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# GLOBAL LAW AND TECHNOLOGY: REFLECTIONS ON THE SCIENCE OF LAW AND THE MODEL OF JURIST IN THE DIGITAL AGE <sup>1</sup>

*DIREITO GLOBAL E TECNOLOGIA: REFLEXÕES SOBRE A  
CIÊNCIA DO DIREITO E O MODELO DE JURISTA NA ERA DIGITAL*

Alfonso de Julios-Campuzano

## ABSTRACT

Ours is an era marked by globalisation, by the technological revolution and by the dizzying development of new information and communication technologies. In this digital and global era, the parameters that established the framework of human relations in a broad sense and the interpretative models of reality have been drastically altered. Thus, in the second modernity, we are witnessing the emergence of a new conception of law. The new legal paradigm of Global Law is outlined by three movements, displacements or translations of defining elements of the law of the first modernity and of the conception of the legal system on which it was based, which determine new characteristics that contribute to reconfiguring the conception of law and the legal system and propose a cosmopolitan reconsideration of the Science of Law and the role of the jurist in this change of era.

**Keywords:** Technology. Global Law. Science of Law. jurist model. cosmopolitanism.

## RESUMO

A nossa era é marcada pela globalização, pela revolução tecnológica e pelo desenvolvimento vertiginoso das novas tecnologias de informação e comunicação. Nesta era digital e global, os parâmetros que estabeleceram o quadro

das relações humanas em sentido lato e os modelos interpretativos da realidade foram drasticamente alterados. Assim, na segunda modernidade, assistimos à emergência de uma nova concepção de direito. O novo paradigma jurídico do Direito Global é delineado por três movimentos, deslocamentos ou traduções de elementos definidores do direito da primeira modernidade e da concepção do sistema jurídico em que se baseou, que determinam novas características que contribuem para reconfigurar a concepção do direito e do sistema jurídico e propõe uma reconsideração cosmopolita da Ciência do Direito e do papel do jurista nesta mudança de época.

**Palavras-chave:** Tecnologia. Direito Global. Ciência do Direito. modelo jurista. cosmopolitismo.

## **GLOBALIZATION AND THE END OF THE FIRST MODERNITY: SOME CHARACTERISTICS OF A NEW ERA**

Ours is an era marked by globalization, by the technological revolution and by the rapid development of new information and communication technologies. In this context, globalization is defined as a multifaceted and multidimensional phenomenon involving a plurality of factors that affect the economic, but also the institutional and cultural spheres (FARIA, 2010, pp.1-2).

The increase in human mobility, brought about by the development of means of transport and the instantaneousness of communications, has led to the spatial reduction of the world and an acceleration of the spatial and temporal coordinates of early modernity, whose paradigm was defined by territoriality and the spatial delimitation of existence stemming from the nation-state.

The first modernity was therefore based on the territorial definition of social spaces, on the definition in state terms of communities and social networks (BECK, 2002, p.2); and consequently, of their political, social and economic organizational forms, but also their cognitive and epistemological models. Therefore, human knowledge of the social (political, legal and economic) was determined by a statist and territorial conception characteristic of the first modernity. The trends that define this complex and multiform phenomenon of globalization point, however,

to a profound erosion of this essential principle of early modernity: territoriality has ceased to constitute the aggregating element of social relations, of the epistemological, cognitive and organizational models on which human knowledge had been built in recent centuries. Thus, a structural disaggregation has taken place that has subverted the classic schemes of our way of knowing, understanding and explaining reality.

Globalization is configured as a disruptive force that has drastically altered the parameters that established the framework of human relations in a broad sense and of the interpretative models of reality. The dissolution of territoriality implies a loss of the aggregating capacity of community, group and identity (BECK, 2002, p. 17). The irruption of globalization ushers in a period of paradigmatic transition (KUHN, 1981; DE JULIOS-CAMPUZANO, 2009a, p. 168), in which the epistemological guidelines of validation of scientific knowledge of the social have entered into crisis and their replacement by a new paradigm that will progressively replace the previous paradigm is already being ventured. This transformation not only reaches the knowledge that will be generated in the future, but will also determine the validity of the already existing scientific acquis, which will have to be revised according to the epistemological guidelines established in the new model (KUHN, 1981, p.149). In this era of paradigmatic transition, an atmosphere of uncertainty, complexity and chaos prevails, which affects social structures and practices, institutions and ideologies, reaching the social regulation devices that are profoundly altered (SOUSA SANTOS, 2000: 257).

Without claiming to be exhaustive, we will now address some of the main characteristics of this paradigm shift, of this profound transformation of reality, whose origins can be traced back to the 1990s:

## **THE END OF GEOGRAPHY**

By virtue of the development of the means of transport and the consequent increase in human mobility, our era has seen a spatial reduction of the world, which has intensified widely by virtue of the interconnection brought about by the media and the new information technologies. As a

result, distances are no longer an objective fact and have been relativized in terms of the human capacity to bridge them. In our time, nothing is too far away and inaccessible.

Paraphrasing Fukuyama's thesis on the end of history, Richard O'Brien proclaimed the end of geography (O'BRIEN, 1992): the beginning of a new era characterized by the pulverization of geographical space, by the abolition of the facticity of distances that had been overcome by an interconnected world, in which borders had been diluted and a growing cultural interpenetration had taken place on the basis of the development of markets, the flow of people, the increase in human mobility and the growing interpenetration of forms and ways of life. The end of geography entailed, in short, a profound revolution that was made explicit not only in the creation of an economic and financial space of global scope, but in the growing cultural standardization of our societies (SANGUIN, 2014, pp.445-446). It is evident that the growing cultural interpenetration is built on a process of uniformization in which cultural diversity is often reduced to a forced homogeneity, which does not make use of the direct colonial imposition of yesteryear, but on the contractual acceptance of forms of domination (BAMYEH, 2000, pp.59-87; FITZPATRICK, 2001, p.212). In short, cultural standardization is made explicit in concrete forms of colonialism or cultural imperialism that favors the expansion of the Western way of life.

## **THE RISK SOCIETY**

In our time, existence has become pure becoming: technological development and the instantaneousness of communications have shaken the material foundations of life, space and time and have thrown us before the evidence that there is nothing solid, stable or secure; that ours are liquid times (BAUMAN, 2017), that we live irremediably in an era characterized by the end of certainties, of the unshakable securities that the Covid pandemic has only certified.

Reality is no longer conceived in fragmentary terms, from the local perspective of a power structure confined to a given territory, according

to the explanatory framework provided by the State as the protagonist of the legal, political, economic and social order. Moreover, technological development has precipitated a temporal acceleration that makes us particularly sensitive to the future. In our time, a consciousness of vulnerability emerges in the face of the risks involved in technological development and the threats that loom over the survival of the species and the future of the planet. In the global risk society, the parameters of security have been dislocated and we have entered a phase of lack of control over the future consequences of human action (BECK, 2002, p. 5). Knowledge, far from providing security and certainty, provokes perplexity and anxiety<sup>2</sup>, heightens the awareness of our own ignorance and makes us vulnerable to risks that we cannot gauge. From this point of view, social and political institutions are confronted with the difficult task of managing uncertainty on a daily basis.

The great challenge of our time is to manage risks whose scope acquires colossal proportions in view of the eventuality of the damage that may result from them (BECK, 2008), often associated with technological developments that are beyond our control. Recent events such as the accident at the Fukushima nuclear power plant in 2011, the effects of climate change on the biophysical space, atmospheric pollution, the decrease in biological diversity or global health alerts reveal that risk management is an essential dimension of human action. It is up to law and politics to weigh up the systemic dimension of human action in order to avoid potentially irreversible damage. Risk thus breaks with the modern conception of temporality on which modern law was based and reveals that the new legal paradigm needs to anticipate the future in order to prevent threats, incorporating a prospective dimension. In contrast to the modern conception of legality, which made it possible to associate legal consequences with damage actually caused, it is now necessary to contemplate a preventive dimension. Against a right that only intervened *ex post factum*, it is necessary to incorporate a right of prevention of risks (DE JULIOS-CAMPUZANO, 2020, p.129).

## THE GLOBALIZATION OF MARKETS

At the same time, the development of technology and communications has made possible, on the economic level, the multiplication of commercial, financial and monetary exchanges on a global scale. Globalization is therefore linked to trade liberalization, functional integration, internationalization of the financial system, generalization of competition on a planetary scale, transnationalization of capital and deregulation of markets. In this way, generalized technological development has made possible a transition from mercantile and productive capitalism to a financial capitalism of a speculative nature, based on new technologies and the development of transnational corporations.

This new global configuration of markets is built on transnational corporations and their decentralized, autonomous, flexible and reticular command structures, as opposed to the compact, rigid and centralized structures of multinational companies (DE JULIOS-CAMPUZANO, 2003, p.48), which have been redesigned to adapt to the requirements of globalization. It is certainly a change that is not merely epidermal, nor can it be reduced to the strictly semantic sphere. Transnational corporations constitute the epitome of global capital (THOMPSON, 1993, p.199). The overcoming of national markets and their transformation into a global market corresponds, on the other hand, with the transition from a model of productive capitalism based on large-scale production, standardization, production chains and cost optimization represented by Fordism, which had prevailed until the end of the 20th century, to a post-Fordist model based on flexible specialization, outsourcing, subcontracting, small-scale production and added value through the use of new information and communication technologies. This transformation has made possible a shift towards a model of financial capitalism based on the centralization of capital and the exponential increase in monetary and financial transactions that prevail in commercial traffic in these first decades of the 21st century. Financial capitalism gives technological development a central place and privileges speculation over production.

## COGNITIVE CAPITALISM

The development of new technologies, the massive use of personal data and Artificial Intelligence, distinctive elements of the digital revolution, have had a significant impact on the development of the economy, generating a new model of capitalism based on information, on obtaining large amounts of personal data (*big data*) whose processing, manipulation and commercialization has given rise to what has been called *surveillance capitalism* (ZUBOFF, 2020).

The new economy is based on the flow of personal information through the Internet and on the existence of large digital corporations that operate in virtual reality creating a transnational business space that often eludes all control and is based precisely on control: social networks resemble a digital panopticon that turns us into objects of permanent observation (HAN, 2014, p.21).

Data have become the vector of the digital revolution and constitute the core element around which a new structure of the world has been built (LASSALLE, 2019, pp.29-30): the productive unit of a new model of capitalism that is conveyed through algorithms, which reconfigure reality and manage information according to criteria that are often biased and not at all transparent, giving rise to a new sovereignty: a digital sovereignty in which public decision-making of a democratic nature is buried by the avalanche of information (*data tsunami*) that flows on the internet, gestated under the parameters of economic profit, productivity and profit. In sum, data constitute the new raw material of global cognitive capitalism and their massive generation and accessibility are altering the institutional and emotional architecture of the analogical world, as it had been configured since modernity until today (LASSALLE, 2019, p.37).

## THE TRANSFORMATIONS OF LAW IN THE SECOND MODERNITY

These transformations are forcing a profound social mutation to which law cannot remain oblivious.

The vast set of transformations that are taking place in our world fully reach the legal phenomenon as a normative model of social life, whose boundaries, as a consequence of deterritorialization, appear to be tenuous and evanescent. Ours is a new juridical civilization characterized by a *diritto sconfinato* (FERRARESE, 2006), a law without boundaries, whose spatial parameters have been diluted as a consequence of the porosity of the State and the weakening of national sovereignty (FERRARESE, 2000, p.42; HABERMAS, 2000, pp.94-97) that announces a diffuse panorama of normative pluralism, conditioned by the globality of the market in a context of growing weakness of State territoriality (IRTI, 2006).

Thus, in reflexive modernity or second modernity we witness the emergence of a new conception of law: the legal paradigm of global law, which is configured around the crisis of the State, the multiplication of legal actors and the emergence of a global legal pluralism, which is the confirmation of the end of the State's monopoly of legal production. The new legal paradigm is shaped by three movements, displacements or translations of defining elements of the law of the first modernity and the conception of the legal system on which it was based, which determine new characteristics that contribute to reconfiguring the conception of law and the legal system and determine a new paradigm of the Science of Law and pose a reconsideration of jurisprudence and the role of the jurist in this epochal change. The following pages will be devoted to the analysis of these shifts and their impact on the configuration of the law of our time and of scientific knowledge about it.

## **FROM MONISM TO LEGAL PLURALISM**

At the institutional level, globalization has resulted in a multiplication of actors on the transnational scene, leading to a growing loss of State sovereignty. The consequent reduction in the capacity of States to control productive, economic and financial processes that transcend the States themselves to become global, fuels a feeling of vulnerability and lack of protection of citizens in the face of economic processes that venture uncontrollable. Thus, the end of organized capitalism (LASH & URRY, 1987)



has given way to a new phase of expansion of the capitalist system which, freed from its territorial confinement and the limitations imposed by state policy, repels all attempts at control to configure a new economic order based on *laissez faire* at the international level (DE JULIOS-CAMPUZANO, 2003, p.24; MARCILLA CÓRDOBA, 2005, p.241): a renewed version of the libertarian thesis that has come to be known as legal globalism, which sponsors a certain model of globalization governed by the imperative of efficiency and the maximization of profits, in which the global deregulation, the free play of economic interests on a planetary scale and the absence of control over corporations and transnational economic bodies prevail, and which is a frontal attack on the modern conception of regulatory law associated with the paradigm of the social State governed by the rule of law.

This absence of control is, however, merely apparent. In reality, the economic system is not exempt from regulation, but subject to its own regulation, thanks to the constellation of bodies and institutions that make up an institutional ecosystem of its own. Far from any control by the political authorities, and outside the requirements of democratic legitimacy that characterize the institutions of the State, these institutions establish the guidelines for economic regulation at the global level, thereby creating a self-regulating subsystem whose norms expand and condition the development of the domestic law of the States. In this way, the regulation of the economic space shifts from state public law to transnational private law and, in turn, the latter limits and curtails the normative and regulatory capacity of state law.

Globalization has led to the creation of a vast and complex institutional ecosystem for the governance of markets, which has brought with it the multiplication of actors with decision-making capacity on the transnational economic scene, in a context of decision-making polycentrism that has helped to relativize the importance of territorial borders. This dense and wooded institutional framework is populated by a dense and impenetrable amalgam of institutions and bodies of diverse nature with regulatory capacity, including global and transnational financial and economic institutions, regulatory bodies and networks, informal forums, transnational corporations and non-governmental organizations, among others (DE JULIOS-CAMPUZANO, 2003, pp. 43 ff.; DIONIGI, 2006, p.47 ff.).

In short, the law of our time is witnessing an exponential multiplication of the instances producing juridicity that definitively shatters the monistic conception of law that gave birth to the state model of law and politics inaugurated by the Peace of Westphalia.

In contrast to this monistic conception of law, which gave the State the monopoly of legal production, a pluralistic conception of the legal phenomenon is now being imposed, characterized by the multiplication of decision-making bodies, by de-legalization and deregulation, as well as by a growing contractualization of the legal phenomenon and a progressive opening up of the legal system towards jurisprudential and customary forms, which progressively supplants the primacy of legality, as well as by a growing contractualization of the legal phenomenon and the progressive opening of juridicity towards jurisprudential and customary forms that progressively supplants the primacy of legality, so that the modern panorama of the sources of law is fractured and diversified, at the same time that the normativity swings from the public to the private (ZAGREBELSKY, 1995, pp. 36-38 FERRAJOLI, 2005, pp.20-22). At this juncture, legality is an anachronistic term, corresponding to an outdated era constructed in juridical terms by the formalist reduction to unity operated by virtue of the law and its battery of categories, hypotheses and fictions that concealed the differences. In the face of this, pluralism has made its way: in the sources and in the solutions. Ours is now, definitively, a polyphonic reality (GROSSI, 2020, p.30; GROSSI, 2010, pp.386-387), in which, with the overproduction of norms, the multiplication and confusion of normativities that attack the certainty of Law, a double form of dissolution of legal modernity is registered, which translates into the appearance of a community law of a jurisprudential nature and the return to pluralism and the superimposition of normativities characteristic of the pre-modern era (FERRAJOLI, 2005, p.21).

## **FROM PYRAMIDAL ARCHITECTURE TO VAULT MORPHOLOGY**

The multiplication of regulatory instances, the proliferation of partially coinciding normativities and the superposition of levels of

inter-legality in the transnational sphere have an impact on the classical scheme of the sources of law, which are overwhelmed (PÉREZ LUÑO, 2011) by the irruption of new forms of supra- and infra-state juridicity (FERREIRA DA CUNHA, 1991, p.55 ), associated with the normative proliferation that accompanies the social State of Law, forms of imperfect legality that integrate a wide and complex normative battery (DE JULIOS-CAMPUZANO, 2009b, pp. 42-43), a phenomenon that the doctrine has referred to as legislative inflation (LAPORTA, 2004, p.63) or pulverization of legislative law (ZAGREBELSKY, 1995, p.37).

The multiplicity of norms, the diversity of sources, the overlapping of normativities and the plurivocity of their normative prescriptions undermine the coherence of the system and shake the unity that was articulated in a primordial way by virtue of the primacy of the law as the source of law. The multiplication of legal actors, of law-producing bodies and the proliferation of rules at supra- and infra-state levels ultimately lead to a dissolution of the legal system in its classic or traditional sense, i.e., as an ordered, systematic and rational set of rules that, originating from the State, are hierarchically structured by means of the principles of unity, coherence and completeness.

This conception of the legal system was the fruit of a certain paradigm: the paradigm of statehood and territoriality of modern law, the Westphalian paradigm of law and politics; the embodiment in legal terms of the principle of sovereignty that constituted law as the emanation of a centralized, autonomous and independent political power. Legal formalism, thus ended up reducing law to positive law as a purely formal structure, a set of mandates whose essence rested on territorial power as an aggregating element. For this reason, formalist legal positivism, in its most complete formulation, would end up maintaining that “*Todo Estado, por el mero hecho de serlo, es un Estado de Derecho*”<sup>3</sup> (KELSEN, 1925, p.91), by elevating to dogma the identification between Law, power and State.

The legal paradigm of our time is based, however, on the negation of the constituent principles of that paradigm. In our era, national sovereignty is being questioned on several fronts, thus demonstrating the inadequacy of stagnant territorial compartmentalization and revealing the dawn of a new era characterized by interdependence, the redefinition of the role of

the State, the progressive dissolution of borders and the birth of a global civil society. In these coordinates, the exclusivity of legal production rooted in the State has definitively lost its nuclear character. Instead, a plural and diversified panorama of juridical production is opening the way, the main characteristics of which are defined in opposition to the previous state paradigm, as follows:

a) as opposed to uniqueness and centrality, the new paradigm opposes diversity and decentralization: ours is already a decentralized scenario of legal production, in which multiple decision-making bodies emerge, a polycentric model that is built on fragmentation, dispersion and proliferation of agencies, bodies and powers, whose functional and territorial differentiation is not always precise, which necessarily affects the rationality of the legal order, leading to the existence of different, and even opposing, legal solutions to identical, analogous or similar problems.

b) as opposed to independence and separation, the new paradigm opposes interdependence, interconnection and cooperation: statehood, as a political unit based on territory, was articulated as such by means of its independence from other states, and the legal and political order acquired meaning to the extent that such independence materialized. In our time, however, sovereignty has ceased to be conceived in opposition, to be understood as an essentially limited power: internally, insofar as sovereignty, in a positive sense, is the sum of the fragments of individual sovereignty that are the rights (FERRAJOLI, 2011, p.37) and, externally, insofar as sovereignty is limited in a global scenario, of multiplicity of actors, of decision-making polycentrism, of legal pluralism and of various levels of interlegality<sup>4</sup>. To fully understand sovereignty in our time requires conceiving it in relational, cooperative and interdependent terms, of mutual connection and collaboration between States in a community that is less and less international and more and more global. Autarky is no longer an option.

c) against the autonomy of the legal system and its corollary of presumed purity, the new order opposes a heteronomous and axiologically compromised conception of the juridical: In our days, constitutionalism has shown us the error of formalist conceptions of law that reduced it to a phenomenon of force and will, radically detaching it from any axiological

reference, material or content. The formalist exaltation of the will ended up turning the norm into an empty vessel: a mandate emanating from power, which was assumed to be legitimate by the mere fact of being valid. And by detaching the law from the demands of justice, the way was open to travel down the path of irrationality, to make the law an instrument at the service of the spurious interests of those who hold power.

The dramatic episodes of war in the twentieth century corroborated that there are moral requirements of the law that we cannot and should not dispense with, at the risk of drying up the sap of justice that vivifies it. That the legitimacy of norms is not an extra-legal dimension, but rather an essential requirement of the good law to which every human society must aspire.

By virtue of this triple transformation with respect to the previous paradigm, there is a breakdown of the systematic conception of the legal system developed from the theoretical assumptions of the old positivist state-based Legal Dogmatics. As a consequence, the pyramidal morphology of the legal system, which had proved to be a powerful explanatory model, is today a museum piece among the didactic resources for the teaching of law (DE JULIOS-CAMPUZANO, 2009a, p.20), to the extent that the assumptions on which it was based -unity, independence, autonomy- have been definitively superseded in the coordinates of an irreversibly global society.

The coincidence in the diagnosis is not resolved, however, with an alternative model that is equally widely accepted. One sector of the doctrine has argued that the new legal paradigm would offer a network morphology (for instance, OST and VAN DER KERCHOVE, 1994 and 2010), symbolizing the multiplicity of normative nodules of different origin and provenance, their interconnection and the absence of hierarchy between the different normativities.

Indeed, this postmodern configuration of juridicity based on a network morphology expresses well the existence of multiple regulatory instances and their interconnection in a space that transcends the limited confines of statehood, but ignores the fact that the law of our time must be developed under parameters of legitimacy in a double sense: (a) legitimacy in a material sense, in terms of recognition of the primacy

and centrality of constitutional principles and values and of the universal ethical catalog represented globally by human rights; (b) legitimacy in a formal or procedural sense, which is that which stems from democratic processes in the gestation of norms that is expressed in conventionality and in the free concurrence of the wills of citizens. The opacity that characterizes a large number of private law norms constitutes a negation of this basic requirement of democratic legitimacy.

Faced with this postmodern version of the legal order, which in reality constitutes its negation, it seems more appropriate to opt for a representation which, without ignoring the distinctive legal pluralism of our time, does not ignore the existence of a center towards which to converge (ZAGREBELSKY, 1995, p. 14), represented by the Constitution, which, without reducing plurality to a forced unity and without referring law to itself by resorting to the fiction of a logical-transcendental presupposition, does not absolutely reject a flexible, open and porous systematicity; a center which, without denying plurality, would recognize a reasonable unity to legality, according to the primacy of values, constitutional principles and human rights. Faced with the pyramidal morphology of formalist legal positivism and with the postmodern conceptions that deny the order and rationality that the systematic conception represents, a configuration of the order with a vault morphology emerges (PÉREZ LUÑO, 2012, p.37; DE JULIOS-CAMPUZANO, 2016, p.357), in whose keystone, cardinal element of its architecture, would be located the elements that shape the legitimacy of the order: principles, values and rights that confer order, hierarchy and unity to the juridicity.

## **FROM HOMOGENEITY TO HYPERCULTURALITY**

The global character of the financial market, the intensification of monetary flows, the increasing density of mercantile exchanges, the growing power of transnational corporations and the development of global cultural industries allow us to contemplate a horizon in which globalization generates, at the same time, a globalization of culture and a culture of globalization. Thus, a global network of forms of life standardized

by globalized localism (SOUSA SANTOS, 1998, p.202) emerges, which do not respond to plurality or reciprocal interaction, but to the transposition and assimilation (via commercial expansion through large business groups) of elements of a local culture that generates specific cultural forms in the receiving cultures, conforming them to the cultural patterns of the Western model. In this way, it becomes clear that

“la sociedad mundial no es, pues, ninguna megasociedad nacional que contenga -y resuelva en sí- todas las sociedades nacionales, sino un horizonte mundial caracterizado por la multiplicidad y la ausencia de integrabilidad, y que sólo se abre cuando se produce y conserva en actividad y comunicación”<sup>5</sup> (BECK, 1998, p.28).

It should be noted that globalization is based on the creation of a cultural environment, an ecosystem of ideas and ways of life that reduce diversity and redirect plurality based on the assimilation of certain cultural standards belonging to Western culture, a process that has its correlate in the legal sphere<sup>6</sup>. Faced with the impotence and inability of States to account for processes that have become global, the market has tended to create a global law: a set of institutions, rules and principles that the community of economic operators is building on its own to make up for the passivity, inadequacy or impotence of States and of the international order itself (GROSSI, 2020: 58).

This process of creation of global law requires a progressive approximation of the various legal cultures in order to create normative structures and legal regulations compatible with the intensification of financial, monetary and mercantile flows and with the expansion of the market at the global level. Thus, the pluralism inherent in the diversity of legal traditions is challenged by the emergence of global law and the processes of legal homogenization that are inherent to it and that are condensed in the transposition of normativities and regulations from other legal cultures.

In this way, the doctrine has emphasized the risks that legal transplantation entails for the preservation of cultural pluralism and has questioned to what extent the processes of cultural assimilation and homogenization can channel old forms of domination that are now dressed

in new clothes. Legal traditions are not incommensurable and must be discerned in a dialogic process through reason (GLENN, 2000, p.333).

The forms of life have become deeply hypercultural, cultural traditions are closely intertwined and their interaction manifests itself as a unity in which the multiplicity of cultural forms is indissolubly interpenetrated, the spatial and temporal anchorages of the first modernity having been abolished.

As a consequence of the cumulative process generated by globalization, there is a juxtaposition of the different, so that heterogeneous cultural contents accumulate with each other. Ours is an era of cultural implosion. As a consequence of the loss of boundaries, cultures are approaching towards a hyperculture (HAN, 2018, p.22). One must ask, however, about the conditions under which the plurality of legal traditions can be preserved, admitting that the phenomenon of globalization entails a growing integration of cultural forms and rejecting the recourse to the forced homogenization of legal transplantation, an imperialist practice incompatible with the pluralism of our time. Globalization and its increasing legal standardization must be compatible with sustainable legal diversity (GLENN, 2000, p.333).

## **THE SCIENCE OF LAW AND THE MODEL OF THE JURIST IN THE DIGITAL ERA**

At this point it seems necessary to undertake a conclusive reflection to question the role and function of the Science of Law in this global era in which great transformations are taking place that herald the birth of a new paradigm: a global law that anticipates a deterritorialized, interdependent and digital reality in which capitalism has entered a new phase and in which information has become the new raw material of a production model based on the massive storage of data that favors a capitalism of surveillance.

The principle of national sovereignty has entered into crisis and the confines of state territoriality are becoming increasingly irrelevant in an era dominated by the decline of States, by the intensification of financial,



mercantile and monetary exchanges, by the expansion of the capitalist production model as cognitive capitalism and by the multiplication of instances producing normativity, a scenario of legal pluralism that shatters the legicentric paradigm of normative production and, therefore, the dogmatic state model that had supported it and the explanatory horizon of legal positivism.

The law of the first modernity has been definitively superseded by the acceleration of the spatial and temporal coordinates of this new era. We are living in a period of paradigmatic transition, an epochal change that fully reaches legal and political institutions and that leads us to the need to understand the law from a new perspective that is now irreversibly global. At this particular juncture, we need to transcend a certain cognitive framework delimited by two parameters that have been surpassed: a) on the one hand, by the Westphalian configuration of the legal-political order, which granted the State exclusivity in the production of law and which gestated a legal order based on the assumptions of autarchy, univocity and independence; b) on the other hand, by the temporal conception of early modernity, which built a conception of time as present time, ignoring the dimension of the future in the cataloguing of legal conflicts. In the global risk society, however, threats reach areas of immediate practical relevance and extend indefinitely into the future: the risk of a destruction of the planet or the annihilation of the conditions that allow the development of existence on the earth constitute threats that cannot be ignored and that suggest the need to incorporate a right of prevention of risks that safeguards the right of future generations to a healthy and balanced environment, in the face of the increasing degeneration of living conditions on the planet.

In these circumstances, it is absolutely necessary to reformulate the parameters of the legal knowledge that gave birth to the State's legal positivism and that propitiated a descriptivist, naturalistic and aseptic conception of the Science of Law. The explanatory horizon of legal positivism is today insufficient to account for the complex reality of the law of our time, a law that cannot be understood on the basis of hollow concepts, abstract categories and myths that reproduce the outdated order that the old Legal Dogmatics sponsored.

The time of univocal, closed and finished normative orders is over. In these coordinates, Legal Theory has the urgent task of developing a new cognitive and explanatory framework to create the conditions for this change of era, a change of era that requires a new paradigm, a new cognitive and explanatory model from which to understand this new reality emerging from the crisis of the State, globalization, technological development, the global dimension of risk and the phenomenon of pluralism in its political, social, legal and cultural dimensions. This new Legal Theory is unburdened by the burden of stateism, that conception of law as the law of the State, the only state and rational law. This Legal Theory, built with the wickerwork of the old Science of Law, needs, first of all, to free itself, methodologically, from the descriptivist dogma of positivism, which reserved for the jurist the mere description of the legal reality and the aseptic application of the norm, excluding any type of evaluation as it could reveal an axiological compromise and, therefore, an inadmissible distortion of the law as an objective reality.

The present time demands a jurist committed to the transformation of law, a jurist capable of questioning the old schemes of a knowledge that is no longer useful. We must avoid conceptualism and sterile legalism.

Therefore, faced with the jurist-technician who uncritically observes reality to reproduce it with its heavy load of mystifications and dogmas, it is necessary to oppose a jurist with transforming capacity, capable of inserting legal knowledge in the complex reality of our time, to observe its intimate connections with the multiple dimensions of human knowledge and social reality. Faced with the old scientific conception of legal knowledge that made the jurist a scientist's younger brother, our time is demanding the recovery of the humanistic dimension of law: that which constitutes the nerve of law against those who try to reify it as an inert reality, that which perceives the deep ethical implications of the rules and discovers in them an instrument to build justice, in the commitment to values.

Faced with the archetype of the jurist-functionary who, inspired by a dogmatic formation, remains oblivious to the ends and results of action (OLLERO, 1982, p. 268), our times call for an integral jurist, capable of perceiving the intimate connection of law with other knowledge and

of inserting legal reality in the set of human realities, to apprehend the legal phenomenon in its complex totality, as a multifaceted and, therefore, multidimensional reality. Against the rigidity of formalism and the stagnation of a self-referential knowledge, it is necessary to oppose an open and interdisciplinary conception of legal knowledge in connection with the whole of human realities to vindicate the social and historical nature of the legal (STONE, 1973: 12-14), from whose full understanding cannot be separated the analysis of social, political, economic, cultural factors, nor the knowledge that deals with them, which are, therefore, deeply interconnected.

It is a matter of opposing the technical jurist, an integral jurist, committed to the needs of his time, following the Humboldtian ideal of new jurists (PAUL, 1980-81, pp.120 ff.; CAPELLA, 1985, p.41): a jurist with a broad human formation that allows him for thinking about society as a whole in order to understand essentially complex problems, inserted in a reality that therefore also requires global consideration; in short, we need a jurist capable of critically reflecting on legal norms and of grasping the teleological background that underlies human action and juridicity itself, with a view to social transformation for the sake of an ever fuller human emancipation.

Faced with the markedly scientific bias that the old nineteenth-century Legal Dogmatics gave to legal knowledge, the present time calls for a revitalization of the humanistic nerve that underlies law as jurisprudence, as eminently normative knowledge, inspired by practical reason; a knowledge that refuses the stagnation of knowledge that isolates itself within the confines of a false systematicity and a merely apparent neutrality. The revaluation of the humanistic dimension of legal knowledge, the vindication of a legal knowledge capable of transcending the explanatory horizon of an outdated conception of legality, calls for a critical reaction against the utilitarian drift that seems to have imposed itself in our time.

With singular sharpness, Nuccio Ordine has vindicated the uselessness of the useless to vindicate the humanities, increasingly harassed by the co-optation of institutions and social structures by the instrumental rationality of the market, to react against this crude utilitarianism of our

societies, which invades the most sensitive spaces of culture and of the common endeavor in which citizenship is forged - science, school and university (ORDINE, 2022, p.111).

This is the primary requirement of Legal Theory: to look at the law of our time, freed from dogmas, from the heavy burden of hollow concepts and anachronistic categories, from the perspective of a fuller realization of human rights. After all, rights represent concrete demands for justice that have been historically made explicit. They are the fruit of a historical rationality that implies a universal moral dimension.

Ours must be, therefore, a cosmopolitan Legal Science, built from the global dimension of the problems and from the global contemplation of the legal phenomenon; a globality that, in this double dimension -of the problems and of the legal phenomenon-, cannot but be distinctively universal and cosmopolitan. Any other way of understanding Legal Science would be to fail to understand the keys of our time: the plurality that demands openness and dialogue and that opposes the imposition of cultural forms proper to other legal traditions. Bentham's proposal of a general jurisprudence, as a universal Science of Law, is a model that should not be forgotten (TWINING, 2000, p.101).

It is up to Legal Science, then, to establish the conditions to break definitively with this old statocentric conception of the autarchic, pyramidal and independent legal system and to forge a new generalist or universalist Legal Dogmatics, a cosmopolitan Theory of Law, open to a plural conception of the legal phenomenon (TWINING, 2000, p.189).

For this purpose, the jurist must use with surgical precision the instruments provided by the comparative method to promote, through it, the dialogue of different legal cultures and build a Legal Science attentive to the changes that are taking place in this global and interdependent world from a double perspective: a) from the profound interconnection of legal knowledge with each other and with the rest of it; and b) from the global connection of human problems, which shows that these cannot be solved from the limited perspective of the horizon of state action.

The jurist must, therefore, incorporate a critical, totalizing and prospective dimension that makes it possible to think globally about law from an unequivocally global perspective of human problems.

This cosmopolitan perspective of Legal Science as General Jurisprudence is definitely incompatible with the formalistic reduction of the law operated by Legal Dogmatics, insofar as it vindicates the axiological commitment of the jurist in the transformation of reality. Building the profiles of this new paradigm of Legal Science requires, therefore, overcoming old schemes that are openly inadequate to face the problems of our time, which cannot be understood or analyzed from the limited perspective of a knowledge linked to the territorial conception of the Westphalian model. In these coordinates of globalization and interdependence, of crisis of the State and redefinition of sovereignty, law needs to be understood from a potentially universal perspective, a perspective that is at the same time sensitive to difference, open to hybridization, refractory to hegemonies, unequivocally supportive and cooperative.

And this task requires a new legal knowledge, a general jurisprudence in accordance with the demands of a new time in which the space-time coordinates have acquired a new dimension in the horizon of a global world. The new paradigm of the Science of Law claims for itself a prospective and transformative dimension, a critical and committed work that involves the jurist in the task of globally constructing justice.

## NOTAS

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- <sup>2</sup> Ours is an era of uncertainties, of great questions that open up before us as scientific and technological development evolves and offers us new horizons. Extraordinary paradox of the scientific development that confronts us with the awareness that there is a vast flow of uncertainty, ignorance and, in short, ignorance that leads us to the end of cumulative knowledge (INNERARITY, 2022, p. 21).
- <sup>3</sup> *Every State, by the mere fact of being a State, is a State of Law*. (Translation is mine).
- <sup>4</sup> For Sousa Santos, interlegality is a key concept of a postmodern vision of law, which represents the phenomenological dimension of legal pluralism (SOUSA SANTOS, 2000, p.211).
- <sup>5</sup> "the global society is therefore not a national mega-society containing -and resolving in itself- all national societies, but a global horizon characterized by multiplicity and the absence of integrability, and which only opens when it is produced and kept in activity and communication" (Translation is mine).
- <sup>6</sup> At the same time, globalization has entailed identity reactions and the expansion of local cultural forms that have become global, globalized localisms that have gone beyond their traditional confines to become concrete expressions of a kind of cultural imperialism under which other cultures are literally colonized by the expansion of ways of life and cultural practices of the

western culture and, particularly the American (Halloween, McDonald's, Coca-Cola or Black Friday). Thus, globalization can be understood as "un proceso...que crea vínculos y espacios sociales transnacionales, revaloriza culturas locales y trae a un primer plano terceras culturas" (BECK, 1998, p.28) ["a process... which creates transnational links and social spaces, enhances local cultures and brings third cultures to the forefront" (Translation is mine)].

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Autor Convidado

**Alfonso de Julios-Campuzano**

Catedrático de Filosofía del Derecho, Universidad de Sevilla. E-mail: julios@us.es

