Contemporary globalization and its impact on the Law: analysis of a historical reconstruction

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Abstract
This article presents a reconstruction of the historical context of contemporary globalization, based on the analysis of facts that are considered relevant since the 70's of the 20th century, in the framework of the international system created after the Second World War. Its aim is to establish some political consequences that followed from this phenomenon in terms of the crisis of the State and its relative impact on the Law, including conceptualizations of the detachment of both notions, which arose in this same historical context, and the creation of non-State legal forms. This implies a theoretical and political challenge at present, in the face of the defense of fundamental rights, as well as in the context of contemporary globalization and its consequences, in terms of the weakening of the State and the autonomy of the Law with respect to it.
keywords: State, Non-State Law, Globalization, Soft-Law, Constitutionalism.

1. *Introduction*

According to Max Weber (1964), the Law is a concept linked to the State. One of the main characteristics of the State is its ability to make mandatory norms and the power to enforce them through legitimate coercion. Therefore, from Weber's comprehensive sociology, Law is an attribute of the State. This sociological concept of Law deals with its “legality” or “validity”, leaving out concerns about justice or morality, which for Max Weber are things different than law. The essential difference lies in the capacity of the State to impose norms and enforce them through the legitimate use of violence, while, in his theory, moral rules escape this exclusive characteristic of legal norms.

In this context, between the end of the 19th century and the beginning of the 20th century, it was difficult to think of Law as a phenomenon that could eventually transcend the frame of reference of the State. However, during the 20th century and into the 21st century, legal regulations have escaped the margins of the State. To illustrate this situation, legal scholars have created a conceptual distinction between Hard-law and Soft-law (Aguiló, 2015), to demarcate the boundaries between State law (Hard-law) and non-State law (Soft-law). Perhaps this distinction between Hard (or strong) and Soft Law (Laporta, 2014, p. 60), is due to the conceptualization that Weber made of it, in the sense that Hard-law can be imposed by the State in a strong or harsh way, while Soft-law lacks this characteristic (Aguiló, 2015, p. 1064). Moreover, in this work it is important to understand and highlight the existence of a Law beyond the referential framework of the State, by virtue of globalization, through the construction of a historical context from the 70's of the 20th century, i.e. what Zupi calls the second, third and fourth wave of globalization (Zupi, 2019, pp. 19 - 20), through the approach of Global History[1] (Conrad, 2017).

From now on, the reconstruction of this historical context will be developed, to later specify the political consequences of this phenomenon both in the State and in the Law, and thus establish a theoretical basis necessary to determine one of the theoretical and political challenges that Globalization in Law brings with it, that is, the defense of fundamental rights beyond the framework of State actions.

2. Building a historical context of contemporary globalization

> *To realize the full possibilities of this economy, we must reach beyond our own borders, to shape the revolution that is tearing down barriers and building new networks among nations and individuals, and economies and cultures : globalization. It's the central reality of our time.*
>
> William Jefferson Clinton. 2000.

After the Second World War a new international system was configured that structured a new organization in the relationship between countries, developing and improving what had already been started after the First World War. In this context, international trade played a fundamental role, as policies to expand exports and imports worldwide were resumed, after the economic catastrophe produced in part by the protectionism of the 1920s (Findlay and O'Rourke, 2007). Several factors help to explain this complex historical moment.

[1] "The Global Story (…) Pays special attention to cross-border interactions and intertwines. It also admits the impact of structures that go beyond the limits of each individual society. With this, global history recognizes the causal relevance of factors that are not limited to the domain of individuals, nations, and civilizations. The ultimate promise is a perspective whose gaze finally overcomes the dichotomy between the internal and the external" (Conrad, 2017, p. 83).

The first is the creation of international economic institutions such as the International Monetary Fund, the International Bank for Reconstruction and Development, later known as the World Bank, and the General Agreement on Tariffs and Trade, which emerged from the Monetary Conference and Finance of the United Nations in June 1944, at the Bretton Woods hotel (New Hampshire, United States), in order to manage international capitalism and thus avoid the crises of the past (Mazower, 2012, pp. 201 - 202) .

An example of how this motivation materialized in this context was the decision to implement the gold standard at the international level, and establish the dollar as the world's exchange currency, so that each country subscribing to these institutions would ensure their gold reserves and their relative price in dollar amounts, that could be issued (United States) or bought, so that a fixed exchange rate would be adopted in these countries.

In this context, the economic model of the 'Western bloc' was capitalism, in its interventionist variant, promoted by the theory of John Maynard Keynes. This model would lead to the economic growth of the developed countries belonging to this bloc during the two decades that followed the end of the war. However, this was also partly due to the organization of international trade and of the national economies of the developing countries in this same bloc, which were generally former colonies, which configured their economy according to international criteria.

This meant that, for example, these countries concentrated on the production of goods in the primary sector of the economy, and that the marketing prices of these products at the international level were generally stipulated according to the needs of developed countries. In turn, developing countries became importers of technology produced in developed countries (Stiglitz, 2018, p. 26), with prices set from these latter, so that a growing inequality between countries began to emerge; eventually, the G-77 was formed, made up of developing countries, or 'third world', as a way of putting pressure on developed countries in search of a better balance in international trade (Mazower, 2012, p. 299; Anand, 2004, p. 253; Lorenzini, 2009, p. 121).

In turn, the rise of oil as a source of energy for international production and the formation of the Organization of Petroleum Exporting Countries (OPEC) in 1960, by developing countries, with the aim of declaring their sovereignty over their resources (Lorenzini, 2009, p. 120), put additional pressure on developed countries, especially in the Western bloc.

In the 70's, this organization became more relevant when an international conflict broke out between Israel (supported by the United States) and neighboring Arab countries (supported by the Union of Soviet Socialist Republics), in which the latter decided, as a form of retaliation in the context of the Yom Kippur war (between Israel, Egypt and Syria), that OPEC production would be cut and an embargo was imposed on Western countries that supported Israel, thus increasing the international price of oil, in order to control this market against the domination that multinational trading companies had previously exercised over the producing countries (p. 120). This crisis generated a global recession and strong political repercussions in Western countries, especially in the United States (Mazower, 2012, p. 344).

In this context, the oil crisis hit especially the developed countries of the Western bloc, which had to establish policies to counteract this 'strategy' of 'third world' countries (Lorenzini, 2009, p. 121). A relevant fact amidst the world economic events that developed after this crisis is that in 1971 Richard Nixon had destroyed the international monetary system created by the Bretton Woods agreements, abandoning the gold standard, in the context of the economic crisis experienced between the late 60's and the early 70's.

The scenario of this crisis created an unprecedented phenomenon in the modern economy, known as "stagflation" (Mazower, 2012, p. 344), which is described as stagnation with inflation (Amighini, Blanchard, Giavazzi, 2012 , p. 194). For the first time, the slowdown in production and the increase in unemployment generated inflation (Mazower, 2012, p. 345), contradicting one of the most widespread ideas in economic theory at the time, i.e. the Phillips curve, according to which, 'when unemployment was low, inflation was high, and when unemployment was high, inflation was low and often even negative' (Amighini, Blanchard, Giavazzi, 2012, p. 207). These developments, added to the pressure from the G-77 countries for a "new world economic order", led to a reaction from the United States and the United Kingdom, which would eventually spread out.

In 1974, 1979 and 1981, Augusto Pinochet, Margaret Thatcher and Ronald Regan started their governments, in Chile, the United Kingdom and the United States, respectively, promoting profound changes in the capitalist economic model of State interventionism that until then had dominated in Western countries, and liberalized national economies; this approach would later be called 'neoliberalism', under the influence of the theories of Milton Friedman and Friedrich von Hayek, both economists awarded with the Nobel Prize in the 1970s. The advice of economists educated at the Chicago School, at the University of Chicago ('The Chicago boys'), where Milton Friedman was professor and from which some of Augusto Pinochet's economic advisers came, was key for the dissemination of this 'new' economic trend, as well as the contribution from the so-called "Geneva School" (Slobodian, 2018, p. 8), which describes a groups of neoliberal thinkers involved in the academy from this Swiss city, who also worked for several Geneva-based international economic institutions, such as the World Trade Organization (p. 8).

An analysis of the changes that were made in the economic policy of Western countries, especially developed ones, and later in the majority, can be found in the work of François Bourguignon (2017) "The globalization of inequality", where he explains that taxation, privatization, deregulation, and structural adjustment were the main tools used to introduce the changes.

In terms of taxation, there were especially 'cuts to income tax' (Bourguignon, 2017 p. 122), as well as the creation of the distinction between 'taxation on capital and savings and taxation of earned income' (p. 123) that produced a 'dual system' (p. 123) of taxation, which taxed both the highest-income group (capital and savings) and the income of the less rich population, male and female workers, to compensate for fiscal spending, taking into account the reduction of the income tax rate.

In fact, as Bourguignon puts it, 'since the income share of capital tends to increase as income increases, the average tax rates for very high-income groups ended up falling' (p. 123). In turn, these reforms to fiscal policy were accompanied by cuts in social spending, or a reduction in the welfare state (p. 124).

In this context, the privatization of public companies, as well as financial and labor market deregulation, also occurred and was promoted (p. 124). The first deregulation or 'financial liberalization' (p. 127) basically consisted in 'the deregulation of operations in financial markets, based on the reestablishment of competition between operators of all kinds and the computerization of markets' (p. 126). In this way, private banks and other operators in the financial sector could compete in the market with less regulation from the State, which increased demand and access to credit (p. 127). It was also possible to create new financial products and the opening of international markets, including capital markets, which produced a 'greater fluidity of international capital mobility' (p. 130).

Another important aspect of this financial liberalization in the monetary policy reforms is that, through banking deregulation, financial entities have a greater margin of monetary creation, through the 'secondary creation' of money (Blondeau, 1983). This implies that the primary issuance of money, made, for example, by a central bank, may fall on a credit made to a commercial bank, which in turn can use the money received to issue credits to its customers. In this process, the commercial bank can grant credits that exceed the amount of the initial credit received from the central bank, as long as the credits granted with the available money received from the central bank maintain a certain amount of money in its reserves, which allows to partially cover the credit received by the central bank.

The difference between the amount of credit issued by the central bank and the total amount of credits granted by the commercial bank with the money from the central bank loan will be equal to the total of the secondary issuance of money by the commercial bank. This is important because by promoting the abandonment of the gold standard in 1971 in the United States and its spreading worldwide through financial deregulation, financial institutions can influence monetary policy through the secondary issuance process.

The second deregulation mentioned so far is that of the labor market, in which employment protection measures have been relaxed in most countries, such as unemployment benefits, with the aim of encouraging those who are unemployed to try to work as soon as possible (Bourguignon, 2017 p. 137), however, as Bourguignon (2017) states:

> There are several additional ways, in addition to employment protection laws, in which the labor market is regulated, including trade unions and collective bargaining, social contributions or deductions from wages, as well as taxes on wages, compensation unemployment and, of course, minimum wage laws (p. 131).

All these forms have been used in neoliberal economic projects, reducing the union bargaining power (p. 133), for example by establishing the minimum wage in low ranges, with respect to the average wage (p. 134) and cutting the contributions to social security (p. 136), to influence the labor market.

On the other hand, structural adjustment was another of the economic policies that were adopted internationally in most countries, through the management of economic institutions such as the IMF or the World Bank, as a recipe to counteract the crisis of the foreign debt in the 80's (p. 141), in the same context of the emergence and positioning of neoliberalism.

This summary of economic policy of neoliberal tendency is incomplete; however, it allows to specify the historical context and some economic elements of this model of international capitalism, since the mid-1970s. In turn, these same economic elements of neoliberalism are considered as components of the phenomenon of contemporary globalization (Bourguignon, 2017; Nadal, 2011; Mazower, 2012).

In this context, Mazower states that, in 1983, Harvard Business School professor Ted Levitt published an article called “*The Globalization of Markets*”, which had a profound influence, and in which he argued that the world had become a single market (Mazower, 2012, p. 363). On the other hand, it is worth remembering the words of Findlay and O'Rourke, when they state that by the mid-90’s the majority of the world's population already lived in open economies (Findlay and O'Rourke, 2007, p. 497).

By that time, contemporary Globalization had been installed worldwide. In fact, Mazower himself highlights the words of the president of the United States, Bill Clinton, when, in 2000, in his speech before the State of the Union, he congratulated the population of his country for having welcomed “*'the central reality of our time'-globalization*” (Mazower, 2012, p. 362). These references show how, from the 70’s of the last century, until the beginning of the 21st century, a historical process developed that internationalized neoclassical economics, and that was named Globalization. Now, it is interesting here to specify what consequences did globalization have on the international economy and, from there, begin to determine the changes that it produced in the Law.

Joseph Stiglitz (2005), one of the main economic advisers to the US government of Bill Clinton and chief economist of the World Bank, in a book originally written in 2003, described globalization, as, 'the greater integration between the countries of the world as a consequence of the reduction of transport and telecommunications costs, on the one hand, and the elimination of artificial barriers, on the other '(Stiglitz, 2005, p. 14).

In the first chapter of this work, Stiglitz describes some of the policies of globalization, managed until that moment by the United States and other developed countries, through international organizations (pp. 46 - 48). Many of the policies collected in that study have been addressed here when neoliberalism was described, following the work of Bourguignon (2017), such as deregulation and reduction of the fiscal deficit, by the State (Stiglitz, 2005, pp. 65-66).

However, another important aspect of this management of globalization, which Stiglitz collects in his study, and which has been little addressed so far, is the free trade policy, based on treaties that further integrate international markets, but which, according to Stiglitz, were generally designed to privilege the production of developed countries (pp. 70 - 74; 2018, p. 26). This has even been pointed out more recently by Abhijit Banerjee and Esther Duflo, when they criticized the way in which international cooperation programs for food security have traditionally been conducted between cooperating and needy countries (Banerjee and Duflo, 2016, p. 63).

On a world scale, this highlights a policy to free national markets from foreign products, and, therefore, to revalue the trade balance in the domestic economies. Mainly, exporting countries have taken advantage of this free trade movement, and have seen their income increased through greater investments, productivity growth and increased exports, such as the United States, Germany and China, among others.

On the other hand, the profit margin of this liberalizing policy of international markets has left few positive returns to mainly importing countries, which depend on their productive structure and capital markets to maintain stability, or even to be able to see an economic growth. This is the case of countries like Colombia, which generally have a negative trade balance (the total value at current prices of their imports is higher than their exports); therefore, this factor is subtracted from their gross domestic product (CEPAL, 2002, p. 176). The same occurs in most Latin American and African countries. To guide the international management of these policies, the General Agreement on Tariffs and Trade (GATT) was transformed into the World Trade Organization (WTO) in 1995 (Mazower, 2012, pp. 361 - 362).

This is the free market policy that was launched worldwide in the historical context, through two types of liberalization of national economies: free trade agreements and the opening of capital markets. The former is widely known around the world, as well as in Colombia, to the extent that many countries have entered these treaties to agree on more beneficial foreign trade terms for their different productive sectors. However, one consequence of this policy is unemployment in sectors where imports entered successfully. In turn, this generated a modification of the productive structure of the national economies, since in each country the companies had to specialize the production in competitive sectors in the international market (Johanson and Olaberría, 2014, p. 8), and allowing foreign products to enter with great force to compete in their national markets.

Of course, this has generated benefits and losses in different economic sectors and countries worldwide (p. 8), as stated by Stiglitz (2005) in his opinion about the way in which the United States managed the policies of economic opening, between the end of the last century and the beginning of the current one, through what he calls 'unfair trade agreements' (Stiglitz, 2005, p. 336), which promoted the reduction or elimination of tariff barriers worldwide. However, at the same time, protectionist policies of national productive sectors were implemented that were not subject to the same reduction of tariffs, or through subsidies to national production, so that the benefited products could compete internationally at low prices (such as agricultural products), and disadvantageous clauses for foreign products in free trade agreements with some countries were established; for example, by subjecting the products to compliance with US health, quality and intellectual property standards, which could be modified for the benefit of national producers, thus eliminating international competition (pp. 336-342).

It is important to highlight the relationship between this free trade model and unemployment (Stiglitz, 2018, p. 105). On the other hand, the production costs of different goods were the object of analysis by the companies in the framework of this trade liberalization, and many factories transferred parts of their production chain to countries where they obtained an economic benefit for settling there, by virtue of a reduction of their production costs (p. 102, 105). Thus, if they considered that there was a saving in wages, for example, or in raw materials, or in transport, they could move their production or part of it, wherever they could reduce these costs (Johanson and Olaberría, 2014, p. 15). Again, the consequence of this is related to employment, insofar as where they closed a factory, to move production to another country, they created unemployment, while where they opened the new factory, they created employment (p. 24).

In this sense, the labor market has also become globalized, making many countries consider themselves 'attractive' for foreign investment, due to their weak labor protection, which is reflected in low production costs, lowering wages and others social security rights of workers. At the same time, this phenomenon has increased global inequality between skilled and unskilled workers, as companies demand increasingly skilled workers to qualify their specialized production processes, thus further widening the income gap, access to formal jobs and social security between the two, globally (pp. 15-20; Bourguignon, 2017, p. 141).

On the other hand, these economic policies are often identified as the causes of the economic crises that followed in the 90's in Latin American and Asian countries, as described by Stiglitz (2005). The financial borders of these countries were demolished, and they entered competition from international banks, usually from developed countries, together with trade liberalization and the consequent reorientation of the national productive structure, which made the economies of the countries that suffered the crises generally depend on foreign loans, or foreign financial investment. Then, suddenly, loans and investments were deemed to be excessive and the banks stopped lending funds or withdrew their investments, underfunding these countries, and leaving them in a crisis status that linked high inflation and unemployment (Stiglitz, 2005, p. 349; Girón, 2002, p. 27).

This is precisely due to the promotion of the free movement of capital around the financial markets in the world, 'which allows the integration of national financial markets into a global financial market that operates 24 hours a day' (Girón, 2002, p. 6), which hinders the investment of these capitals in the productive structure of the countries, and rather encourages their flow. Hence, the national economic agents will probably not be able to take advantage of the income of said capital and, on the other hand, they will be able to benefit from the exchange and interest rates that exist in the different national markets, creating global competition between markets, with the aim of attracting capital, with almost no benefit being produced in the national productive structure.

The risky factor in terms of economic stability of those countries that have competitive financial markets in this system, is the one-sidedness of the decisions of those who invest in them, provided that they can withdraw their investment practically whenever they want. Therefore, the economic agents who use foreign capital can be affected by decisions made by the investor, such as withdrawing direct investment (which could trigger a corporate bankruptcy, and with it unemployment) or claiming indirect investment (loans) very quickly, without the receiving agent being able to achieve the expected returns, having to pay interests and financial costs without having received profits. The volatile circumstances of the markets, such as the mobility of interest rates or exchange rates, would also add to the risks.

This has generated serious economic crises in some states, such as Mexico in 1994 (Sassen, 2007, p. 118) or Brazil in 1997 (Girón, 2002, p. 46), to name a few examples. However, to give numbers on the liberalizing movement of markets that globalization implies, it is convenient to refer to the increase experienced by international trade in goods worldwide. According to the figures from the World Trade Organization (WTO), the export of these goods went from 2,753,000 million dollars in the last quarter of 2005, to 4,790,000 million dollars in the same period of 2019, which implies an increase of 73.9% in 14 years, while imports went from

2,828,000 million dollars to 4,852,000 million dollars during the same period, which represents an increase of 71.5% (WTO, 2020). This without including within the analysis the data updated to 2020 (or 2021), in the context of the global economic crisis produced by the emergence of the new coronavirus SARS-CoV-2, which shows a recession on a global scale, with a reduction in these numbers estimated at around 10% from one quarter to another, between December 2019 and March 2020 (WTO, 2020).

In this sense, the globalization described so far, as an essentially economic phenomenon, has generated political consequences at the global level, such as the relative reduction of sovereignty of States (Bauman and Bordoni, 2016), the promotion of non-State legal scenarios, or autonomous global legal regimes of a private nature (Teubner, 2010; Held and Mc Grew, 2003), the promotion of the capitalist economic system worldwide and some other elements of liberal ideology, such as Human Rights (Mazower, 2012). All of the above concepts will be explained a little more in detail later in this work.

3. *Some political consequences of globalization*

The future does not belong to globalists.
The future belongs to patriots.

Donald Trump. 2019.

Globalization transformed the political system worldwide, based on the following historical facts that are considered as fundamental to determine what globalization consists of, and how this phenomenon influenced the reconfiguration of the political system:

a) The industrial revolution.
b) The international system after the Second World War.
c) The abandonment of the gold standard by the United States.
d) The rise of the neoclassical capitalist economic model in liberal countries between the 70's and 90's of the 20th century.
e) The fall of the Berlin wall, and with it, the end of the Cold War and the relative victory of the Western bloc.

These five relatively recent historical events configured a world economic system governed by the rise of financial capital, in which the dependency relationship between the productive apparatus of national economies and the amount of money that circulates in each national market, i.e. what people actually get, is no longer necessary. For this reason, there are companies and individuals that accumulate more capital than some States.

In the comparison between the GDP of a country and the fortune of a person, people richer than countries can be found. For example, in 2019, according to Fortune magazine, Walmart accumulated revenues for a total of 514,405 million dollars (Fortune, 2020), while, in the same year, the Gross Domestic Product (GDP) of at least 154 states was lower than this figure (World Bank, 2020), and only 26 states achieved a GDP higher than Walmart's revenue during the same year, also based on World Bank data. No particular change occurred later, for example in 2022, when Walmart accumulated revenues for a total of 572,754 million dollars (Fortune, 2022),

This comparison is objectionable from many perspectives, especially due to the type of measures used, such as GDP (Coyle, 2017); however, the idea is to highlight the possibility that companies or people may accumulate as much or more capital than States (as both can accumulate capital). This implies a relationship between States, companies and people, in terms of capital, to the extent that the three actors need to produce and accumulate. Therefore, there is a relationship of codependency between them, in order to generate the conditions they need to reproduce capital.

Although interests may be different, these three actors are related based on their needs and the opportunities that may be generated in pursuit of their interests. Therefore, as previously described, economic globalization created a kind of market of opportunities for companies to segment their production chain and locate some processes in certain States that favor their interests (Stiglitz, 2018, p. 105). Likewise, some States compete in this market through their exchange and tax policies, to achieve greater foreign investments.

Likewise, people who seek to reduce the tax costs of their capital can move it to States where regulations are more favorable to their interests. This generates financing and at the same time underfunding of States, creating wealth and poverty at the same time, depending on the States from which the capital comes and goes.

At the bottom of this, as mentioned above, are people's jobs (Stiglitz, 2018), public resources by virtue of taxes collected by States and, with them, the social objectives that they have for the sake of enforcing the rights of people. That is why research such as those by Piketty (2019), Bauman (1999) or Bourguignon (2017) speaks of increased inequality at the world level due to globalization. With this system, private individuals can get richer and richer, through the reduction of their tax costs, just as companies can reduce costs by relocating their production where they can get better prices (both for labor and taxes, for example), thus reducing their contributions in terms of taxes and jobs in the countries where they were originally located, and in turn generate new jobs and tax revenues in the countries of destination. Ultimately, what is generated is a lack of financing in the public sector, and an upswing in private wealth.

In this way, the current circumstances of the States make some researchers of the matter speak of a crisis of the State, such as Zygmunt Bauman (1999), Carlo Bordoni (2016), Saskia Sassen (2007) and Ulrich Beck (2017). To describe this crisis, Bauman (2016) says the following:

> the State has seen itself expropriated a considerable (and growing) part of its former genuine or presumed power (to do things), which has been appropriated by supra-state (global) forces operating in a << space of flows >> (Manuel Castells dixit) outside of all political control, while the effective reach of existing political agencies and bodies have failed to go beyond state borders. This means, plain and simple, that finance, investment capital, labor markets and the movement of goods are outside the remit and scope of the only political agencies currently available to carry out the work of supervision and regulation. It is that politics chronically afflicted with a deficit of power (and therefore also of coercive capacity) that faces the challenge of powers emancipated from political control (pp. 23-24).

In this context, there are political actors who compete for power with the former Sovereign entity of the Enlightenment, i.e. the State, and eventually with the People, as the primary constituent; these are the individuals and companies that manage to accumulate large sums of capital in the framework of globalization. In this sense, it is possible to ask ourselves: "Is the State still the Sovereign? Is the People sovereign in Globalization?" The above is quite doubtful, because Globalization is a complex phenomenon, which escapes the categories of social organization based on the State, so it is difficult to identify who are the People in Globalization. And what does it mean to be Sovereign in this context? Therefore, it is very difficult to try to answer the first questions in a political and economic scenario as distant from the historical moment of the Enlightenment, as it is today (Bauman, 1999, pp. 79-80).

In turn, the problems of globalization are increased by the way in which they arise, since they can originate in one place, but have repercussions in another very distant place, with different effects; thus, it is difficult to coordinate local solutions to global problems. Even the solutions proposed from the global perspective are problematic, because global problems are generally more complex to solve, due to the plurality of interests at stake in their solution.

Consider, for example, the global crisis due to climate change, whose causes and consequences spread globally, and the responses to it, both locally and globally, that have been very difficult to apply (Beck, 2017). On the other hand, global pandemics are a good example of these difficulties, as in the case of the global health crisis caused by the new coronavirus SARS-CoV-2 that emerged in China in 2019, and spread throughout the world in 2020 through commercial travel, recalling the relationship between the spread of diseases and trade routes, as in the case of the Black Death in the 14th century (Frankopan, 2016, pp. 219 - 220).

The very fact that a person was originally infected in a Chinese market and then the virus spread to the furthest corners of the world shows how complex and interconnected the world is today, through a world trading system that connects people and places so far apart. This crisis demonstrated various ways in which the political actors described here, individuals, companies and States, act. For example, some States strengthened their collaboration ties to overcome the crisis, such as the Europeans, while others acted locally and affected global solutions with their decisions. This was the case of the United States, which decided to withdraw from the World Health Organization while this institution was fighting the pandemic at a global level and, as a consequence, they stopped financing an important part of this international organization.

On the other hand, some companies rushed to restructure their production, and relocated or changed their global chains, or their supply of goods and services, to survive the serious global economic crisis resulting from the pandemic. Likewise, instead of cooperating, some companies decided to undertake an individual race for the development of a vaccine, in a scenario of economic opportunity created by the global need, just as some States also rushed to invest in these companies to ensure production for their population, leaving others with limited possibilities to react.

This serious global crisis has not yet been resolved, but what is evident is a general lack of coordination at political, economic, social and cultural levels, globally, on the most appropriate ways to overcome the situation, with only a few exceptions. The foregoing was done almost without recognizing how interconnected the world is today, so that local solutions to global problems are insufficient, and, global proposals without a conducive environment for cooperation are ineffective to face such a serious situation such as SARS-CoV-2.

In turn, the pandemic of this new coronavirus represents a challenge to globalization as described so far, since it has unequivocally demonstrated the need for the State to be capable of solving the problems, for which it must be properly managed and financed. The competition for sovereignty with the State on the part of some companies and individuals, by virtue of their economic interests, must be called off to be reevaluated, due to the urgent need of citizens, workers or not, to demand the fulfillment of their rights before a legal-political entity that should be fully compliant, regardless of other considerations.

A worker from company X who asks his employer to guarantee his/her right to health is not in the same situation as a citizen making the same request to his State, since the interests of the companies may go beyond those of the workers, and perhaps the employer could find it cheaper to replace a worker than to ensure his/her rights, while the very purpose of the State, according to the tradition of liberal constitutionalism, is precisely to guarantee the rights of citizens and control the Sovereign (Dippel, 2009).

In this context, it is not clear if Globalization, as it has been known until now, will change after this pandemic. The truth is that it should, in order to make it more consistent with social needs in the face of global problems that warrant solutions of this same level.

Finally, we should to analyse some of the changes that Globalization has produced in Law.

4. Some changes in the Law under Globalization

> *But history does not stop, and the task of each generation is to do what it can with the cards that are played.*
>
> Joseph Stiglitz. 2018.

Just as the State has changed due to Globalization, so has the Law. This is because the latter has traditionally been conceived as linked or dependent on the State, and since it has been modified by Globalization, the Law has also undergone changes. Perhaps the most notable aspect of this process has been the emergence of: i) contemporary descriptions of Law not linked to the State, and ii) non-State legal scenarios.

The former occurred specifically in the second half of the 20th century, although perhaps it is possible to speak of a tradition of studies on Law that did not link the latter as a product of the State, and it may be the case of the genealogies of Soft Law by Anna di Robilant (2006). But especially, Niklas Luhmann's Theory of Law as an autopoietic social system has had a great relevance in the studies that have been carried out on Law in the last 50 years. Likewise, his theory is important for this research, since it considers a description of the Law without conceptually linking it as dependent on the State, as mentioned by Luhmann (2014):

> Law is an autonomous functional system of society that determines by itself what it regulates and submits all the factual assumptions on which it communicates to the binary code in accordance with Law or contrary to Law (Recht / Unrecht) (p. 38).

This description of Law as a social system, based on a language, does not mention the State as an essential feature on which it depends, but rather, this is a product of the complexity of social interaction, and not of a bureaucratic-administrative apparatus (Weber, 1964). This consideration allows one of Luhmman's students, Günter Teubner, to theorize about the existence of new legal fields where the State does not operate, what the German sociologist also calls "*private legal regimes of an autonomous nature*" (Teubner, 2005, p. 121). This theorization about non-state law allows the consideration of it, as a social phenomenon beyond the state in the context of globalization, as described by Teubner (2010):

> Ultimately, in Globalization, the creation of rules that predominate is shifting from the centers of Law that had been politically institutionalized in the nation-state (…) towards the periphery of Law, that is, towards the limits between Law and other sectors globalized social networks. The new world law is primarily peripheral, spontaneous and social law. Private government, regulation, and justice are becoming fundamental sources of law: they are intrinsically legal phenomena (p. 74).

Researchers outside the Law also agree on this, such as David Held and Anthony McGrew (2003), who described some of the changes that Globalization has produced in Law:

> Many new centers of legislative and normative decision have emerged, creating a multitude of << decentralized legal decision-making processes >> in various sectors of the global order (…). Many of them have been born through self-validation processes in relation to technical standardization, the production of professional rules and the transnational regulation of multinational corporations, and through business contracting, arbitration and other elements of the lex mercatoria (the global framework of the commercial law) (…). Global networks of public political action that involved public and private actors are reshaping the bases on which national and international rules were made and regulatory systems operate; and the results do not easily fit into the traditional distinction between national and international law (…). There is no longer a strict separation between public and private, domestic and international legal procedures and mechanisms; Legislative decision and execution models no longer fit clearly into the logic of States (pp. 32 – 33).

This is also experienced in the supra-State political scene of grouping of countries, such as the European Union, the OAS, among others, in which instances of international public law have been created that imply a modification of the legal sovereignty of the countries (Peters, 2010, p. 209), even the national constitutions themselves (CIDH, 2001, p. 39). In fact, theoretical proposals have been launched to promote a common constitutionalism among countries, with supra-State regulations and institutions, through a process of normative integration, such as the *Ius Constitutionale Commune*, a project specially led by the Max Planck Institute for Comparative Public Law and International Law, from the University of Heidelberg in Germany, or global constitutionalism (Peters, 2018), after the identification of the crisis that this theory is going through, facing the challenges that Globalization imposes, both on the State and to the Law. In the words of Peters (2010):

> Globalization places the state and state constitutions under pressure: global problems force states to cooperate within international organizations, as well as through bilateral and multilateral treaties. Previously, typical government functions such as ensuring human security, liberty and equality have been partially transferred to 'higher' levels. Furthermore, non-state actors (acting within the state or transnationally) are increasingly being charged with the exercise of traditional state functions, including tasks as essential as military or police activity. The result of this varied phenomenon is that 'governance' (understood as the general process of regulating and exercising matters of public interest) is exercised beyond the constitutional borders of the States. This means that state constitutions can no longer regulate the totality of governance in a comprehensive way; and that the initial demand of the state constitutions to create a complete basic order is thereby discarded. The vacuum of state constitutions affects not only the constitutional democratic principle but also the rule of law and collective security. In general, state constitutions are no longer 'total constitutions" (p. 209).

On the other hand, examples such as the technical standards issued by the International Organization for Standardization (ISO), which have as much or more relevance in some scenarios of globalization (such as global value chains) than the standards issued by national political entities or international courts (Frydman, 2018), may be recalled; or the arbitration courts themselves, in which civil individuals decide on a legal conflict, in which they can even condemn a State, as in the case of the International Center for Settlement of Investment Disputes (ICSID) supported by the World Bank (Donaubauer, Neumayer and Nunnenkamp, 2018, p. 892), where the parties can choose the individuals who will resolve their conflict, and even the rules with which they can do so (Esis, 2019, p. 38), presenting this modality of conflict resolution as one that is faster than national justice (Fiss, 2007, p. 130), "*in favor of peace and the promotion of trade and investment version*" (Esis, 2019, p. 38).

All this in the context of Globalization, in which companies are the ones that acquire a leading role in the redesign of social life worldwide (Stiglitz, 2018, p. 120), while States lose political power (Bauman and Bordoni, 2016; Bauman, 1999), as well as the majority of individuals, who see in companies the new sovereigns in a new Social Pact. This is due to the weakening of the Social Contract in which the State had to ensure rights, since now its capacity to guarantee them is limited in the face of the loss of financing, as well as of relevance, within the framework of the Western globalization model.

Meanwhile, the Chinese model of Globalization, which is developing from projects such as 'the belt and the route' (Frankopan, 2019, p. 93), implies a reorientation of the traditional role that the State has played in the liberal world, as that shows a form of capitalism in which it has a great responsibility (Chun, 2013), through active participation, and relative political control of the people (Frankopan, 2019, p. 103), as well as a new relationship with foreign actors, such as States, individuals and companies (p. 92). The curious fact is that this model, in terms of Law, also resorts to the transformation of this phenomenon as detached from the State, through tools such as international arbitration (p. 97), to implement globalization.

For all the above, it is pertinent to analyze the context of this independence of the Law from the State (Teubner, 1997), from its theoretical description, to its materialization in non-State legal instances and norms, according to the historical development that is taking place facing the future of Globalization, especially due to the challenges that it brings to the assurance of fundamental rights of individuals, such as human rights, a task traditionally linked to the State, but which in this context must be thought beyond this conceptual framework, and therefore beyond national constitutionalism. The above, under the understanding that the Law operates as a stabilizer of historical developments, rather than as a 'revolutionary' of History (Teubner, 2017, p. 188).

5. Conclusions

Although the Law has traditionally been conceptualized as a product and exclusive attribution of the State (Weber, 1964), in contemporary Globalization this has ceased to be the case. Through this historical phenomenon, the Law has begun to be described as a social system independent of the State, more linked to social interactions between individuals and groups of individuals, such as companies or States, without being a product or exclusive attribution of any of these entities; even, as an autonomous social system, derived from intra-systemic communications (Luhmann, 2014; Teubner, 2017).

In this sense, private capital has reconfigured contemporary Law, modeling legal systems through the establishment of new instances and regulations in favor of its interests, such as international arbitration and the various scenarios and tools for the solution of international conflicts, beyond the regulation of States, or even within them, through mechanisms such as Free Trade Agreements, or multilateral or supra-State organizations, such as the World Trade Organization or the International Center for Settlement of Investment Disputes.

Therefore, Globalization also represents a challenge for citizens, States, and their legal systems, because it implies competition against their sovereignty, that is, their political power, since it reconfigures the causes for which this political system was established at the time of the Enlightenment and, with it, its effectiveness, i.e. the function of guaranteeing the rights and control of the Sovereign, through a constitutional legal-political system.

Taking into account what has been said so far, it is necessary to recognize that constitutionalism is in crisis, and that it is essential to make an effort to analyze what alternatives this theory should explore to continue being effective, in a global political context such as the contemporary one, especially in the future, facing the possibility that non-State legal instances turn out to be more welcomed and extended worldwide, and become the new legitimate sources for the resolution of legal conflicts on fundamental rights, in the context of Globalization.

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