.), *Le nuove frontiere della cittadinanza europea* (Bari); Zagato, L. (Ed.), *Introduzione ai diritti di cittadinanza* (Venezia) and in particular the work of

Rigo, E.-Nicolin, S. and Cortese, B.

<sup>45</sup> This point has been made by Quadri, R. (1959). *Cittadinanza*. Novissimo Digesto (Torino), 307.

<sup>46</sup> In this connection, see the interesting reflections put forward by Spadaro, A. (2011). *I diritti sociali di fronte alla crisi (necessità di un “nuovo modello sociale europeo”: più sobrio, solidale e sostenibile)*. Rivista AIC, n.4, 1ff and Patroni Griffi, A. (2018). *Ragioni e radici dell’Europa sociale: frammenti di un discorso sui rischi del futuro dell’Unione*, from Federalismi.it, n. 4, who recall (in the hope that it will stage a return) the “social spirit of postwar constitutionalism”, though without underestimating the problems posed by the lingering economic crisis. Readers may also be interested in Poggi, A. (2017). *Crisi economica e crisi dei diritti sociali nell’Unione europea*, Rivista AIC, n. 1, 1ff.

farmer power and those without it, or between those who acquired it at different times" [88]. Over the last 13,000 years of humankind's history, however, there has been a clear tendency for societies to amalgamate in ever-larger and more complex forms. This is because tribal organization does not work for large groups of people, who need centralized organizations to deal with conflict resolution, decision making, economic redistribution and control of land [89]. But it must never be forgotten that "large societies can function economically only if they have a redistributive economy in addition to a reciprocal economy. Goods in excess of an individual's needs must be transferred from the individual to a centralized authority" [90].

History thus confirms that there is a push toward amalgamation, from small societies to large, where "large units potentially enjoy an advantage over individual small units *if*—and that's a big 'if'—the large units can solve the problems that come with their larger size, such as perennial threats from upstart claimants to leadership, commoner resentment of kleptocracy, and increased problems associated with economic integration" [91].

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