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THE TURBULENT GLOBAL CONVERGENCE GAME
WCSA Special Issue

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Emilia Ferone and Giovana Camila Portolese*

Prologue

It was a great honor and pleasure of ours to serve as Guest Editors for this special issue of the **Central European Political Science Review (CEPSR)** emerged from the cooperation agreement between the Review and the **World Complexity Science Academy** (www.wcsaglobal.org) and aimed at developing a viable toolkit for global governance and policy modelling.

In an age of global impact phenomena the clear paradox is that globalization increases despite local voices that, in its turn, have to become global to be heard. Therefore, there is no scape from globalization, for the better and worse. The challenges and opportunities of globalization can be understood as long and far as the toolkit is suitable. Obsolete common sense beliefs are not able to demonstrate whether globalization is wrong or failing; they merely show the inappropriate observation skills of the observer.

Beyond any moral judgment, the present special issue provides some key interdisciplinary pillars of the complex systemic process. By considering epistemological, theoretical, methodological, technical, and applied operations (empirical is a tricky word which creates the illusion the observer can capture the reality as it is through the data) this issue offers a systemic vision to understand the world around us and enhance policy modelling. As a matter of fact, the link between research and policy is decisive as stated by **WCSA motto: *Research determines policy, policy determines politics, systematically.*** Notwithstanding, it is also worthwhile to draw a distinction between descriptive research and normative policy guidelines. The conflation

of description and prescription has a negative impact in the reputation of science, law, and politics.

The present special issue explores concepts and provides hints at different levels from epistemology to applied operations. Rather than describing these features chapter-by-chapter, a Mertonian systematization of contents will be presented in a nutshell. Such wider approach is possible since a broader and deepest overview of the systemic vision is underpinning the entire issue from its inaugural chapter titled ***Turbulent Convergence: A WCSA Presidential Agenda Setting for World Order Lawmaking and Policy Modelling***. Written by **Andrea Pitasi and Emilia Ferone**, it cross-fertilizes all the five pillars described bellow:

1) The understanding of globalizations processes through identification/des-identifications, memetic recombinations of mixed symbols and flexible heterodox traditions, which could be broadly meant as the evolution of cosmopolitanism (Chapters 2, 3, and 7).

2) The empowerment of interconnected platforms (digital, legal, data, etc.) gives rise to a virtuous circle of memetic and symbolic recombination and reconfiguration (Chapters 2, 3, 4, and 7).

3) The setting up of a scenario where the sense of place and time is blurred by the memetic reconfigurations and platform expansions expanding memetic reconfigurations: the age knowledge-intensive and intangible value, which represents an impressive new Cambrian explosion for our times (Chapters 2, 3, 4, and 7)

4) The rethinking of epistemology, methodology and theory on a big data global scale and beyond methodological nationalism as the only viable way to face the key evolutionary challenge before us, helping to overcome the temptation of pouring new wine into old bottles or presenting old wine in new bottles (Chapters 3, 4, 5, 6, and 7).

5) The impact of the intangible world in the dynamic between digitalization and taxation, which is an exemplary case of how the methodological and epistemological resetting coevolves the policy modelling toolkit. For instance, by setting problems differently and providing – or at least trying to provide – counterintuitive solutions (Chapters 3, 5, and 6).

Still and all, because the texture of the special issue is wider, richer, more complex, neater, and further intriguing, some case studies are presented (Chapters 8, 9, and 10). However unusual this five points compass might be, it facilitates the mapping of the special issue for the reader, allowing him/her to start a wonderful adventure in the complex and intangible global scenario we are living in.

Leiden/Napoli/Curitiba, March 2019.

Turbulent Convergence
A WCSA Presidential systemic Agenda Setting
for World Order Lawmaking and
Policy Modelling

1. One planet, many interconnected worlds

This work is focused on turbulent convergences in our global scenario to be analyzed through a systemic approach. It is very important to consider we all live in just one planet: this planet, single planet is made of many interconnected worlds.

As systemic scholars, we know dealing with complex evolutionary systems, that the system is involved in a holistic vision in which is unified and interconnected but not integrated, moreover we know that the whole is much more than the mere sum of its parts. Many interconnected worlds which show us how the whole is greater and much more complex than the sum of its parts. That is why a systemic and holistic vision is strategic.

Then, every one-sided, every unilateral, every simplistic interpretation, for example of political phenomena or economical ones is devoted to failure if we do not have a wider and more strategic and systemic vision in which we can frame and embed the phenomenon itself we are investigating.

For example, we have many transnational / multinational / supranational organizations which cover our planet through treaties, through agreements, through different protocols and most of them began originally shaped as International treaties and agreements then evolved proportionally to the development of legal and juridical globalization.

Day by day the world is turning the from is shifting from International to a transnational or even better supranational world order model as described for example in the field of Sociology of law by authors like Guenther Teubner or Christopher Thornhill.

The UN is just one example.

If you look at the map in practice, all the planet is covered by the UN treaty. There are no meaningful exemptions.

Let's provide some more information about UN:

Headquarters in New York, US

Offices in Geneva, Nairobi and Vienna

193 Member Countries / 196 Countries in the world



Figure 1. UN – United Nations map

World Health Organization more or less tells the same story if you look at the map and the distribution figuration.

Let us show briefly its key info:

Headquartered in Geneva, Switzerland

6 WHO regions

49 field offices in countries/territories/areas

Countries without a WHO office: covered by nearby field offices or by the appropriate regional office



Figure 2. WHO – World Health Organization map

If we check the International Labor Organization (ILO) it is the same story.

Headquarters in Geneva, Switzerland

187 Member Countries / 196 Countries in the world

Divided into 5 regions: Africa, Americas, Arab States, Asia and the Pacific, Europe and Central Asia



Figure 3. ILO – International Labour Organization map

Everybody was involved. The illusion that the National governments can shape autonomously their own labor policies is just a legend nowadays and again this post national

state pattern is reproduced by WTO evolving. Probably the most popular with the UN is the World Trade Organization shape the and founded by the treaty of Marrakesh on January 1st 1995.

Once again, 164 members, member countries of course, and 23 observers, a very small part of the planet is out of there.

So every time you negotiated taxations tariffs, whatever you have to sit at the table there and start debating even quarrelling fighting eventually, but there you cannot invent your own trade policy like that, locally and nationally.



Figure 4. WTO – Word Trade Organization map

Once again, a global outlook the out creature of the International Organization for cooperation and development (OECD). And once again, the planet is covered by them. Also OECD mirrors the below patterns.



Figure 5 OECD – International Organization for cooperation and development map

And once again, we find some basic information about the organization.

Headquarters in Paris, France

36 Member Countries

Global Relations reach non-Members

Key partners: Brazil, India, Indonesia, China and South Africa

Regional Initiatives: Europe, the Caucasus and Central Asia; Asia; Latin America; the Middle East and North Africa (MENA)

2. Evolutionary regulation platforms as Conway's game

These organizations are not equal and they do not work according to the same, identical regulations and bylaws. Nevertheless most of the differences among them do not make the difference in evolutionary viable terms. They

are all stretched between a trans/supranational megatrend redesigning and reshaping both their internal-external connections and the noise resonance of the nation state not systemic environment (Luhmann, 1995 and 2012-13).

Thus, on one side we have first glance of freedom, freedom of action freedom of movement freedom of everything. In practice this freedom that is inside a very wide flexible, but at the same time powerful network covering all over the planet, freedom evolves as a game. With its key, few but pivotal evolutionary regulations.

These evolutionary regulations shape platforms of redesigning world order law and policy patterns which are basically light on / light off in Conway's game (Figure 6).

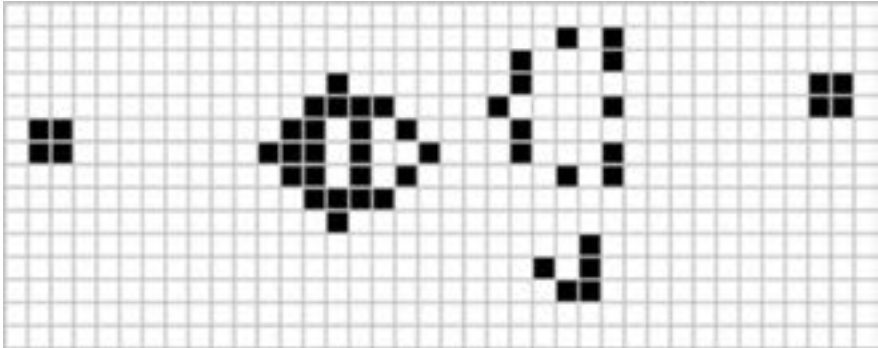


Figure 6. Conway's game representation

It is shaped as Conway's Game of Life (Dennett, 2004) which will be explained just some lines below and which can be applied to describe how many lights on together with few lights off describe the emerging global civilization with few Global Player (GP) interconnected by a relatively small amount of links (L) where each GP is free to empower and evolve some links and weakening others.

However each choice is predetermined in the whole amount of potential link (P) where $L=(f)P$.

So, each GP is a reconfiguring autocatalytic and self-organized set for evolutionary selection (Kauffman, 1995: 273-304) which means a more and more leveraged

data/bit relationship: a lower and lower amount of bits capable to manage, code and select an increasing amount of data (Chaitin, 2006).

All GPs are connected each other by platforms.

One of these platforms is digitalization; another is represented by taxation treaties, for example. These both platforms are something totally different if they are analyzed on a methodological nationalism bias (Beck, 2006) or as interconnected, structurally coupled system both dealing, for example with the matter of intangible value creation and assessment.

When the Conway's Game is fully empowered, all the lights are on. What is a Conway's Game of Life in substance? it's like that also reminding the picture above. Imagine a set of lamps; each cell is a kind of lamp light on light off. On one side light on light off is a random phenomenon, what some scholars would call potential but resourceless freedom. Light on light off is freedom. But freedom is inside the structure; there is no way that a light might be on out of the game.

There is no freedom about that out of there. The freedom is the random choice of interconnection and recombination in out on off inside the game. What Conway means is that there is no freedom of choice outside of the game.

Considering the Emergent Global Player Scenario (EGPS) as a Conway Game which are the key factors which frame the game and set the lights off /on?

They are listed below in the Emerging Global Player Scenario-EGPS shaping a unitas multiplex:

Global cosmopolitanism; Science intensive, knowledge-based policy modelling, and procedural decision-making; Entrepreneurial self-constructing, wide horizon spirit; Social autonomy structuration to a systemic global level.

Let's explain these key concepts.

1.) Global cosmopolitanism. The concept of cosmopolitan vision is a key contribution by Beck, (2006) who states that: “Cosmopolitanism [...] is a vital theme of European civilization and European consciousness and beyond that of global experience [...] What do we mean then by the cosmopolitan outlook? Global sense, a sense of boundariness. An everyday, historically, alert, reflexive awareness of ambivalence in a milieu of burying differentiation and cultural contradictions” (Beck, 2006: 2-3). The cosmopolitan outlook can be described as follows: “As a counter-image to the territorial prison theory of identity, society and politics we can provisionally distinguish five interconnected constitutive principles of the cosmopolitan outlook:

First, the principle of experience of crisis in world society. The awareness of interdependence and the resulting civilizational community of fate induce by global risks and crises which overcomes the boundaries between internal and external, us and them, the national and the international;

Second, the principle of recognition of cosmopolitan differences and the resulting cosmopolitan conflict character and the (limited) curiosity concerning differences of culture and identity;

Third, the principle of cosmopolitan empathy and of perspective taking and the virtual interchangeability of situations (as both an opportunity and a threat);

Fourth the principle of the impossibility of living in a world society without borders and there consulting compulsion to redraw old boundaries and rebuild old walls.

Fifth the *mélange* principle: the principle that local, national, ethnic, religious and cosmopolitan cultures and traditions interpenetrate, interconnect and intermingle-cosmopolitanism without provincialism is empty, provincialism without cosmopolitanism is blind” (Beck, 2006: 7). Beck

adds: “the cosmopolitan outlook calls into question one of the most powerful convictions concerning society and politics which find expression in the claim that modern society and modern politics can only be organized in the form of national states. Society is equated with society organized in nationally and territorially delimited states. When social actors subscribe to this belief, I speak of a national outlook. When it determines the perspective of the scientific observer I speak of methodological nationalism” (Beck, 2006: 24).

2.) Science intensive, knowledge-based policy modeling, and procedural decision making. This concept refers to Nowotny’s key contribution of scientific citizenship which features the knowledge based society; she affirms, “a knowledge based society also increase its production of epistemic things, various kinds of abstract objects, and technical artifacts that are subject to the same rules. The democratization of scientific expertise is also merely the expansion of principles of governance that have served the Western liberal democracies well. Today, science and technology are no longer viewed with awe but are part of everyday life. Mediated by the educational system and qualifications and certificates people acquire, they determine people’s chances of upward social mobility, their working world, and the course of their biographies. It is thus logical to extend the concept of citizenship to science and technology. «Scientific citizenship» comprises right and duties and asks about both the functions that expanded concept of citizenship could fulfill in social integration and also the duties that arise from it for citizens as well as for political institutions and administrations” (Nowotny, 2008: 23-24).

3.) Entrepreneurial self-constructing, wide horizon spirit. This key concept is inspired by the volume “The entrepreneurial Society” (Audretsch, 2007). “The entrepreneurial mentality and vision are synonym of proactivity, wide horizon strategy, relentless evolution (Laszlo, 2008a), continuity in goal attainment, clear goal setting, high speed in changing methods, tools and tactics if required to reach to fixed goal and so on. The entrepreneurial attitude and vision imply “lifelong” learning, evolutionary citizens who are always ready to distinguish shifts and shocks are mostly in their own emotional self-control and when the shock is coming (shaped as the Schumpeterian winds of creative destruction as shown in Pitasi-Ferone, 2008) they are already aware of how to act strategically and consistently. They do not cross and not wish to cross their lifetime as Broch’s Sleepwalkers (Broch, 2011).

4.) Social autonomy structuration to a systemic global level. Last key concept is concerning with the previous and it is a sort of consequence. The knowledge society challenges “dramatically provokes strong public opinion debates, and their “consequences” easily witness that emotional, incompetent reactions and attitudes simply generate a growing public misunderstanding of science, technology and their socio-economical impacts. That is why scientific citizenship is emerging faster and faster to solve the “incompetence” problem. Scientific citizenship is reconfiguring itself and it is emerging in the shape of sociitarian citizenship (Donati, 1993), inspired by the autonomous, self-organizing “spirit” and mood of the most competent and skilled knowledge-based elites, educated according to the most self-reflexive, relational, responsible freedom” (Pitasi, 2015).

“Social and public engagement by not profit organizations is crucial as far as it allows the emergence of new trends,

requests and needs if these organizations are cosmopolitan, managed by an entrepreneurial spirit and science intensive to follow the deliberative systemic procedures. When these organizations fail to accomplish or reject this cosmopolitan, science based, entrepreneurial and societarian model, they turn into noisy movement expressing the most emotional moods of the crowds in radical democracy participation fueled by bias and common sense. That is why e-democracy, for example, is becoming more and more procedural and complex. Organizations allowing e-voting have very clear settings and ranks to vote admittance” (Pitasi, 2016).

The four key concepts, Cosmopolitanism, scientific citizenship, entrepreneurship, societal autonomy, are the four dimension of a new idea of citizenship, called Hypercitizenship (Pitasi, 2012, 2015, 2016; Pitasi-Ferone, 2017). Hypercitizenship is sketched out by designing a multidimensional and multipolar convergence among different kinds of citizenship above explained.

With its four conceptual dimensions, Hypercitizenship, features the strategic attitude of those areas in which capitalism is turning into turbogenetic capitalism. The Hypercitizenship concept is focused on the fact that communication about key challenges of our times is increasingly meaning communication and public understanding of science and technology for governance and policymaking on a global, glocal and cosmopolitan scale.

3. A systemic process vision: Macro – Meso – Micro – Psycho-Social levels

Let us get back to the Conway’s Game of Life. The light is on when the Global player is aligned to the transnational/supranational megatrend expanding and evolving; the light is off when the methodological nationalism bias leads the Global Player to self implosion which means not a return

to the past nation state scale but rather its centrifugal fragmentation whose previous pieces are been incorporated by different – and then bigger and stronger – centripetal global players.

Here the list of the current Global Players:

The NAFTA GP

The BRICS GP

The Turkish Area GP

The EU GP

The United African Market GP

The Chinese – Japanese Area GP

The Mercosur GP

They are «LEGO» shaped thus every brick is built in a GP to exist and evolve but in a very interconnected intangible way two bricks can be built in two or more evolutionary shapes, despite what happens in the physical world. BRICS and MERCOSUR are both GPs; Brazil belongs to both of them, for example.

In brief, some areas remain outsiders but not isolated (Bahamas, Singapore, Switzerland, for example); they are not autarchically closed and isolated; they play a key interconnection role among GP, instead. They remain independent as they bridge the GPs increasing their mutual connections and their scale and leverage. Thus, they are Convergence Knots / Hubs clearly unifying and harmonizing a systemic process vision:

Macro: The EGPS

Meso: Each GP “scanned”

Micro: National states and their fragments

Psycho-Social: Gemeinschaftliche Lebenswelt (De Swaan, 2015)

It is a key evolutionary step in scale and leverage emerged in the last thirty years at great speed. At the mid of the 1980s every course of applied sociology would

have adopted the following scale to explain for example, unemployment:

Macro: unemployment in Italy

Meso: unemployment in the Emilia Romagna Region

Micro: unemployment in Bologna

Psycho-Social. Unemployment in the Santo Stefano Neighborhood of Bologna . This were the pattern of a relatively macro based course but a more micro oriented professor might have shaped the research design levels as follows:

Pyscho-social: Giovanni is an unemployed telling his life story by interview in depth

Micro: Giovanni's friends and mates tell their stories of unemployment and the story of their community neighborhood

Meso: participant observation in a Bologna hall Employment Center for labor policies

Macro: comparing the success of the whole network of these centers in the Bologna Metropolitan Area.

The power of recursivity. Time passes by, freedom evolves, complexity increases and the scale and leverage expand globally thus political and social sciences working styles change: What sociological working styles do effectively work? Observing the history of sociology in terms of working styles, sociological works can be categorized in relatively few kinds.

1. Qualitative local based works. These works are not featured by wide theoretical frameworks, historical depth or huge amount of data, they are rather focused on small scale ethnographical information and participant observation. Probably the most famous and exemplary sociological research of this kind is White's *Street Corner*

Society (1993) but probably *Middletown* (Lynd & Lynd, 1929) was the very first champion. These works are craft ship ones, certainly fascinating and intriguing even if at a very low generalization level and scientifically not very reliable and reproducible. Visual ethnography methods introduced since the end of the 1970s were an attempt to develop more valid and reliable procedures (Grady, 2001 and 2011).

2. Quantitative middle range works trying to balance theory and empirical research in a kind of circular and mutual double check between theory and fieldwork. Robert King Merton's *Theory and social structure* (1949) is the masterpiece which embodies this working style at its top.

Both these working styles had not great generalization standards, especially the former. They were both focused on a territory and time limitation of the research subject Merton's key work (1949) implicitly framed the problem of generalization when he considered the systematization of the most relevant theoretical-empirical findings to expand their range.

The matter of comparison dramatically emerged also though the growing internationalization of what Elias called the *Civilization Process* (Elias, 1969 and 1982) which was very inspiring showing how comparative research might show different ways to reach the same aim: multiple modernities as different paths towards the same direction (Eisenstadt, 1991).

3. Comparative Sociology, both diachronically and synchronically, emerged as a key vision to expand the sociological horizons beyond the specific territory and time limitations which features the two other working styles.

Comparative Sociology generated high quality contributions to compare “entities” (social and institutional ones) for example though Goudsblom’s writings (Goudsblom, 1994 for example) nevertheless this working style implied very neat and simple scenarios in which the entities were compared thus very wide but simple scenarios in which complex interconnections were rather weak. That is why the editors of the superb *Concise Encyclopedia of Comparative Sociology*, sharply wrote: “if, as globalization seem to have implied, there were to be eventual social and cultural convergence in the world, comparative sociological research would wane as there would be fewer distinct entities to compare” (Sasaki et al., 2014: XII)

Beware globalization does not imply fewer entities, globalization implies fewer distinct and neatly separated entities which in the past shaped the stereotypes of the taken for granted world (Berger & Luckmann, 1995). Globalization implies an increasing density and variety of entities but these are recombinational hybridations (genetically and mimetically) which express on one side a variety and density of entities increase and on the other side the vanishing of “pure”, specific local entities. Variety increases by hybridation, then comparisons become very unlikely and the convergence concept in the age of complexity scenarios is not a mere socio-cultural convergence.

What is convergence then? The metaconvergence spiral (Pitasi, 2014) shapes the answer; nevertheless one further step in mapping sociological working styles is required.

4. One forth working style is general sociological theory which is a great stream focused on the epistemological construction of conceptual and semantical systematization of scientific knowledge by letting converge the

key foundations and findings of interdisciplinary studies. No convergence would never be possible without this kind of working style whose masterpieces as Luhmann's *Social Systems* (1995) and *Theory of Society* (2012 and 2013).

The theoretical challenge: rethinking sociology convergently which implies to observe the double contingency of high macro linear global change and the spiral like meso, micro and psycho-sociological levels. The social agent in his/her context is always involved in nonlinear and turbulent dynamics s/he can clearly perceive and feel uncertain, mysterious but still the macrotrend is much more linear than s/he can realize.

In brief imagine how turbulent, chaotic, violent, tragic the Two World Wars were and how short in time they took place: 1914-1945. A person born in 1914 who survived both world wars might have been very skeptical (to be elegant and polite) if aged 31, someone had told him, evolution is simple and linear. Nevertheless if we consider the four key forces of macroevolution – demography, climate change, globalization and research demand, (Smith, 2010) – specifically demography we can easily check world population in 1900 was 1,600 000 000 inhabitants, in 1950 2,5 million inhabitants. Two of the most violent wars ever maybe influenced demography a little but they did not change the expansion trend.



Figure 7. The Metaconvergence Spiral and its Linear Evolutionary Macrotrend

As shown in the Figure 7. above describing the metaconvergence spiral is featured by 6 platforms (coded in the blue areas of the spiral and listed top down in the figure):

- Convergent world organization
- Ring singularity
- Language
- Triffin's world currency
- Memetics
- Mediatech & Ict

These are the Globus Platforms (metaphorically Windows XP). While the 5 types of convergent catalogues in the spiral are coded in the white areas listed top down as follows:

- A. Ethological Copies (EC)
- B. Symbolic Multipliers (SM)
- C. Functional Equivalents (FE)
- D. Innovations (IN)
- E. Reconfigurations (RE)

5 Types of Catalogues Mundus (metaphorically the folders of files, if there are too many identical copies the risk of being thrown to the bin is high, if the variety of files is viable each folder will collect the different files of the same project). The metaconvergence of platform and catalogues is not a mere dialectical synthesis between a thesis (platform) and antithesis (catalogues); the metaconvergence spiral is rather an increasing dematerialization and differentiation process, redesigning and reconfiguring the dynamic and instable flows among EC/SM/FE/IN/RE, in which the increasing EC density implies inflation of copies and deflation of value and the RE variety describes the opposite side of the bifurcation shaping four key scenarios of high/low density linked with high/low variety as follows:

- HD/ HV
- HD/LV
- LD/ LV
- LD/LV

Moreover, the variety-density link mirrors the internal differentiation coding of the platform expansion or not. For example, currency platforming is binary coded with institutional sovereignty and language platforming is coded with vernacularization; the vernacularization process is currently decreasing (Cavalli Sforza, 2001) just like the

amount of currencies representing sovereign orders: the Euro is a simple example of how many currencies disappeared in the last decades (the German Mark, the Dutch Guilder, the Spanish Peseta, the Italian Lira and so on). Other currencies keep on existing (mostly in Africa and South America) but they are rather irrelevant and further currencies keep on existing a satellites of just one, stronger currency (the Australian, Canadian and Hong Kong currencies are named dollars). The convergence of currencies and its turbulence can be explained though some meteorology fractal principles (Mandelbrot, 2006).

4. Conclusion

Nowadays sociological and political science based research can shift between comparative and convergent research design to avoid that the subjectivity of the social actors from research items might switch into official knowledge sources. Social actors /agents are at the most lamps on /off.

The so called Conway's game of life is very important to make sense of the link between systemic boundaries and margin of freedom. Especially in an emergent scenario, which we called the global player scenario (EGPS), which is a Unitas Multiplex of same specific features as shown above.

In this scenario WCSA is a Think and Do Tank (TDT) for research & policy in the EGPS and on facilitating interdisciplinary among the social, political, legal and economical sciences as "policy determines politics" (Lowi, 2009) which determines politics.

Policy is design-based research, not subjected to political selection.

Mind Elias – De Swaan's Process (De Swaan, 2015) from macro to psycho-social.

All four steps are required in a correct and viable systemic complex process design, but not all the four matter in the same way as the coding process and the scaling and leveraging functions draw the distinction between meaning and noise.

Political decisions = (f) science based research design is viable.

Turned upside down is rhetoric manipulation on masses (back to Canetti's *Crowd and Power*?) WCSA is aimed at shaping standardized research design for policy modelling screening high continuity beyond contingent turbulence: Filtering the shifts – differences which do not make the difference – focusing either on continuity or on trend reversing shocks according to the WCSA key epistemological vision: research determines policy, policy determines politics.

However you shape our planet it is an Unity; in complexity it is a “Unitas Multiplex” but the multiplex of the unity exists functionally to the unitas.



Figure 8. The world is a cat playing with Australia

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Sara Petroccia and Tyler Adams

Civilization and Globalization

In trying to enlarge our understanding of human and social processes and to acquire a growing fund of more reliable knowledge about them

– this in itself is one of the main objects of sociology – we are confronted with a similar task of emancipation.

In this sphere (...) people find themselves subjected to ‘compelling forces’ (...) The aim is to guide these forces in such a way as to make them less meaningless and less wasteful of lives and resources.
(Elias 1978: 17)

Introduction

The emergence of civilizations was linked with the differentiation between low and high cultures and as claimed by Bonnemaïson “People generally consider that between culture and civilization, there is a difference of scale, and not a difference of nature.

Civilization owns a broader meaning and a larger scale than culture embracing cultures, often distributed over large and almost fixed areas, with a universal vocation. People speak of the Western civilization: it includes Western Europe and North America. People speak of Amerindian civilizations, of the Islamic of Indian civilization. Each of these civilizations includes a variable number of cultures and cultural systems” (2001, p. 86).

Culture is a useful tool to describe the luggage of attitudes and knowledge societies use in order to hold a grip over their environment and organize human interaction. Analysing civilizations in the plural is an even more complex task. As noted earlier, debates regarding how we should define and bound civilizations are extensive. These range from conceptions of civilizations as social formations

clearly bounded by properties such as blood, religion, language and a common worldview to seeing civilizations as much looser and more porous social complexes. The perspective treats civilizations as loosely coupled, internally differentiated and weakly institutionalized social orders shaped by a variety of processes and practices over time.

These points to a processual analysis of civilizations, as pioneered in the work of Norbert Elias. Elias done one of the most important contributor to civilizational analysis has endeavored to contextualize civilizations, in the sense of addressing directly the problem of the coexistence of different civilizational forms and the actual or potential contributions of different civilizations to an overall human circumstance. A processual analysis presents a civilization as a complex arrangement of habits, principles and historic traditions of action on which people may draw in a variety of ways. One of the benefits of a processual approach to civilizational analysis is that it provides a more dynamic account of how the social and political frontiers of civilizations are produced and reproduced locating individual or collective identities in broader temporal, geographic and cultural communities. These act as resources to generate perceptions of common interests, goals and standards of behaviour that link diffuse peoples in a form of imagined community, such invocations produce and reproduce the community's boundaries.

Analysing civilizations in the plural is an even more complex task. As noted earlier, debates regarding how we should define and bound civilizations are extensive, "Humanity split up into states is increasingly becoming the framework of reference, as a social unit, of many developmental processes and structural changes. Without global frames of references such processes and structural changes

cannot be either adequately diagnosed or adequately explained. The incipient breakthrough to a new level of integration that can be observed on all sides demands a breakthrough to a new level of synthesis in sociology” (Elias 1991:163). These act as resources to generate perceptions of common interests and goals of behaviour that link diffuse peoples in a form of imagined community, so the civilizations are diffuse social and political entities. The underlying idea of society does not give due attention to the formation of individual identity, as it is assumed that individuals have a passive role: they adapt to collective identities which are considered predetermined and constant over time (Harrie, 2006).

Globalization has made clear the need for new forms of social and civil coexistence in the relations among different social and cultural groups with different identities. As a result, cultural and ethnic identities and the individuals themselves have undergone radical changes in their social relationships and in the very perception of their human condition. However, there is another meaning in individual identity, which, although less studied, has a more radical practical relevance and human value: every human being has a fundamental need to *know their identity*, i.e. to know *who they are*, to create a self-image that would give sense to their actions and their life as a whole.

If the polytheism of values mentioned by Max Weber, characterizing of most civil societies, seems to have narrowed the horizon of meaning according to which each identifies their being in the world, the whole of their duties, the authentic way of relating to others, the ultimate destiny of life, a series of subjective options touched by insecurity, emotion, or a more or less irrational faith. All this has added to the multiple subsequent images of man set forth by the developments in the various sciences, which have tried and often demanded, to reveal the mechanisms of his

being: at first the physical, chemical, thermodynamic, electrical operation of his body and then the mechanisms of the psyche, whether conscious or unconscious, or those of his social or linguistic conditionings, connecting them more or less arbitrarily. All of these objective but partial images inherently lack of unity and when they claim to be able to offer it, they do it in a reductionist way, i.e. by claiming to explain the most basic facts of subjectivity, such as freedom of choice, selfconsciousness and the moral sense, as the effects of determinism, thus not depending on us. In terms of civilization, globalization should force people to think on the possibility of a single civilization of all human beings as a whole. Although the process in most cases is easily associated with the expansion of western civilization. It may be considered that the motor of globalization is primarily world capitalist system and could be associated with the latest stage of capitalism (Thomas, 1997) as a process supported by the western hegemony: people search for global identifications in terms of social, economic and political values. While the main impetus behind globalization is economic concerns (Friedman, 1995), its implications reveals itself in the form of an emerging civilization going beyond western affiliation. Thus, it is an urgent task today to think whether we are experiencing the rise of global civilization, as the coexistence of characteristics of being a civilization in globalization process.

Early civilizations were geographically bounded and had peculiar characteristics differing from other civilizations in other parts of the world. However, globalization that we are experiencing today began to emerge after the industrial revolution and appeal to an ecumenical world system suppose an investigation of the dynamics of modern civilizations and the reason for which multiculturalism arose as an answer to the emerging spatial pattern

of cultures. Identities play a decisive role in the dynamics of culture, since they limit some forms of evolution, so values and identities give some measure of permanency to cultures, when horizons of expectation undermines their stability and they introduce diverging tendencies on the social scene.

The contemporary sociological debate seems to focus on a polarity of the concept of identity under analytical perspectives that are more limited and definite, so identity becomes the main mental feature for a conscious social action and for the full development of human potential. The groups and the individuals who are denied their identity suffer real damage since the lack of recognition of their specificity prevents self-esteem and self-confidence, indispensable to act independently. Identity is the basis that allows entities to acquire self-awareness and to act, to participate in social life, beginning the most solid heritage with which to develop in an original and autonomous way one's own biography, life and history. Foucault (1976) highlights how identities can be understood only within systems of knowledge and discourses that are historically specific; cultural studies point out that: "[...] identities are never unified and, in late modern times, increasingly fragmented and fractured; never singular but multiply constructed across different, often intersecting and antagonistic, discourses, practices and positions. [...] Precisely because identities are constructed within, not outside, discourse, we need to understand them as produced in specific historical and institutional sites within specific discursive formations and practices, by specific enunciative strategies.

Moreover, they emerge within the play of specific modalities of power and thus are more the product of the marking of difference and exclusion, than they are the sign of an identical, naturally constituted unity an 'identity' in

its traditional meaning (that is, an all inclusive sameness, seamless, without internal differentiation)". The idea that identity is a universal feature brings one to argument that everyone has an identity, that such an identity has a particular shape and contents, manifested in their most accomplished form in the most privileged social layers of Western civilization.

The notion that identity is the basic requirement for autonomous and conscious actions – unique and original – makes any transformation problematic. If we are our identity and if this is based on the peculiarities of what we have received and built, every non recognition, every transformation and every adaptation results in loss and degradation. Retaining one's own identity becomes a task but it can also become an obsession. Identity can also become a matter of roots to be retained, protected against the flow of continuous changes that characterizes contemporary society, as well as against threats from other identities, alternatives and in competition with ours. The influence of Western civilization and the condition of excess of information seem to be particularly relevant to the processes of self-definition. Those having better resources and cognitive chances can benefit from wider availability of models and build a more detailed self-image: the breadth of choices involves greater individual freedom and a wider and more composite range of options. Identity becomes more and more an individual game, with weaker and weaker bounds to traditions and shared models. The narrative possibilities are amplified by the widening of narrative experiences, which are no longer only tied to location and to direct interaction but included in the global space-time dimension of mediated communication: experience does no longer require physical presence and face-to-face relationships, but creates itself according to undefined space-time dimensions.

At the other end are those who are denied access to the chosen identities, who do not have a say in deciding their own preferences and who are finally given the burden of identities imposed *by others*, identities that they find offensive but that they are not allowed to dismiss: stereotyping, dehumanizing and stigmatizing identities.

2. The complex interdependence between cultures and civilization

The growing interdependence between the contemporary erosion and multiplication of boundaries make possible to think of oneself as freed from local ties, in constant motion, immersed in global flows that enable remote relationships, the rapid transition from one context to another and the ability to overcome and establish distinctions. They allow individuals to recognize themselves within a cosmopolitan outlook, which means: “Global sense, a sense of boundarylessness. An everyday, historically alert, reflexive awareness of ambivalences in a milieu of blurring differentiations and cultural contradictions.

It reveals not just the ‘anguish’ but also the possibility of shaping one’s life and social relations under conditions of cultural mixture. It is simultaneously a skeptical, disillusioned, self-critical outlook” (Beck, 2000). The growing uncertainty favors the emergence of defensive solidarity, the systems of classification and distinction become at the same time more diverse and more stringent. Those among the privileged have the opportunity to free themselves from local or traditional models and ties and to play on a plurality of boundaries to define their social position. On the contrary, those who find themselves among the excluded are often constrained by categories and boundaries that they did not choose nor helped to create. The goal

is to improve the consciousness of the ‘oppressed’ people by revealing how some systems, structures and identities cultures explain their life conditions, problems and so on. (Cfr. Figure n.1)

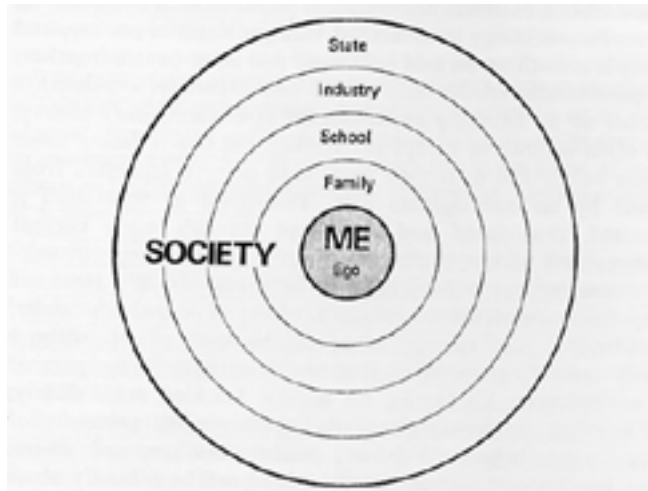


Figure n. 1 Source: Elias (1978: 14)

The main principle underlying these demonstrations is that the social universe is seen from the perspective of just one person. In large part, contemporary people’s self-conscious view of itself as at least an outsider, if not a permanent stranger, rests upon an absorbed realization of social relativity and of the transformative power of history. The individuals can see some of their contributions to the structuration of the world, but they cannot fully see themselves as interdependent co-producers of the world embedded in the civilizing process. The feeling of being constantly faced with the risk of losing one’s references, to be left strayed and excluded, favors the creation of stories where the ‘Other’ is the enemy and the threat, the reason for the establishing of boundaries and the development of the sense of belonging. The necessity of keeping high and effective defensive barriers against the possible invasion of the ‘Other’ fosters the emergence of the question for new identifications, which may allow individuals, alone in

facing uncertainties and risks, to feel some sort of inclusion and safety. Defining one's own identity is more and more the result of the ability to stand out, to overcome habits and homogenization, to exceed established models and to come to original syntheses by combining and mixing heterogeneous elements, often taken from contexts and traditions that are geographically and culturally distant. Those who have access to more material and cultural resources are able to actively select those features that are desired in order to build one's own identity and to select the most prized and favorable options, while marginal individuals and groups are often forced to assemble self-images resulting from those that Bauman (2005) calls 'waste elements'. In terms of identification, belonging to a particular group is often an indispensable condition to access valuable and limited social resources. Those who perceive insecurity and instability as a lack of certainties and cannot rely on enough resources to transform variability into opportunity tend to build strong and defensive identifications, which make distinctions into barriers.

The generalized loss of national identities causes today phenomena that might be considered a historical regression or involution. In many of those that could be considered the most firmly established nations, sometimes having a considerable historical legacy, there is the occurrence of phenomena that are often very sharp and even violent, like separatism, centrifugal and disruptive dynamics, extreme exaltation of differences that the historical process had gradually overcome and integrated into the unity of the nation. However, the cultural, social, and political vacuum of these phenomena is clear when one realizes that they have not produced the constitution or perhaps the recovery of communities that are truly inspired by a spiritual and ideal sense of belonging to history, so they show themselves as attempts to pursue a better defense of local

interests, cloaked in vague and general discourses of trampled identities.

Since everybody's identity is in daily contact with the world, in what terms can one then speak of cultural identity? Does globalization leave no room for cultural identities? It is believed right and necessary that everybody can have and develop their own culture, but it is believed even more right and necessary that everybody may deal with the 'Other' and measure themselves with the rest of the world. Elias' works can help to resolve this issue. The very first thing to do is to reject the habit to separate individual and society or the subject and the object, as if the social universe and its components (including ourselves) could be really understood by relying on some form of modern egocentric perspective; as if society would exist outside or before the individuals. What we need is a 'figurational' perspective (Cfr. Figure n.2)

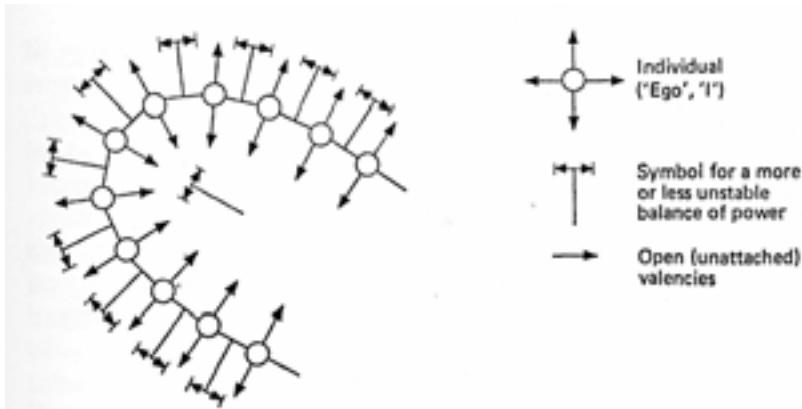


Figure n. 2 Source: Elias (1978: 15)

As Elias wrote: "These people make up webs of interdependence or figurations of many kinds, characterized by power balances of many sorts, such as families, schools, towns, social strata, or states" (Elias 1978: 15). In this logic, it is easy to understand that individuals are never free since they constantly have to deal with the presence of other actors and some physical components of their universe. Figurations

such as states, social classes or nations, do not think, act or impose themselves. They are temporary products or effects of transactions. Empirically speaking, they do not self-act on society or any structure so we can talk of cultural freedom should be separated from an indiscriminate celebration of all forms of cultural heritage, which does not consider whether the people involved would choose those particular practices if given the opportunity to subject them to critical analysis and to have adequate knowledge of other options and other existing choices. Although the important and all pervading role of cultural factors in social life and in human development has been much debated in recent years, the focus has tended to shift to the need to promote cultural diversity for the sake of preserving what different groups of people have inherited from their predecessors is not actually an argument based on cultural freedom. Being born in a given culture is obviously not a manifestation of cultural and to preserve cultural inheritance only by virtue of birth is unlikely to be, in itself, an exercise of interdependence. Social repression can deny cultural freedom, but the violation of freedom can also come from the tyranny of conformity, which makes it difficult for the members of a community to opt for other ways of life.

An individual can decide to approach more than one of predefined cultures or may also decide that their ethnic or cultural identity is less important than their political views, their professional commitments or literary convictions. It is a choice that must be made solely by that individual, regardless of the role played by the culture in their own country or in the world.

3. Multiculturalism in the global civilization process

What it is difficult to understand, though, is why this question for uniqueness is so successful, considering that, it is

an extraordinarily naive thesis in a world where the plurality of affiliations is an obvious fact. To consider a person uniquely on the basis of just one of their many identities is obviously an intellectually trivial exercise; yet, judging by its effectiveness, the sought after illusion of a unique identity is easy to defend and easy to promote.

An important counterpart in the 20th century was Elias's claim that the gulf between human accomplishments in controlling 'natural processes' (Elias, 2001a: 126) and the relatively low level of mastery of relations between groups has never been as great as it is today. Long-term trends had incorporated larger numbers of human beings in highly pacified social systems that enabled millions of people to concentrate on 'peaceful pursuits' (Elias, 2007a: 129). But they became subject to new insecurities as the dominant 'annihilation units' (Elias, 2001a: 209) acquired the capacity to eradicate a large proportion of the human race and destroy the biosphere in a fragment of time. In Elias's writings, the central question is whether humans can undergo a global civilizing process in which the widening of the scope of emotional identification keeps pace with any further lengthening of the webs of material interconnectedness. The purpose of multicultural policies should protect cultural freedom, to broaden the range of individual choices and not to penalize those choices. In Eliasian sociology, the notion of civilizing processes does not assume that some societies are clearly superior to others. Its guiding idea is that all societies have civilizing practices that, with different levels of success, enable their members to coexist without injuring, demeaning and in other ways harming each other (Elias, 1996: 31). However, cultural identities are heterogeneous and evolve they are dynamic processes with inconsistencies and internal conflicts that bring change. Of course, some societies,

such as European nation-states from the late 18th century, have placed confidence in their cultural superiority at the heart of their image of the civilizing process. That was one reason why ‘contradictory’ (Elias, 2007b: 145) moralities that outlaw particular forms of harm in relations within the group while licensing them in relations with outsiders have been prevalent in human history.

A society could be tolerant towards cultural difference, the free flow of cultural suggestions and freedom of cultural choices: a society that is willing to continuously negotiate the changing boundary that separates the differences between acceptable lifestyle and punishable crimes. What multiculturalism does not imply is that keeping cultural differences intact and preventing free cultural exchange among communities is a value to be respected and defended politically. Likewise, it does not assume that a healthy debate on the validity of the suggested cultural solutions and on their relative merits or downsides might be harmful or dangerous, therefore to be avoided or even prohibited.

Multiculturalism does not just mean that we are becoming aware of the presence of multiple cultures, ethnic groups, religious traditions and worldviews and of their potential conflicts: multiculturalism means first of all that each culture holds a non negotiable value and that each of them has its own way of understanding human dignity. Besides, the respect for the humankind and its forms of life is the soul of every culture and its profound *raison d’être*. An inhuman culture would be a contradiction in terms, as it would be the imposition of a few against the many. The belief that we cannot reduce the idea of human dignity to the one developed by Western culture has produced its effects on the conception and practice of human rights. The account did not reject the possibility that the ‘long

learning process' (Elias, 2007b: 141) in which humanity is involved might result in higher levels of self restraint, even in the context of anarchy, that mark the rise of a very advanced civilization and in other words, multiculturalism is consistent in relying on freedom as main value: to be true freedom, the freedom of cultural choice should include the right to dissociate from just one culture, but also the right to embrace it. Multi-communitarianism, on the other hand, confers to the maintenance of cultural differences between members of different groups the status of a value in itself. Not only it denies the existence of an objective basis on which to rest a critique of cultural choice, but it also argues that any external criticism, and therefore any debate between cultures on cultural values, is both a farce and an abomination and that if a similar debate takes place, its conclusions, whatever their content, will not be valid. It elevates the cultural purity of the group to the rank of supreme value and it considers a contamination any manifest ability to assimilate, while the capability of assimilating is precisely a characteristic of cultures.

The concept of symbol emancipation stressed the changing power ratio between cultural and biological evolution and underlined the increased importance of intergenerational learning 'during mankind's long formative period' (Elias, 2001a: 171). Symbol emancipation referred to the emergence over millions of years of the linguistic capability of acquiring, storing and transmitting accumulated knowledge across generations. More precisely, it suggests the simultaneous presence of systems or cultural totalities and therefore the interdependence of all its features. The term may indicate contiguous cultural worlds: something similar to politically and administratively separate territories. However, it is not possible to state with some degree of precision where one stands at any given moment and

in which direction one is heading. The term also suggests that cultures are spontaneous and natural and to be in a certain culture, or to belong to it, is something that depends on fate, rather than the result of a choice. Further more, it suggests that belonging to a certain culture is a matter of fact and that to be placed into a cultural totality is the way, perhaps the most natural one of being in the world.

It would be misleading to suggest that Elias saw only logics of global integration in history. The stress on competition between states emphasized that interwoven logics of integration and disintegration had shaped and would continue to shape, long term trajectories. Elias' attempt to combine analysis of class stratification is a clear candidate as such an alternative, although one which has not been widely used. Precisely because it does provide an alternative, it seems worthwhile to re-examine the work, drawing out some themes more explicitly, and discussing some of the problems in the reasoning. For Elias clearly wanted the book to be also a critique of current notions of class, defined essentially in terms of position in the occupational structure. *The Established and the Outsiders* can in fact be seen as an attempt to describe inequalities arising out of migration which neither sees them in national cultural terms nor reduces them to class inequalities as conventionally conceived and it seems introduce the actual idea of multiculturalism. However, the other scholars cited all state that, in order to coexist, individuals need common elements as a reference. At the same time, however, Elias and Scotson were surely right to see neighbourhood ties as importantly affected by migration or non migration.

The question of the effects of migration on networks of kin and friends is surprisingly under investigated: the existence of communities seems to have blinded many researchers to the need for detailed empirical investigation of

migrants' networks and the effects of geographical mobility on these. What we do know does however strongly suggest that migrants' networks are specific (even apart from ethnic composition). For, by altering the kinds of exchanges which are possible, geographical mobility has major effects on many aspects of social organization. Some ties are reinforced while others are weakened or transformed. It is this reorganization of networks which constitutes much of the sociological significance of migration.

4. Global Identity: possible scenarios

The available toolbox is still incomplete and unsuitable to analyze the current situation and possible future scenarios. Certainly, the focus will be here only on the sociological reflection about the hegemony of the classical paradigm of globalization. In recent years, these debates have converged with that around the theme of the plausibility of a global culture, the plausibility of the *evolution of global Identity* (Pitasi, 2013).

However, the harmful effect of these different factors is not the same for everybody: for quite a few people, indeed, this variety of positions, knowledge and imagery can prove enriching, if they have a global and unitary framework from where to draw judgment and evaluation criteria for these different contributions, placing each of them in its proper context and giving it a certain meaning. Nowadays it is all about giving up on this attitude to understand that there isn't a new center and realize that human finitude never allows an individual nor a single community or culture, no matter how advanced, to embrace the full range of what is good, beautiful and valid for humankind, while everybody has something to contribute with, and something to learn and assimilate from others because "identity is not a private matter and a private worry" (Bauman 2001) it has become

an issue because rapid social change have led to identity disease.

Among the most significant of these worrisome features there is undoubtedly a strong acceleration of the phenomenon of the loss of individual identity. When dealing with individual identity, it is here intended to refer to the problem of understanding and explaining how a person can keep their own identity, culture and tradition in a world in constant change. People of global society - in evolution - will continue to find the roots of their identity and at the same time to be open to be enriched by the contact with and sharing of the contributions of traditions other than their own. As there is always a link between individual identity and the global one, we attempt to think identity as process, as something achieved rather than something innate. Then, from one hand the global evolution can be considered as an exaltation of diversity, acceptance of chaos, independence from precise territorial values; on the other hand, it could be viewed as reproduction of uniformity, push towards homogeneity, search for order, rootedness in a limited area and its history.

We could speak of cultural homogenization only in terms of process and in any case beyond the idea of homogeneity and integration typical of national societies, to deal with the transnational level or trans-social processes of cultural integration/disintegration in order to take into account the complexity of the global cultural flows. In the meantime, the variety of responses to the process of globalization, not global evolution and the persistence of major divisions cautiously suggest the use of the expression global cultures in the plural. The questions on the existence and the features of the so called global culture now receive different answers that outline alternative future scenarios, which one could express respectively and summarize in terms of evolution of global identity and, of course,

social evolution. So the construction of a global identity it is rather the process around different interpretations, potential meanings, values and terms that are crucial for its development however, a reconceptualization of civilization influenced important changes in practices of recognition and conceptions of legitimate behaviour, significantly facilitating the globalization of the sovereign state order. Civilizational ideas and practices have thus acted as sites at which boundaries are contested, norms and institutions are challenged and rights are claimed in global society.

Civilizational interaction continues to provide a key dynamic within global society and facilitating civilizational interaction. Furthermore, civilization as an evaluative discourse still plays a role in iterating the boundaries of international society, as well as providing a mechanism through which both the boundaries and frameworks of global society are challenged.

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Digitalization

The Internet of Things in the Turbulent Convergence of Our Times

1.Prologue and Historical Background

The goal of this work is to show how the convergence of everything described in this special issue, that is, the social, economic, political, legal, anthropological and other aspects of human evolution on this planet are strongly enhanced by the key role of informatics as a global platform that connects human nature and the most advanced scientific, political and technological frontiers that humanity has evolved over the millennia. (Pitasi 2015). The field of communication is in a state of permanent ferment and flux, and this is made even more so by the breathtaking transformations of the Internet, which has emerged as the fulcrum of our discursive, political, social and cultural engagements. This article examines the evolution of the Internet, explores the nascence of the Internet of Things and points out the implication this would have for not only human communication but also quotidian life in general. It also highlights the potential problems that the mainstreaming of the Internet of Things might pose for privacy and for global digital democracy. In other words, this paper's perspective is anchored on the general frame of the turbulent convergent scenarios we are living in.

No one could have accurately predicted the Internet communications revolution we have collectively witnessed over the past three decades with any detail. Some futurists, like Alvin Toffler and Marshall McLuhan, hinted at the coming of a "global electronic age," which would begin in the late-1980s or early 1990s (Toffler 1971; McLuhan

1964) and herald the birth of the “global village.” Marshall McLuhan and Bruce Powers even talked about how “electronic technologies have begun to shake the distinction between inner and outer space, by blurring the difference between being here or there.” (McLuhan - Powers 1989: 148). In other words, they predicted what Cairncross (2001) has called the “death of distance.” Nevertheless, these prognostications, which now read more like prophetic poetry than careful empirical inquiries, were uncertain as to exactly how the transformations they foretold would occur and how they would alter our quotidian lives.

The last few decades have seen a spellbindingly dizzying expansion and diffusion of the Internet as a medium in ways that both mirror and transcend these predictions. All the new-fangled Internet-enabled technologies that took shape over the last few decades are now being transmuted into the ever-expanding and kaleidoscopic architecture of emergent Internet forms amid an inescapable march toward a greater contraction of the world. In this article, we explore the history and forms of the Internet and theorize the trajectory of its future development.

As our historicization of the emergence and evolution of the Internet below demonstrates, the Internet was the exclusive playground of a scientific cult; it was the “Disneyland for geeks” (Dominick 2011: 303) whose arcaneness trammelled its mass appeal. In time, it became a mass medium for a variety of media that are tethered to computers and later to mobile devices as well. The next stage of the Internet, we show, will be ubiquitous, immersive, and unmoored to the preferences we are accustomed to in the contemporary generation of the Internet. The perpetually variegated changes of the contours of the technology of the Internet means “delivery technologies” (Jenkins 2008: 13) will continue to evolve and diverge,

and connectedness in a multiplicity of forms will become a core constituent of our very humanity.

Before we unravel what the Internet is and how it has caused a massive communications revolution, we must appreciate the “network of networks” by way of a simple metaphor. The amount of information that the Internet contains at both the surface and deep levels is almost infinite (Lightman and Rojas 2002). According to a December 2018 Netcraft.com survey, there were more than 1.6 billion active websites in the world. Dutch researcher Maurice de Kunder pointed out that as of late December 2018, “at least 5.4 billion pages” have been indexed by the world’s two major search engines – Google and Bing. And in a November 2016 blog post, Google said it had indexed “over 130 trillion individual pages and it’s constantly growing.” These are no doubt phenomenal numbers. Nevertheless, these astronomical numbers represent just the surface web. More than 90 percent of the content of the web reside in the deep web, often conceptualized as the part of the web where information that is unindexed and therefore unsearchable by public search engines reside. Hardy and Norgaard also define the deep web as “unregulated, untaxed, and hidden from a typical Internet search. It is a self-contained market place that functions under a set of informal institutions.” (Hardy - Norgaard 2015: 1). In sum, the growth of Internet-based information since 1991 (when Tim Berners-Lee and Robert Cailliau wrote the first Web browser) has been nothing short of extraordinary. This article is structured into two major sections: (I) a brief history of the Internet and (II) the future of the Internet.

1. The Dawn of Digitalization¹

We should consider the 1945 bombings of Hiroshima and Nagasaki as watershed events that initiated the study of atomic-scale force and energy throughout the world. Likewise, these two events, and the litany of research that they inspired, produced a significant change of perspective about how computer-based communications should operate. Now that the “Pandora’s Box” had been opened, the other nations of the world also sought after the prize of becoming an atomic power. This made the threat of a nuclear exchange all the more real and created a significant amount of social-psychological tension among the peoples of nations that wanted to arm themselves with nuclear-grade armaments. The threat of nuclear war was no longer merely theoretical; it was now a real, graspable possibility. Further heightening tensions among the superpowers was the successful launching of U.S.S.R. Sputnik I in October of 1957 and then U.S. Explorer I in January of 1958. (Borgman 2007) Given the invention of artificial satellites, scientists correctly assumed that space itself could become militarized with nuclear payloads. This would make enemy strikes almost instantaneous and undetectable by radar. The proverbial “race for space,” therefore, was more about understanding the military advantages of zero gravity than it was about egalitarian exploration.

In 1957, two important research agencies were formed in the U.S.: the Advanced Research Projects Agency (ARPA) and the National Aeronautics and Space Administration (NASA). These agencies worked together to understand the dynamics of strategic satellite usage and the military advantages of space exploration. Their collective mission was to understand the “satellite attack”

¹ A version of the historical excursion of the Internet and some parts of the conclusion of this paper first appeared as a book chapter in Adams, Ferone, and Petroccia (2017).

scenario. One of ARPA's findings occurred in 1959, when Los Alamos Laboratory physicists were blast-testing in the New Mexico desert. These researchers found that nuclear explosions registered a shockwave of energy upon initial detonation, which rendered all electrical equipment – lights, automobile batteries, radios, telephones, and computers – lifeless for a significant duration (estimated at between two and three days). Scientists concluded that the energy array effectively disrupted the orderly flow and charge of electrons, making electrical equipment useless near the epicenter. For example, a 1.4-megaton blast some 250 miles high in the atmosphere above Johnston Island in the Pacific Ocean knocked out Hawaii's power grid (which was over 800 miles away) for two full days. This event also troubled RAND and NASA engineers who believed that these electromagnetic pulses (EMPs) could be tactically used to disrupt ground communications (of all electronic forms) for aerial bombing attacks. (Corwall 2002; Derfler and Freed 2005; Freeman 2002; Howard 2004).

2. RAND Blueprints a Galactic Network

The question on the minds of all physicists and engineers of the 1950s and 1960s was: how do we survive the horrors of an atomic war? The issue was not “if” atomic war would break out, but “when” it would break out. While U.S. citizens were buying rubber suits, oxygen tanks, gas masks, and stockpiling canned food for their backyard fallout shelters, RAND was trying to solve the problem of maintaining communications during an atomic war or EMP blast strike with the Soviets. Specifically, they were extremely concerned as to how they could preserve Pacific Coast to Atlantic Coast communications. Their challenge was to create a communications network of immense proportions that would be pervasive and nearly impossible to destroy.

It was a formidable task. Instead of radio or telephone communications, these scientists turned to computers as communications vehicles. This is where the term computer-mediated communications first began to appear in the research literature, and it ushered in a coterie of scientists with interdisciplinary academic pedigrees — all focused on making computers communicate with one another over extended distances, even in the event of a global thermonuclear holocaust. (Wu and Irvin 1998; Nissenbaum and Price 2004; Gates and Hemingway 1999; Marshall 2007).

The scientists at RAND set out to create a distributed network that would not only work on the ground but that would also go to and through airspace through satellites. The name given to the project was the “Galactic Network.” Previously, all computer networks functioned based on a traditional command-and-control model, which is highly centralized. One computer served as the “master” of all communications, and the other computers connected to it were “slave” machines. RAND’s idea was to create an all-encompassing network that allowed for constant peer-to-peer communications, where no single computer would be critical to the overall functioning of the systemic network. (Leiner, Cerf, Clark, Kahn, Kleinrock, Lynch, Postel, Roberts and Wolff 2009). This notion flattened the communications hierarchy and made all computers on the grid equals. It was a highly unconventional idea, produced as a direct result of the threat of nuclear annihilation. As a result, one could easily argue that the Internet was invented because of nuclear weapons. The ultimate centralized argument made real (smashing atoms until they release nature’s inherent energy) was the direct cause of the ultimate decentralized argument (freeing communication until there is no central structure). (Hearn, Mandeville, and Anthony 1998).

RAND assumed that precise geographies and cities in the U.S. would be eliminated in an all-out nuclear exchange. The model also assumed that no distinct computer on the network, or communication line, was decisively critical. Communications, therefore, could be accomplished using a series of alternative routes on the all-encompassing network. Each computer would look for computers that were “active” on the network, and send messages to and through them. Thus, if a city fell to an attack, or a particular communications line went out, the remaining online systems would route messages through the residual network through an array of routes. In the same way, if a computer or communications line came back in operation, all of the computers would immediately recognize it, and revive it in the strategy for relaying data. (Blake 2002)

This is how this works in reality now. If you wanted to relay a message from Los Angeles, California (A), to Boston, Massachusetts (E), it would typically go through several routes like Dallas, Texas (B), Atlanta, Georgia (C), and possibly Philadelphia, Pennsylvania (D). But, what if Dallas (B) and Atlanta (C) no longer existed? How would computer-based communications get from Los Angeles to Boston? Certainly, other cities could also carry the communiqué rather than the Dallas-Atlanta-Philadelphia (B-C-D) path? In the RAND model, the answer is yes, because it defies the orthodox command structure. Communications could, instead, flow from Los Angeles (A) to Chicago, Illinois (X) and through Cleveland, Ohio (Y) to reach Boston (E). And while this principle works on a macroscopic national scale, it also works on a microscopic scale—within a regional geography, a state’s boundaries, or even a city.

4. ARPANET Debuts and Sprawls into the Public Sector

On the West Coast from 1968 to 1970, the Department of Defense (through ARPA) began building a computer “internetwork” that could communicate with all of the preexisting computer networks. By conceptual definition, an “internetwork” is a mother network of lesser networks, which allows computers on differing networks to communicate with one another. (Martin 1997; Geihs, König, and von Westarp 2002; Coutard, Hanley, and Zimmerman 2005). This forming network was called ARPAnet, named after the agency creating it for the budding research and development industry in the West. In the beginning, only research and development firms were allowed to connect to ARPAnet. But, little did ARPA realize that it was actually creating the first links on the Internet. For, their idea was so successful, it spread quickly from coast to coast in the U.S. and eventually exported itself overseas through communications satellites. On September 2, 1969, a computer at the University of California, Los Angeles (UCLA) became the first *host* on ARPAnet, shortly thereafter connecting Stanford University, the University of California at Santa Barbara (UCSB), and the University of Utah (within 2 months).

UCLA, Stanford, UCSB, and Utah were creating the first Internet and experiencing unforeseen benefits of this miniature network they had established: (1) enormous streams of data could be easily transferred from one system to the next, (2) mainframe systems could be accessed remotely, allowing for precious “system time” to be maximized on valuable computers, and (3) it mushroomed the exchange of messages from one user to the next remote user, thus creating the first online communications.

All of this was very exciting. People were using computers to communicate and were doing so in unexpected and unanticipated ways. Still, the system connecting the

four test institutions would periodically crash — as a direct result of an unreliable protocol set governing internetwork communications. So, to improve ARPAnet's reliability, UCLA, Stanford, UCSB, and Utah worked with ARPA to make a more reliable protocol standard. That standard would be the National Control Protocol (NCP) which emerged in 1970, allowing for an immediate geographic expansion of the internetwork to other institutions and government agencies. Tvede, Pircher and Bodenkamp 2001). The NCP proved to be durable, producing a rule set governing communications until the debut of the Transmission Control Protocol / Internet Protocol (TCP/IP) fused suite in 1983. ARPAnet snaked its way eastward across the U.S., eventually connecting West and East, and the internetwork moniker was popularly dropped, and people using the system simply began calling it "the Internet."

Between 1972 and 1982, ARPAnet continued to cover the major research and development institutions throughout the U.S. In fact, it did so with such success that ARPAnet staff began using the network for personal as well as professional purposes. Most of the network traffic occurring on ARPAnet was, at that time, electronic mail of an personal nature. Hence, ARPAnet's network administrators took counteraction by declaring that the network should be used fonly or professional exchange. The online edict did very little to change things. People continued to communicate online with each another. So, in 1983, ARPA moved all of its upper-echelon research and development affiliates off of ARPAnet – physically onto another communications network altogether – called MILNET. This new network was built with the intention of keeping the research community insulated and isolated from the online prattle parlor that ARPAnet had become. It did not work. Even the researchers were interpersonally communicating online. Something major was afoot.

5• U.S. National Science Foundation (NSF) Funds the “Public Internet”

Another major context was looming on the horizon, which also utilized the TCP/IP suite: the public Internet. Private companies began selling Internet access through dial-up modems in retail outlets, making the Internet more ubiquitous than any network ARPA’s 1968 “Galactic Network” class could have imagined. The Internet continued to grow progressively, access point by access point, port by port, hub by hub. And then one day in 1984, the U.S. National Science Foundation (NSF) obtained access to considerable governmental funding earmarked for the development of the “public Internet” through their Office of Advanced Scientific Computing (OASC). The mission was gargantuan but strategically possible: cultivate the Internet throughout the entire U.S. by deploying the best high-speed technologies available. NSF’s accompanying strategy was to fund NSF grants to agencies willing to build their own infrastructures, employing private enterprise to do the work. However, NSF first sought to create a high-speed backbone Internet network running from coast to coast along ARPAnet’s old interstate path, via five supercomputing facilities. The name of this network became NSFNET.

In 1988, NSF upgraded the U.S. information backbone stretching from the northeastern corridor to the southwestern coast of California using T1 fiber optics (very fast lines). And in 1991, NSF again upgraded the backbone with T3 fiber (extremely fast lines). To put the difference between T1 and T3 into perspective, imagine a 25 times increase in data throughput from 1988 to 1991. This “backbone” represents the fabled “information superhighway” of popular legend. Today, most of the Internet development in the U.S. focuses around two major initiatives: (1) Internet2, known as the Abilene Network, and (2) wireless

fidelity access points [Wi-Fi]. (Freeman 2002; Bellaver 2006; Gascó Hernández, Equiza-López, and Acevedo-Ruiz 2007).

These are just the major developments, which led to the rise of a public Internet in the U.S. Still, since many of these major communications breakthroughs occurred in the U.S. first, this information stands as necessary Internet history. Yet, there were certainly many developments that happened along the way. Let's take a look at some of them now.

6. Time will crawl: in a second a century goes

In the early 1990s, as the Internet emerged as an important communications medium, community concerns regarding Internet access gave birth to numerous volunteer-based *freenets*. There were long-established freenets in many highly populated communities, still existing as volunteer organizations and often based at the local public library. Some were able to offer free Internet access through grants and funding, but many charge a nominal fee in order to continue operating. Freenets normally had community discussion boards, volunteer technical support help, and information about the community.

With the universal proliferation of Wi- Fi and Internet-enabled mobile telephony, the Internet has now become ubiquitous not only in the United States but also worldwide. The global population of Internet users reached 4.2 billion in October 2018, indicating that more than 55 percent of the world had access to the Internet. The trend of Internet penetration in the world shows that in the coming decades, almost everyone in the world will be connected to the Internet in some fashion. Even hitherto digital backwaters of the world (Kperogi 2016) that Manuel Castells had characterized as the “black hole of informational

capitalism” (Castells 1998) have leapfrogged into the modern, increasingly interconnected, global Internet ecosystem. This reality has set the stage for the evolution of the next stage of the Internet: the Internet of Things.

7 The Internet of Things: Towards the Digital Convergence

The phrase “Internet of Things” was neologized by British technology entrepreneur Kevin Ashton in 1999 at a presentation he made for Procter & Gamble. He conceptualized it as follows:

“Today, computers – and therefore the Internet – are almost wholly dependent on human beings for information. Nearly all of the roughly 50 petabytes...of data available on the Internet were first captured and created by human beings – by typing, pressing a record button, taking a digital picture or scanning bar code. Conventional diagrams of the Internet include servers and routers and so on, but they leave out the most numerous and important routers of all: people. The problem is, people have limited time, attention and accuracy – all of which means they are not very good at capturing data about things in the real world” (Ashton 2009).

The materialization of the full potential of the Internet of Things, he pointed out, would consist in empowering “computers with their own means of gathering information, so they can see, hear and smell the world for themselves, in all its random glory.” In other words, the “Internet of Things” means the growth, maturation, and omnipresence of smart, “intelligent” technology that not only seamlessly converges online and offline worlds but that also comprehends, anticipates, interfaces with, and satisfies human needs and desires with effortless ease.

The Internet of Things is also known by other names. It was once called the “evernet” (Berst 2000) to capture the sense of its projected ever-presence in our lives. Some technology enthusiasts called it the “supranet” (Hayward et al. 2000) to indicate that it would transcend the contours of the contemporary Internet. Researchers at Pew called it “Internet II” (Anderson and Rainie 2006) to show that it would represent the next generation of the Internet. The Washington University project on “the next generation Internet” called it “Internet 3.0” (Jain, 2009), which is a spinoff from the term “Web 2.0,” which signifies the evolution of the web into a user-generated, interactive, and participatory web, developments that birthed such inventions as blogging, social media, video sharing, wikis, crowdsourcing, etc. (O’Reilly 2009). Web 2.0 is an improvement on its antecedent, Web 1.0. As Graham Cormode and Balachander Krishnamurthy noted, “content creators were few in Web 1.0 with the vast majority of users simply acting as consumers of content.” Inventor of the Web Tim Berners-Lee and his colleagues James Hendler, and Ora Lassila, in an article for the *Scientific American*, called the Internet of Things “the semantic web.” (Berners-Lee, Hendler and Lassila 2001). It is so called because they said the Web would evolve to a stage where the signification of all its contents would be intelligible to machines, which would deploy this fact to foreknow and gratify human needs. Nevertheless, in spite of its multiplicity of nomenclatural identities, scholars are fairly united in their conceptualization of the outlines of the next generation of the Internet.

The Internet of Things is the successor to the conventional Internet, and its defining singularity is or will be its capacity to merge wireless, broadband, and a multiplicity of delivery technologies, which will ultimately give materiality to “always-on” connectivity to the Internet. In other

words, people would no longer “go on the Internet”; they will always already be on the Internet. Some technologists have prognosticated that when the Internet of Things becomes mainstream, we might get to a point where we wear the Internet like a contact lens. We call this the corporeality of the Internet. As Peter Friess and Francisco Ibanez have noted, the Internet of Things is a “dynamic global network infrastructure with self-configuring capabilities based on standard and interoperable communication protocols where physical and virtual ‘things’ have identities, physical attributes, and virtual personalities, use intelligent interfaces and are seamlessly integrated into the information network” (Friess and Ibanez 2014: 2).

The Internet of Things is no longer in the distant future. Its incipience is already manifest, and it is enabled by the exponential growth, expansion, and diffusion of bandwidth that enables millions of homes around the world to access the Web through low-cost cable modem, DSL, or wireless connections. Already, in the last few years, we have seen the proliferation of household appliances, including home and office networks, that are fitted with devices that control the environment, regulate temperature and lightning, sense when occupants of a home are gone and then power down, inform people of daily appointments, monitor security systems, place orders when supplies have run out, schedule maintenance, and so on. The increasing centrality of artificial intelligence, cloud computing, automation, virtualization, and interoperability is helping to accelerate the development and mainstreaming of the Internet of Things. So is the multiplication of portable devices that can wirelessly connect to other devices (such as Bluetooth). Industry experts have predicted that by 2020, more than 200 billion devices will be connected to each other via the Internet. This has momentous implications for

human communication and interaction. The world is going to shrink further than it already has, and vast swathes of people that are territorially separated will become even more connected than ever before. Since devices will have an “always-on” connectivity and interactivity with other devices, the Internet of Things will also make possible continuous communication between at-risk patients and their doctors, such as pacemakers transmitting the heart rates of patients to their doctors in real time. Furthermore, the Internet of Things will “be able to incorporate transparently and seamlessly a large number of different and heterogeneous end systems, while providing open access to selected subsets of data for the development of a plethora of digital services.” (Zanella et al. 2014). It will impact industries, transportation systems, education, healthcare delivery, tourism, and so on.

Nonetheless, there are also legitimate worries about the Internet of Things. Perhaps the greatest fear of this stage in the evolution of the Internet is its potential for untoward intrusiveness into people’s personal spaces. The pervasiveness of the Internet of Things and the technology required to sustain it would entail a surrender of people’s locational and personal privacy. Although technologists are confident that cryptographic techniques would be embedded in devices to conceal personally identifying data, the loss of privacy that social media platforms have already engendered and caused people to become habituated to indicates that privacy would be one of the major casualties of a world governed by the Internet of Things. This is particularly true because big corporations have shown that they will lobby to thwart any robust effort at strong, fool-proof data privacy protection. As Bennett Cyphers, Gennie Gebhart, and Adam Schwartz (2018) have pointed out, “Even as some lawmakers moved to protect users’ privacy,

corporations increased their lobbying at... both the state and federal levels to try to protect their own interests. In Illinois, hostile bills and legal attacks threatened to defang the state's Biometric Information Privacy Act, the strongest protection for biometrics like fingerprints, voiceprints, and facial recognition in the country."

The Internet of Things might also create and deepen new technological barriers between the developed and developing countries of the world since constant electricity is a core requirement for the "always-on" connectivity that is crucial to the sustenance of the Internet of Things. Several countries in the developing world cannot guarantee the constant electricity needed to power the network of devices that will constitute the Internet of Things. The International Energy Agency pointed out that reliable electricity is correlated with wealth creation. (IEA 2002), and many scholars have found that electricity is the most important driver of the "new digital economy" (Wolde-Rufae 2006: 1108; Ebohon 1996; Rosenberg 1998). Given this reality, the Internet of Things has the potential to create new digital fringes in the world. Although low-power, low-cost batteries can power many devices, "front-end architectures have remained traditional." (Vermesan and Friess 2014: 93). Most importantly, although online connectivity is increasingly becoming an essential infrastructure for human existence, close to half of the world's 7.7 billion people have no access to the Internet (Coffin and Means 2019). Nevertheless, the global trend in the last few years is moving in the direction of more connectivity and digitalization, not less.

8. Conclusion

There is a lot in the history and development of the Internet to inspire hopes for the future. The Internet is expanding

worldwide, particularly with the growth of Wi-Fi. This is a potential boon for the expansion of the Internet of Things. In November 2008, the US Federal Communication Commission issued an Order adopting “rules to allow unlicensed radio transmitters to operate in the broadcast television spectrum at locations where that spectrum is not being used by licensed services.” This unused TV spectrum is often termed “white spaces.” This action made a significant amount of spectrum available for new and innovative products and services, including broadband data and other services for businesses and consumers. (Gaskin 2004; Feser, et al 2006). Essentially, this signaled the potential for a free, nationwide Wi-Fi network. While such players as Microsoft, Google, and the Wireless Innovation Alliance support such a system, traditional carriers such as AT&T, Intel, T-Mobile and Qualcomm, fearing “market disruption” (a euphemism for loss of income to the corporations that now have financial control of the airwaves for voice and data). The policy debate is being carried out in Washington, with multi-million-dollar corporate lobbying campaigns but little concern for or influence by potential consumer benefits, so the outcome is uncertain.

So much has happened so quickly in the development of computer-mediated communications over the past decades that it really is hard for anyone to keep up, and much more than we can imagine is on the horizon. The merging of old and new technology to intensify and diversify mass communication and to create cyber states and utopias is not new (Ludlow 2001; Pavlik and McIntosh 2004), but the centralization of devices that can effortlessly anticipate and provide human communicative and existential needs, which the Internet of Things entails, is unprecedented and promises to alter and significantly defamiliarize our habitual perception of social reality. And while we struggle with the creation of knowledge, we also struggle with these new

communication tools and technologies created to better manage that knowledge as well as the politics of regulation that are sure to attend it. Certainly, we are witnessing a massive transformation occur before our very eyes. While people used to rely almost exclusively on face-to-face meetings and interpersonal collaboration to best convey information and make decisions, we are now mediating conversation through technology over vast distances — and, in some cases, preferring to do so. Beyond the revolution of our communication methods, however, lies a more powerful argument: that our knowledge is being transformed by this accelerated, global, digital communications context. (Mansell 2002; Hine 2006).

Globalization has been on a relentless march over the past few decades, and this has been accelerated by the Internet in unimaginable ways. (O'Hagan and Ashworth 2002; Latham and Sassen 2005). The Internet is challenging our assumptions and techniques of participating in the ongoing worldwide dialogue that now surrounds us all. It is the medium that connects and binds the world and provides the platform for transcultural exchanges. The reach and significance of the Internet is only just beginning. In the coming years, the Internet of Things would not be an option; it would be an intrinsic constituent of the very structures and processes of human existence. The global village that McLuhan predicted years ago is shaping up to be a global marketplace with differential privileges and points of entry. The real and virtual merging of the world is not a mere ongoing process; it is, in every way, shape, and form, an eventuality. The strong mind will prepare for it, and learn to embrace it, rather than sentimentally holding on to the familiar.

The Internet of Things will at once empower and decenter human beings in the coming years. Given how

crucial the next generation of the Internet will be to the processes of globalization and the interactions of people across the boundaries of nations and states, global policy makers need to invest some thoughts into how to make it inclusive. But inclusion is not a mere top-down or bottom-up process. The Internet has diffused beyond national boundaries and borders through landline fiber, satellite feeds, and other intriguing means of electronic transmission. This global diffusion is also contributing to the global shift from international to a transnational – supranational world order policy modelling (Spagnolo 2015). It has led to diffusion framed in a wider interconnection of epochal changes (Done 2012, Smith 2011) that evolved in a complex process from psychosocial through micro and meso to macro (Sorokin 2010: 308-317).

To understand ICT and digitalization change on a global scale is to switch from a national state perspective to a global player perspective, such as understanding the dynamics of the EU, NAFTA, WTO, WIPO, etc. rather than the USA, France, Mexico and so forth. In many cases, law and policymaking about digitalization depend on global player agreements and treaties and not on national bylaws. That is why it is important to skip the risk of methodological nationalism (Beck, 2006). Some brief exemplary cases are: 1. Canada, Mexico and the US are the key protagonists of NAFTA, and the free trade standards of NAFTA interconnect legal and commercial features that involve the strategic use and development of ICT. 2. Since December 2017, negotiations between the European Union (EU) and MERCOSUR (the unified free market area of South America) began in Geneva and Buenos Aires through the WTO mediation to create a convergent free area between the two global players. 3. In the EU, there is a continental split between EU members and the relatively few non-EU

members. EU unified its ICT bylaws and signed agreements with some key non-EU members that are in a strategic transcontinental position such as Turkey, which is one of the fastest growing e-commerce economies in the world (Garren and Govaere 2017).

To conclude, it helps to conceptualize the problem of the digital divide in a transnational-supranational world order and to show how convergent global processes are also the indirect solution to a digital divide that is rooted in the high-speed evolution of digitalization itself. The internet's diffusion and adoption have many pivotal policy implications. Nevertheless, these implications become clearer when we realize that the key to change is interconnection in a spiral shaped system (Pitasi 2014, Pitasi 2016) as described below. Internet diffusion here is framed in the media technologies item at the bottom of the spiral. ICT diffusion accelerates the identification/disidentification processes to draw distinctions between WE and THEY or US and THEM (de Swaan 2015). The more identification goes global, the more WE = whole humankind. The more identification goes local, the more WE = becomes an ethological tribe code. The broader the identification, the more "cultural traditions" become soft and flexible, which facilitates symbolic manipulation and memetic reconfigurations. The narrower the identification process, the more rigid, dogmatic the "cultural traditions" become and thus the higher the conflict risk among different "tribes" and identities. The forgotten few may often emerge by the shifts in the identification processes. To keep the foe at bay, it is sometimes required to shape a technological divide. It is an evergreen concept since arrows are stacked up against guns.

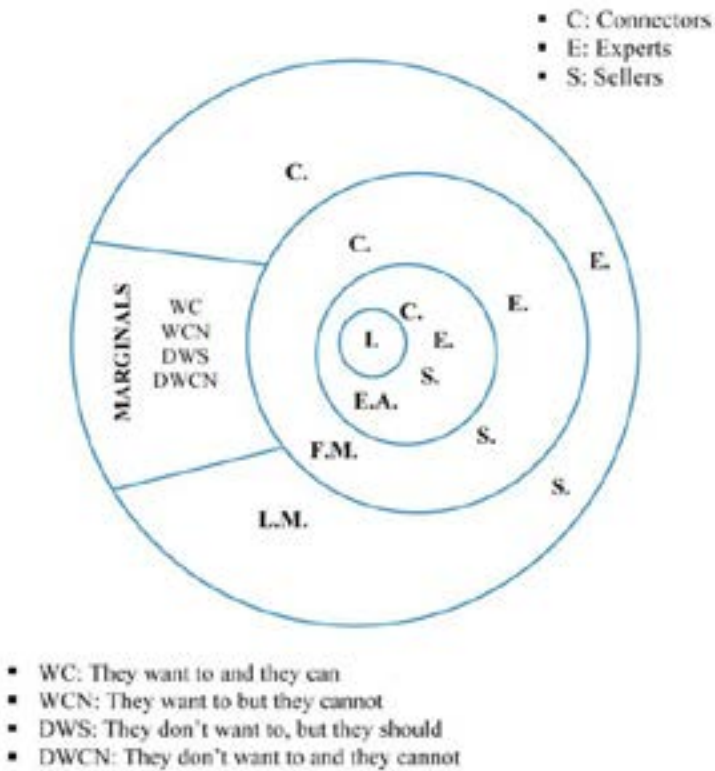
In our times, many conflicts that also impact on ICT changes are the ones between sovereignty and monetary

expansion (the so-called Triffin's Dilemma). As mentioned earlier, the ICT policies are shifting from a national state decision-making to a global layer one, which dramatically redesigns the world order scenarios (see for example the EU GDPR impacting on privacy on the net worldwide as Google, Facebook, Microsoft and Amazon can clearly testify). Moreover, ICT innovations are strongly and deeply embedded in the so-called RING Singularity speeding up innovations. RING means the convergence of Robotics, Informatics /ICT, Nanotechnology and Genetics (Nowotny 2010). Moreover, the monetary, legal, technological expansion of our global planet scenarios is strategically redesigning linguistic heritage. The number and variety of languages spoken on our planet are decreasing and the adopted ones are memetically recombining worldwide (Spanglish - Spanish/English, Itanol - Italian /Spanish, for example) canceling every language purism. Reconfigurations become transnational, supranational, global shaping of a metaconvergent spiral visualized below in figure 2. This Metaconvergent Spiral (MCS) is the Global Innovation which embeds the internet diffusion and adoption worldwide selecting the "forgotten few." At the ICA Conference in Acapulco in 2000, Everett Rogers expanded on his world famous diffusion of innovation cycle (Rogers 1956). Pitasi developed and evolved up to the current version in figure 3. According to Rogers' revised cycle, the forgotten few belong to the marginals. This has been subdivided into four categories. When WC and WCN are successfully reached, the cycle is saturated thus the positioning of the forgotten few in the marginals subcategories becomes strategic to set any agenda planning to integrate them in the cycle.

Fig.1: The metaconvergence spiral (Pitasi, 2014, Adams-Tarricani-Pitasi, 2018; Fabò-Petroccia, 2017)



Fig.2: The Rogers Model revised by Pitasi (2015, 2016)



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Big Data: a Challenge for Social Sciences Criticisms for Social Knowledge and Politics

1. Introduction

This contribution is part of a wider movement in the field of social science that, for a number of years, has reflected on the phenomenon of Big Data and its impact on society in general and social research in particular.

In the face of new research programmes on data collecting and processing promoted by the EU, our aim is to explore the contribution social science can bring to this challenge.

All this involves a review of the data revolution and the commitment by social actors, among these scientific research groups, to experiment, innovate, and adapt to the new world of Big Data, and to the utilisation of this new resource, evaluating its related advantages and disadvantages (Giovannini 2016:66). This implies, on one hand, the need to understand the problems that Big Data poses for scientific research, and the potential gains it offers in terms of insights into social phenomena and, on the other, the need to investigate the role of politics in guiding the processes of innovation, managing the rate of change and extending access in a universalistic sense, so as to guarantee the benefits of progress for all.

Given the importance of the Big Data revolution social scientists and researchers are called on to raise their game to comprehend its transformative potential for society and explore ways in which it can be harnessed to the mechanisms of analysis, prevision and decision making (e.g. Stubbs 2014; Moro Visconti 2016; Talia 2018).

² This contribution is the result of a joint reflection, however the author of paragraphs 1, 2, 3 is Olimpia Affuso; the author of paragraphs 4.1, 4.2, 5 is Antonella Coco.

Thus the world of social science is required need to and manage the potential advantages but also the limits (cfr. Boccia Artieri 2012; Manovich 2012; Kitchin 2014; Lupton 2015, Leonelli 2018) of a new arena of knowledge for the study of social phenomena based on digital information. This cannot but require a redefinition of the methodological set up vis-à-vis traditional methods of research and, in particular, a consideration of the various problematic aspects information technology brings in its wake, which range from the question of data reliability and the consequent need for scientific control and validation, to the issue of data measurement and the risk of distortions that could occur unless the methodology is able to deal with and overcome the new challenges.

In order to minimise the risks for society and extend as widely as possible the opportunities and advantages deriving from these changes, however, political intervention is necessary. As far as Big Data is concerned, therefore, there is a need to focus closely on the emergence of new problems and challenges requiring political answers. With reference to Big Data, what is the role of political regulation in the production of knowledge and hence science? Why is the political regulation of Big Data a necessity for the scientific community? This involves proposing solutions and taking decisions on the risks inherent in the digital ecosystem arising, for example, from unequal data access (digital goods becoming governed by the logic of the market), uncertainty regarding the reliability of the information, the risks of abuse in the use of personal profiles and other matters of an ethical nature.

2. Big Data and methodological issues

Although the results already acquired can also be useful in this context to highlight the fact that when we speak of

Big Data we are referring to the all the digital information collected, archived and managed by means of large scale datasets, not treatable through software and hardware systems traditionally used in social sciences (Lombi 2015). This dataset covers two categories of information: that generated by exchanges between the public and public and private institutions; that produced through the insertion of data, images, comments, geo-locations by the public on web platforms 2.0 and on social network that have an exponential capacity for producing, storing and exploiting data. We must, therefore, underline the fact that the expression Big Data “covers all the things that can only be done on a large scale” and it is, above all, internet companies that are specialised in doing this- companies that are currently the main users of data processing technologies (Mayer-Schonberger and Cukier, 2013: 16).

In this scenario the social sciences do not appear to be adequately equipped for managing data, especially from the methodological and technological point of view. In particular, Big Data cannot be considered representative but only indicative. What makes (a unit of) information representative is its relationship with a designed sample based on probabilistic procedures that enable the researcher to generalise from the results to the overall population, a sample of which is selected as representative (Lombi 2015). As regards information from digital sources, there is no sample that can be considered representative: for one reason not all individuals have access to that source; for another, since the population investigated on the basis of information taken from Big Data may well not be entirely representative of all net users, as those who participate in expressing opinions and intervening in digital environments are only a fraction of all those who use the net. Moreover, even if in recent years the number of users has increased considerably, it is still not possible to generalise

from the information drawn from net users to the population as a whole.

Hence the impossibility of applying traditional methodology of scientific research. Big Data, in fact, opens up a new way of understanding social reality in which knowledge is based on the use of unlimited amounts of data from a variety of sources. In this case quantity takes the place of accuracy: faced with datasets bulging with information one loses the precision which was hitherto acquired at micro level and enabled a detailed understanding of a phenomenon. Yet it is also possible to understand a phenomenon in a more general sense at macro level, thereby opening the way for new interpretations, passing from causation to corroboration. Corroboration allows us to identify an indicator B of phenomenon A, even if it cannot be measured.

Thus the information that Big Data allows us to obtain in social research cannot form the basis for making generalisations on phenomena, but merely on on-going trends and tendencies. This is why Big Data is, however, important for making previsions. The task of social scientists, therefore, is to corroborate the classical methods of study and analysis of a phenomenon (which enables the research to manage many numbers with few data in the long term by means of a representative sample) with the employment of a method that allows the researcher to work with an enormous amount of data, not aiming to be completely representative but rather to find an estimation, in other words to capture tendencies. Yet, Big Data can also gather countless population and infinite amount of information; it is complex, since it comes from a wide range of sources that can be, in turn, aggregated, cleaned and transformed; it can be transmitted rapidly and exhaustively and it is highly flexible; it can adapt or be adapted to a variety of collective trends. Finally it can be detailed and identifiable

due to metadata information. For all this they are very interesting for scientific research, because they can allow to map, in an almost real time, tastes, opinions, individual and collective feelings, and because they can be available in a format that allows various types of analysis, measurements and representations (statistics, graphics, comparative).

3. Two approaches: data driven vs theory driven

From the research perspective, therefore, Big Data opens up the way to new scientific opportunities. Many analysts talk about the shift from theory driven, which would have to take a back seat, in favour of data driven approaches. There is a widespread feeling now that we are in a data-centric era, characterised by the fact that Big Data, rather than supplying elements to test hypotheses and theories opens the way for data-based analyses, where researchers could use the data available and later supply justifications *ex post*. However, there is a long way to go before such an eventuality comes to pass (cfr. Lombi 2015). This is mainly because the development of new technologies is itself generating the need for new theoretical tools; secondly, Big Data is not informative *per se*, it only becomes so in relation to the context in which the information is generated. As the context varies so does the phenomena, hence the need to explain each characteristic in order to produce scientifically verifiable knowledge (cfr. Leonelli 2018). Yet all this demands a theoretical perspective supplied by the scientist if the data is to be considered scientifically reliable.

The question of unreliability is one of the main problems that arise with the use of Big Data in scientific research. This is linked to the difficulty in finding a method that can satisfactorily deal with certain issues associated with this kind of data: above all the question of transferability and

mobility; in order to produce knowledge Big Data must be inter-connectable with the maximum amount of possible digital information from different sources. Without transferability there would be no Big Data (Ivi) because it would be impossible to extract the data from their specific situations.

Given that Big Data is characterised by mobility, that is to say the ability “to travel across diverse analytical situations and be placed in relation to the maximum possible amount of diverse information” (Ivi:13), it is only scientifically usable if produced in standard formats, as is already the case, for example with GPS geographical data. Generally speaking, however, the data used in scientific research are not easily transferrable and do not lend themselves to standardisation for many reasons: each store of information is highly specific in terms of format, in terms of the objects referred to, the techniques used in their production, the differences in scientific traditions, the use made of them, not to mention the different assumptions and constructions of the data banks employed. This scientific pluralism, that is a by-product of the need to study highly variable phenomena, makes it problematic to transfer digital information and create Big Data.

To obviate this problem it is essential to clarify how data are formatted and stored so as to make them universally accessible and comparable. This requires a knowledge driven approach, in other words an approach based on detailed knowledge and on documentation of several factors and processes: technically possible formats, the phenomena under observation, scientific judgements on how the data can be aggregated and analysed, the processes through which they are transformed and stored. Data storage is a process of major importance in the epistemology of Big Data and is inseparable from questions of power,

a well-known issue in the sociology of science, in other words the power of infrastructures (Mongili and Pellegrino 2014). The way in which data banks are constructed, as underscored by Leonelli (2018), determines who can use them and for what ends, as well as questions of interpretation, compatibility with other data and selection of the phenomena under investigation.

The challenge for scientists in general and especially social scientists is to be able to access the underlying structures of data storage, not only in the sense of being able to extract data therefrom, but also in the sense of participating in their construction and how they are structured. This is the central battleground of the digital divide, that concerns everyone, scientists, public and private institutions, Northern and Southern countries of the world, between those that have the tools- economic and technological- to analyse and use Big Data and those that do not. The gap between those that can have access to data and are able to use them and those that not, joined to the growing domination of the financial aims over the scientific ones, is generating a new condition of inequality, that can be called “data divide” and that is going to generate many tensions and imbalances in the field of scientific research.

4. Big data, social sciences and politics

4.1 Access and Use of Big data

One of the growing risks for scientists and others regarding Big Data is, therefore, the increasing inequalities in access and use. The data divide, in fact, concerns not only access to data but also the capacity to use it, i.e. the skills required to extract useful knowledge from it (Mayer-Schonberger and Cucker 2013). The difference between countries and scientific groups and research centres may be

on the increase, due to the differences in the financial and human resources at their disposal, as well as differences in the location of research centres. The differences between those who control the infrastructure and are able to use it to mobilise data, and those who have neither the means nor the skills to do so, has come to be known as disparity in participation (Leonelli 2018).

Finding, storing and analysing data are operations that involve not only researchers but a much wider range of actors, political economic and so on (e.g. businesses, financial institutions, advertising firms, insurers, public bodies). Researchers can produce data autonomously, or can buy it from others, who then generate data for various reasons that, unlike scientific concerns, may be purely commercial in nature. Public and private research bodies, therefore, in acquiring data are constrained in the same manner as others by the laws of the marketplace. All types of data (whether produced and studied by researchers or not, whether recognised as genuine sources of information or not) have a potential commercial value (Ivi:7) and thus constitute a particular economically valuable category of goods (Rabai 2017).

Big Data represents a chain of values, composed of the ownership of the data, the cultural orientation, the expertise required to use the data efficiently and so on; all these factors can be vertically integrated in a single company, such is the case of Google (Mayer-Schonberger and Cuckier 2013). This chain starts from the owners of the data, who, in exchange for services, release personal data and their treatment to large-scale providers who, in turn, become the new owners and can use the data directly or, for a percentage of their value, release them to third parties on licence. Data specialists are also part of the chain. These are companies that possess the special skills

and technologies to carry out complex analyses. Then there are those who tend to be culturally oriented to Big data and are able to realise their creative potential in their work. On the same wavelength as Big Data companies, the intermediaries, who are independent from the owners of Big Data, and able to aggregate data from different sources for different uses, find themselves in an enviable position along the value chain.

A new frontier in the market for data is the permanent trawling for individual behaviour (for example, through the use of apps, social media or through the simple click of the mouse on the computer screen indicating an interest). This information once aggregated becomes Big Data that can be sold on. The information found on the internet- job, marital status, possessions, consumption illnesses- once aggregated has a commercial value and becomes a source of income for those who deal in great quantities of individual profiles sold under the form of information packs.

There is a growing market, therefore, for personal data that requires regulation. What is needed, in other words, is a political economy of Big Data. Indeed, there is a tendency towards further concentration and consolidation of the market power of the big players in this field (data providers) as a result of the growing profits of data collection (Pitruzzella 2016; Giannaccari 2017; Quaglione e Pozzi 2018), with the consequent creation of giants of enormous wealth thanks to their ownership of digital platforms and the trade in data. The people governing digital macro-systems that process the complexity of available data see their commercial advantage strengthen further with the appropriation, selection and commercialisation of all this digital information (Di Chio 2015).

The governments of individual States intend to regulate the flow and sale of all this information. This process,

which has only just begun, has to weigh up the different interests at stake both public and private (commercial, privacy issues and so on). Moreover, there is also the need for regulation at a global level since data flows continuously across territorial borders and companies always have a supra-national dimension (Rabai 2017; Catanzariti 2016; Giovannini 2016).

As mentioned above, Big data, besides being a particular category of goods, can also become a means of exchange, albeit a somewhat impenetrable one (Gianaccari 2017). This aspect is also in need of regulation. It is by no means new that information obtained through data elaboration becomes a market asset and the value of such information can bestow a strategically competitive advantage in various economic sectors. In the digital ecosystem the value of personal information as a factor of success is on the rise. For this reason, such a value could become a currency for the new Millennium, the ultimate manifestation of the revolution begun with the advent of the Internet (Colangelo 2016). The information that users of search engines, social networks and e-commerce platforms supply to providers becomes, in place of money, a means of exchange in services, only apparently free, useful for daily life (traffic information, weather forecasts and so on).

The growing tendency is the growth of an oligarchy in the ambit of digital information and knowledge production, in which the logic of exclusion dominates over the spirit of inclusiveness (Di Chio 2015). As Leonelli (2018) demonstrates the trend to turn data into a commodity highlights the ambiguity over their status as a public or private good. In fact, the financial model of the large-scale companies that buy and sell data is based on two contradictory principles: on the one hand personal data are treated mainly as public goods, easily accessible and reusable, if individuals

give their permission; on the other, they become private goods, and hence the object of buying and selling as any other item on sale.

The fact that data used for research have often been generated in commercial ambits, and thus bought on the free market is not without consequences for the research itself. In other words, the evaluation and treatment of data on a commercial basis can be in conflict with the epistemic function of the data. Processed data as commercial goods subject to market rules and their exchange value determine above all: “an ever growing loss of opportunity for those who have less social and economic say in the construction of analytical and interpretive tools and strategies” (Ivi: 29, our translation). The privatisation of Big Data restricts the amount publically available vis-à-vis what is effectively stored in the archives and, moreover, it becomes ever more difficult to have access to the metadata, i.e. information on how the data is processed and managed, essential for interpreting and re-contextualising the data in question. It is clear that commercial nature of Big Data has serious implications for research and the interpretations based on the use of such data (*ibidem*).

In the light of all this, it is the function of politics to regulate these commodification trends and the digital asymmetries, which undermine the idea of equality within the digital space. The EU has introduced regulations to facilitate the use of research data in order to stimulate the innovation and the public good. The United Nations has included in its Agenda 2030 and in the SDGs (Sustainable Development Goals), as a guide for the foreseeable future, an increase in the amount of data available for individuals and social actors, thereby recognising the value of the work of planning, monitoring and decision-making (Giovannini 2016; 2014). Given the widely recognised importance of

this resource for society as a whole, therefore, we pose the question whether Big Data itself can be viewed as a public good or could become one. This goes in the direction of Open Data and a political choice to render an important global resource fully public. This could be a way to overcome the disparities in information access in the production of knowledge. Yet such an option is not without obstacles, for instance the work of profiling, processing and data preparation require resources. Who should carry out these tasks? Who should ensure transparency of the metadata, that is to say the assumptions governing the information gathered, essential for evaluating the data reliability and the plausibility of the conclusions drawn? According to a number of experts, however, the scenario of Big Data as Open Data, that is to say, universal unrestricted access (for others this represents the revolutionary potential of Big Data) is unrealistic if one considers the costs involved in the creation and management of such a network- storage, cataloguing, standardising, not to mention the costs of running the data banks (Leonelli 2018).

Finally, let us consider the role of politics in financing research through Big Data. As Leonelli shows (2018) research based on Big Data is no cheaper than the traditional methods. Resources and investment are needed to produce, manage and interpret the data that are the raw material of knowledge. Data accumulation requires money. The passage from data production to knowledge production is complex and costly. Data processing and analysis entails resources for the maintenance of data banks, the employment of experts and so on. If such investment is lacking however, the alternative is to rely unthinkingly on Big Data and this can have serious consequences for the quality of the knowledge produced.

4.2. Privacy and protection of individual rights

Another problem for researchers using Big Data concerns the consequences on people's lives, in particular in terms of privacy and the protection of individual rights of those who publish personal information, or offer it in return for services, not knowing how this information will be used. What are the risks for individuals or groups linked to the utilisation of their personal information? Irresponsible use of such information by Big Data companies, especially in the case of sensitive information can cause serious harm: for example, the risks of stigmatising individuals or leaving them exposed to threats. This danger requires not just political intervention to regulate the traffic in and the use of data, but also a serious discussion by scientists on the ethical questions raised.

The question to be addressed concerns the risks to the protection of individual rights such as privacy, or “the control of one's personal information” (Rodotà 1995). As a barrier against the misuse of data by the holders (Big Data) the idea is gaining ground of transforming the individual from simple user to owner who, fully informed of how information will be used, is solely responsible for its release. Thus individuals would have the right of possessing and control of their own data, which they can release to a government or private company in return for compensation on the basis of informed consent. This growing demand for self-determination and the individual's entry into the market place of data trading, however, runs up against the dynamics of digital asymmetry, that tend to render ineffective the real substance of any such guarantee. Digital asymmetry would also influence the divide between privacy of the rich and privacy of the poor (Crowford, Miltner and Gray 2014); in other words between those that would have the option to purchase anonymity and those who would

relinquish control of their details in return for certain services, without which they would become marginalised.

In Europe, regulation (2016/679), otherwise known as GDPR (General data Protection Regulation) introduced by the European Parliament and Council of Europe, binding on all member states, decrees a series of norms to protect the rights and basic liberties of individuals, by recognising for the first time their rights linked to the “profiling and portability of personal data”, at the same time as guaranteeing economic activity and the principles of competition in Europe (Rabai 2017). Moreover, this regulation requires the detailed documentation of the way in which data are handled so as to render their use transparent.

According to Mayer-Schonberger and Cukier (2013) the legal instruments in use at the present time are insufficient to deal with the question of privacy; a solution is difficult to find, however, because the nature of the risk has changed. The instrument of prior consent, for example, is inadequate as individuals must give their consent to the use of data but they themselves cannot know a priori what the data may be or how it may be used. Responsibility for safeguarding privacy, therefore, needs to shift from individual consent to the organisations that handle and exploit the data. Aside these changes, there is a need to raise ethical questions and consider the implications within the various scientific communities; scientists should become integrated in this debate rather than passive observers. The ethical issues should be considered as an integral part of the work of science itself (Leonelli, 2018).

5. Conclusions

Our contribution has intended to discuss the relationship between social sciences and Big Data, in line with the idea that knowledge produced through Big Data is not separable

from the outside world. The enormous mobility that characterises such data, in other words the fact that they travel across different contexts, scientific or not, and the fact that they connected to different scopes and ways of using them, make clear for us the need to clarify information concerning data origins, storage and processing, thus the set of meta-data. In fact, it is precisely metadata which allows to evaluate information reliability, to make the publicly accessible and handling, placing limits to the power of infrastructures exercised by data experts and owners in the different fields of interest. To any scientific value of data as a source of knowledge, one has to add other factors, such as political and economic values and interest. To fully understand the functioning of Big Data in science, it is, therefore, essential to take into consideration all these complementary aspects, regarding, for example, economics, politics, ethics.

In particular, we focused attention on the role of politics in the scientific use of Big Data taking into consideration its regulative function with regard to the great change and the new challenges coming from Big Data for scientific knowledge. We highlighted a number of aspects that may require regulation, bearing in mind the autonomous nature of science vis-à-vis politics, at the same time as their interdependence. In details, we took into consideration three key aspects which, according to us, are of relevance to social research. They concern access to data, the protection of individual rights and the financing of scientific research. They call on the role of politics to its function of regulating processes of change and they show the reasons why we consider the need for political regulation Big Data a necessity for the scientific research also.

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Processing Personal and Business Data and the Rule of Law in the Era of Digital Trade

1.Introduction

Due to the liberalization of trade and to the use of digital services, data flows have increased in the last decade. Data is used for instance for medical, educational, social, industrial and tax purposes. Companies such as Facebook, Google, Netflix, Amazon have used digital platforms to collect and exchange social data and at the same time to facilitate digital services. Governments are also seeking to collect data to access taxpayer information to prevent tax evasion, tax avoidance including aggressive tax planning and money laundering.

Further to the collection of data, there is an increase flow in the exchange of data among governments and companies and in the analysis of large data sets by using software to identify possible patterns to enhance productivity, public sector performance, and facilitate enforcement of the law. This use of large data sets is called big data. The term big data “usually identifies extremely large data sets that may be analysed computationally to extract inferences about data, patterns, trends and correlations” (Mantelero 2017:2).

3 The writing and research carried out for this article is the result of the ERC research in the framework of the GLOBTAXGOV Project (2018-2023). The GLOBTAXGOV Project investigates international tax law making including the adoption of OECD and EU standards by 12 countries. The GLOBTAXGOV Project has received funding from the European Research Council (ERC) under the European Union’s Seven Framework Programme (FP/2007-2013) (ERC Grant agreement n. 758671). Information available at <https://globtaxgov.weblog.leidenuniv.nl/a-new-model-of-global-governance-in-international-tax-law-making-globtaxgov/>. Initial version of this article was presented at the *2018 Conference of the World Complexity Science Academy (WCSA)*, organized by Prof. Andrea Pitasi, that took place in Rome between 12 and 15 November 2018. The author is grateful for the feedback provided by the discussants and participants at this conference.

Despite the increasingly collection, exchange and use of data by companies and governments, this article argues that there is not enough legal protection in the collection, exchange, use, monitoring and processing of this data. Furthermore, the use of big data also raises questions regarding the protection of privacy¹, and also the safeguards in place for the data controllers among others.

Accordingly, even though the use of data and big data has increased, and it is justified in the era of digital trade, recent developments such as Facebook Cambridge analytic scandal² and the Panama Papers, Paradise Papers and Luxleaks³ raise questions regarding the processing of personal and business data in this new environment. Some of the most important questions that need to be raised in the processing of personal and business data are (i) who has my data? (ii) is my data properly collected, stored and monitored? (iii) is the processing of my data allowed? And (iv) who owns my data?

Against this background, the main question of this article is *are the instruments in the era of digital trade, internet governance and taxation sufficient to guarantee the privacy and data protection of individuals and business?* In order to answer this question, this article will address the challenges and the instruments for the protection of the use of data and big data in three areas: trade and internet governance (Section 2) and taxation (Section 3). Thereafter, this article will provide some conclusions and recommendations.

1.Challenges: Data and Big Data in Trade and Internet Governance

1.1.Digital trade and Internet Governance

In digital trade, the use of digital (internet) platforms, the increase of digital economy and the introduction of

digital services market create challenges for the regulation of these services and for the protection of privacy, and personal and business data of individuals and companies.

Nowadays, individuals and companies use digital platforms (e.g. Facebook) to exchange data and to disseminate their work in social and professional networks. Furthermore, by means of digital economy there is “a worldwide network of economic activities, commercial transactions and professional interactions that are enabled by information and communications technologies”.⁴

The digital services market makes possible that multinational companies (e.g. Netflix) can provide services worldwide but also small companies (SMEs) are able to access consumers outside its own territory. As rightly stated by Mishra “the digitals service market is the fastest growing sector in the world today and is a key driver of the global economy. The entry barriers in the industry are low, and consumers have access to a range of competitive and high-quality services from across the world. Further, digital platforms have also increased access of SMEs to consumers outside their local or domestic markets” (Mishra 2019:29).

Another area that is closely related to digital trade is internet governance that promotes data flows among countries and the use of commercial digital platforms so that “customers can access and use different digital services”. (Mishra 2019: 15) In addition to openness, internet governance aims to ensure security of the internet network to protect personal data and confidentiality of the information that is stored, and privacy to ensure consumer trust (Mishra 2019: 16, 20, 21).

Therefore, in digital trade and internet governance, the protection of privacy, personal and business data is important to ensure the user and consumer trust. However, the instruments used to protect this data are limited since

it is mostly left to the domestic laws of the country. Even in cases such as the Facebook Cambridge analytic scandal that affected 87 million Facebook users, there were no international instruments to enforce the privacy and protection of the Facebook users' data. If one example can illustrate this, is the lack of sanctions to Facebook at the United States Congress' hearings (Kozłowska 2018) and at the EU Parliament hearings (European Parliament 2018a).

1.2. Instruments and challenges for data protection and privacy

The promotion of data flows in the area of digital trade and internet governance bring challenges to the balance between the use (and exchange) of data for digital services, and the protection of data and privacy including also the protection against cybersecurity.

Countries have regulated these areas in several instruments such as the Constitution addressing the right to privacy and confidentiality and domestic data protection laws. In addition, countries have also implemented EU laws (e.g. General Data Protection Regulation⁵) and/or signed bilateral agreements (e.g. EU-US Privacy Shield⁶) and/or multilateral agreements, for instance Convention 108 for the Protection of Individuals with Regard to Automatic Processing of Personal Data (Council of Europe 1981)⁷.

For cybersecurity examples of these instruments are found in domestic criminal laws and at EU level also in the use of an 'Information and Communication Technology cybersecurity certification'⁸.

Finally, in some cases, due to reasons of national security, countries have also restricted the access to data flows that contain a political or cultural banned content. For instance, "Russia and China have repeatedly asserted sovereign control over free flow of information to block or filter information that could be harmful to the cultural

or moral ethos of the country, or for purposes of national security. This idea of ‘national sovereignty’ in cyberspace (or ‘cyber sovereignty’) entails governments ‘governing’ the internet and the multi-stakeholder community playing only a secondary role” (Mishra 2019:14). These restrictions may influence the rule of law mainly on the right to be informed and the freedom of press. Therefore, it can be argued that it is not always clear how these restrictions enhance the protection of personal and business data since in some countries the free flow of data will be restricted but mainly for political reasons (Mishra 2019:10-11).⁹

2.Challenges: Data and Big Data in Taxation

2.1.1.Exchange of Information and Collection of Personal and Business Data

At international level, governments have agreed to exchange information first on request and since 2013 (as introduced by the Organization for Economic Cooperation and Development (OECD) with the political support of the G20) also automatic exchange of financial accounting information.¹⁰ For this purpose, different bilateral and multilateral instruments¹¹ have been used including art. 26 of the OECD Model (DTC) used in Bilateral Tax Treaties (OECD 2017); Bilateral Tax Information Exchange Agreements (TIEAs); and the Multilateral Convention on Administrative Assistance in Tax Matters (MAC) which at the time of writing (February 2019) has been signed by more than 120 jurisdictions.¹²

In addition, under art. 6 of the MAC, two Multilateral Competent Authority Agreements have been agreed the first one to introduce the standard on automatic exchange of financial accounting information (signed by 140 jurisdictions¹³) and the second one to facilitate the exchange of country by country reporting (signed by 76 jurisdictions).¹⁴

The aim of these instruments is to tackle tax evasion and tax avoidance including aggressive tax planning.¹⁵

At European level, the most important instrument to facilitate exchange of information in taxation is the Directive on Administrative Cooperation (2011/16/EU).¹⁶ This Directive has been amended 5 times to make possible (i) automatic exchange of financial accounting information (2014/17/EU); (ii) automatic exchange of tax rulings and advance pricing agreements (2015/2376/EU); (iii) automatic exchange of country by country reports (2016/881/EU); (iv) to ensure that tax authorities have access to beneficial ownership information collected pursuant to the anti-money laundering legislation (2016/2258/EU); and (v) automatic exchange of reportable cross border arrangements by tax intermediaries¹⁷ (2018/822/EU) (Council 2011, 2014, 2015, 2016, 2016a, 2018).

These amendments increase the amount of information exchanged within the EU. For the EU, “Administrative cooperation in direct taxation between the Competent Authorities of the EU Member States helps to ensure that all taxpayers pay their fair share of the tax burden, irrespective of where they work, retire, hold a bank account and invest or do business”.

At national (domestic) level, information is also being disclosed to the public. For instance, politicians may voluntarily disclose their tax return, or the tax administration can disclose the information prior request of any person exercising the right to access to public information (Nguyễn-Duy 2016).¹⁸ Furthermore, tax administrations are exchanging data for instance in joint audits between officials from two (countries) tax administrations (Burgers – Criclivaia 2016), or in informal join meetings to analyze taxpayer data taking place at the location of one tax administration.¹⁹

Another development that it is important to mention is the introduction by the United States of the Foreign Account Tax Compliance Act (“FATCA”) to exchange financial account information of US taxpayers. FATCA is applicable to the reporting by financial institutions (i.e. banks) worldwide to the Internal Revenue Service of foreign accounts held by US Taxpayers.²⁰

The introduction of automatic exchange of information as the global standard in 2013 and the use of multilateral instruments to exchange information result on information (personal and business data) being exchanged at a fast pace around the world. In the past, exchange of information will only take place if there was a bilateral agreement/instrument making possible the exchange of information (e.g. art. 26 OECD Model in bilateral tax agreements or Tax Information Exchange Agreements) and for specific purposes (to tackle tax evasion).

These instruments allowed the disclosure of information (on request) between authorities of two countries (including courts and administrative bodies) dealing with the assessment, collection, enforcement, and/or prosecution in respect of taxes. The information exchanged could only be disclosed to a third country with the authorization of the Supplying State (country providing the information).

Nowadays, information is not only provided by the taxpayer but also information is provided by intermediaries (e.g. tax advisors, accountants, lawyers, bank). This information is not only provided to one country in a bilateral relationship, but it can also be sent (automatically) to other countries due to the two Multilateral Competent Authority Agreements for automatic exchange of financial accounting and for country by country reporting.

In light of these developments, it can be safely argued that the multilateral instruments and the flows of

information exchanged makes more difficult to prevent leaks to third parties and to prevent the misuse of the information by the countries or government officials for other purposes than the ones for which the information has been exchanged (Debelva - Mosquera Valderrama 2017).

1.1. Instruments and challenges for data protection and privacy

1.1.1. Data Protection Laws

Notwithstanding the use of multilateral instruments to exchange information, the safeguards to protect personal/business data and privacy are left to the individual country. These safeguards are mainly in the Constitution (right to privacy) or in data protection laws. Furthermore, even if the data protection law exists, this may be obsolete to regulate the current developments of data processing, automatic exchange of information and use of big data. For instance in a study carried out by this author of 4 countries, Uruguay, Brazil, Colombia and South Africa it was concluded that the data protection laws were mainly based on the 1995 Data Protection Directive which makes these laws nowadays obsolete in accordance to the current developments on digital trade, internet governance and tax information exchange.

Therefore, countries around the world should revisit their data protection laws to provide more protection for taxpayers. One way is to use the new EU Data Protection Regulation provisions by introducing in the domestic law, provisions containing specific definitions of personal data, genetic data and biometric data (art. 3) and regulating the protection of the processing of these data as special categories of personal (sensitive) data (art. 10).²¹ Another way is by signing on a multilateral instrument for data protection for instance the Council of Europe Convention No. 108 that will be addressed in the following section.

Finally, following this Convention 108 and some other instruments (OECD 1980, 2012, 2013) ²², this author and Debelva (2017) proposed to introduce the following safeguards to guarantee privacy, data protection and confidentiality in taxation:

“(1) similar data can be received from the receiving State (reciprocity), (2) the receiving State ensures adequate protection of confidentiality and data privacy that is guaranteed by a follow up by the supplying State to guarantee the respect of such confidentiality in the receiving State, (3) the exchange is adequate, relevant and not excessive in relation to the purpose or purposes for which they are processed, (4) the sending of data does not constitute an excessive burden for the tax administration that lacks of the administrative capacity or technical knowledge to develop a secure electronic system to exchange data, and (5) the principle of accuracy, stipulating that the data controller has the duty to carry out regular checks of the quality of personal data” (Develba–Mosquera Valderrama 2017:381). However, in order to introduce these safeguards, political will and compromise from countries around the world is needed.

1.1.2. The Council of Europe Convention No. 108 for the protection of individuals with regard to Data Protection Laws²³

One of the most important challenges in the era of digital trade, internet governance and tax information exchange is the protection of the processing of personal and business data. Until now, the efforts have been mainly directed towards domestic or EU regulations to regulate data protection, but since data flows all around the world, there is a need for multilateral instruments.

The Convention No. 108 (Council of Europe 1981)²⁴ is the only binding multilateral instrument that can

potentially have a worldwide application, since the 2001 Protocol opened this Convention to countries non-members of the Council of Europe (third countries). However, in practice the scope of application is limited since it applies only to personal data (thus no business data) and at the time of writing only few third countries have ratified this Convention. As of December 2018, 6 countries i.e. Cabo Verde, Mauritius, Mexico, Senegal, Tunisia, Uruguay have ratified this Convention.²⁵ Therefore, from the 193 countries around the world 53 countries (47 countries members of the Council of Europe and 6 third countries) have ratified this Convention.

The Convention No. 108 protects the individual against abuses which may accompany the collection and processing of personal data and at the same time regulates the cross-border flow of personal data. Furthermore, in order to modernize this Convention and address the challenges of big data, the 2018 Protocol amending the Convention No. 108 was approved in May 2018 and open for signature as of 25 June 2018.²⁶ The modernization of Convention 108 pursued two main objectives: to deal with challenges resulting from the use of new information and communication technologies, and to strengthen the Convention's effective implementation.²⁷

In respect of big data, art. 11 of the 2018 Protocol introduces new rights for the persons in an algorithmic decision-making context, which are particularly relevant in connection with the development of artificial intelligence. For instance: (i) in order to obtain confirmation of the processing of personal data on request, at reasonable intervals, and without excessive delay or expense, the communication of the processed data must take place in an intelligible form in order to ensure the transparency of processing and (ii) the data subjects have the right not to

be subject to a decision significantly affecting him or her based solely on an automated processing of data without having his or her views taken into consideration.

In addition, art. 12 of the 2018 Protocol introduce additional obligations for signatory countries, mainly regarding big data. These obligations include: (i) the implementation by controllers/processors of technical and organizational measures, which take into account the implications of the right to the protection of personal data at all stages of the data processing; (ii) the examination, prior to the commencing of such processing, of the likely impact of intended data processing on data subjects' rights and fundamental freedoms; and (iii) the design of the data processing in such a way that it prevents (or minimizes) the risks of interference with those rights and fundamental freedoms. These changes aim to make data controllers/processors aware of the data protection risks of processing big data, and to take them into account when designing their data processing systems.

However, one drawback is that this convention is only applicable to personal data by individuals, and therefore, the protection of business data or any other data by companies is left to the domestic laws of the countries. However, since the focus of the domestic law is also personal data, the protection of business data should be also addressed at a multilateral level. One way could be to introduce a protocol to this Convention 108 (Council of Europe 1981) for the protection of business data.

Conclusions and Recommendations

Nowadays, data is being collected, exchanged and used in small or large amounts by governments, international organizations and companies for medical, educational, social, industrial and tax purposes amongst others.

This article concludes that in this era of digital trade, internet governance and tax information exchange, the current instruments used to guarantee the privacy and the data protection of individuals and business are not sufficient and are limited in their application and enforcement. For instance, domestic data protection rules can be obsolete if the rules do not follow the new technological developments in data such as the use of biometric data, or genetic data. In other cases, even though the rules exist and are up to date, there is a lack of enforcement of these rules as shown in the Facebook Cambridge analytic scandal where neither the US-EU Privacy Shield nor the EU General Data Protection Regulation were able to introduce sanctions to Facebook. In some countries, these rules are used to ban the use of data flows that contain a political or cultural content and therefore, restricting the freedom of information.

The protection of personal data and privacy and the use of big data calls for a new multilateral instrument that takes into account the processing of data in a world of big data such as the Convention 108 for the Protection of Individuals with Regard to Automatic Processing of Personal Data which was opened to third (non-EU countries) in 2001 Protocol. Up till the time of writing only 6 non-EU countries have signed this Convention and therefore, non-EU countries are losing an opportunity to participate in this Convention and to provide more safeguards and protection for the automatic processing of personal data. The 2018 Protocol has amended this Convention 108 to address the challenges of big data. One of the drawbacks of this Convention 108 and its 2018 Protocol is that it only protects automatic processing of personal data (individuals). Therefore, in order to guarantee the protection of companies, it is recommended to introduce a Protocol to this Convention 108 to address the protection of business data.

More data means more responsibilities for all actors involved in the collection, processing, and analysis of this data. If the use of big data is relevant to enhance the countries' democratic processes and compliance with rules, the protection of the processing of this data (including personal and business data) is also relevant in order to enhance the rule of law. Therefore, the challenge for governments is to adopt the Convention 108 while, at the same time introducing safeguards to guarantee the safe and adequate use of personal and business data.

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Data Sharing Beyond the Public/Private Divide

1.Introduction

Nowadays legal systems of most Western countries face relevant changes in the politics of information control. The rise of advanced technologies has magnified the capability of new actors to control both means of communication and data flows. States happen to share their regulatory competences with an indefinite number of actors, whose either public or private function, or governmental role is no longer relevant. Indeed, the emergence of big data analytics has completely altered the logic of data gathering and processing (Mayer-Schönberger - Cukier 2013).

Whereas in the past, the monitoring of behaviours was conducted on the basis of specific information, in the context of big data it has become much more important to have access to huge amount of data, constantly updated and interconnected, in order to infer new and even unexpected trends on the basis of a purely inductive method of analysis and without starting out with a precise target of the study. However, the source of such information is fragmented and “*market-driven*”. The digitization of communication technologies is just one of the most important components of our contemporary “*liquid surveillance*”, and the relevant sources in such a brave new world are private companies, rather than the political actors. As a result, in order to effectively pursue their own institutional aims, nation-states are increasingly in need of private cooperation, as they need to rely on systems of multi-level governance.

As the fundamental source of information, private parties, once the traditional contenders of the nation-state, tend to play a crucial role in-between nation-states and

individuals as intermediate actors. To an increasing extent, governments systematically access private sectors data not only directly to private data-bases and networks but through the cooperation of third parties, as financial institutions, communication providers, insurance companies etc. that control databases or networks. Those actors have been labelled by Jack Balkin, even though in the different field of freedom of expression, as *information fiduciaries* (Balkin 2018: 1160; 2016: 1183), whose interference entails asymmetry of powers towards end-users, because of their practical omniscience. He defines an information fiduciary as a «*an information fiduciary is a person or business who, because of their relationship with another, has taken on special duties with respect to the information they obtain in the course of the relationship*» (Balkin 2018: 1209). The idea of fiduciary obligations generally presupposes a contractual relationship between clients and media companies. In the field of data protection, this could be the case of the terms and conditions applicable to many kinds of social networks' subscriptions in our daily life, in which private intermediaries play a big role while dealing with huge amounts of data mediated through technologies and algorithms. Nonetheless, even regardless of contractual obligations, the effects of the trust given to private intermediaries by individuals who share their data, is sufficient to draw a picture of a bridge in-between individuals and public actors, which progressively erodes the milestones of a vital political and social conflict between the state and the users.

Nonetheless, this framework is complicated by the fact that, among private actors there are also those who are owners of private infrastructures. Private governance means that infrastructure providers control the flow of information through the infrastructures that they own. Towards

them nation-states have been traditionally the antagonists, whereas they have now gained a role of counterweight of developing technologies.

The context of electronic mass surveillance is one of the most meaningful examples, by which private actors have gained an intermediate position in-between the state and the individuals which entitles them to negotiate their own interests by apparent check and balances tests. This role has traditionally belonged to the nation - state, as the only legal entity enabled - even through its bodies and powers, and especially the judicial power - to make a balance of interests, for instance, in the case of mass surveillance, between national security and privacy. By contrast, private actors cast themselves in a function of assuring individual rights' protection as intermediaries. Nowadays, corporate actors are able to jeopardize such a balance in the name of the protection of property rights, such as patents and trade secrets, by using the idea of the right to privacy, as a shield against state interference and namely against the enforcement of counter-terrorism measures or security. The traditional nation-state is then adapting to new circumstances, which question its monopoly in the use of the legitimate power. On the other hand, the idea of protection of personal data as a right of individuals should be nuanced taking into account the social dimension of group targeting in order to enter the huge social transformation which arises from cumbersome data flows. As pointed out by Mantelero, a deeper reflection on the digital revolution should lead to counter the phenomena of data lock-in and 'social' lock-in in order to enhance user propensity to share data with trustworthy services (Mantelero 2013: 229).

The paper will explore the cooperative and competitive dimensions of public and private sector in the field of bulk collection for cross-border mass surveillance purposes.

More often, the social control is the result of the interaction between private and public actors, based on collaborative models that are often carried out via mandatory disclosure orders issued by courts or administrative bodies towards big companies. The way in which service providers seek to strike a balance between their customers' interests could lead towards proactive activities which apparently protect individual interests (Rubinstein, Nojeim, Lee 2014: 98; Castells: 1996).

The starting factual point is that internet means by definition regulating cross border information flows (Woods 2018). This implies to rethink of new forms of sovereignty as applied to the digital reality not only from the horizontal point of view, in relation to the other sovereign actors; but also from the vertical standpoint, as regards the interaction with new forms of intermediate powers (Hijmans 2016: 77). What often happens is an overlapping between transatlantic data transfers and data transfers from private actors to public actors, as most of the web giants are established in US. This blurring shakes the traditional forms of Weberian rational power according to which administrative bodies are entrusted to exercise power and require obedience (Weber 1974: 212, 215, 217); rather, it is a phenomenon which resembles to social change in which variables modify their reliance capacity according to the exchange value of information (Parsons 1965: 499). This implies that it is quite hard to draw an evolutionary picture of the interaction between heterogeneous sources of information, because much depends on which are the players who originate data flows and how their capability to handle huge volumes of data affect the blurring of purposes for recipients.

The case-study of this paper is data transfers of personal data of EU citizens, originally circulated for commercial purposes, to public authorities overseas for

further purposes, including detection, investigation and prosecution.

The methodology chosen is a legal comparative based approach amongst the most similar cases of mass-surveillance programmes in EU and US. This involves the analysis of some EU and US legislation and case-law in order to show the socio-legal implications of cross-border data flows.

2. Mass surveillance beyond the public/private divide

From a strictly legal perspective, the observation of mass surveillance programs is a useful starting point to look at the interplay between public and private actors: firstly, these programs are mostly conducted in secret and therefore they cannot be generally challenged in Courts until they are publicly accessible; secondly, the huge volume of cross-border data transfers increases the conflict between the extraterritorial claims of border judiciaries.

After Edward Snowden's revelations to the *Guardian* and the *Washington Post*, an important debate arose on the transatlantic mass surveillance programs, such as Upstream and Prism. These programs permitted the control of contents and meta-contents of wiretaps and telecommunications by NSA, giving it access to communications passing through US companies such as Microsoft, Apple, Google, Facebook, Skype and YouTube. Similarly to U.S., also UK in 2008 put in practice a mass surveillance programme called Tempora, which enabled the Government Communications Headquarters (GCHQ) to access external communications in bulk along fibre optic cables running between US and UK, by intercepting and storing a back-up of internet activities entering and leaving UK. The UK not only used this data for its own purposes but it also gave NSA access to this data. This programme

was set up for tapping, storing and analysing all electronic data including metadata. The leaks showed that US and European programs of mass surveillance were transversal and concurrent in their scopes.

Programs like Echelon, Ukusa, Prism, Upstream, X-Keyscore, Bullrun - based on a large scale monitoring of Internet based communication – revealed that governmental agencies, through the cooperation of non governmental actors, and namely private companies providing communication services – have conducted bulk interception of electronic communications of non-US persons and undertaken massive collection of metadata carried out by US authorities concerning all citizens. The control was extensive and included sending copies of data through fibre-optic cables, international indexing of email addresses, IP addresses, lists of names, phone numbers from which analysts can derive selection parameters (so-called “selectors”) that are relevant for a target of individuals or a suspected behaviour. According to these programs, data have been also integrated through algorithms to decipher cryptographic keys (Rubinstein 2012: 1).

The originating debate on the invisible power in the age of mass surveillance was explained through the lenses of variable relationships between power and rights. As noted by David Lyon, mass surveillance can be defined as *«the focused, systematic and routine attention to personal detail for purpose of influence, management, protection and direction»* (Lyon 2007: 14). It is a way to control in the field of action of the others.

Firstly, mass surveillance is a clear example of the secret use of technology, which paradoxically realizes virtual transparency and the possibility to publicly share data on huge economies of scale. Secondly, in contemporary societies surveillance programs transcend the public/

private dichotomy (Richards 2013: 1935). This means that these programs can be used either by public actors and private actors.

Approaching this new constellation of post national phenomena rises a few theoretical issues (Habermas 2001: 58). As noted by Neil Richards and Jonathan King, mass surveillance gives rise to three fundamental paradoxes: the first paradox, the transparency's one, concerns the possibility to know the data of all individuals by using secret programs; the second, the identity's one, is related to the crystallization of the identity of an individual in its monitored behaviour; the third, the power's one, probably the most dangerous, consists in the fact that the apparent recognition of certain rights, such as the transparency in the network, is parallel to the growth of the power in the private actors that manage the selection and aggregation of data (Richards - King 2013: 43, 45).

These three paradoxes are key-points in the history of the relationship between visibility and power. Traditionally, there is a limit of compatibility between the use of secrecy and democratic forms of power, which consists in predicting the public use of secrecy, limited to certain cases (Curtin 2018: 5). Even though "*some democratic policies require secrecy*" – as observed by Thompson - "*first order secrecy requires second order publicity*" (Thompson 1999: 1181-1185). The invisible use of power is, therefore, a justifiable practice so far as it falls within a process that is in itself not secret. This is the case of algorithms which are used to fasten processing and take decisions but are mostly based on secret systems not accessible to anyone (Pasquale 2015: 3).

The Datagate scandal showed that the public and private regulation of invisibility has not only been converging, but also concurrent in manners and purposes.

Such interconnected scenario has been also favoured from the fact that few contractual clauses included within terms of service may wave public actors' capacity in data collection. Whereas in the first season of data protection legislation, remedies have been envisaged mainly against information misuse by public authorities, nowadays the new conditions of either cooperation or competition between the private and public sector suggest the individual effective control over data flows to be shifted at an upfront layer, and namely at the first stage of the interaction between individuals and intermediaries (Mantelero 2016: 238).

From a theoretical point of view, the idea of adapting social systems is useful in order to understand the logic which urged opposite players to cooperate. This has also to do with the non consumable nature of information, which can be not only reproducible but also non appropriable (except in the case of property rights).

The expansive aggregation of data in the age of mass surveillance urges to question the forms of regulation entrusted in the new technologies and their technological independence from the purposes of surveillance. As surveillance improves the cooperation between public and private actors, not only companies that draw advantages from the collection of the data, but also individuals who voluntarily agree to share their data on virtual platforms increasingly facilitate the work of the NSA. The prior consent to processing personal data supplied by users of social networks is just one of the examples of the re-use of individual consent by intermediaries. The transversal effect of neutralizing the balance between powers as a vital form of democratic resistance has been replaced by the cooperation among undifferentiated actors that could both play as private and/or public actors.

3.The myth of the consent as individual safeguard

Nowadays the phenomenon of information gathering and sharing - limited to personal data - contributes at least in two different ways to dismantle the paradigm of nation-state sovereignty (as applied to the specific issue of control over data): from a horizontal perspective, foreign governments' need for data located overseas entails in most cases extra-territorial claims or, at least, an extension of the territorial reach of domestic jurisdictions; from a vertical perspective, public authorities more often turn to the private sector for data mining's purposes.

The original idea of transnational law, developed by Philip Jessup in 1956, *«include(s) all law which regulates actions or events that transcend national frontiers»*, but has become sensibly more complex as global phenomena suggest to re-frame in more constructive ways legal categories (Zumbansen 2011: 7). The tangible effect of the “*liaison dangereuse*” between global economy and digital technologies is that private companies, such as service providers – operating at a global level – are able to share individual information even beyond the frontiers of nation-states. The model of multilevel governance and the development of soft law provisions may be properly applied to understand this context, as they sometimes offer support to the discretionary decision-making of private actors and to lack of control by public powers; or to the discretionary power of public authorities via the cooperation of private actors by mandatory disclosure orders (Rubinstein, Nojeim, Lee 2014: 98).

In this last case, the cooperation is not only based upon mandatory disclosure orders, but also upon a voluntary attitude of private actors who wish to get in good with governments, by seeking some favourable policy investment (Rubinstein, Nojeim, Lee 2014: 105).

Of course, the distinction between these attitudes, the compulsory and the voluntary, is extremely relevant, as in the first case, when an order is issued, rarely questions on the responsibility of private actors arise, as they are obliged to share information with public authorities; in the second case, a voluntary transfer may address liability issues for consistent violations of individual rights, as recently shown by the Cambridge Analytica case.

The connection between bulk collection and communication technologies, like cloud computing, big data and artificial intelligence, has produced a significant blur of purposes among different layers of data gathering – for instance, commercial profiling techniques and security – aims at depicting individuals with fragmented identities, as consumers, suspected of certain crimes, good citizens or “other”. As pointed out by I. Rubinstein, bulk collection *«encompasses both direct access by the government to private-sector databases, without the mediation or interaction of an employee or agent of the entity holding the data, and government access, whether or not mediated by a company, to large volumes of private-sector data»*.

Nevertheless, only one side of the coin portrays public actors as more tied to constraints than private actors. What happens in practice is demanded to contractual clauses which individuals sign every time they subscribe terms and conditions as clients of service providers and media companies. The myth of the “consent”, as the traditional bastion of the individual will, is an instrumental tool sometimes used by private actors to bypass all complex architecture lying at the basis of information rights protection in Europe, and also for the benefit of public authorities which exploit information transfers aiming to use it for its own purposes.

Data gathering for law enforcement and national security is, for example, mostly exempted from general data protection laws or constitute exemptions under these laws even at the EU level.

Furthermore, in the architecture of the General Data Protection Regulation, consent has been conceived in a more substantial way losing its centrality as a key point of individual freedom, as only one of the six legal basis of a lawful data processing (art. 6).

One of the most promising provisions of the GDPR aiming at imposing a significant limit to private actors who should withdraw the “freely given consent” in the frame of the “purpose limitation principle”, is the so called “*tie in ban*”: *«when assessing whether consent is freely given, utmost account shall be taken of whether, inter alia, the performance of a contract, including the provision of a service, is conditional on consent to the processing of personal data that is not necessary for the performance of that contract»* (art. 7 GDPR).

This provision is extremely important, as it could refer to a series of further activities, among which bulk collection – which are allowed through the extortion of individual consent most of the time kept under the veil of non transparent or unfair commercial offers. Its violation is punished with consistent fines for companies under GDPR.

This specific choice has been conceived for not demanding to the individual consent all depredatory contractual practices which seek to rely on it, every time data cannot be otherwise lawfully processed. In fact, most of the technological giants have their data repository outside Europe. This may produce the risk of undermining protection standards for Europeans who release their consent to data processing carried out by “web big giants”.

But consent is a legal basis provided only by GDPR and not Police Directive, which applies, in the framework of EU data protection package, to data processing for purposes of investigation, prevention and detection.

Nonetheless, this triggers the potential of consent much faraway as foreseen. Especially in the field of data transfers to third countries, many issues arise as regards the legal basis of the transfer provided by GDPR. As known, specific safeguards have been prompted for data transfers to third countries or international organizations, including onward transfers: legally binding enforceable instruments such as an adequacy decision, or appropriate safeguards such as binding corporate rules, standard data protection clauses, certification mechanisms. A few derogations have been foreseen, including authorisation of the data subject, which applies in the absence of an adequacy decision or any appropriate safeguards.

If we compare both sections on data transfers in GDPR (artt. 44-49) and Police Directive (artt. 35 and 38), we can observe that only the first one includes the so called “consent exception” as derogation for data transfers among data controllers (which, according to the definition provided by GDPR includes also public authorities among “natural or legal persons, public authorities, agencies or bodies”) and third countries, in the absence of an adequacy decision or appropriate safeguards, whereas the Police Directive does not include in such derogations individual consent (art. 38).

The reason is easy to understand, as consent should have been never included into the legal basis of the lawful data processing for purposes such as prevention, investigation, detection and prosecution (art. 8 Police Directive and Recital n. 35).

Nevertheless, what seems apparently clear, is nuanced if considered from a transatlantic perspective.

In fact, the consent on data transfers to third countries or international organizations under GDPR (i.g. of those personal data that are not initially processed for the purposes of the prevention, investigation, detection, or prosecution of criminal offense or execution of criminal penalties) might push overseas public authorities to ask private actors for data transfers not otherwise admitted. In this way individual consent turns to be an escapable mechanism for uncontrolled data gathering, as Regulation (EU) 2016/679 should apply to the processing of those data for purposes other than the purposes of this Directive where such processing is authorised by the Union or Member State law (*see* Recital 34).

Therefore, it would be extremely important to circumstantiate it and pay attention to terms of service and privacy policies offered by media companies, especially with regard to clauses concerning transfers to third parties and clauses modelled on a “tie-in ban”, because the fact that such clauses could be held as invalid by a European Court does not prevent data subjects’ effective remedies from being hampered outside Europe.

In a few words, it is noteworthy to stress what Shoshana Zuboff pointed out regarding the emerging form of surveillance capitalism:

«This architecture produces a distributed and largely uncontested new expression of power that I christen: ‘Big Other.’ It is constituted by unexpected and often illegible mechanisms of extraction, commodification, and control that effectively exile persons from their own behaviour while producing new markets of behavioural prediction and modification. Surveillance capitalism challenges democratic norms and departs in key ways from the centuries long evolution of market capitalism» (Zuboff 2015: 79; 2019).

4. EU-US information sharing

In particular, two are the most important international agreements signed by US and EU in the field of transatlantic data transfer: the one is the Umbrella Agreement which covers all personal data (for example names, addresses, criminal records) exchanged between the EU and the US for the purpose of prevention, detection, investigation and prosecution of criminal offences, including terrorism; the other is the Privacy Shield, which has replaced in 2016 the Safe Harbour Agreement, declared contrary to the European Law, providing for a new framework for transatlantic exchanges of personal data for commercial purposes.

In particular, with regard to the protection of personal data, former Art. 25 of Directive 95/46 and now artt. 46-47 of the GDPR provides for data transfer to third states which can take place only when there are certain conditions. On the one hand, the adequacy of the standard of protection by the third country must be determined according to the context in which the transfer takes place: particular attention should be paid to the nature, purpose and duration of the transfer; the country of origin and the country of arrival of the transfer have to be taken into account. On the other hand, national authorities and the Commission are responsible for reporting cases of non-respectively adequacy standards adopted by third countries.

The Privacy Shield aims to offer more safeguards of those assured by the Safe Harbour Agreement.

The new instrument is intended to overcome the limits imposed by the Directive through a system of self-certification of the adequacy standard of data processing to the Directive 95/46/EC, which had to be applied to American companies operating in Europe (Curtin 2012: 8). The inspiring principles of the old Safe Harbour Agreement - notice,

choice, onward transfer, security, data integrity, access, enforcement – have been roughly modelled on the content of the European directive and now strengthened by added principles of Privacy Shield such as regular reviews, tightened conditions for onward transfers. However, the system of self-certification of the required standards' achievement online to the Department of Commerce often turned out to elude these principles. According to these standards, the parties concerned should give their consent to the processing and transfer of their data; should receive a notification from the company processing the treatment; could access their data at any time. Companies, for their part, should ensure adequate standards of safety and integrity of the data, while governments should ensure the procedures of effective protection and adequacy of the standards required. Among the most common security policy, the obligation of confidentiality, integrity and accessibility of data always appear.

Special attention has been posed on the guarantees regarding the national security access to data transferred to the US, as the redress in the area of national security will be handled by an Ombudsperson, who is independent from the US intelligence services.

Recently Europe has engaged itself in a project on interoperability of information systems in the Area of Freedom Security and Justice throughout a technical mechanism aimed at gathering and sharing data among public authorities and administrative entities at both national and EU level. In particular, it concerns the fields of migration, borders management and police cooperation, with the primary purpose of establishing persons' identity and sharing information for crime prevention, investigation and law enforcement. Interoperability would be most likely implemented through three technical tools: a European search portal where mainly personal data are associated

to alphanumeric data; a common identity repository; and a shared biometric service for biometric data. Allegedly efficient, it allows data to be processed only once and then simultaneously accessed by all interoperable actors and used for matched purposes. The potential is the efficiency as well as the standardization and the increasing transparency of procedures, which enables interoperable actors not only to query several systems simultaneously, instead of having to query each system separately, but also to control and scrutinize the use of information not in a unilateral way. The actors operate through different links which show similarities or divergences of data stored (so-called multiple identity detector).

One paradox is that GDPR is not applicable to EU agencies but could be applicable to transfers of data towards third parties such as foreign agencies (art. 3), whereas personal data stored in or accessed by the interoperability components shall not be transferred or made available to any third country, to any international organization or any private party (art. 48, Proposal for a Regulation of the European Parliament and of the Council on establishing a framework for interoperability between EU information systems).

5. Mass surveillance as “intelligence matter” in US

In the United States there are basically three sources of law for mass surveillance programs, which allow mandatory disclosures to intelligence authorities by service providers. The first is the FISA (Foreign Intelligence Surveillance Act, amended in 2008) governing electronic surveillance inside the US territory, in order to obtain foreign intelligence information by foreign powers; the term “foreign power” includes not only states, but also the agencies of foreign states, as well as any group involved in combating

international terrorism. In particular, § 702 of FISA requires service providers to immediately provide all the information, tools and support necessary to acquire foreign intelligence materials, through the revelation of cryptographic keys. Furthermore the purpose of foreign intelligence must not be exclusive, but only significant. This provision does not mention any reference to territorial limits and refers to individuals that are presumably outside of US territory. It also does not require a court order, being subject only to a system of annual certification by which the FISA Court identifies the categories of information, relevant for purposes of foreign intelligence, in order to be acquired according to the decision of the Attorney General and the Director of NSA. The second source is § 215 of the US Patriot Act, which allows the FBI to apply to the court to issue a warrant for obtaining from companies “tangible secret records” relevant to an investigation, which must refer to the activities of foreign intelligence and is aimed at non-US citizens for combating international terrorism and clandestine intelligence activities. American citizens enjoy the protection of the First Amendment, which safeguards individuals for freedom of religion, speech, press and association. The interpretation of the concept of foreign intelligence information is not clear, as it includes “*information with respect to a foreign-based political organization or foreign territory that relates to, and if concerning a United States person is necessary to the conduct of the foreign affairs of the United States*”⁴. This general definition refers, in fact, to a foreign intelligence information concerning non-US citizens, provided that it is relevant to the foreign policy of the United States.

Finally, the last source is the Executive Order 12333 of 1978, amended in 2008, which provides for special

4 50 USC §1801(e)2(B) - <http://www.law.cornell.edu/uscode/text/50/1801>

powers of intelligence agencies, including the collection of data of foreign intelligence, without providing any temporal limit. Although the Executive Order does not contrast with the Federal Constitution, and in this case with the Fourth Amendment, however, no judicial review is applied: there is full discretion of the President. Furthermore, the inquiries of the EU-US Working Group on Data Protection show that the Executive Order should ensure the disclosure of mass surveillance programs conducted by the United States against foreign countries, which never happened, since the Executive Order is secret (Bignami – Resta 2015: 231, 250-253).

This entails a broad application of FISA to European citizens, whereas it may apply to American citizens only when their activities are relevant to US foreign policy.

As regards judicial activities of foreign policy, the jurisdiction of FISA Court covers both the FISA and the USA Patriot Act, but not the Executive Order 12333. In particular, according to the § 215, the Court must approve the order imposed to companies for the collection of data. In the case of § 702 FISA, however, the Attorney General and the Director of the NSA authorize the collection of data. The role of the Court is limited to the confirmation of such orders based on a mere formal control of requirements. However, acts adopted by FISA Court are classified and data subjects can not be represented before it. The court operates *ex parte* and *in camera*.

6. Two Western concepts

The interaction between public and private sector data, especially across the Atlantic, may betray not only the cultural differences which are at the basis of different legal systems but also reverse the rationale behind some provisions of EU law. For example, it is quite significant that the

activities of EU agencies are not covered by GDPR, but data transfers to third countries under GDPR could include foreign agencies.

It could entail also curtailing protection while information sharing is conducted with third parties. Nonetheless, EU law should not be considered uniquely as the milestone of privacy rights, as the primary goal of the internal market of personal data is a free movement of goods, persons, services and capital.

While in Europe, the right to privacy is considered as a fundamental right linked to the development of personality flourishing in the concept of human dignity, in the United States the idea of privacy belongs to the sphere of individual self-determination against the interference of public and private actors, which can also be waived by agreement at contractual level among individuals as “privacy consumers” (Schwartz – Peifer 2017: 121; Hijmans 2016: 17). In US, for instance, the logic of privacy as control over information has been never accepted, as it does not extend to relations among private individuals (Schwartz – Solove 2011: 1814). Constitutional privacy is deeply embedded in the logic of American constitutional adjudication, but this basically means just intangibility of the domicile, liberty and self-determination in fundamental choices that affect the human body. As stigmatized in 1967 in the Katz Case by the Supreme Court, “*the Fourth Amendment protects people, not places*”. By contrast, informational privacy is irrelevant to the American constitutional “culture”, as it only protects individuals when governments process their data. The linchpin of the Fourth Amendment is the reach of the warrant, as the amendment protects against unreasonable searches or seizures, unless justified by a warrant. The Federal Rules of Criminal Procedure, which govern search and seizure law, provide at Rule 41, as regards digital data, that a federal law enforcement officer or government

attorney may attain a warrant from a magistrate judge so as to conduct a search or seizure. Rule 41(d)(1) allows a magistrate judge, after receiving an affidavit or other information, to issue a warrant if he believes there is probable cause to justify a search and seizure.

This is the constitutional idea of information privacy under the umbrella of the Fourth Amendment, which should cover also communications and electronic data, recognized by the Supreme Court in the case *Whalen v. Roe*, 429 U.S. 589 (1977). By contrast, the right to self-determination, which is the conceptual framework in which the continental idea of privacy is inscribed, furthers the project of free development of personality (Whitmann 2004: 1151; Gareis 1877: 185).

In Europe, protection is advanced at the level of data acquisition, through the intermediation of independent administrative authorities; in the US, the initial acquisition of data does not mean data processing. Therefore, the protection is shifted to a higher level, which can be explained with the propensity to the adversarial legalism in US, whereas in Europe administrative negotiations are generally intended to avoid the intervention of the judiciary. Thus, American privacy has been defined *reactive*, whereas European privacy has been defined *proactive* (Busch 2006: 318).

In a very comprehensive way, the difference between the US and EU model has been pointed out by Paul Schwartz and Nikolaus Peifer in what Americans feel comfortable in protecting consumers in a data marketplace whereas Europeans pay attention to the project of constructing the personal identity of the European citizen (Schwartz-Peifer, 2017: 115).

So far two main models of regulating data privacy have emerged within the Western legal tradition: the

European approach, considering *data privacy* as a fundamental human right and assigns responsibilities to independent data protection authorities, protects the individual against the interferences by private and public powers and fosters an idea of control on information about themselves based on dignity; and the American approach, endorsing a much broader concept of self-determination as a form of liberty that may be waived within contractual relationships with other private actors. The American notion of privacy has been built against the intrusion of the State in the individual sphere, whereas the European notion of privacy has been erected on the basis of the principle of dignity (Bignami 2007: 609). This fundamental choice affected the system of remedies: in Europe the responsibility of the data processing is assigned to Data Controllers, whereas in US the right on personal data could be negotiated by contract (Bowden 2013: 8).

7.A cumbersome territory

The recent *Microsoft Case* raises relevant issues not only in terms of extraterritorial reach of foreign jurisdictions but also as regards the opposite role played by private actors and state-actors as regards the protection of digital data from search and seizures.

The Supreme Court has recently declared the *Microsoft Case* moot because of the entry into force of the Cloud Act - under which the US government obtained a new warrant which obliged servers providers to release data and valid under Stored Communication Acts (SCA). This means a lot in terms of jurisdiction enlargement and potential foreign law conflicts. As known, this very famous case was ruled in the first instance by the District Court for the Southern District of New York, which had issued a

warrant against Microsoft to provide the US Government with email content from an account located on a server in Ireland. In response to the Order, Microsoft filed a motion to stay the execution of the warrant. The issue was then brought before the Southern District of New York, which, upon reviewing the Order, Microsoft's Motion to Stay the Warrant, and the Government's Motion to Lift the Stay, granted the Government's Motion to Lift the Stay, upholding the validity of SCA warrant. Microsoft then appealed to the Second Circuit, which declared a US magistrate's warrant requiring data located abroad unlawful, reversing the decision of the District Court.

It is interesting, from the perspective of the competitive role of private actors towards public authorities, to analyse a few arguments made by Microsoft. First, focusing on extraterritoriality, Microsoft emphasized the Court's long-standing policy against applying a U.S. law outside of U.S. territory absent a clear Congressional mandate to do so, a principle known as the presumption against extraterritoriality. This means that entering premises in Ireland, through a search and seizure of an email account that was located exclusively in Ireland, would have entailed thereby infringing Irish sovereignty. But what is more interesting is that Microsoft also challenged the District Court's employment of the "hybrid" subpoena, arguing that such a construction would be inconsistent with what Congress actually wrote and intended in SCA. It argued that there is a difference between ordering a company with a foreign subsidiary to produce its own records and ordering a company functioning as a *caretaker* of private records to produce records. It pointed out that email customers lack any legitimate expectations of privacy to non-content information that they have voluntarily conveyed to providers, but they maintain a legitimate expectation to privacy in the

private intimate contents of their electronic messages, and thus providers have only limited control over those emails. Microsoft addressed foreign policy concerns as well. Emphasizing reciprocity, Microsoft warned that a breach of sovereignty in one instance would have led to similar breaches all over the world and diminish foreign relations (Din 2016: 33-34).

Nevertheless, the focus of this paper is not to discuss the extraterritorial implications of such controversy, rather focus on the extent of executive agreements which under the Cloud Act allow foreign government to seek data of non-US persons.

8.The potential of international agreements in cross-border data sharing: the US CLOUD Act

I will not provide a systematic analysis, but just an overview of the most relevant controversial rules in terms of problematic data sharing among private and public parties. In particular, Cloud Act allows that all Stored Communication Act's provisions on required disclosures apply regardless of data location (i.e. communications and recordings).

Indeed, what seems to me particularly interesting in the scenario of international data sharing is the new form of international agreements occurring among states.

Three are the forms of cross-border data sharing: rogatory letters (not binding towards recipients), mutual legal assistance agreements and Cloud Act agreements (or so called executive agreements). Whereas MLAT's create treaty-based obligations between governments which are often contradictory with the prohibition by US law to disclose data, executive agreements are faster and directly bind service providers to release the contents of electronic communications to the foreign government with

whom US has signed an executive agreement, through a system of certifications which are not subject to judicial or administrative review (S. Mullighan 2018. 17). The underlying issue is the eligibility of certifying foreign nations for signing an executive agreement. In MLAT and letters rogatory processes, a federal court reviews and approves foreign government's request for information before issuing a warrant or a court order; under CLOUD Act agreements, foreign governments can submit orders directly on servers providers. The CLOUD Act determines a conflict with European data protection law, which provides that any judgment of a court or tribunal and any decision of an administrative authority of a third country requiring a controller or processor to transfer or disclose personal data may only be recognised or enforceable in any manner if based on an international agreement, such as a mutual legal assistance treaty, in force between the requesting third country and the Union or a Member State (art. 48 GDPR). This means that any extraterritorial exercise of judicial jurisdiction towards Europe could be regulated by international agreements. Such solution is a result of a compromise, as in the draft Regulation approved by the European Parliament, this clause (the so called Anti-FISA Clause) prohibited third countries (such as the United States and other non-EU Member States) from accessing EU personal data where required by a non-EU court or administrative authority without prior authorization by an EU Data Protection Authority (supervisory authority). The failing would have been that the Anti-FISA Clause, as reported in the last official text of the Regulation, should have been extended to Controllers/Processors in EU markets. This is one of the reasons why the final version provided for international agreements as an exception to extraterritorial enforcement of courts' and administrative authorities' decision (Kuner 2017: 26).

Should such European provision had been passed, the CLOUD ACT could have not implied such extraterritorial potential to reach every foreign country signing executive agreements.

Indeed, even though the GDPR has been conceived in the sense of an enlargement of the territorial scope of EU law against “data nationalism” as it applies even to controllers and processed not established in EU but offering good and services to the EU market, irrespective of whether a payment of the data subject is required.

This determined a paradoxical opposite effect, as Internet providers have located their data centres in EU to escape restrictions on international data transfers, as EU may block recognition of third country legal measures (Kuner 2017: 25).

9.The transatlantic architecture and the protection of EU citizens abroad

What Ira Rubinstein in his report sponsored by *The Privacy Projects* calls «*the declining „wall“ between national security and other uses*» (Rubinstein, Nojeim, Lee 2014: 18) - means that Intelligence agencies may pass information to law enforcement officials, while data collected for law enforcement and other purposes may be shared with intelligence agencies.

The Umbrella agreement has been signed in accordance to art. 37 of the Police Directive, which provides for appropriate safeguards with regard to the protection of personal data which are provided for in a legally binding instrument, under the legal basis of artt. 82 and 87 TFEU (judicial cooperation in criminal matters and police cooperation) or art. 16 TFEU (protection of personal data).

It is a trilateral agreement, signed by US, EU and MS competent authorities in July 2016, and covers all personal

data (for example names, addresses, criminal records) exchanged between the EU and the US for the purpose of prevention, detection, investigation and prosecution of criminal offences, including terrorism in the frame of a high protection standard for transatlantic law enforcement cooperation.

Before that Judicial Redress Act has been passed, which was the most relevant achievement during the negotiations, if an EU citizens' data transferred to US law enforcement authorities and if their data is incorrect or unlawfully processed, EU citizens – non-resident in the US - were unable to obtain redress in US courts (unlike US citizens, who could ask for redress in European courts). The “Umbrella Agreement” has introduced the equal treatment of EU citizens. Records are “covered” by the Judicial Redress Act only if they have been transferred *(A) by a public authority of, or private entity within, a ... covered country; and (B) to a designated Federal agency or component for purposes of preventing, investigating, detecting, or prosecuting criminal offenses.*

Nonetheless, the Judicial Redress has been considered a “*paper tiger*”. Even though it allegedly extends the core of the judicial redress provisions of the US Privacy Act of 1974 and gives EU citizens the right to seek judicial redress before US courts in case US authorities have denied access or rectification, or unlawfully disclose their personal data, the designation of covered countries is under the discretion of the Attorney General, and this is tied to conditions depending much more on the long-standing characters of transatlantic history and less to legal concerns.

In particular, unfortunately it does not live up to what it seems to promise, as it expressly discriminates against non-citizens and completely denies judicial redress to data subjects from the EU who are not nationals or citizens of

an EU Member State, such as refugees and asylum-seekers, and non-EU/non-US travellers whose data has been passed on to the USA under the EU-US PNR Agreement or other agreements (art. 18). This is clearly and manifestly in direct violation of the European Charter of Fundamental Rights and of International and European human rights law.

Moreover, judicial redress for EU citizens is far too limited. In particular, it would appear that they cannot obtain a judicial order for the deletion or erasure of inaccurate or improperly (indeed, even unlawfully) processed data; and they cannot obtain compensation for damages caused by the information being incorrect, or improperly processed by the US agency. They can only obtain compensation if they can prove actual damages arising from wilfully and intentionally unlawful disclosures of their data by the receiving US agency. This falls far short of an appropriate judicial redress system, such as must be available to “everyone” under the EU Charter of Fundamental Rights. Furthermore, the material scope of the Judicial Redress Act excludes two key categories of records: records maintained for purposes other than enforcement of criminal laws, and records transferred from the EU to the US government by way of commercial intermediaries in the US (or in third countries that are not covered by the Judicial Redress Act) (Hasbrouck 2016: 21). In addition, one of the core principles of the Umbrella Agreement is the ORCON (originator control) principle as regards onward transfers, by virtue of which any onward transfer to a non-US, non-EU country or international organisation must be subject to the prior consent of the competent authority of the country which had originally transferred personal data.

Once data has been transferred to organizations located in the US and self-certified under the EU-US Privacy Shield, US intelligence agencies may only seek personal

data where their request complies with the FISA or is made by the FBI on a so-called National Security Letter (par. 78). Some legal bases that U.S. intelligence authorities may use (e.g. E.O. 12333) are not covered. Moreover, even where judicial redress possibilities in principle do exist for non-U.S. persons, such as for surveillance under FISA, the available causes of action are limited and claims brought by individuals (including U.S. persons) will be declared inadmissible where they cannot show ‘standing’, which restricts access to ordinary courts.

One of the basic problems of such a system is that individuals, and namely data subjects, can challenge the legality of surveillance (and seek to suppress the information) only in the event the U.S. government intends to use or disclose any information obtained or derived from electronic surveillance against the individual in judicial or administrative proceedings in the United States, as otherwise the programs are secret.

10. What the European protection of fundamental rights implies

The raise of the soft law provisions has strongly affected the European capability in the field of information sharing (Calliess - Zumbansen 2010: 123). In the area of security, soft law has been used in order to foster exchange of intelligence between member states and EU home affairs agencies without binding forms of control. This has also produced the activation of transnational intelligence networks (let us think at *Five Eyes* or *Europol*) (Bignami 2007: 663). Such practices have been considered an example of “indirect administration” through which national authorities make the first decision, which is often only confirmed at the European level by the committees of representatives for each national state (Bignami 2004: 31; 2005: 822).

While bilateral treaties, such as traditional Mutual Legal Assistance Agreement (MLAA) permit collaboration between law enforcement authorities by providing certain assistance to foreign governments for criminal investigations and counter terrorism activities, trans-governmental networks generally promote exchange of information in the matters of security and intelligence. Nevertheless, national security is not included in the competence of the European Union. Due to this limitation, European authorities resorted to different negotiated solutions, one based on an international treaty, the other based on the alternative and informal European procedure. Significant examples are the PNR (*passenger number record*) program, the Swift Case and the Safe Harbour Agreement, replaced in July 2016 by the Privacy Shield.

Looking at the history of the PNR program, for example the problem was indeed the ambiguous use of the notion “*preventing and combating terrorism*”, which was one of the goals of the cooperation between third countries. EU granted to two US Agencies, the Customs and Border Protection and the Transportation Security Administration, permanent access to PNR data in 2003 (Busch 2006: 312). In June 2004 the European Parliament decided to ask the Court of Justice to overrule both the PNR agreement and the adequacy findings. In May 2006, the Court annulled both the Council’s decision concerning the agreement and the Commission’s decision on adequacy and recently similar issues have been raised by Opinion 1/15 on the Canadian PNR agreement.

In the last years the proactive role of the Court of Justice of the European Union entailed a specific European project towards the extraterritorial protection of fundamental rights. On April 8, 2014 the case *Digital Rights Ireland* of the Court of Justice struck down the Data Retention Directive, as it would, in fact, exceed the

limits of proportionality, while the retention of metadata of EU citizens for up to two years by the telecommunications providers and the access of these data allowed to the competent national authorities exceeded the proportionality requirements under EU law. In particular, programs of mass surveillance on a large scale would not be sufficiently circumscribed via policies to ensure that the interference was limited to necessary purposes. The Court of Justice observed, in particular, that the preservation and subsequent use of data without the adequate information of the subscribers or registered users may engender the feeling that their privacy is subject to constant surveillance.

According to the arguments of the Court, the Directive has, in fact, allowed the identification of: (i) personal communications between registered users and subscribers of telecommunications providers; (ii) the duration of communications and the place from which these communications were made; (iii) the frequency of communication between registered users or subscribers with certain persons whose data were collected. The directive was declared invalid since it does not distinguish between individuals and data. The Court held that the Directive has made legitimate the collection of all data of all individuals collected by service providers and telecommunication companies, to whom the obligation of collection of data is addressed. Second, it held the Directive has not provided any objective criteria by which the competent national authorities could justify access to data for purposes of prevention, detention and criminal investigations. Moreover, the Directive did not provide an objective criterion to determine the needs of the different holding periods between six months and two years, and did not secure at the end of the collection period the irreversible destruction of data. Finally, the Court considers that the Directive, since it does not

require that the data remain within the European area, indirectly infringed European legislation, and in particular the European Charter of Fundamental Rights, Directive 45/96 / EC on data protection personal and Directive 2002/58/EC on the protection of personal data and privacy in the telecommunications sector. This judgment can be read as an important step in the set of initiatives that recently European legislator and courts have adopted for the protection of fundamental rights. After *Digital Rights Ireland* and *Tele 2 Sverige/Watson* (Joined Cases C203/15 and C698/15), the compliance of the Directive 2002/58 with art. 7 and 8 of the Charter entails the obligation of Nation States of not “adopting legislation permitting, as a preventive measure, the targeted retention of traffic and location data, for the purpose of fighting serious crime, provided that the retention of data is limited, with respect to the categories of data to be retained, the means of communication affected, the persons concerned and the retention period adopted, to what is strictly necessary”.

Recently, Europe has seen an attempt to constrain the American policy regarding foreign intelligence. Both the Court of Justice and the European Court of Human Rights have in fact played a leading role in putting a limit on the forms of control operated in violation of the right to privacy. In particular, in the *Schrems* case, the compatibility of the Safe Harbour Agreement with Articles 7 and 8 of the Charter of Fundamental Rights of the European Union concerned the legality under European Law of the transfer of data from Facebook to the NSA, covered by the Safe Harbour Agreement. Even the *Google Spain* decision (Case C-131/12), although it relates to the different question of the applicability of the EU Directive on the protection of personal data (45/96) to the processing operated by Google, and in particular the right to be forgotten, highlights

a range of policy law aimed at protecting the fundamental rights of European citizens against violations according to a broad interpretation of the parameter of the server provider's territoriality. In fact, the ECJ has held that the right to be forgotten requires search engines who offer goods and services to the EU market, to remove links to webpages containing information no longer relevant or excessive. On this case, the GDPR has modelled also the territorial scope of EU data protection, as GDPR now applies to controllers and processors even not established in the EU but offering to the EU market goods and services.

As known, the proactive and purposive role of the CJEU has been tested several times in the last years through an expansive interpretation of EU data protection law as ultimately the post-Lisbon judgments rely on the TEU, TFEU and the EU Charter (Kuner, Cate, Lynskey, Millard, Ni Loideain, Svantesson 2017: 1).

11. Conclusions

The case of electronic mass surveillance affects the competitive role of different cultural patterns. The analysis of mass surveillance programs both in Europe and US shows that they are mostly cross-border. Although cultural assumptions characterize the identity of legal systems – the European model, for instance, being based on dignity and fundamental rights, the US model on the idea of individual liberty – some attitudes are convergent. This is an indicator of possible regulatory responses that can barely comply with objective standards lying behind global dynamics at a supranational level.

The indications provided by the European Court of Human Rights seem to confirm such trend

The ECtHR seemed to be more reluctant in endorsing an aware analysis of the limits to the secret surveillance programs.

Whereas the *Szabo* case (Judgement 12.1.2016) seemed to embrace the idea that secret surveillance measures should answer to the requirement of strict necessity, the *Zacharov* case (Judgement 4.2.2015) pointed out that the secrecy of surveillance measures should not result in measures being effectively unchallengeable and outside the scope of national judicial redress.

The recent judgement *Big Brother Watch and others v. the UK* (Judgement 13.9.2018) has been defined as a “pyrrhic victory” (Christakis 2018), as the ECHR accepted the policy of mass surveillance in the field of intelligence sharing.

Even though the Court found that there has been violation of art. 8 under the profiles of bulk interception and communication sharing with communication service providers, bulk collection has been conceived a valuable means to achieve the legitimate aims pursued by intelligence sharing, particularly given the threat level for global terrorism and serious crime, even though not.

The ECHR is now endorsing what has been defined the “new normal”, through the proliferation of mass surveillance dimension. A more general and systematic concern could regard situations such as the ones directly concerning MS that might be considered in the future as falling outside the scope of EU law and therefore be subjected only to ECHR.

Ruling that intelligence sharing does not affect the violation of individual rights invites to carefully reflect to the relevance of the territorial scope of data management in terms of digital sovereignty.

Notwithstanding the primacy of fundamental rights in the European culture, the circulation of information beyond national borders oblige to abandon the pattern of information monopoly towards rival regulatory data sharing models of race to the bottom.

Based on such conclusions, it is still questionable whether Europe could be an exportable model based on the horizontal logic “us/them” as opposite to US based on the paradigm “in/out” (Michaels 2006: 1003, 1045). The former shall justify a possible claim of actions vis-à-vis other states considered sovereign actors and not vis-à-vis the defendants, giving prominence to the best management of litigation. Nonetheless, as correctly stressed by Kleine (Kleine 2014: 154), patterns of societal interdependence that underpin global relationships change in ways. One should be aware of the shift and unsustainability of a model in which data have been the object of regulation and control towards a model in which data – sorted out from the consequent legal protection – are embedded in the social dimension of law.

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The Hypercitizenship Systemic Vision - Aligning Digitalization, Intangibles and Taxation

1. The Problem Setting Key Challenge of this Paper

The interface among intangible assets, value creation strategies and taxation policies has been dramatically testifying how the world order is deeply redesigning itself.

The operational closing on different levels of self-reference (Luhmann 1995, 2012-13) – global and supranational for the circulation of intangible assets, transnational for digitalization and international/national for taxation – clearly shows the misalignment of the structural coupling among systems and their evolutionary functions (Luhmann 1990). The key epistemological and theoretical goal of this work is to provide some conceptual, methodological and policy inputs to correct this misalignment. Misalignment that *in se* is a risky set as it considerably increases environmental noise and the likelihood for every small-scale policy form international to national or lower closings to implode for a total lack of possible adjacent (Kauffman 2002) in a devastating high-speed entropy process (Pinker 2018).

2. The Scenario Overview

Today's information, communications and technology (ICT) revolution enabled the separation of the information aspect from the physical world. The application of digital technologies has dramatically accelerated the flows of dematerialized information, making it possible for information to be re-linked to the physical world everywhere (Normann 2001).

On the other hand, the ‘verticalization’ of lawmaking beyond national borders had also played a central role in the digitalization process of the entire economy. For instance, capital movements deregulation initiated in the 1970s and the set-up of a rules-based international trade system contributed to a great extent to the cross-border circulation of tangible and intangible wares relaxing the costs for moving goods, ideas, and people (Normann 2001, Baldwin, 2017, Pinker 2018).

Coupling technological innovations favored business and individuals to reconfigure their operations, functions, and activities throughout borders (Normann 2001) and promoted their integration into global value chains (WIPO 2017). The unbundling of economic activity - mainly manufacturing - toward the developing world added new players to the global scene such as the BRICS countries (Brazil, Russia, India, China and South Africa) provoking the rebalance of the world order powers (Baldwin 2017).

Not surprisingly, reframing business structures within horizontal and flexible networks of interrelations combined with the loosening of the connection of capital with a territory caused, at first, disruption in the application of the traditional taxation rules and principles which have maintained a sound national basis. For instance, if capital does not hold national flags and multinational enterprises (MNEs) cannot be seen anymore as national ‘cultural’ ambassadors (Turley-Chamberlain-Petriccione 2017), it is hard to claim taxation on cross-border activities on the grounds of emotional reactions or moral judgments like the ‘fair share of tax’. Particularly, when legal connection criteria (residence/permanent establishment) are not met under digital economy flows and the non-taxation phenomenon occurs as a result of the lack of tax coordination among nation-states.

Secondly, the organization of business activities along global value chains (GVCs) and the facility to place intermediary business structures in low tax jurisdictions have created a multilayer of tax relationships, leading to the collapse of the international taxation system inner logic, set on the basis of bilateral – at last plurilateral – relations between source and residence countries (Bianco-Tomazela Santos 2017).

Consequently, from a taxation perspective, the dematerialization of information, globalization, and the digital economy are perceived as threats, because they shed light on the limitation of current nation-state's and international regulatory frameworks for imposing taxation, both domestically and transnationally (Dagan 2016).

Despite the paradigm shift on nation-state controls toward a more flexible, cosmopolitan, complex, and uncontrolled global order has been long debated in the field of social sciences, tax law remains refractory to this scenario changes. Trapped into a methodological nationalism and blind to the fact that the myth of cultural and identity links supporting the nation-state construct (Beck 2006) has long disintegrated and along with it any isolated attempt to address the complexity of our times, countries are struggling to redesign their taxation policies after the 2008 global financial crisis.

The reactions burst into the G20 meetings at Mexico (June 2012) and St. Petersburg (September 2013), leading to a political commitment in order to tackle multinational enterprises' international aggressive tax planning strategies by means of international cooperation under the framework of the Organization for Economic Cooperation and Development (OECD). The OECD/G20 initiative was named Base Erosion and Profit Shifting (BEPS) and the project resulted in an Action Plan composed of 15 actions,

among which one specific action was dedicated to *address the tax challenges of the digital economy* (Action 1).

Even though the project aimed at a global reach – through the initial involvement of G20 countries, some of them non-OECD members, and gathering latter other countries (up to date 125) under the so-called ‘Inclusive Framework’ – both the name of the project (BEPS) and action 1 (challenges of the digital economy) denote the perception that MNEs activities and the digital economy represent a global risk for the functioning of the world society.

This attitude is defined in Beck’s works as ‘cosmopolitanization’ and as such ‘*occurs as the unwanted and unobserved side effect of actions that are not intended as ‘cosmopolitan’ in the normative sense*’, favoring the emergence of international forums as well as the development of ‘*institutionalized cosmopolitanism*’ (Beck 2016: 6-7/ part I). In this sense, cosmopolitanization is a deviation of a ‘*cosmopolitan vision*’. The present work stands for the idea that a lack of a ‘*cosmopolitan vision*’ may constitute one of the fundamental reasons for the growing awareness on the legitimacy deficits in the making of international tax law by international organizations, as delineated in Mosquera Valderama studies (Mosquera Valderrama 2015, 2018; Mosquera Valderrama- Lessage-Lips 2018).

The purpose of this paper is; therefore, to investigate how the multidimensional conceptualization of Hypercitizenship as elaborated by Pitasi (2012, 2014, 2017) can contribute to overcome the methodological nationalism (Beck 2006) which permeates the debate on the taxation of the digital economy. The assumption is that current domestic and even international lawmaking are still biased in a national outlook (Beck 2006, Dagan 2016), hindering the delivery of tax policies able to speed up the transformation

of the economy while guaranteeing a suitable level of revenue collection for financing its negative impact.

3. Setting the theoretical grounds

The Hypercitizenship model emerged from Pitasi (2012, 2014, 2017) theoretical approach to the paradigmatic shifts in systems theory individuated by the author in four consecutive steps: developing from whole/part model (Paradigm1) as conceptualized by Parsons to the re-foundation of the concept of system itself (Paradigm4). In the author's view, these shifts have '*generated the epistemological frame of the systemic approach to social sciences*', helping to expand the scope of sociological theory beyond the national borders (Beck 2006).

The nation-state construct is mirrored in the whole/part paradigm (P1), as conceptualized by Parsons, which theory stood for the existence of one general social system (the whole) divided into four key functions (the parts) represented by the '*LIGA*' pattern, acronym standing for: '*Latency, Integration, Goal Setting, and Adaptation*'. Each of LIGA quadrants was part of a structure composed of a function or a group of functions seen as subsystems of the general system. Education, culture, traditions, religion and family were placed under the concept of latency. Legal system under integration while political system fit in the goal setting quadrant. In their turn, economic, medical and biological systems were gathered under the pattern adaptation (Pitasi – Dib 2017).

The whole/part model generated the illusion that every aspect of human life (culture, politics, economics, law, religion) could be confined and controlled within the rigid and static structure of the nation-state, promoting the differentiation of us (nationals) from them (foreigners)

(Beck 2006) anchored in a the concept of latency: *‘a kind of cultural integration, not a legal integration: the family, the church, the media, the group of peers’* (Pitasi – Dib, 2017:20). In other words, there was an assumption that within each nation-state (whole), cultural integration under latency was the fundamental pillar, in a way that all the other systems (parts) reflected the cultural vision of the group of peers, including legal and economic systems. The idea of the legal system as part of nation-state’s structure and; consequently, the national sovereignty for imposing taxation finds support in the whole/part paradigm.

When the complexity in the human interrelations increased, the cultural integration pattern, called latency in Parson’s work, melt away and with it the fundamentals (such culture, education, language, religion) that have supported the nation-state’s rigid and homeostatic structure. Complexity, a terminology frequently misused in taxation studies, here is understood as outlined by Luhmann (1990:26) and cited by Pitasi (2002:16): *‘The term complexity is meant to indicate there are always more possibilities of further experience and actions than can be actualized’*.

From the melting away of the idea of latency, the other patterns within the LIGA concept fragmented and by functional differentiation were recaptured within a *‘unitas multiplex between differences that make a real difference’* (Pitasi 2002:21). For instance, the fragmentation of Parson’s concept of a plurality of legal functions (under the pattern integration) confined into the borders of the nation-states was recaptured within a *‘unitas multiplex’* at a global level, through functional differentiation. The same happened to the other functions composing Parson’s general social system structure such as economics, politics, and science.

Theoretically, Luhmann conceptualized this fragmentation in opposition to Parson's whole/part elaboration. By proposing a paradigm shift from a theory of the general system to a general systems theory (Luhmann 1995), the systems/environment model was introduced. Differently from Parsons, to whom system was a rigid structure, Luhmann conceived systems as communication flows (Pitasi 2012), not differentiating *'from the environment by means of their structure, but by means of their identification of own function operated by their code and program'* (Dib 2018:74).

According to this elaboration, the functions related to the legal system operate in the light of the code legal/illegal and the program valid/invalid. Thus, the goal of the legal system is to produce valid law, leaving moral aspects out of the scope. In this sense, political and social emotional manifestations are considered noise/disturbances from the environment; and communication with the legal systems will only occur through system's selectivity from the noise/disturbances that make a real difference (Pitasi – Dib 2017).

Building on the studies of Maturana and Varela, Luhmann learnt that complex systems are also self-referential and autopoietic (Dib 2018), importing *'into sociological system theory the most relevant interdisciplinary systemic contributions such as Biology or 2nd Order Cybernetics'* (Pitasi 2002:27). In brief, it means that with the system/environment elaboration model, Luhmann's opened up the avenues for the study of complex systems in the field of sociology.

The autopoietic capacity of the system, coupled with the features of being self-referential and permeable through selective choices, mean that systems not only refer to themselves (auto reference) by operating its own

code and programs, but also are capable to auto-reproduce/ auto-regenerate themselves (autopoiesis) through meaningful communication, selecting from the environment noise/disturbances the differences that make the difference (Dib 2018).

Relating to legal systems and particularly to international lawmaking a good example can be extracted from the political commitments formalized as declarations or soft-law instruments. These are considered noise/disturbance from the environment and the only viable pattern to turn them into hard-law is to make them attractive to the legal system, which selecting from the environment will operate through its own codes and process to implement the legal changes, allowing itself to self regenerate and evolve as a legal system.

The autopoietical turn in Luhmann's theory (P3) set the ground for a fourth paradigm (P4) shift in sociology, expanding the limits of sociological theory to incorporate globalized scenarios. Based on the studies of Niklas Luhmann, Richard Normann, and Daniel Dennet, Pitasi (2012:29) highlights the key concepts introduced by a fourth paradigm shift in sociology: *'fluctuating constellation, autopoietic reconfiguration, memetic complexity, catalog, global platform, and enormity'*. From this elaboration, the author proposes a *'theoretical refoundation of the concept of system itself, system meant as a high speed, reconfiguration, enormous constellation'* evolved as an autopoietic variant of self-organization (Pitasi 2012:29).

Within this context, the concept of *'Hypercitizenship'* developed by Pitasi (2012:29) emerges as an alternative to what he calls *'Neofeudal Scenario'* within his elaboration named *'Normann's Bifurcation'*. According to the author, the Neofeudal Scenario is an exemplary aspect of Beck's methodological nationalism, representing a reaction to the

expansion of the analysis of social systems from a perspective beyond the national borders.

Pitasi conceptualizes Hypercitizenship as *'the key emergent shape through which the global organized social system is redesigning itself'* (2012:32) from its own references (autopoiesis). His theoretical milestone builds on a new idea of citizenship, the Hypercitizenship which is constructed from a *'multidimensional and multi-polar convergence among four different kinds of citizenship'* that are not confined within national borders: 1) Global Cosmopolitanism, 2) Scientific citizenship, 3) Entrepreneurial self-constructing, wide horizon spirit, and 4) Social autonomy structuration to a systemic global level (see Ferone-Pitasi's essay – chapter 1 in this same special issue).

Multinational Enterprises are a paramount example for the application of the Hypercitizenship concept. MNEs' worldwide strategies and operations make evidence of how the four dimensions of citizenship (cosmopolitan, scientific, entrepreneurial, societal) convergence at a higher operational closing - beyond national borders – dramatically increases intangible capital flows, speeding-up the processes of dematerialization and globalization of the whole economy. On the other hand, it also poses challenges for the current national and international taxation rules which are called to develop accordingly to this new global scenario.

4. Problem setting enlarged: New wine in old bottles

Within the context of Hypercitizenship model, the key questions inspiring the present work are then:

1) How can the different systemic closings described in paragraph 1 be aligned at their highest observation level

(global) so that they can shape global order entropy, reducing the noisy and dissipating entropy of the lower levels (national and international)?

2) Could the Hypercitizenship vision and policy agenda represent the useful 18th Camel (Pitasi – Dib 2018:4) to facilitate the alignment (digitalization, value creation in the intangible economy, and taxation) as ‘it lifts all the boat up’?

The theoretical assumption is that only when the alignment between intangible capital flows, digitalization, and taxation is set, or at least shaped, there will be room for the operational question: How to tax intangible value arising from the digitalization of the economy? Before promoting the alignment at the highest systemic closing, the operational question will have a very simple answer: it is not possible to tax the intangible value effectively. In the case of a misaligned systemic closing, every apparent solution is a sort of self-defeating entropy accelerator for a basic reason: if you are a rock (nation-state) you cannot stop the ocean (tax global flows of intangible values).

For answering these questions, it is important to recapture the idea introduced in paragraph 2 about the OECD/G20 BEPS project.

The reactions leading to the BEPS initiative are a perfect representation of the interdependency crisis called by Beck (2006) as ‘world risk society’, meaning the way social order perceive the conflict generated by ‘*the production and distribution of ‘bads’*’ [for example, MNE’s aggressive tax planning strategies, dematerialization of information] *that contradict the steering role claimed by the established institutions of the nation-state*’ (p. 30/part I). Beck (2006) also stands for that ‘*what is at stake at all levels is accordingly the compulsive pretense to control over the uncontrollable, whether in politics, law, science, the economy or every-day life*’ (31/part I).

The analysis of the problems of our times under the frame of threats makes it difficult for international organizations *‘to make the transition from agreement on the definition of the threats to agreement on form the required response should take’* (Beck 2006:38/part I). This is exactly the situation reported in the OECD/G20/BEPS Action 1 Interim Report (OECD 2018:166, paragraph 372).

The OECD/G20/BEPS Action 1, focused on *Addressing the Tax Challenges of the Digital Economy*, considered the tax challenges raised by the digital economy, both for direct and indirect taxation. Action 1 Final Report (OECD 2015) identified the tax challenges created by the increased digitalization, recognized that it would not be feasible to ring-fence the digital economy, as the digitalization of the economy is becoming the economy itself, and highlighted that further research should be carried out particularly in the field of direct taxation.

As a consequent action, the OECD/G20/BEPS Action 1 Interim Report was then released, reaffirming the common proposition for the entire OECD/G20 BEPS project: *‘the principle that the location of taxable profits should be aligned with the location where economic activities and value creation take place’* (OECD, 2018:167).

In a nutshell, this principle confirms the interrelation between domestic and international taxation rules that were devised in the 1920’s which heavily relies on a physical presence to determine the so-called ‘nexus’ rule and the allocation of profits mirrored in the arm’s length principle. A proposition that *per se* is incompatible with the highest systemic closing alignment among digitalization, intangible capital flows, and taxation, meaning by that an alignment beyond national/international levels.

In this sense, it is possible to say that the golden principle adopted in the OECD/G20/BEPS Project and reproduced in Action 1 is a reflex of the national outlook that

still permeates domestic and international tax lawmaking. Anchored in Parson's old-fashioned whole/part paradigm, the principle does not offer the suitable tools for managing the complexity of the present time. Not surprisingly, the disagreement among countries on how to address the threats/challenges previously identified (MNE's behavior and digitalization) has been showing hard to overcome, as pointed out in Action 1 Interim Report (OECD 2018:166, paragraph 372).

Another important aspect related to nation-states narrowed-minded vision on the complexity of the intangible economy is the proliferation of interim unilateral measures directed to reap the benefits arising from the digital economy (UN 2017, OECD 2018). Most of these measures try to circumvent the difficulties on encapsulating business activities that create value within a territory despite the lack of the physical presence of its operator.

The proposed alignment between taxation and value creation is a problematic approach for several practical reasons. First of all, because it is extremely difficult, if not impossible, to establish where value is created in the intangible economy (Haskel-Westlake 2017). This is because meaningful value creation is becoming dramatically immaterial as it is more and more connected to flows of dematerialized information, which can re-link anywhere in the material world circumventing nation-states myth of controls (Normann 2001, Beck 2006). For example, value creation in the intangible economy is much more linked to functions relating to restructuring of business activities, marketing strategies and management of intangibles than to manufacturing activities itself (Haskel-Westlake 2017, WIPO 2017).

Additionally, difficulties in evaluating intangibles and the income that accrues from them are not only a matter

of taxation. For instance, businesses relying heavily on intangibles face enormous challenges to finance their investments with debt, exactly because intangible assets are hard-to-value in the light of their key economic properties: scalability, sunkness, spillovers and synergies (Haskel-Westlake 2017:58).

Secondly, the formula ‘value creation’ became a kind of ‘mantra’ in international taxation, having being reproduced without further criticism and considerations about its different meaning, particularly in relation to direct or indirect taxation. In VAT/GST systems value creation can be easily translated into the concept of value-added throughout the production and distribution along value chains. Conversely, in direct taxation the concept of value creation is technically less evident to monetize, particularly in the scenario of new business models, where an accurate and tailor-made analysis for the qualification of rents/income is required. And, even further, whether value creation is something different *‘from the originating cause of income or profit’* (Schwarz 2018).

Thirdly, up to now allocating taxing rights in cross-border transactions has triggered much controversy due to the classification constraints in the regard of a relatively large spectrum of active and passive rents: income, royalties, interests, dividends which in the international taxation arena requires a highly specialized knowledge, retained mainly by tax administrations and tax consultants (Picciotto 2013) in developed countries. It also requires the expertise in the management of transfer-pricing issues. For instance, State-aid investigations carried out by the European Union on business such as Amazon, Fiat and Starbucks shed light on the difficulties involving the application of transfer-pricing rules on intangible intensive industries.

Finally, resetting the international taxation systems through the alignment of value creation and taxation at a national/international level as conceived in BEPS project could reproduce, once again, a bias in favor of developed countries. Particularly, due to the application of the nexus approach – under OECD/G20 BEPS Action 5 (OECD 2015a) – to match research & development expenditures and the income generated by the corresponding Intellectual Property (IP) assets. In other words, a tentative to revamp the traditional residence-source binomial, which incorporates the historical opposition between capital import and capital export countries. Or to make it clearer, between developed countries and the rest of the world. Like pouring new wine (digital economy/new business models/intangibles) into old bottles (traditional national/international taxation system) unfit for holding the new contents (Schwarz 2018).

Thus, it is not casual that the approach taken in the decision-making process of OECD/G20 BEPS project is under scrutiny of the international community, particular in the regard of its governance aspects. Concerns regarding the BEPS Inclusive Framework have led to the increase in awareness of legitimacy deficits, both in the decision-making process and in the implementation of measures, so to hinder the attainment of their most urgent policies and goals of the developing world (Mosquera Valderrama 2015, 2018; Mosquera Valderrama-Lessage-Lips 2018).

To sum up, *‘the principle that the location of taxable profits should be aligned with the location where economic activities and value creation take place’* (OECD 2018:167) entails a re-entry in a methodological nationalism in the sense of Beck (2006) or in a *‘Neofeudal, reptilian, territorial and family identity operative closure’* in Pitasi (2012:30) and by doing so is not suitable for promoting

the higher alignment among digitalization, value creation in the intangible economy, and taxation.

5. Conclusions: Some Problem Solving, Hints and Policy Guidelines

Considering the scenario description of BEPS Actions developments, particularly in relation to the digital economy, and before introducing the possible answers for the questions posed in the last paragraph, there is one more question to be addressed: Is everything lost? And the answer is a sound ‘NO’.

The OECD/G20 BEPS project has been generating a number of positive spillovers. Among them, the most significant is, undoubtedly, the creation, reinforcing, and diffusion of international standards, which at some extent can be also considered flows of dematerialized information. Even though legitimacy deficits in the decision-making process leading to the adoption of standards as well as in their implementation must be addressed as soon as possible, it is also true that the progressive entry of new actors in the OECD-G20 BEPS Inclusive Framework scene has been pushing forward for a shift in the international basis of the OECD toward an effective global reach of the organization. The process has already started, but refractory approach of nation-states has been hindering its faster implementation.

Evidently, a shift from a national/international outlook toward a cosmopolitan/global one can only occurs through the increase of both formal and material participation of developing countries and other stakeholders in the international arena. In this process, the convergence of the many initiatives on international tax governance, including taxation and trade, tax and crime, Platform for Collaboration on Tax among others (Mosquera Valderrama-Lessage-Lips

2018) plays a central role, along with contributions from academia, business associations, and civil society.

A complementary measure to speed up the turning point between the frame national/international to the frame supranational/global could be to reinforce the mandate of the United Nations Committee of Experts on International Cooperation in Tax Matters, overcoming its diminishing role biased at the 2015 Financing for Development Conference in Addis Ababa (Mosquera Valderrama-Lessage-Lips 2018).

However difficult this transition may be, if this enlargement goal is ever achieved, it is most probable that some standpoints in the OECD approach (eg. TP standards/arms-length principle) will progressively start to cease, leaving space for other proposals to growth and allowing the redesign of the taxation system at a higher-level closing. For instance, the design of a unitary (supranational) taxation to capture MNEs' global combined with a formulary apportionment methodology, or even more radically, the supranational taxation of digital investments, as discussed by Wolfgang Schön (2018).

Therefore, the possible answers for the questions proposed in paragraph 4 are:

- 1) By increasing the participation of developing countries and global stakeholders in the frame of the OECD, reinforcing the mandate of the UN Tax Committee, allowing tax cooperation initiatives to converge; all in favor to promote a shift in the national/international approach of the OECD toward a higher-level, escaping from the methodological nationalism trap.

- 2) As a Hypercitizenship vision is a possible and viable way-out from the methodological nationalism/Neofeudal scenario traps, such as the one embedded in the OECD/G20 BEPS current discussions. The Hypercitizenship

multidimensional conceptualization (cosmopolitan, scientific, entrepreneurial, and social autonomy structuration) offers a powerful interdisciplinary approach to 21st century organizations to increase their ability to manage their viability in the complex social and business environments while shaping the competition/cooperation among legal systems aimed at attracting the most strategic capitals such as financial, intellectual, and human (Pitasi 2012). Which is one of the key goals for modelling effective tax policies.

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Is South Dakota V. Wayfair, Inc. Case Relevant to the Digital Economy Taxation?

1. *South Dakota v. Wayfair Inc.*²⁸

Since the U.S. Supreme Court decisions in *Bellas Hess* (1967),²⁹ and *Quill* (1992)³⁰ one State may not require a business that has no physical presence in such State to collect its sales tax. Therefore, out-of-state sellers who shipped their inventory directly to South Dakota consumers had not been collecting taxes to that State. The climbing of the electronic commerce in the last years was seriously affecting the State revenue since it was losing between \$48 and \$58 million annually, an important deficit of critical funding for state and local services.

The circumstances led to the enactment of a law requiring out-of-state sellers to collect and remit sales tax to South Dakota “as if the seller had a physical presence in the State.” The Act establishes a threshold for its application, which is more than \$100,000 of goods or services delivered into the State or to engage in 200 or more separate transactions for the delivery of goods or services into the State.

Wayfair, Inc. and the others respondents of the lawsuit filed in the state court are all top online retailers with no employees or real estate therein and met the Act’s minimum sales or transactions requirement. Nonetheless, they were not collecting the State’s sales tax.

South Dakota sought a declaration that the Act’s requirements were valid and applicable to respondents and an injunction requiring them to register for licenses to collect and remit the sales tax. After the trial court granting the motion for summary judgment on the grounds of

the unconstitutionality of the Act, the State Supreme Court affirmed, declaring that *Quill* is the controlling precedent. South Dakota agreed that the Act could not survive under *Bellas Hess* and *Quill* but asserted the importance, indeed the necessity, of asking the Supreme Court to review those earlier decisions in light of current economic realities. The Court then held that the physical presence rule of *Quill* is unsound and incorrect, overruling both *Quill* and *Bellas Hess*.

The highlight arguments made in the opinion delivered by Justice KENNEDY can be summarized as follows. (i) The substantial nexus requirement for imposing on internet sellers the duty to collect and remit sales tax is satisfied by South Dakota statute, since the demands of due process require that there be some definite link, some minimum connection, between a state and the person, property or transaction sought to tax. (ii) The nexus is undoubtedly sufficient in South Dakota's Act. It applies only to sellers who engage in a significant quantity of business in the State.³¹ (iii) It is solid law that a business does not need to have a physical presence in a State to satisfy the demands of due process. (iv) Physical presence normally enriches a business' connection with a State, but it is undeniable that modern commercial life transacts a substantial amount of business with no need for it within a State in which such business is led. (v) It is not unfair to require companies that avail themselves of the State's benefits to bear an equal share of the burden of tax collection.

Just to clarify, "due process" is closely connected with fairness. In consonance with the Supreme Court, "due process nexus analysis requires that we ask whether an individual's connections with a State are substantial enough to legitimate the State's exercise of power over him."³²

2.The Marketplace Fairness Act of 2017³³

After the Supreme Court decision, several States started enacting statutes to ensure taxation or to increase its sales tax thresholds, since *Wayfair* is now the law.

In 2017, the Senate had passed the “Marketplace Fairness Act”, which provides that “each Member State under the Streamlined Sales and Use Tax Agreement is authorized to require all sellers not qualifying for the small seller exception [...] to collect and remit sales and use taxes with respect to remote sales sourced to that Member State pursuant to the provisions of the Streamlined Sales and Use Tax Agreement [...].” The small seller exception was established as follows: “A State is authorized to require a remote seller to collect sales and use taxes under this Act only if the remote seller has gross annual receipts in total remote sales in the United States in the preceding calendar year exceeding \$1,000,000.”³⁴

The “Streamlined Sales and Use Tax Agreement” (SSUT) was adopted on November 12, 2002 as a multistate Agreement whose purpose is “[t]o simplify and modernize sales and use tax administration in the member states in order to substantially reduce the burden of tax compliance.” It centers on enriching sales and use tax administration systems for all sellers and for all types of commerce through the following guidelines: state level administration of sales and use tax collections; uniformity in the state and local tax bases; uniformity of major tax base definitions; central and electronic registration system for all member states; simplification of state and local tax rates; uniform sourcing rules for all taxable transactions; simplified administration of exemptions; simplified tax returns; simplification of tax remittances and protection of consumer privacy. Hitherto, twenty-four states have implemented the simplification

instruments in the Agreement (representing over 31 percent of the population) and more states are moving to adopt them.³⁵

However, the “Marketplace Fairness Act” is stalled in the House of Representatives, and the call for acting is strong. Nonetheless, there are those saying that “all is not lost if Congress fails to act.”³⁶

Wayfair expressly referred to the SSUT emphasizing that “South Dakota is one of more than 20 States that have adopted the Streamlined Sales and Use Tax Agreement.”³⁷ The allusion suggests that membership in the agreement would very likely moderate most other legal challenges related to state tax collection. “That may well incentivize states to join the agreement, which already has more than 20 members. Federal involvement will strengthen the agreement and help it keep to its goals. Again, legislation will prevent a period of extended uncertainty and hefty legal bills. But if Congress is quiet, there is a path forward.”³⁸ There are also voices sustaining that a congressional action is no longer necessary.³⁹

3. The U.S. Engagement in the Taxation of the Digital Economy Debate

Recently, the U.S. Treasury Secretary Steven T. Mnuchin issued the following statement regarding the OECD report on taxation of the digital economy:

“The U.S. firmly opposes proposals by any country to single out digital companies. Some of these companies are among the greatest contributors to U.S. job creation and economic growth. Imposing new and redundant tax burdens would inhibit growth and ultimately harm workers and consumers. I fully support international cooperation to address broader

tax challenges arising from the modern economy and to put the international tax system on a more sustainable footing.”⁴⁰

The U.S. disposition to adopt a more proactive leadership role in tackling the problems of digital economy taxation has been increasing in recent times. In spite of the consistent position against a ring-fenced digital economy, U.S. Treasury officials have recently voiced statements suggesting that the country might be willing to reexamine basic concepts of the international tax system considering broad global economic changes (Herzfeld 2018:219).

Moreover, the U.S. Supreme Court’s recent decision in *Wayfair* might stimulate the United States to revisit the permanent establishment standard. “And practitioners and academics are increasingly suggesting incremental measures that could still produce the changes needed to adapt international tax rules to a modern economy, indicating that there might be palatable options that don’t require a complete rewrite of the system.” (Herzfeld 2018:219).

The *Wayfair* case supports the fact that if the remote seller does not have any physical presence in one jurisdiction, this circumstance “[s]hould not by itself prevent the jurisdiction from asserting the right to tax if the stated conditions are met.” Albeit the case was concerned with sales taxes, it is still pertinent to taxing rights more generally (Vanderwolk 2018: 200).

Indeed, “*Wayfair* has been celebrated in Europe for what it seems to say about the digital taxation debate, namely, that physical presence ought not to be a prerequisite to taxation.” (Mason 2018). However, in the United States the current position is that the economic nexus standards of *Wayfair* should not be extended to the direct taxation of income (Jones et al 2018: 11).

4.The OECD Interim Report of March 2018

The OECD Interim Report (2018) concerning to the digital economy taxation expressed its concerns without delay, right on the foreword:

The integration of national economies and markets has increased substantially in recent years, putting a strain on the international tax rules, which were designed more than a century ago. Weaknesses in the current rules create opportunities for base erosion and profit shifting (BEPS), requiring bold moves by policy makers to restore confidence in the system and ensure that profits are taxed where economic activities take place and value is created.

The focus on “value creation” permeates the report, as we can see from its Chapter 2:

This chapter presents an in-depth analysis of value creation across different digitalised business models, with the aim of informing the current debate about international taxation. Section 2 describes the main characteristics of digital markets. Such characteristics shape the three different processes of value creation identified in Section 3 (value chain, value network and value shop) and analysed in detail in Section 4 through business case studies. Section 5 identifies three key factors that are prevalent in more highly digitalised businesses and it accounts for the related differing views of the members of the Inclusive Framework on BEPS (OECD, 2018: 31).

That “value creation” approach has been criticized by some commentators. “Part of the OECD’s problem is the hopelessly vague standard it developed during the BEPS project: that profits must be taxed where value is created.”

(Herzfeld 2018: 1369). Indeed, it is difficult to derive a correct definition of value creation or its source in tax jurisprudence (VANISTANDAEL, 2018: 1385). “In particular, multinational enterprises may create value in countries that currently fail to tax their business in the absence of a physical presence of the enterprise. This situation creates an unintended tax bias in favour of going digital and remotely operating business, thus enjoying in fact more favourable tax conditions than traditional business players operating in a given market.” (Brauner - Pistone 2018: 87). According to VanderWolk (2018: 198), the view adopted by the OECD Interim Report is an economist’s view:

Discussions of value creation tend to start with the value chain. Developed by Michael Porter in the mid-1980s, the value chain is a standard tool in academia and business applied to analyse a firm’s competitive advantage. Value chain analysis divides a firm into discrete activities in order to understand how to create superior value, where superior value has two sources: by offering differentiated products which can justify a premium price or by reducing costs.⁴¹

Notwithstanding, this approach is problematic in the context of income tax law, at least for two reasons. First, the concept of a unitary entity whereupon it is premised is not present in the tax law environment. Pursuant to the unitary entity concept, whether the company does its business as a single business entity or through a group of commonly controlled entities is not taken into consideration. Second, the value of the business in any way constitutes taxable income in the taxation of a business income. Many business can have value but no income, thus no income tax liability (Vanderwolk 2018: 198).

Consequently, “[a]n economist’s analysis of value creation does not lead to any clear conclusions regarding what ought to be done in the corporate income tax area to address perceived problems resulting from digitalization. Perhaps an approach based on economic activity, rather than value creation as defined in the world of economics, would be more fruitful.” (Vanderwolk 2018: 199).

At this point, it is noteworthy to remind that the difficulty with online retailers has been already disciplined under BEPS Action 7 and article 13 of the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI). In other words, “[t]he significant reduction of the PE exceptions in article 5(4) of the OECD Model will allow taxation in the source State.” Nonetheless, “[t]he problem remains as to suppliers without logistic centers in the market jurisdictions.” (Baéz - Brauner 2018: 9-10).⁴²

5.Unilateral Measures Proposed on the Taxation of the Digital Economy

Brauner has recently cautioned that “[u]nilateral measures, even when tagged as interim measures, taken by some countries threaten our already fragile international tax regime that seems to deteriorate towards less rather than more coordination of tax policies” and could work only “[i]f carefully designed.” (Brauner 2018: 462-465). Nonetheless, to date the European Union and some countries have adopted one-sided actions.⁴³

A.European Union

On March 21st, 2018 the European Commission proposed two measures related to the taxation of the digital economy, a COUNCIL DIRECTIVE laying down rules relating to the corporate taxation of a significant digital presence,⁴⁴

and a COUNCIL DIRECTIVE on the common system of a digital services tax on revenues resulting from the provision of certain digital services.⁴⁵

The “significant digital presence” was outlined in article 4(3) of the particular directive, and shall apply from January 1, 2020 with respect to tax periods beginning on or after that date:

A ‘significant digital presence’ shall be considered to exist in a Member State in a tax period if the business carried on through it consists wholly or partly of the supply of digital services through a digital interface and one or more of the following conditions is met with respect to the supply of those services by the entity carrying on that business, taken together with the supply of any such services through a digital interface by each of that entity’s associated enterprises in aggregate: (a) the proportion of total revenues obtained in that tax period and resulting from the supply of those digital services to users located in that Member State in that tax period exceeds EUR 7 000 000; (b) the number of users of one or more of those digital services who are located in that Member State in that tax period exceeds 100 000; (c) the number of business contracts for the supply of any such digital service that are concluded in that tax period by users located in that Member State exceeds 3 000.

Additionally, the so-called “interim digital services tax” was designed to apply also as of January 1, 2020 to an entity meeting both of the following conditions: (a) the total amount of worldwide revenues reported by the entity for the relevant financial year exceeds EUR 750 000 000; (b) the total amount of taxable revenues obtained by the

entity within the Union during the relevant financial year exceeds EUR 50 000 000.⁴⁶

The services that shall be taxed in the future are (a) the placing on a digital interface of advertising targeted at users of that interface; (b) the making available to users of a multi-sided digital interface which allows users to find other users and to interact with them, and which may also facilitate the provision of underlying supplies of goods or services directly between users; (c) the transmission of data collected about users and generated from users' activities on digital interfaces.⁴⁷

Recently, the U.S. Senate Finance Committee sent a letter to the European Commission President asking the European Union to “abandon” the digital services tax. The letter stated that it “violates the long-held principle that taxes on multinationals should be profit-based, not-revenue-based.”⁴⁸ Also, on October 25th, 2018, *U.S. Treasury Secretary Steven T. Mnuchin issued the following statement regarding digital tax proposals:*

“Treasury is working very closely with the OECD and our counterparts there to address issues of base erosion and fair taxation. We believe the issues are not unique to technology companies but also relate to other companies, particularly those with valuable intangibles. I have instructed our team to continue their efforts in the OECD so that we can make progress on these issues quickly. I highlight again our strong concern with countries' consideration of a unilateral and unfair gross sales tax that targets our technology and internet companies. A tax should be based on income, not sales, and should not single out a specific industry for taxation under a different standard. We urge our partners to finish the OECD

process with us rather than taking unilateral action in this area.”⁴⁹

Indeed, instead of unilateral measures, coordinated work is the best way to find a solution not harmful to the international tax system.

B. Austria

In Austria, the federal government proposed to extend the currently existing advertisement tax to include online advertisement. Advertisement tax was introduced in 2000, and only embraced the then prevailing media such as print media, television, radio and billboards. Therefore, until this proposal online advertisements were not subject to taxation. It is expected to lower the tax rate (of at present 5%) and at the same time expand the tax base, so that the overall tax revenue from the advertisement tax will remain the same.⁵⁰

C. Australia

In 2016, Australia introduced a diverted profits tax (DPT) that came into effect on July 1st, 2017 at a rate of 40%. The purpose is to ensure that the tax paid by significant global entities (SGEs) appropriately contemplates the economic substance of their activities in Australia and intends to preclude the diversion of profits offshore through arrangements involving related parties. The DPT only applies to SGEs, which are outlined as entities being either a global parent entity with an annual global income of A\$1 billion or more, or a member of a group of entities (consolidated for accounting purposes) where the global parent entity has an annual global income of A\$1 billion or more. For the purposes of the DPT, the definition includes both Australian-headquartered entities with foreign operations and the local operations of foreign headquartered multinationals.⁵¹

D.France

France has been contemplating the idea of taxing digital economy by the institution of corporate taxes on income produced in the market country, the redefinition of the digital economy including the unpaid nature of work accomplished by Internet users and the identification of data generated by Internet users in a regular fashion in the market country. The main purpose of this proposal is to tax tech giants according to their frequency range and not their reported profits. France recommended two specific digital taxes. The first is a tax based on revenues in sales or advertising. The second is a tax based on activity such as number of users, flow of data or number of advertisers concerning collection of data. (United Nations 2018: 11)

E.Italy

Italy published its Finance Law 2018 on the Italian Official Gazette on December 29th, 2017. Among several topics touched on by that Law it is the introduction (starting from January 1st, 2019) of a tax on digital transactions, better known as “web tax,” a tax of 3% over some internet transactions provided both by Italian resident and non-resident entities, performed in a highly automated manner, which means with extremely limited human support. The Italian taxpayers who receive the digital services, primarily companies, will apply and pay the tax upon payment of the service and at the same time will be required to mandatorily recharge the amount to the supplier. Such web tax looks like a type of withholding tax. An additional circumstance required for the transaction to be subject to the tax is that the provider has to put in place at least 3,000 transactions per year; this amount characterizes a minimum threshold as a condition of application of the tax. (Braccioni 2018).

F.India

On February 1st, 2018, Indian Finance Minister introduced the country's latest Budget, which encompasses an international tax proposal with the purpose of amending the definition of "business connection" to include a new nexus to tax business profits based on a "significant economic presence." (Goel 2018)

The Explanatory Memorandum asserts that "as per BEPS Action 1 Report, a non-resident enterprise would create a taxable presence in a country if it has a 'significance economic presence' in that country on the basis of factors that have a purposeful and sustained interaction with the economy by the aid of technology and other automated tools. It further recommended that revenue factor may be used in combination with the aforesaid factors to determine 'significance economic presence'." (Goel 2018)

In its turn, the Finance Bill, 2018 specifies that a foreign company shall be said to have a "significant economic presence" in India if: (a) the aggregate of payments arising from a transaction carried out by a non-resident during the financial year exceeds an yet-to-be prescribed amount; or (b) systematic and continuous soliciting of business activities or engaging in interaction with a yet-to-be prescribed number of Indian users through digital means (Goel 2018).

On February 29th, 2016 India had already introduced an equalization levy on online advertising revenue earned from India by non-resident e-commerce companies, which became effective on June 1, 2016. The Act requires a six percent equalization levy to be deducted from amounts paid to a non-resident who does not have a permanent establishment (PE) in India, for specified services. Indian residents leading business or non-residents with a PE in India must withhold the equalization levy. The specified

services comprise online advertisement, any provision for digital advertising space, or any other facility or service for the purpose of online advertisement. (PWC, 2016)

G.Spain

Spain's Council of Ministries on October 19th, 2018 presented a proposal for a new digital services tax on large tech companies. Consistent with the European Commission's proposal, Spain would impose a tax on three-percent tax on digital firm revenue. It would apply to revenues generated from activities where users play the main role in value creation, but only to companies with total annual worldwide revenues of €750 million and revenues in Spain of €3 million or more. The tax would be imposed only on online advertising services, online intermediation services, and on the sale of data generated from information provided by the user. (MNE TAX, 2018)

H.United Kingdom

The UK's budget, delivered on October 29th, 2018 proposed a digital services tax, aimed at search engines, social media platforms, and online marketplaces. It applies a 2% rate on revenues of specific digital business models, and despite portends immediate action, its implementation is delayed until April 2020. It targets revenues, not profits, yet offers a safe harbor so that loss-making companies do not pay the tax and those with very low profit margins pay a reduced rate of tax. (MNE TAX, 2018).

6.WAYFAIR, OECD and the European Union

Despite *Wayfair* had addressed state sales taxes, whereas the concerns surrounding the digital economy around the world have its place into the income tax arena, “[a]t root, the European Commission, the OECD, and the Supreme

Court are all dealing with the same question: Have changes introduced by technology changed modes of doing business so much that it's necessary to revisit the way cross-border business transactions are taxed?" (Herzfeld 2018: 1026).

The Supreme Court in the United States has approved South Dakota's thresholds for a "significant economic presence" – more than \$100,000 of goods or services delivered or to engage in 200 or more separate transactions for the delivery of goods or services. Therefore, other states may follow them with confidence. "But what if states adopt different standards? By what standard will future courts judge other thresholds? This question was raised at oral argument but not clearly answered by the case." (Mason 2018). The dissenter opinions in *Wayfair* reasoned that the taxation of digital sales was an important tax policy question with conceivably substantial economic effects, and they believed that Congress, rather than the Court, should make such policy. Nothing in the majority's decision, however, precludes Congress from acting. Congress has extensive constitutional authority to regulate interstate commerce, and, encouraged by the decision in *Wayfair*, it could do so now. Congress could, for example, homogenize the nexus requirement for sales tax collection. Congress could even legislatively overrule *Wayfair* by passing a law prohibiting the states from forcing remote sellers to collect sales tax when they lack physical presence (Mason 2018). For now, Congress has not legislated.

The 2015 OECD Final Report on *Addressing the Tax Challenges of the Digital Economy* describes some factors regarding a new nexus based on the concept of significant economic presence, such as revenue-based factor, digital factors and user-based factors:

To be an appropriate measure of participation in the economic life of a country, the revenue

factor could be combined with other factors, such as the digital and/or user-based factors that indicate a purposeful and sustained interaction with the economy of the country concerned. In other words, a link would have to be created between the revenue-generating activity of the non-resident enterprise and its significant economic presence in the country. The choice of which factors should be combined with the revenue factor to ascertain whether a significant economic presence should be deemed to exist is likely to be driven by the unique features and economic attributes of each market (e.g. size, local language, currency restrictions, banking system) (OECD 2015: 107-111).

Although listing those factors, the OECD Report (2015: 13) did not recommend any action at that time:

None of the other options analysed by the TFDE, namely *(i)* a new nexus in the form of a significant economic presence, *(ii)* a withholding tax on certain types of digital transactions, and *(iii)* an equalisation levy, were recommended at this stage. This is because, among other reasons, it is expected that the measures developed in the BEPS Project will have a substantial impact on BEPS issues previously identified in the digital economy, that certain BEPS measures will mitigate some aspects of the broader tax challenges, and that consumption taxes will be levied effectively in the market country.

The same way did the 2018 Interim Report, which acknowledges that “[t]he tax issues raised by digitalisation are technically complex, and this interim report identifies the different views among countries on whether and to what

extent the features of highly digitalised business models and digitalisation more generally should result in changes to the international tax rules.” Thus, “following an update on progress in 2019, the Inclusive Framework will work towards a consensus-based solution by 2020” (OECD 2015: 212).

In consonance with Báez and Brauner, “[i]n the absence of the traditional qualitative features of a Permanent Establishment (i.e. a fixed place of business or a dependent agent) the only way to define a “virtual” nexus is by means of quantitative thresholds normally defined according to revenue or user-based factors or a combination thereof. A definition based exclusively upon qualitative (digital) factors would be easily avoidable and not very indicative of a significant economic presence.” (Báez Brauner 2018: 14).

With the exception of Israel, the existing domestic measures so far proposed regarding to the nexus concept of “significant economic presence” would in any event call for the legal determination of a (revenue) threshold ultimately intermixed with supplementary qualitative or quantitative benchmarks (Báez Brauner 2018).

The “interim digital services tax” proposed by the European Union was designed based on revenue factors as thresholds: (a) the total amount of worldwide revenues reported by the entity for the relevant financial year exceeding EUR 750 000 000; (b) the total amount of taxable revenues obtained by the entity within the Union during the relevant financial year exceeding EUR 50 000 000. (European Commission 2018)

Wayfair accepted that “more than \$100,000 of goods or services delivered or to engage in 200 or more separate transactions for the delivery of goods or services” is an adequate quantitative threshold for establishing a tax nexus between a remote seller and a State where it does not have

physical presence. Of course in the international arena the discussion is about income tax and the figures ought to be much higher for quantitative thresholds, if indeed that will be the way to be trodden. Nonetheless, the important point is, “[i]f anything, proponents of digital taxation have even more support from the U.S. jurisprudence than they realize: the only question in *Wayfair* was whether sales taxes would remain an exception to the general rule that physical presence was not needed to establish tax nexus.” (Mason 2018). Definitely it is not, said the Supreme Court.

7. Conclusion

At the end of the day, what does all of that mean? Well, comparing *Wayfair* and the EU proposals, it seems that the United States and the EU “[h]ave more similarities than differences”, notwithstanding being often depicted as having utterly opposing understandings on the difficulties posed by the digital economy and how to tax tech companies (Herzfeld 2018: 1029).⁵²

The United States has been demonstrating its inclination in the direction of the cooperation with the OECD to address the digital economy taxation challenge. Whether or not this inclination was triggered or encouraged by the Supreme Court decision in *Wayfair*, we do not know. The letter recently sent by the U.S. Senate Committee on Finance to the Presidents of the European Council and of the European Commission reaffirmed the “[p]otential for long-term harm arising from the EU DST Proposal”, stating that “[t]he EU should refocus its efforts away from this interim tax measure and back on reaching consensus with other leading economies within the OECD on new digital taxation models.” (United States Senate 2018).

We believe that, definitely, global cooperation and coordination of tax matters, as showed by Brauner (2003), is

the best solution, especially in this arena of digital taxation. Indeed, Brauner (2003) states, “[c]ooperative solutions, based on the stability of the current world tax regime, have proven successful in the area of e-commerce taxation.”⁵³

Therefore, unilateral actions should be avoided. After all, what if the international tax world ends up realizing that the digital services it is trying to tax are not actually services, but fits better within another characterization? Paraphrasing Kingson, whose article is said by Brauner as “[s]till one of the most thoughtful scholarly articles on the taxation of digital transactions,” (BRAUNER, 2018: 462-465) the “[i]ncreasing importance of intangibles has led to a focus on the blurring of distinctions between the form of delivery and the substance of what is delivered.” (Kingson 1996: 644).

Maybe we still need a “[m]ore precise definition of what is doing business.” (Kingson 1996: 661) The digital services tax (DST) was certainly carefully designed by the European Commission. “But the DST may prove unworkable for business models we cannot even imagine yet.” (Mason 2018).

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Brazilian Tax System, Tax Reform and Taxation of the Digital Economy

1. Introduction

Recent research states that digital economy represents about 22% of Brazilian GDP in 2016, tending to increase and pointing out that one optimal digital strategy could provide 5.7% (equivalent to U\$ 115 billion) to GDP growth in the following year⁵⁴. Another study indicates that the global digital economy should experience a growth 2.5 times superior in relation to the total economy⁵⁵. Taxation of the digital economy is a natural way, said the former Brazilian Minister of Economy, however there are different points of view, promising an intense debate⁵⁶.

History is one of the best approaches to be used by fiscal sociology, as the Austrian founders have already understood (Leroy 2011:107). This study proposes an interpretation of the Brazilian taxes' recent history, in order to deal with fiscal phenomena in accordance with a general socio-political outlook, because the political, social, territorial and environmental functions of tax policies complete the economic and financial approach (Leroy 2011:13).

The key issue is regarding to which elements should be taken into account when implementing a tax reform, focusing on the digital economy, considering Brazilian tax system's background and specific circumstances. The analysis arose because the country once again discusses the need for a tax reform⁵⁷ and digital economy should be a crucial point on that.

Brazil has a high tax burden, according to Brazilians taxpayers' perception⁵⁸, even though it is, actually, in the OECD average (OECD 2019). On the other hand, it is the

country where more hours are consumed to fulfill the tax obligations⁵⁹ and has been emerging from an economic crisis, with expenses that exceed its revenues⁶⁰. In this scenario, raising taxes is a measure that causes fears in both the government and the legislators and, especially, faces great social rejection⁶¹.

Moreover, Brazil, the largest country in Latin America, is a federation composed by 26 States, one Federal District and more than 5.500 Municipalities. States have autonomous administrations, collect their own taxes and receive a share of taxes collected by the Federal government. Municipalities, as the States, have autonomous administrations, collect their own taxes and receive a share of taxes collected by the Federal and States governments (Brazil 1988).

Virtually, considering their differences in legal, economic, political and social structures, there is not a single taxation model good or applicable to all countries, without any criticism or requiring tailor-made measures. It is important to bear in mind this aspect and take it into consideration when developing international tax policies or trying to apply international models domestically, and it is necessary to be very careful when proposing to adjust the tax system based on other countries examples.

The Brazilian Minister of Economy has recently stated: *“Today, corporate tax is 34%. If it goes down to 15%, then it is necessary to raise the tax on dividends to stay at the same level”*. In the United States, he pointed out, the burden on the productive sector is 20%. So, he concluded, *“if Brazil does not lower the tax burden for companies, no company goes to the country. It ends up going to other places”*⁶². The Minister argued the reduction is necessary because *“everyone is lowering”* taxes, which itself is only an emotional reaction to the international race-to-the-bottom competition for attracting investments and, in isolation

of other elements impacting capital attraction, may not be a strategic choice.

For instance, let us remember tax system in Mexico was very complicated, urging for a huge fiscal review in order to achieve simplicity. Moreover, there were special treatments to several economic sectors, producing unfair distribution of tax burden. Tax evasion was very high, requiring considerable efforts to reduce it, through the creation of incentives in order to improve the culture for compliance. Finally, there was, and it until exists, a key issue involving corruption in the tax administration (Martinez-Vazquez 2001).

Mexico has been doing continuous changes in order to increase efficiency, harmonization with international standards, simplicity and equity in tax matters. The Mexican current tax burden is lower than other countries such as Brazil, China, India or Russia, for instance. The cost of this measures, however, was a system unable to produce enough amount of tax revenues (OECD 2018).

This consequence, mainly, was observed because the changes had as objective the equalization with international patterns. When Mexico made the decision to expand internationally its economy, the country was forced to align its tax system applying the United States, Canadian, and European Union models (Martinez-Vazquez 2001). A deep market opening was promoted. If in earlies 1980's, Mexican officials were yet discussing the convenience about signing the GATT, by 1986, Mexico, besides entry in that international agreement, also adopted a customs tax system considerably open, favorable to imported products. The advances in this opening process plus the stabilization and the global tendency to build economic and commercial agreements, made it possible for the country to reach an agreement with Canada and the US, the so-called NAFTA.

Due to this measures, nowadays Mexico has one of the most modern tax systems of the world, with low negative impact over the economic growth. Nevertheless, the country is only able to generate tax revenue about 17% of the GDP (OECD 2018), making it difficult, if not impossible, to assure a minimum standard of social benefits to its people (Reynoso - Araar 2016).

On the other hand, it can be observed that, by reducing the main taxes' rates, while increasing the taxable basis, it was possible to Mexico to balance the losses in taxes revenue. This occurred, however, because there was a considerable "region" of taxpayers not paying taxes and, with lower rates and more efficient system, they started to pay. This same phenomenon did not occur, for instance, in the US during the Ronald Reagan's government, when the reduction of taxes in order to improve the economy generated a huge fiscal deficit (Haufler 2001:21).

In the regard of the equation "low rate/broad base" taxation structure, another relevant example is New Zealand, one of the most developed and industrialized countries in the world. When the country was settled by the British, New Zealand was divided into provinces. This model was abolished in 1876 so that the government could be centralized, for financial reasons. As a result, New Zealand has no subnational entity such as a province, state or territory, beyond the local government⁶³.

Having broad bases means that taxes are applied with few exemptions and grants. As a consequence, New Zealand raises substantial amounts of tax revenue relative to the tax rates when compared with other countries. The country collects a large share of revenue from its three major tax bases: personal income, corporate income and GST (goods and services tax). More than 90% of their tax revenue is collected from these or similar taxes (including

resident and non-resident withholding taxes and fringe benefit tax). An important reason for their relatively low percentage of “other” taxes is that New Zealand does not have social security taxes (New Zealand 2017).

Recently, Eurico de Santi, one of the most active scholars in discussing a possible Brazilian tax reform, stated: *“in the last 20 years, 85% of the countries that have done tax reform have gone to a VAT 4.0, which is our proposed model. It was structured from the most internationally functional model, which is New Zealand’s. We take their model and adapt to Brazilian issues (...)”*.⁶⁴

Considering the quotations and examples above, the questions arising: are international VAT models suitable to impose taxation in the Brazilian digital economy? Substituting the existents taxes or reducing tax rates can totally solve the problematic? In order to draw an answer, it is important to bear in mind how the Brazilian current tax system has developed and why tax reform is urgently needed.

2. The Brazilian tax system. A historical-political analysis

The purpose of this section is to delineate how taxes on consumption have arisen in Brazil as well as how “harmful” tax competition among the three entities composing the Brazilian Federation’s structure (Federal Union, States and Municipalities) has evolved.

In the current landscape, taxing powers are spread within the three actors competences, in accordance to constitutional rules. While direct taxation is mainly concentrated under the Federal Union competence, there is not a single consumption tax and indirect taxes are designed and levied in the three levels of government: federal, state and local, as follows:

- Federal Union: IPI, PIS and Cofins⁶⁵
- States: ICMS
- Municipalities: ISS

There is an urge for simplification and adoption of a single consumption tax, because some of those taxes have cumulative effects and raise questions on tax compliance and tax control. Consequently, notwithstanding the relevance of the discussions regarding the taxation of the digital economy, it is possible to say that a tax reform in Brazil will have to deal with a previous challenge: to create a comprehensive model for taxing consumption and ensure the fair distribution of resources and social expenses among the federative entities. This is the reason for recalling for a historical-political analysis of the taxation in Brazil⁶⁶.

In 1946, Brazil entered the phase in which taxation mainly explored domestic bases at the same time as a process of sustained industrial development began. Whether the 1946 Constitution brought few modifications regarding the list of taxes used in the country, it showed, however, the intention to increase the allocation of resources to the municipalities and two new taxes were added to their competence. Thus, although it did not promote a taxes structure's reform, the new Constitution profoundly modified tax competence discrimination, reinforcing the system of sharing tax revenue among the central and sub-national governments (Martuscelli 2010).

The 1946 Constitution aims to strengthen municipal finances faced several problems. The most important, regarding the topic in analysis here, is that quotas of revenue were distributed equally among the municipalities, which led to a rapidly increase in the number of those entities, due to political interests and the possibility of receiving part of the revenue without having to produce anything in return. The 1,669 municipalities existing in 1945 became 3,924

in 1966 (there are currently 5,570). Many of the new units depending almost exclusively of revenue transfers from the central government.

A new tax system was gradually implemented between 1964 and 1966, giving priority to measures that, on the one hand, immediately contributed to the rehabilitation of federal finances and, on the other hand, respond more urgently to the business sectors' claims for tax relief, which constituted the political basis for sustaining the entire regime. In the same period, federal tax administration was reorganized; Income tax revenue grew vigorously due to legislative review; and the consumption tax was reformulated giving rise to the Tax on Industrialized Goods (IPI), with a similar result (Varsano 1996:12).

The Constitutional Amendment n. 18/1965 and the National Tax Code (Law n. 5.172/1966) are the legal instruments signing the end of that reform. In addition to being successful in rehabilitating federal finances quickly, the reform of the 1960's had the merit of dodging cumulative taxes, replacing them for a value added tax - now widely used in Europe and in Latin America, but then only in France. Thus, for the first time in Brazil, it was possible to think about a tax system that was in fact a system, with economic objectives, or, precisely, which was a strategic instrument for accelerating the economic growth (Teixeira 2005).

Furthermore, that Amendment established the municipal competence to the Tax on Services (ISS), what was followed in the 1966 National Tax Code and in the 1988 Federal Constitution (Sales 2008:10-11).

The 1966 National Tax Code, still in force, contains a precise definition of "tax" in its article 3 (Brazil 1966)⁶⁷. Some scholars (Amaro 2014) criticize such a definition contained in the law because, for them, the doctrine has the role of defining and classifying taxes. In Italy, for example,

neither the law nor the Constitution provides a general definition of tax, that role fell to the doctrine, which for long time outlined a general definition, identifying this notion with that of a compulsory payment, directly linked to an economic fact and in order to ensure the people's participation in the public expenditure (Tesauro 2009)⁶⁸.

Simple definitions can make significant differences. Whether to include or not a definition/concept such as “tax” or “income” in law represents an important normative choice, as it will be possible to see in the next Section, regarding the definition of “services” or “goods”.

In a nutshell, the fundamental objective of 1966's tax system was to raise the level of fiscal effort. As a result, not only the budget balance was achieved, but also resources were directed towards fiscal incentives to capital accumulation, promoting economic growth. However, by favoring the stimulus to accelerated growth and private accumulation, the reform practically neglected the goal for equality and finally, when its economic growth and industrialization started, Brazil also fostered a deep social inequality.

According to the strategy outlined, it was for the central government to lead and control the process due to the call for central economic decisions. The reform, however, predicted that states and municipalities would have sufficient resources to carry out their functions without disrupting the economic process, mainly through the ICM - tax on the circulation of goods – revenues and an intergovernmental transfer system. However, to ensure subnational entities non-interference in the decision making process, their degree of fiscal autonomy were severely constrained. Thus, the power granted to states to legislate in matters related to the ICM was limited, and that tax, despite the fact of generating enough revenue, could not be used as a tool for fiscal policy.

In spite of the intensive granting of fiscal incentives, the country's tax burden was able to sustain itself, by the time the new system was introduced. However, since 1970 it was already evident to the government that the granting of tax incentives excessively eroded the base. To reinforce its financing resources, the federal government created the Contribution to the Social Integration Program (PIS), which marks the resurgence of cumulative taxation (Varsano 1996:13).

Around 1975, the fiscal autonomy of the states and municipalities was reduced to its minimum level, subnational governments began to sketch a reaction, which halted the process of increasing centralization and resulted in a Constitutional Amendment in 1976, raising the level of resources allocation to States and Municipalities.

The 1980's were remarkable by an impressive amount of changes processed in the tax legislation, in order to sustain the tax revenue. However, this legislative effort has compromised the system's quality, particularly in the field of indirect taxation: a further cumulative tax, the Contribution to the Social Financing Fund (Cofins) was created, and Tax on Industrialized Goods (IPI) and the Tax on Circulation of Goods (ICM) were transformed in taxes not similar to what is thought to be a value added tax (VAT).

The tax system created by the 1988 Constitution was a result of participatory process in which the main actors were politicians. Despite the fact they were technically trained, had previously exercised executive functions in government and were advised by a group of technicians, the decisions, although technically informed, were eminently political in their nature (Varsano 1996:15-16).

Even though the Constitutional process was profoundly democratic, as it allowed intense participation of all congressmen and even the direct participation

of the people, the 1988 Constitution created an insufficient funding system for the size of the implicitly defined State, due to a lack of a realistic forecast about the availability of resources for financing its social actions. The situation of budgetary imbalance was consolidated. Therefore, the process did not observe what the classic suggestion of Tocqueville (Leroy 2011:27): “*one must determine, first, the wealth of the nation and, second, the portion of that wealth devoted to State expenses*”.

In short, the 1988 Federal Constitution increased Federal Government expenditures (especially in the social area) and reduced available revenues (by sharing revenue with states and municipalities). As a consequence, the Federal Union addressed its tax system towards the taxation of resources not constitutionally shared with the subnational entities, in order to balance its fiscal accounts. Since 1988, there has been an increasing use of social contributions, highly productive in terms of revenue (and not shared with states and municipalities) and low administrative cost, but generating several distortions associated with cumulative taxes. Within that strategy, the participation of social contributions in the level of federal collection raised from 27% to 47%, in the period 1992-2006 (Mendes 2008). For instance, in 2015, while the tax levied on companies' profits represented around 8.5% of the total revenue (including the Union, States and Municipalities), the Social Contribution named Cofins, a turnover tax, represented about 10.37% of the total revenue. The contribution based on salaries, to the social security system, represented more than 16%, according to the Ministry of Economy Center of Tax Studies (Brazil 2016).

This federal government's reaction to the new tax system instituted after the 1988 Constitution caused a decline in the quality of the tax system, without entailing

a definitive solution for its fiscal imbalance. It lacked a decentralization plan previously negotiated with the subnational governments, which could confer a minimal order to the process.

Currently Brazilian taxation scenario is the result of the evolving disputes among the federative entities, shading lights on the unequal distribution of social expenses in the 1988's Federal Constitutions, which dramatically increased the domestic tax competition for scarce revenues. At the moment, there is a tax reform on the way and the legislative proposals can be reassumed in two different positions: one of merging all the consumption taxes into a single tax and the other of creating new types of taxes.

The standpoint, however, is that both proposals deal with the redistribution of taxing powers among the federal entities. Consequently, until a comprehensive plan been carefully negotiated and approved by the federal and subnational governments, there is no possible way of reaching agreement in the Parliament, which gives a wide margin to sketch an answer for the questions set in the previous section: as the suppression of the state level in the federative structure of Brazil as well as of taxation on social security are out of the scope of the tax reform, the adoption in Brazil of a taxation system such as the one of New Zealand, would be unrealistic, if not impossible.

On the other hand, both proposals on the table involve a comprehensive tax reform, which will result in the alignment of taxing rights among federative entities and contribute to overcome one of the main challenges regarding the taxation of the digital economy in the country. This is what will be explored in the next section.

3. The taxation of the digital economy and the Brazilian tax reform

3.1 The international debate

Despite the fact that digitalization of the economy has been taking shape for some time now, awareness of its effects in the field of taxation has only emerged at a global level in 2013 from the OECD/G-20 Base Erosion and Profit Shifting Project (BEPS), which Action 1 addressed the tax challenges of the digital economy. The initiative applied a holistic approach for evaluating the impact of the ongoing transformation of the economy in both direct and indirect taxation.

Because the first findings accounted in the Action 1 Final Report released in 2015 were that digitalization process is transversal to the whole economy – traditional and new – and goes beyond BEPS practices, ring-fencing the digital economy for taxation purposes would be counterproductive, if not impossible (OECD 2015).

In the domain of indirect taxation, Action 1 Final Report (OECD 2015) identified two major challenges for taxing the rents emerging from digital transactions. First of them concerning the domestic schemes providing exemptions for imports of low-value goods, which have been causing the reallocation of business to offshore jurisdictions in order to sell low-value goods free of the consumption tax. Due to the considerable expansion of this practice by means of cross-border electronic commerce, there is a growing concern in the regard both of fair tax competition among business operators and the reduction in the collection of consumption taxes.

The second challenge relates to the remote provision of digital services and intangible directly to consumers, for instance streaming or digital contents such as movies, music and television shows.

In a nutshell, Action 1 Final Report (OECD 2015) recommended the lowering of thresholds for the exemptions for imports of low-value goods, and in the case of remote sales of digital supplies, the adoption of a destination-based system for both business-to-consumer and business-to-business transactions. In order to circumvent concerns about control and compliance, the report also recommended the introduction of a requirement for the remote (non-resident) supplier to register before the tax administration in the place of consumption of the service or intangible.

Besides indirect taxation, Action 1 Final Report (OECD 2015) has also concentrated on the challenges imposed by digitalization processes for realigning taxing rights and value creation activities, questions chiefly related to direct taxation; therefore, raising awareness on the fair allocation of cross-border profits and having a wider impact in the traditional international taxation rules. Three broad options have been suggested, requiring further work: the extension of the nexus for source taxation to “significant economic presence” (i.e. “digital” or “virtual” Permanent Establishments), the introduction of withholding taxes on digital transactions, or the introduction of equalization levies (Kofler-Mayr-Schlager 2017).

In February 2018, the OECD-G20 BEPS Inclusive Framework released the Interim Report on Tax Challenges Arising from Digitalization (OECD 2018). From the Interim Report was possible to infer that an agreement among the (then) 110 countries participating in the Inclusive Framework was a far reach. Back there, three positions have emerged⁶⁹ regarding the need to implement further actions in the field of direct taxation. A group of countries believed that the digital economy is new, and that dilemmas could be faced with legislation that prevents aggressive tax planning. Others understood that what really exists is the

digitization of the whole economy, which means that the entire international taxation framework should be revised. And finally, there was the group of capital exporting countries fearful of the general effects of measures, which argues that no specific treatment is necessary.

In brief, regardless BEPS Action 1 main findings (OECD 2015, 2018), there are still some disagreement among groups of countries on whether the digital economy is a different form of economy, and so it would require specific solutions for direct taxation or if it is not possible to adopt solutions in the sense to “ring-fence” the digital economy from the rest of the economy for tax purposes (Kofler-Mayr-Schlager 2017).

Even if a common international position has not emerged yet, it is extremely important to any individual country to bear in mind the horizons of the international landscape for taxing the cross-border digital supplies, before introducing a comprehensive domestic tax reform.

Consequently, the solutions arising from OECD-G20 BEPS Project could be of great value and shed light on the current Brazilian tax reform proposal. Taxing digital goods in Brazil has at least two additional features comparing to taxing the digital economy internationally: the multiple competences on consumption taxes and the legal redefinition of digital goods/merchandises concept.

3.2 Brazilian Tax Reform

Brazil has a new political environment, considering the recent presidential election. During the campaign, tax reform was a central argument of all discussions. Despite the fact of differences in the political orientation among candidates, it was possible to observe a convergence in terms of their proposals in relation to the groundswell of support on rethinking decentralization and federalism, simplification of the system, and tax evasion. Their similar

proposals were designed by a group of professors and academics⁷⁰. Some aspects under revision will be individualized in this work.

For the supporters of the idea to replace all federal tax to a single one, the model would provide simplification, lowering compliance and administrative costs while reducing opportunities for tax evasion. They also sustained that a single tax would increase the system's transparency level.

According to the proposal, the single tax would firstly replace several federal taxes and secondly state and municipal's taxes⁷¹. The idea is, in effect, to replace five taxes levied on consumption (ISS, ICMS, PIS, Cofins and IPI), which would be extinguished and replaced by a value-added tax called IBS, acronym in Portuguese for *tax on goods and services*⁷². The main constraints of such a proposal revolves around the need to reach an agreement for modifying taxes competence of the three federative entities and to avoid revenue imbalances due to the modification in the very federation's structure.

Currently, the Congressman in charge of drafting the text with a proposal for reform, pointed out three main findings⁷³ in respect of the current tax structure: a complicated system of taxes on consumption with relative cumulative effects; *tax competition* between the federative entities; deeply regressive income taxation. According to him, a viable solution would be to promote the “*alignment [of the domestic system] with existing taxation models in the rest of the developed world*”. He went on to propose a tax system inspired in the “*European [Union] model*”, comprising an income tax (with a federal basis in Brazil); a Value-Added Tax (VAT) and a state selective tax (with federal legislation), and a municipal tax on private properties (with federal legislation). According to the Deputy, “*Another characteristic of our tax system that differs from those in*

developed countries is the large concentration of taxation on consumption rather than income taxation, which ends up burdening the poor people more heavily”.

A proposal for a comprehensive tax reform resulting in the adoption of a single tax on consumption could be positive at least for three reasons: by bringing coherence for the entire system lowering – if not eliminating – tax competition among federative entities. Secondly, by solving the main domestic question regarding the taxation of the digital economy, which relates to the blurred definition of “merchandise” according to the constitutional order. Last but not least, by aligning the domestic taxation on consumption to international standards, which would greatly enhance the participation of Brazil in the global economy.

3.3. The definition of digital goods and services: litigation before the Supreme Court

The split up of competences between federative entities for taxing consumption brought states and municipalities before the courts in order to assess the taxing rights on digital goods, due to the lack of precise definition of “goods” or “merchandises” in the Brazilian law. The importance of the dispute lays in the circumstance that transactions associated with “merchandises” are taxable by states and the provision of services, in general, remains under the taxing powers of municipalities. As a result, a legal definition restricting the concept of merchandise/goods to the tangible world – as it is the case in the European Union VAT system - would surely trigger the questioning about the constitutionality of the law before the Supreme Court.

Principle of legality plays a very important role in the Brazilian tax constitutional structure, much because of the historical context in which the 1988 Constitution was enacted. A significant body of the doctrine still has it as the basic pillar for taxpayer protection against possible State

abuses, when exercising taxing powers. Legal concepts and exhaustive descriptions are required, as strict as possible, and the Constitution itself has a whole chapter devoted to the tax system design, with such minute rules, which should never be included in a constitutional text.

For instance, in October, 1998, the Supreme Court analyzed a case involving a taxation dispute concerning the interpretation of the meaning of “merchandise”, according to the Federal Constitution. Specifically, the *vexata quæstio* was a distinction between commercial off-the-shelf software embedded in a physical mean (taxable by the state tax ICMS) and bespoke/taylor-made software (taxable by the municipal tax ISS). The ruling stated that an off-the-shelf software carried by a physical support is a good/merchandise, while the bespoke software is a service⁷⁴.

Soon after the Supreme Court ruling, in December, 1998, the state of Mato Grosso passed the Law n. 7.098, extending the scope of ICMS to any transaction involving the supply of software, including those performed through electronic transference of data, a clear overruling of the Supreme Court’s decision. The constitutionality of the Law was brought before the Supreme Court and the case has not been ruled up to now⁷⁵.

3.4. The definition of digital goods and services: legislative developments

The disputes regarding the digital economy taxation expanded from the mere question involving the supply of software, increasing tax competition among federative entities.

In 2016, the Federal Government enacted the Supplementary Law n. 157/2016⁷⁶, amending Supplementary Law n. 116/2003, which provides for the Tax on Services [*of any Nature*] (ISS) under the municipalities competence. One of the most relevant changes was the inclusion

of services / activities in the list of services subject to the ISS, expanding the tax scope, such as the provision of audio, video, image and text content over the Internet without limitation - i.e., streaming; the insertion of texts, drawings and other advertising and publicity materials, in any media – i.e, advertising; the creation of computer programs, including electronic games, regardless the constructive architecture of the machine on which the program will run, including tablets, smartphones and similar. The provision reached Netflix, Google and Spotify, among others. The tax should be also paid by apps' stores and software development, such as Google Play and the Apple Store. Furthermore, the tax should be collected by the Municipality where the clients are, which means a sort of “destination based taxation”.

The Supplementary Law n. 157/2016 had two basic objectives, as explained Machado Segundo and Espíndola (2018). The first one was to remedy the municipalities' dispute in attracting taxpayers, based on the offer of reduced ISS rates (the law establishes 2% as a minimum rate, in order to reduce or avoiding competition among municipalities by inhibiting tax exemptions). The second was to update and made explicit the list of services annex to the law, including some recently emerged activities, in order to correct previous omissions. In their opinion, however, the initiative, instead of settling disputes of competence fulfilling the role assigned in the 1988 Constitution, will increase these conflicts, causing great uncertainty both to the providers and to the users/consumers⁷⁷.

For instance, the Law nº 16.757/2017⁷⁸, enacted by municipality of São Paulo, following the Federal rules wording, established that *streaming* should be taxed on the 2.9% rate. Nevertheless, if Supplementary Law potentially lowered tax competition among municipalities, on the other

side it fueled the discussions between states and municipalities revolving around whether digital goods, including streaming, should be placed under the scope of the state tax (ICMS) or the municipal tax (ISS).

The reaction came almost immediately. The National Council for Fiscal Policies, composed by the States Secretaries of Finance, enacted the Cooperation agreement n° 106/2017⁷⁹, authorizing states to charge ICMS on the transactions with digital goods, such as software, programs, electronic games, apps, electronic files and similar (even if they have been or may be adapted) and marketed through electronic transfer of data. The agreement established that ICMS would be collected on domestic transactions and on imports made through a website or an electronic platform that sells or makes available, even if through payment (such as subscriptions), digital goods and merchandise by electronic data transfer, in the place where the purchaser of the digital goods has its domicile or where he is established (destination principle).

Following up these developments, the São Paulo State Department of Finance published an Ordinance n. 24⁸⁰, 2018, to detail how the incidence of ICMS on digital goods and merchandise should occur. It mentions that digital goods and merchandise are considered “all those unincorporated, embedded in a mass marketing chain, such as those offered for sale on physical means”, such as “audio, video, image and text content, with definitive assignment (download)”; hopefully leaving *streaming* (availability without definitive assignment) out of the ICMS scope in the state of Sao Paulo.

It is important to highlight that each of the 27 federation’s member states has autonomy to detail the application of the Cooperation Agreement n. 106/2017, making it utterly needed to evolve from this scenario towards a clearer

definition of digital goods and services and, consequently, of states and municipalities taxing rights in the regard of the digital economy. Whether through a comprehensive tax reform or the design of a new tax.

Regarding the design of a new tax, the difficulties in matching the constitutional matrix of ICMS and ISS, caused scholars like Marco Aurélio Greco to propose an unprecedented approach on how to tax digital activities, through the creation of a new tax modality regardless of any broad tax reform or major changes in the revenues' sharing among the Union, states and municipalities⁸¹. However, creating new taxes could be problematic, because there is also a broad consensus that the country has already a very high tax burden, which would prevent sustainable economic growth, as the current Minister of Economy argues⁸².

4. Conclusions

There are no taxation's general models good or applicable to all countries. One must understand and respect this, when developing international tax policies or trying to apply international models domestically.

Nowadays, digitalization is crucial in economic fields and how to tax digital economy is present in almost all forums in tax matter. The discussions have in common the fact that value creation is largely decentralized and decoupled from a "physical presence". The challenges of taxing digital economy, which are many for all countries in terms of establishing a new concept for permanent establishment (PE), determining where value is created and identifying legal liability for tax collection, find special obstacles in Brazil.

Brazilian initiatives to tax digital economy are concentrated on consumption taxes, levied on goods and services. There is a trend to impose taxation on the place where the consumers are. The federation's structure, some

characteristics of constitutional law and the sharing of taxing rights among federative entities have been provoking divergences. The clearing of the blurred definition between “service” and “goods/merchandises” along with practical issues to enforce the collection of tax in more than 5.500 municipalities are challenges.

The expected tax reform, which is not detailing changes specifically related with the digital economy taxation, considers a proposal to replace five taxes levied on consumption by a value-added tax. However, as the new Federal Revenue Special Secretary states: “... *in the modern world, VAT are increasingly subject to different forms of tax evasion and ‘planning’, causing profound erosion in the tax base effectiveness. At the same time, they demand increasing bureaucracy and endless controls to prevent loss of revenue*”⁸³. Furthermore, the Congressman dealing with the tax reform recognizes: “... *another characteristic of our tax system that differs from those in developed countries is the large concentration of taxation on consumption rather than income taxation, which ends up burdening the poor people more heavily*”⁸⁴.

There are no current legislative proposals to tax digital economy applying tax on income or companies’ profits. A possible solution would be to focus the taxation of the digital economy on the federal government, balancing the consumption tax with the taxation of profits, which competence is already federal, despite it is operationally more complicated than taxing consumption.

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Short-Term Advantages vs. Long-Term Uncertainty in Italy-China Cooperation

1. Introduction

A few months ago, a [South China Morning Post's](#) op-ed (Liu 2018) arouse unusual interest among the Italian observers. The “Italy aims to be China’s first G7 partner on Belt and Road” article illustrated the Italian government’s purpose of striking an agreement with China by 2018, in order to deepen cooperation under the Belt and Road Initiative (BRI), the massive infrastructure project launched by China in 2013, and becoming, as a result, the first G7 member state to do that. The article in the popular Hong Kong newspaper came out in the midst of a lively debate in Italy about the Five Stars-League government’s ambition to deepen cooperation with Beijing and to exploit all the «can’t-miss opportunities» (Geraci 2018a) offered by the Chinese markets. In the meantime, Italy’s Ministry of Economy and Finance, Giovanni Tria – in his first trip abroad as head of the MEF, under-Secretary for Economic Development, Michele Geraci and Vice Premier Luigi Di Maio [were traveling across China to meet Chinese officials and reach several trade deals.](#) As a matter of fact, the intention to strengthen cooperation with Beijing is not entirely new – as proved by former Italian PM Paolo Gentiloni’s participation in the BRI Forum in May 2017, the only Head of Government of a G-7 or EU country.

Still, the Italian debate remained lacking when it comes to the International Relations (IR) theory as commentators merely split between supporters and opponents to the Italian government’s China-friendly blueprint. The authors hint that in order to assess Italy’s potential

in bolstering cooperation with China, reaching advantageous deals, leading regional efforts to benefit from BRI, it would be more helpful to draw from IR theory's concepts and models and to clearly distinguish short-term and long-term outcomes. In this context, the article intends to determine first whether closer cooperation with China would be feasible and beneficial for Italy in the short term as claimed by several Italian political figures. Then, the study questions whether these advantages are sustainable in the longer term given Italy's trade position and economic system, the shifting international context and the overall advancement of BRI.

The article will proceed as follows. First, it analyzes why Italy can be treated as a medium power and how Rome could achieve short-term positive outcomes. However, in the longer-term uncertain outcomes may prevail due to a growing Italian dependence from the PRC and because as an US-ally and EU member Italy may face an either/or dilemma being compelled to unknot the ties it built with China. Furthermore, taking a realist perspective (Waltz 1979), section two argues that China's rise presents a structural challenge to American hegemony and that Beijing is pursuing its revisionist objective towards the international order in a selective and incremental approach (Natalizia-Termine 2018). Faced with it, Washington, the benign hegemon (Ikenberry 1998, 46), will seek to «preserve the unipolar moment» (Mastanduno 1997) and its military and economic superiority. This will prove pivotal for Rome since great-powers strategic competition and the formation of blocs are expected to close windows of opportunity of advancing the Italian national interest in the longer term. Likewise, section three argues that after a period of political absence from Brussels we are witnessing today the first signs of a tougher competition between some European countries and China in the long run (Fallon 2019) and that

in the future, consequently, Italy could be demanded to stick more firmly to the approaches of the European Union towards China. From a regional point of view, section four contends that Italy would benefit from an increasing trade flow in the Mediterranean Sea as BRI advances and from taking a proactive role, guiding BRI-related regional projects and facilitating the intermediate steps in China's westward route (Hu 2018). However, BRI suffers from a number of ambiguities and lacks transparency (Baltensperger-Dadush 2019). In addition, in the longer term, it may not work as expected due to several structural flaws that may force China to gradually drop out of the project. The authors hope to stimulate discussions in the Italian IR theory's and political science's community through this study.

2. A medium power's foreign policy: the case of Italy

Taking into account different orders of criteria such as population, GDP and military budget (Mearsheimer 2001) or national political discourse (Romero 2016), Italy falls under the category of "middle power" (Santoro 1992; Andreatta 2001; Giacomello-Verbeek 2011). As argued by Marco Valigi (2017:81), in a scenario of great-power struggle between a dominant-conservative power and a revisionist one there are five categories of middle power: the ally, the stabilizer, the aggressor, the conciliator, the satellite. As NATO member, Italy has to be considered an "ally" because it shows a high degree of complementarity with the conservative power, the US, that provides security and collective defense to Rome in exchange of compliance to the international order it leads (Lake 2011). Complementarity refers to a general condition of accord and to a high level of ideological consent. Furthermore, in this scenario, an ally's dominant strategy – in game theory the strategy that earns a player a larger payoff than any other regardless of

what any other players do – would be to act in accordance with its partners and allies (Valigi 2017:81) . Drawing from it, we argue that while in the short run Italy may benefit from boosting its ties with China, in the longer-term Rome should be prepared to tackle a very diverse environment for at least three reasons: the reducing marginal benefit due to a growing dependence from China if Rome stops developing its own growth policies; the deterioration of the relations between the US and China, primarily, and the EU and China, secondly, into a harsher competition; increasing obstacles for China in move BRI forward.

3. Italy and BRI: short-term vs long-term outcomes

The Five Stars Movement, definitely the most pro-Beijing party in the Italian political establishment (Pugliese 2018), has long shown interest for BRI and China: back in 2016 Manlio di Stefano, now under-Secretary for Foreign Affairs, claimed that the Belt and Road Initiative would «follow the free-market rules and provide win-win partnerships to states involved» and that «Europe needs new financial partners [other than the US] for promoting a new type of development and fostering a new trend of growth» to, eventually, introduce «more respect for national sovereignty and real solidarity among peoples» (Di Stefano 2016). However, it is Michele Geraci, who may be regarded as the real China hand in the Executive since his academic and working experience in the Middle Kingdom, that most endorsed and sponsored an Italian tilt toward China: before officially taking the office, he has been arguing *inter alia* that China could help Italy to «handle its debt and spread», «manage the migration flows», «attract more investments» especially in «infrastructures and transportation», serve as model given its «high-level public security» and «green economy», be the «top destination for Made

in Italy products», lead the «socio-economic stabilization of Africa» (Geraci 2018a). Later, Geraci claimed that «the world is bipolar nowadays» and that we should «get used to it» (Geraci 2018b:251). Hence, albeit the failure of reaching a MoU in 2018 (Fatiguso-Fotina 2018), the authors expect this China fever to endure in the future.

Broadly speaking, in terms of volume of goods processed in harbors, Italy is number three among the European countries, since it can count on many maritime facilities and a spe and since 64% of EU-China trade in 2016 traveled by sea (Hu 2018). Rome, as well as being EU Foreign Direct Investments' third destination – just after London and Berlin –, is the fourth Chinese trading partner among the European countries for both import and export. Beijing's interest in Italian infrastructures is proven by the acquisition of the 49,9% of the Vado Ligure's future terminal container, which will be the most automated hub in the country, by the Chinese COSCO (40%) and by Qingdao Port International Development (9,9%) (Casarini 2018). Nonetheless, it should be noted that Rome is losing positions in the ranking. While in 2014, the ships that passed through the Suez Canal to and from Italy amounted to 8,8% of the total, in 2017 that percentage dropped to 6,6%. Moreover, in the same year, the Italian maritime import-export has recorded the lowest data, in value terms, since 2010, with 159 billion dollars of exchanges. A crucial role could be played by the Special Economic Zone system, approved last year, that would make Southern Italy - apart from being the macro area with the «highest concentration of shipping companies» in Italy (SRM 2017:6) – even more attractive, thanks to its cost and time cuts. Moreover, the geography of the Adriatic Sea would allow Italy to set up an infrastructure network in order to link the Suez Canal and North Europe. For this purpose, the North Adriatic

Port Association (NAPA), a consortium between the ports of Venice, Trieste Ravenna, and Rijeka, could work effectively. The proximity with central Europe combined with the lower costs of the maritime route represents an advantage especially for the port of Trieste that benefits from a sheer sea-depth and would be able to intercept international cargo shipments (Sommariva 2018). Hence, Italy should focus on the maritime economy so that the development of a competing railways system might not be the best policy goal (Prodi 2016). Indeed, «in terms of volume of Germany exports more to China than Italy does, this provides Berlin with stronger potential to exploit the economies of scale created by the development of new railway connections», (Fardella-Prodi 2017:130).

The inclusion of China in various value chains is now a reality and in the long-term this will be not unravelled. China share of inputs embedded in Italian production is growing as the share of Italian inputs embedded in the Chinese exported goods (Amighini 2016). This is a sign of the increasing interdependence between the two economies but this dynamics could turn against Rome and prove counterproductive because the growing Chinese export pressure is shifting from developing countries to advanced economies. This changes in Chinese export that are shifting its production toward capital and knowledge-intensive products could threaten the competitive advantage Italy has enjoyed so far is coming to an end. structure. Leveraging on complementarities is one of the possible strategies that a medium power like Italy can adopt. As highlighted by many authors (Amighini 2016; Poncet 2015) China export of goods is concentrated in low value-added sectors and specialization within sectors, at least for Italy, has allowed to limit the «China effect on exports» (Giovannetti et al. 2018). In the long run, Italy must develop, in coordination

with Europe, its own growth policy to avoid that positive complementarities-based interdependence turns into dependence. Then, future policies will need to balance economic agreements between Rome and Beijing, with the opt-out clauses in order to prevent a dramatic collision of the relationship with Italy's allies in Europe.

4. Foreshadowing strategic competition: Donald Trump and the trade war

Compared to his predecessors, Donald Trump has advanced some relevant changes to the US foreign policy towards the People's Republic of China (Termine 2018). According to the 2018 National Defense Strategy (DoD 2018), after a period of «strategic atrophy» – in which the US dominance has been eroded – an «inter-state strategic competition» (p.1) has reappeared today as the major threat to US national security. Likewise, the 2017 National Security Strategy contends that China – together with Russia – is challenging «American power, influence, and interests, attempting to erode American security and prosperity» (Trump 2017:2). Furthermore, at a regional level, China would be «using predatory financial methods to intimidate its neighbors while militarizing features in the South China Sea» (DoD 2018: 1) and seeking «Indo-Pacific regional hegemony in the near-term and displacement of the United States» (p. 2). In short, China is considered a «strategic competitor» (p. 2) and «revisionist power» since its promotion of an utterly «antithetical world to U.S. values and interests» (Trump 2017:25). After the NSS disclosure, the US Administration decided to hit China with tariffs for its alleged unfair economic methods. Thus, after paving the way with 3 and 50 billion dollars of initial measures, the US has imposed a 10% tariff on approximately 200 billion

dollars of Chinese products (September 2018), which was supposed to rise to 25% in January 2019, triggering the immediate Chinese retaliation. After about 150 days of trade war, at the G-20 Buenos Aires summit in December 2018 the US and China negotiated a truce from further protectionist escalation, but, nonetheless, competition is expected to endure (Heath-Thompson 2018; Allison 2017, Garcia-Herrero 2018), especially «in the economic and technological realms», driving them into an «uneasy peace» (Yan 2019:40) and if the White House opts for harsher measures such as sanctions, Italy will be trapped in a crossfire, as happening nowadays to Iran's trade partners (Vernile 2018). With the «the era of US-China cooperation drawing to a close», indeed, what will follow is «strategic competition» (Jones 2019).

Thus, the Italian Government must choose wisely. If, on the one hand, PM Conte has tried to set up a bilateral agreement that connects Rome to Washington during his July visit to the White House – and, apparently, during the September 2018 UN General Assembly as well, on the other, it is hard to imagine the US gladly accepting Italy to explicitly benefit from most-favored-nation-like gains within the BRI or any other Chinese initiative, for example, the Asian Investment Infrastructure Bank. In the long run, indeed, Chinese revisionism (Schweller-Pu 2011; Buzan 2010) may trigger a more resolute reaction from America which in order to reduce costs may opt for sharing the burden of tackling the revisionist power with its allies (Natalizia 2017:8) as the Huawei and the Meng Wanzhou case⁵ is demonstrating nowadays. Many of Washington's allies and partners are gathering together with the US against China's ambiguous technological presence in the world through its state-owned or state-sponsored firms

5 See <https://www.bloomberg.com/news/articles/2019-01-29/u-s-message-to-world-with-huawei-case-don-t-trust-china-on-5g>

(Williams 2019). This dynamics of coalition formation is expected to persist so that China-friendly policies will be nipped in the future.

5. The European Union

Since BRI has been launched in 2013, the European Union has not formulated a common and coherent strategy in order to react to the Chinese project, leaving the Member States free to pursue different approaches. While some members opted for their involvement already at the preparatory phase of the initiative back in 2013, others chose to wait, in order to learn more about Chinese intentions behind BRI. Other members, simply, didn't join it at all. The Central-Eastern European countries (Albania, Bosnia, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Macedonia, Montenegro, Poland, Romania, Serbia, Slovakia, Slovenia) have proved to be definitely more solid: they set up with Beijing a specific framework (the "16+1") for cooperation and they convene regularly in meetings – last one in July 2018 – where BRI is a focal topic of discussions. The EU political vacuum has thus permitted a process of collective clientelism vis-à-vis Beijing, «playing into the hands of China» (Bradani 2018:3), and in the matter of international promotion of human rights, democracy and the rule of law, produced four different patterns among EU states' foreign policy towards China: «(a) active and vocal; (b) active and discreet; (c) passive; and (d) passive and potentially counteractive» (Rühlig et al. 2018:12).

China has recently shown eager to cooperate with the European Union in order to counterweight the worsening relationship with the US and the international environment seems to lure Brussels and Beijing together especially in those areas of policy where the US has proven to be

erratic and alienating (Poggetti 2018) but the cooperation will remain wary. In the longer term, indeed, most of the scholars do not see many chances for a closer EU-China cooperation because of many factors such as the transatlantic alliance shifting towards the Indo-Pacific region (Walt 2019), growing «political influencing efforts in Europe» by the PRC (Benner et al. 2018), national security concerns (Feng-Saha 2019), opposing perspectives on the rule of law and human rights. EU's normative power (Manners 2002) could be not enough, then, to protect European interests in the face of China's geopolitical growing role (Maher 2016). It is worth mentioning that the EU-China Strategic Agenda for Cooperation – providing the guidelines for the Brussels-Beijing relationship – is close to expiring (2020), hence discussions on its renewal have already begun. In this regard, the High Representative Federica Mogherini intervened with a Joint-Communication in July 2016 from whom some essential takeaways of a new European engagement with China can be drawn. Among the others, Brussels aims to «promote respect for the rule of law and human rights within China and internationally» and to «maximise EU cohesion and effectiveness in its dealings with China» (Mogherini 2016:3). Likewise, in September 2018 the EU High Representative, despite attesting that it is still possible to «build win-win solutions», spoke up against «restrictions on freedom of religion, on minorities' rights, and on freedom of association and expression» in China (Mogherini 2018). China's poor record when it comes to human rights, democracy, liberalization of the market, trade openness and intellectual property is expected to take the center of the stage of EU-China relations, being at odds with Beijing's demand that the EU doesn't meddle with its non-negotiable «core interests», e.g. Tibet, Taiwan, Xinjiang among the others (Szcudlik 2019). Indeed, in the long run, the EU and China are expected to conflict on an increasing number

of dossiers, and this will shut the door to EU member states for cooperating with Beijing. Echoing what the Trump Administration claimed in its National Security Strategy, in 2018 German Foreign Minister Sigmar Gabriel warned that «China is developing a comprehensive systemic alternative to the Western model that, in contrast to our own, is not founded on freedom, democracy, and individual human rights» (Gabriel 2018). The «constructive approach» Italy has adopted to China (Casarini, Mariani, Angiolillo 2018) could prove ineffective in safeguarding the Italian position in Europe.

6. Sailing west: BRI and the Mediterranean Sea

China has been trying to open up for at least two decades and this is forcing other countries to adapt. The naval ship-building output is concretely one of the expressions of the new magnitude of power projection that Chinese foreign policy initiatives are creating (Erickson 2016). Growth rates of the naval shipyard's production confirm this trend also in qualitative terms, differentiating vessel types much more than other countries. The increasing trend in production in the last 4 years reveals that China's program produces more tonnes than the total in service under the Indian military force. During 2015-2017 the growth rate of vessels production surpassed the US rate (Child-Waldwyn 2018). In the short run, accelerating dynamics proves that China is changing and preparing itself to sail the seas with different aims: to increase the purpose of its military operation but also to defend existing commercial opportunities and to exploit new one. The geography of this flow conducts to the Mediterranean Sea, whose area is a nerve center of global trading. since it handles 20% of the global maritime traffic. The Asia-Mediterranean Sea route across South-East Asia, the Indian subcontinent, the Gulf States and the Suez

Canal «grant a variety of strategic and intermodal hubs with a higher average loading capacity compared to all the other global traffic routes» ([Ferrara-Panaro 2018](#)). This, of course, includes a beneficial decline in cost. Indeed, at the beginning of 2018, the sea shipment of a container from Shanghai to Europe costs \$797 across the Mediterranean Sea and \$912 across the Northern Route. The Chinese investments in Spain, Italy, Greece, Turkey, and Israel are a further indication of Beijing's focus on the Mediterranean area. The 67% purchase of the Piraeus Port by COSCO Shipping – Beijing's state-owned maritime transport giant – is meaningful. If, on the one hand, it demonstrates that China has already found the main terminal for trafficking in the Mediterranean Sea, on the other, it is also true that, in order to reach Western Europe, Italian intermodal hubs could be a huge improvement when properly developed ([Hu 2018](#)).

Notwithstanding, more than five years since the launch of this initiative, it is hard to unambiguously assess BRI progress. According to several authors ([Hilman 2018](#); [Small 2018](#); [Yu 2018](#)), the initiative got bogged down in terms of consistency and confined to local and short-term projects turning, frequently, into monumental failures ([Kinge 2018](#)). Generally, associating a specific project to BRI is a major difficulty, since either the investment is often decided long before the BRI launch, i.e. the Gwadar port, or there is no mention of any link to the initiative but very vaguely. What it is certain, though, is that some countries, such as Kazakhstan, Bangladesh, Myanmar, Pakistan, Malaysia, and Sri Lanka, experienced strong local resistance to the implementation of BRI-related projects ([Greer 2018](#)) and that, for other countries, the financial terms for participation have gradually proven to be more prohibitive than expected, raising concerns about a

“debt-trap diplomacy” toward less developed countries⁶. Moreover, the maritime route has stalled in the Indian Ocean and possibly none of the local China’s projects will be financially sustainable (Funaiolo-Hillman 2018). In the long run, then, this massive infrastructural blueprint may suffer from increasing difficulties and BRI could not break its way to the Mediterranean Sea.

7. Conclusion

The world here presented resembles a ladder. In order to climb it and strengthen cooperation with China, Rome should be aware that each rug carries a combination of drivers and obstacles. The article aims to provide an overall assessment of how these factors could interact with each other and enable or obstruct the Italian government ambition. In the global dimension, signs of a great-power competition are reappearing, and the US-China trade war is likely to be just an opening skirmish in a multifaceted economic and technological struggle that will lure in many other nations, including several European countries. Careful moves are then needed, and Italy will have to weigh up international and regional opportunities lucidly in a short-run vs. long-run framework. Otherwise, Rome could embark in an effort that is likely to prove unsustainable in the future.

6 The debate about the “debt trap” is ongoing. For instance, see Pomfret, 2018 and Fox and Dornan, 2018

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Note

- 1 Privacy defined as the right to keep one's affair secret whereas data protection addresses the person's right to control his or her personal data and the processing of such data. This data protection can also be applicable to companies when referring to business data (e.g. trade secrets, business strategies, list of clients)
- 2 In the Cambridge analytical data, the data of 87 million Facebook users was improperly obtained, and misused for political purposes (UK Brexit Referendum and the US 2016 Presidential Election) (European Parliament, 2018).
- 3 Panama papers, Paradise papers and Luxleaks revealed by the International Consortium of Investigative Journalists (ICIJ) disclosed the exploitation of offshore tax regimes to hide funds and income, which reduce tax revenue in countries. See website ICIJ <https://www.icij.org/investigations/> (Accessed 9 February 2019)
- 4 Definition of digital economy <https://searchcio.techtarget.com/definition/digital-economy> (Accessed 9 February 2019)
- 5 According to the EU website, regulation (EU) 2016/6791 (European Parliament – Council 2016) regulates the processing by an individual, a company or an organisation of personal data relating to individuals in the EU. It doesn't apply to the processing of personal data of legal entities.
https://ec.europa.eu/commission/priorities/justice-and-fundamental-rights/data-protection/2018-reform-eu-data-protection-rules_en (Accessed 9 February 2019)

- 6 The EU-US Privacy Shield decision was adopted on 12 July 2016 (European Commission 2016) and the Privacy Shield framework became operational on 1 August 2016. This framework protects the fundamental rights of anyone in the EU whose personal data is transferred to the United States for commercial purposes. Information available at the website of the EU Commission https://ec.europa.eu/info/law/law-topic/data-protection/data-transfers-outside-eu/eu-us-privacy-shield_en (Accessed 9 February 2019)
- 7 See section 3.2.2. below.
- 8 This certificate has been proposed in the framework of the EU Cybersecurity Act approved on 10 December 2018 http://europa.eu/rapid/press-release_IP-18-6759_en.htm (Accessed 9 February 2019). This is an “EU-wide certification schemes as a comprehensive set of rules, technical requirements, standards and procedures. This will be based on agreement at EU level for the evaluation of the security properties of a specific ICT-based product or service e.g. smart cards. The certification will attest that ICT products and services that have been certified in accordance with such a scheme comply with specified cybersecurity requirements. The resulting certificate will be recognized in all Member States, making it easier for businesses to trade across borders and for purchasers to understand the security features of the product or service.”. Information available at <https://ec.europa.eu/digital-single-market/en/eu-cybersecurity-certification-framework> (Accessed 9 February 2019)
- 9 Mishra rightly argues that “Measures restricting data flows can also be examined in light of the nature of the measure and its underlying objective. Certain measures restrict data flows based on the nature or

content of the digital service and underlying data flows, for example, preventing supply of digital services that contain politically or culturally sensitive or banned content. For example, the restriction on the supply of Virtual Private Network ('VPN') services in China is intended mainly to ensure a clean internet environment within the country in line with its public morals and order interests. Similarly, Korea bans cross-border transfer of mapping data, and thereby, significantly reduces business opportunities for location-based applications such as Google Maps”.

- 10 The standard of transparency including exchange of information on request was endorsed in the G20 Summits in Washington, London and Pittsburgh, and G8 Summits in L'Aquila and Lecce (Italy); Hokkaido (Japan). The G20 meeting of Sept. 2013 in Saint Petersburg endorsed the development of a new global tax standard i.e. automatic exchange of information. Tax Annex to the St. Petersburg G20 Leader's Declaration, para.3 (G20 2013).
- 11 For an overview of the developments in exchange of information see <http://www.oecd.org/ctp/exchange-of-tax-information/> (Accessed 9 February 2019)
- 12 List of jurisdictions participating in the Convention available at http://www.oecd.org/tax/exchange-of-tax-information/Status_of_convention.pdf (Accessed 9 February 2019)
- 13 Information available at <http://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/MCAA-Signatories.pdf> (Accessed 9 February 2019)
- 14 Information available at <http://www.oecd.org/tax/automatic-exchange/about-automatic-exchange/CbC-MCAA-Signatories.pdf> (Accessed 9 Feb. 2019)

- 15 The need for more instruments for exchange of information increased since 2013 when news media around the world highlighted a steady decrease in contributions to public finances by many high-profile multinational companies and high net worth individuals. Concerning individuals, the decrease was associated to the use of offshore tax havens. Concerning multinationals, this decrease was associated with sophisticated (aggressive) tax planning techniques to shift otherwise taxable income and transactions out of the tax base. One example is the Canadian Revenue Agency on International Tax Gap and Compliance report (June 2018), where it was estimated that in 2013, the stock of hidden offshore wealth held by Canadians was between \$75.9 billion and \$240.5 billion. Canadian individuals were hiding this money in offshore tax havens, and not paying tax on it. See Section 4.1. International Tax Gap and Compliance Results for the Federal Personal Income Tax System <https://www.canada.ca/en/revenue-agency/corporate/about-canada-revenue-agency-cra/tax-canada-a-conceptual-study/tax-compliance.html> (Accessed 9 Feb. 2019)
- 16 https://ec.europa.eu/taxation_customs/business/tax-cooperation-control/administrative-cooperation/enhanced-administrative-cooperation-field-direct-taxation_en#heading_2 (Accessed 9 February 2019)
- 17 An intermediary can be either an individual or a company (i.e. accountants, advisers, lawyers, banks, etc.). https://ec.europa.eu/taxation_customs/sites/taxation/files/dac-6-council-directive-2018_en.pdf (Accessed 9 February 2019)
- 18 This is for instance the case of Norway due to the Freedom of Information act enacted in 2006. This Act

gives the right to access (certain) public documents, as well as records of public administration, at the national and local level. This means also that taxpayer income tax returns and registration of property can be accessed by any person.

- 19 This is for instance the case in the Netherlands, where tax administrations of several countries gather in one room to analyze data collected or received from the Panama Papers, Paradise Papers, and Luxleaks amongst others.
- 20 The FATCA aims to tackle offshore tax evasion and non-compliance by US taxpayers with foreign accounts. See <https://www.irs.gov/businesses/corporations/foreign-account-tax-compliance-act-fatca> (Accessed 9 February 2019)
- 21 “If one example may illustrate this is for instance the conditions for lawful processing of data and the transfer of personal data to third countries” (Mosquera Valderrama – Mazz – Schoueri – Quiñones – Roeleveld – Pistone – Zimmer 2017:20).
- 22 The 1980 (updated in 2013) OECD Guidelines on the protection of Privacy and Transborder Flows of Personal Data and the 2013 OECD report on the protection of confidentiality of information exchanged for tax purposes.
- 23 Some of the elements analysed in this section have been previously addressed by this author and others (Mosquera Valderrama – Affuso – Coco 2019).
- 24 “The Convention opened for signature on 28 January 1981 and was the first legally binding international instrument in the data protection field. Under this Convention, the parties are required to take the necessary steps in their domestic legislation to apply the

principles it lays down in order to ensure respect in their territory for the fundamental human rights of all individuals with regard to processing of personal data” (Council of Europe 1981)._

- 25 However, 3 countries have also asked for access to the Convention which at the time of writing (February 2019) is pending of approval i.e. Argentina, Burkina Faso and Morocco. https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/108/signatures?p_auth=cN6J4BCa (Accessed 9 February 2019)
- 26 At the time of writing (February 2019), this new Protocol has been signed by 24 countries of the Council of Europe and 1 third country (Uruguay) <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/223/signatures> (Accessed 9 February 2019)
- 27 See website modernisation of the Convention available at <https://www.coe.int/en/web/data-protection/convention108/modernised> (Accessed 9 February 2019)
- 28 138 S.Ct. 2080 (2018).
- 29 National Bellas Hess, Inc. v. Department of Revenue of State of Ill, 386 U.S. 753.
- 30 Quill Corp. v. North Dakota, 504 U.S. 298.
- 31 Whether or not a threshold lesser than that established by the State of South Dakota is “significant” is not addressed by the Court.
- 32 Quill Corp. v. North Dakota, 504 U.S. 298, at 312.
- 33 See <http://marketplacefairness.org/bill-text/>, last visited Oct. 17, 2018.
- 34 See <http://marketplacefairness.org/bill-text/>, last visited Oct. 18, 2018.

- 35 See <http://www.streamlinedsalestax.org/>, last visited Oct. 18, 2018.
- 36 See <https://thehill.com/opinion/judiciary/393772-after-states-win-on-internet-tax-congress-must-ensure-fairness>, last visited Oct. 18, 2018.
- 37 138 S.Ct. 2080, 2099 (2018).
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- 39 See <https://www.politico.com/newsletters/morning-tax/2018/07/24/a-return-to-online-sales-tax-295624>, last visited Oct. 18, 2018.
- 40 See <https://home.treasury.gov/news/press-releases/sm0316>, last visited October, 18, 2018.
- 41 Interim Report, Chapter 2, par. 66. The European Commission proposals, analyzed below in this paper, seem to follow the same approach: “In the digital economy, value is often created from a combination of algorithms, user data, sales functions and knowledge. For example, a user contributes to value creation by sharing his/her preferences (e.g. liking a page) on a social media forum. This data will later be used and monetised for targeted advertising. The profits are not necessarily taxed in the country of the user (and viewer of the advert), but rather in the country where the advertising algorithms has been developed, for example. This means that the user contribution to the profits is not taken into account when the company is taxed.” See https://ec.europa.eu/taxation_customs/business/company-tax/fair-taxation-digital-economy_en.
- 42 Available at SSRN: <https://ssrn.com/abstract=3167124>. See G.W. Kofler, G. Mayr & C. Schlager, Taxation of the Digital Economy: “Quick Fixes” or Long-Term

Solution? Eur. Taxn. 57 no.12:527; G.W. Kofler, G. Mayr & C. Schlager, Taxation of the Digital Economy: A Pragmatic Approach to Short-Term Measures, 58 Eur. Taxn. 4 (2018), Journals IBFD, at 2.2.

- 43 Whether or not the unilateral provisions are a violation of current international tax rules is beyond the scope of this paper.
- 44 https://ec.europa.eu/taxation_customs/sites/taxation/files/proposal_significant_digital_presence_21032018_en.pdf (last visit October 21st, 2018).
- 45 https://ec.europa.eu/taxation_customs/sites/taxation/files/proposal_common_system_digital_services_tax_21032018_en.pdf (last visit October 21st, 2018).
- 46 https://ec.europa.eu/taxation_customs/sites/taxation/files/proposal_common_system_digital_services_tax_21032018_en.pdf, article 4(1), (last visit October 21st, 2018).
- 47 https://ec.europa.eu/taxation_customs/sites/taxation/files/proposal_common_system_digital_services_tax_21032018_en.pdf, article 3(1), (last visit October 21st, 2018).
- 48 <https://mnetax.com/us-formally-asks-the-eu-to-ditch-digital-tax-30738>.
- 49 <https://home.treasury.gov/news/press-releases/sm534>.
- 50 https://www.wolftheiss.com/fileadmin/content/6_news/Newsletter/2017_Q2/WolfTheiss_Tax_Newsletter_Q1_2017.pdf (last visit October 25th, 2018).
- 51 <https://www.ato.gov.au/general/new-legislation/in-detail/direct-taxes/income-tax-for-businesses/diverted-profits-tax/?=redirected> (last visit October 25th, 2018).

- 52 Mindy Herzfeld, “Digital Nexus in the EU and United States,” *Tax Notes Int’l*, March 12, 2018, p. 1029. “Just like those who say greater taxes on tech companies in the EU are needed because those companies benefit from the EU market, a Wayfair amicus brief says online retailers without a physical presence in a state still benefit from state government investment in transportation and broadband infrastructure. In both cases, appeals to fairness underlie the arguments for changing tax rules to allow for more tax on digital transactions. Finally, both the U.S. states and the EU believe that the revenue loss resulting from new ways of doing business necessitates a revision of existing tax rules. Who should decide how to answer those questions is unclear on both sides of the Atlantic.” (Idem, pp. 1028-1029).
- 53 Recently, the Association of International Certified Public Accountants issued a [policy paper](#) advocating “international coordination to develop a global solution to the taxation concerns raised by digital transactions and the general digitalization of the economy.” (<https://www.politico.com/newsletters/morning-tax/2018/10/24/opportunity-knocks-385331>, last visit October 27th, 2018).
- 54 Digital Disruption: The Growth Multiplier. Available at: <https://www.accenture.com/us-en/insight-digital-disruption-growth-multiplier>. Visited at: 14 Sep. 2018.
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- 62 In Davos, Guedes signals a reduction in the tax burden and higher rates on dividends. Available at: <https://>

www.seudinheiro.com/em-davos-guedes-diz-que-governo-quer-reduzir-de-34-a-15-impostos-para-em-presas/. Visited at: 05 Feb 2019.

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- 64 Consultor Jurídico. New consumption tax is to improve revenue, not to make tax policy. 9 Set. 2018. Available at: <https://www.conjur.com.br/2018-set-09/entrevista-eurico-santi-professor-direito-tributario>. Visited at: 05 Feb. 2019.
- 65 The acronyms stand for: IPI (Tax on industrialized goods), PIS and Cofins (Contributions for Social Security), ICMS (Tax on the circulation of goods and some specific services) and ISS (Tax on Services).
- 66 For specific details about data and facts, in this section, see: Amaro, Luciano. 2014. *Direito Tributário Brasileiro*. São Paulo: Saraiva. Ferreira, Benedito. 1986. *A História da Tributação no Brasil: Causas e Efeitos*. Brasília. Varsano, Ricardo. 1996. *The Evolution of the Brazilian Tax System throughout the Century: Annotations and Reflections for Future Reforms*. Text to Discussion n. 405. Rio de Janeiro : Instituto de Pesquisa Economica Aplicada – IPEA.
- 67 Art. 3º - Tributo é toda prestação pecuniária compulsória, em moeda ou cujo valor nela se possa exprimir, que não constitua sanção de ato ilícito, instituída em lei e cobrada mediante atividade administrativa plenamente vinculada.
- 68 Nel nostro ordinamento né il legislatore ordinario, né quello costituzionale provvedono a fornire una definizione generale di tributo. La migliore dottrina da tempo ha delineato una definizione generale di

tributo, identificando tale nozione con quella di una prestazione obbligatoria imposta, direttamente collegata a un fatto economico e finalizzata a garantire il concorso di tutti al finanziamento della spesa pubblica, in applicazione del dettato dell'articolo 53, primo comma, della Costituzione.

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[outros-documentos/resumo-hauly](#). Visited at: 6 Feb 2019.

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- 75 Brazil. Supreme Court. ADI 1945. Available at: <http://portal.stf.jus.br/processos/detalhe.asp?incidente=1747607>. Visited on 2 Feb. 2019.
- 76 Brazil. Presidência da República. Supplementary Law n. 157, 29 December 2016. Amends Supplementary Law n. 116, dated July 31, 2003, which provides for the Tax on Services of any Nature.
- 77 Machado Segundo; Espíndola. 2018. If concentrating the collection in the Municipality where the service provider is located would require a consideration about the proportionality of the revenue distribution between the “source-destination municipalities”, aiming for a greater balance in the municipal revenues, on the other hand, to allocate the taxing rights to the place where the service taker (or, in the case of goods, its consumer) is located, in the Brazilian case, besides demanding a major legislative change, would face technical difficulties, in the light of the enormous amount of municipalities, the divergence of their legislation and the country’s territorial extension, aspects that even make problematic the changes already carried out in this sense by Supplementary Law n. 157/2016.
- 78 São Paulo. Câmara Municipal. Lei nº 16.757, de 14 de novembro de 2017.
- 79 Brazil. Conselho Nacional de Política Fazendária. Convênio ICMS 106, de 29 de Setembro de 2017.
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REPORTS AND CONFERENCES

THE WORLD COMPLEXITY SCIENCE ACADEMY (WCSA) PROUDLY PRESENTS A CALL FOR PAPERS, PANELS, AND PRESENTATIONS FOR THE 9th WCSA WORLDWIDE CONFERENCE

Ischia, Italy

March 23rd - March 25th, 2020

SECTION ONE (I): PROLOGUE & WCSA PRESIDENTIAL ANNOUNCEMENT

As the current President of the World Complexity Science Academy (WCSA) -- which is a European-based policy modelling think-tank headquartered in Bologna, Italy -- I am delighted to invite you to the “2020 WCSA Call for Papers and Panels” for our 9th WCSA Worldwide Conference in Ischia, Italy. The conference will take place on March the 23rd through 25^h in 2020. The conference is hereby titled:

GEGNET: A Complex System Vision on Global Governance and Policy Modelling

Please feel free to redistribute this information on the Internet to potentially interested parties, whether they come from academic, legislative, financial, or governmental sectors. The event promises to be ground-breaking, academically, but we want to also welcome policymakers and global players representatives among the attendees for what promises to be an extremely robust networking opportunity for the international professional. *However, please note that the official language of the conference is English.*

SECTION TWO (II): THE WCSA CONFERENCE MANIFESTO

Gegnet is a German theoretical concept meaning limitless opening to the possible.

The current global economic context of worldwide business and direct foreign investment is comprised of a decreasing number of huge players named Global Players (GP), such as the European Union (EU), the United States (US), the MERCOSUR, the United African Market, along with Brazil, Russia, India, China and South Africa (BRICS). It radically redesigns also the public policies and their scale about digitalization, intangible asset portfolio creation (e.g. patents, licenses, trademarks, copyrights), taxation, public expenditures, international trade regulations and much more.

The aforementioned Global Players are already interconnected by digital technological convergence, international treaties and legal transplants: (e.g.) CETA, NAFTA, MERCOSUR,

African Union. So, the linkages among Canada, the US, and Mexico under NAFTA; the EU under the CETA, and the South countries in Latin America under the MERCOSUR are shaping a legislative fabric where free trade, technological standardization, and shared human rights policies are converging towards congruence. The emerging key challenge is enormous and evolutionary, particularly for those who are responsible and in power of direct foreign investment flows. For instance, the recent treaty between the EU and Japan is a fine piece of evidence for the argument of international technological and legal convergence. To sum up, the network of treaties wrapping up our planet is shaping a spiral convergent trend, pushing forward the shift from international to supranational lawmaking through the setting up of a transnational agenda for global governance and policy modelling. The internal differentiation of the

law system is creating different types of Global Players, more or less improving the complexity and variety inside the law system, which are the keys of evolutionary systems. Law convergence among Global Players is strategic in this changing scenario and the Mediterranean area reveals to be a special hub between Europe and Africa, while Southern EU at large is also a special hub with Central - South America. These hubs are offering variety in a huge catalogue for law shopping from Spain to Malta, from Portugal to Brazil, from Cyprus to the redesigning of the North Africa and - driving further - the emergent East African Federation.

The key evolutionary challenge and paramount goal of the WCSA Conference is to be the host for innovative lawmaking / policy modelling, legislative implementation, institutional redesign, and economic development also by citizenship expansion. We will work on shaping a triple helix of (1) legislative design, (2) free-trade alignment, and (3) digital standardization.

SECTION THREE (III): THE WCSA “SCIENTIFIC STEERING COMMITTEE”

Tyler L. Adams, University of The Bahamas

Badreya Al Jenaibi, United Arab Emirates University, UAE

Angel Antonio Alberto, SFAI, Argentina

Marcelo Amaral, Fluminense Federal University, Brazil

Nicoletta Bersier Ladavac, Thémis, Switzerland

Adele Bianco, G. D’Annunzio University, Italy

Richard M. Brandt, Director of Iacocca Institute, Lehigh University, United States of America

Rod Carveth, Morgan State University, United States of America
James Chen, Michigan State University, United States of America
Gerhard Chroust, IFSR General Secretary, Austria

Gyorgy Csepe, ELTE Budapest, Hungary

Giampiero Di Plinio, G. D'Annunzio University, Italy
Emilia Ferone, G. D'Annunzio University, Italy
Edit Fabó, ELTE University, Hungary
Polona Filipic, University of Ljubjana, Slovenia
André Folloni, PUCPR, Brazil
Roberta Iannone, University La Sapienza, Italy
Michael C. Jackson, Editor of Systems Research and Behavioral Science, United States of America
Francesca Jacobone, CREIS, Italy
Muneo Kaigo, University of Tsukuba, Japan
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SECTION SIX (VI): HOW TO SUBMIT A PANEL/ PAPER PROPOSAL

Should you wish to submit a PANEL PROPOSAL as a panel proponent (PP) and to be the chair”, the proposed panel please do not hesitate to contact me by sending a simple email or Microsoft WORD Document including the following information:

1. Panel Proponent FIRST NAME
2. Panel Proponent LAST NAME
3. Panel Proponent INSTITUTIONAL/ORGANIZATIONAL AFFILIATION
4. OFFICIAL PANEL TITLE
5. A maximum 1000 WORD abstract of the entire panel core idea

6. Panel Proponent Email address and cell phone number / WhatsApp contact number
7. A list of the panel speakers -PS- (minimum of 5, maximum of 10)
8. The first and last name of each Panel Speaker
9. Panel Speaker institutional affiliation and presentation/paper title
10. The abstract of each Panel Speaker's presentation – minimum 200 words, maximum 400 words per each submitted abstract
11. Please specify if the PANEL is a General Panel (GP) mostly focused on theory, epistemology, high strategy, methodology, descriptive research or a Workshop Panel (WP) focused on policy modelling, policymaking, applied research, strategic consulting, training, coaching, and mentoring for private sector, investments, governance, urban-metro development and so on.

The submission of the panel proposal is in care of the panel proponent (PP) and s/he can submit it to me by email or by email doc attachment at: wcsaconferences@gmail.com. In the email subject line, please specify: WCSA CONFERENCE SUBMISSION

May you wish to submit a single paper proposal please do not hesitate to contact me by sending me a simple email or Microsoft WORD document, including the following information

1. AUTHOR FIRST NAME
2. AUTHOR LAST NAME
3. AUTHOR INSTITUTIONAL AFFILIATION
4. PRESENTATION TITLE
5. A maximum 400-WORD presentation abstract
6. An email address and WhatsApp contact number

OFFICIAL SUBMISSION DEADLINE:

MAY 6th, 2019

Notifications of acceptance/rejection feedback for the Conference will be electronically communicated by May 20, 2019 via email to the panel proponent (PP). It is the panel proponent's task and responsibility to notify all members of his/her panel, the conclusive results. In order to be included in the "Official Program," the panel proponent must respect the following guidelines and requirements: **BY JUNE 10, 2019** the panel proponent must confirm their presence (and their panel members' presence) at the Conference by registering and paying the WCSA Membership and Conference Fee.

Nota bene: in order to participate in the Conference as a speaker, it is MANDATORY to hold a paid membership with the WCSA. The WCSA Conference Fee (listed below, according to member's rank/specialization) is totally inclusive of the annual WCSA Membership Fee. Accordingly, the Conference Fees (including WCSA Membership Fee) are hereby established as:

Senior Scholar/Professional Rank (Full Professors/ Associate Professors/ Executives):

260 Euro

Junior Scholar/Professional Rank (Assistant/ Middle Management/ post-doc/ PhD students):

200 Euro

Virtual Presentation by Zoom/Skype videoconference (to be conducted virtually):

160 Euro¹

Attendance at the Convention as an Auditor:

120 Euro

In order to make timely payment, please assure your pay-

ment arrives to WCSA **BY JUNE 10, 2019**, using one of the two payment methods:

Wire Transfer to WCSA bank account in Italy

WCSA IBAN CODE: IT37Y0301503200000003497794

FINECO BANK, Salita San Nicola da Tolentino 1/B, Roma

For foreign bank transfer

Receiving Bank (Swift): UNCRITMM BIC Beneficiary Bank: FEBIITM1

PayPal Transfer

WCSA will send you an e-mail providing the link to proceed with the payment.

Please note that by choosing PayPal, an additional PayPal service fee may be added to the original amount of the conference fee

SECTION SEVEN (VII) THE WCSA CONFERENCE PROCEEDINGS

This is our 9th Global Conference. The previous eight conferences have generated several noteworthy proceedings:

BOLOGNA: <http://www.aracneeditrice.it/index.php/publicazione.html?item=9788854842700>

¹ The presenters must sent their own video presentation to the Organizational Committee within 28th February 2020 and they must be WCSA members in good standing and having paid the conference fee BY JUNE 10, 2019 otherwise he presentation will not be considered

PALERMO: <http://www.aracneeditrice.it/index.php/publicazione.html?item=9788854848513> VIENNA: <https://www.amazon.it/Mapping-Systemic-Knowledge-Giulia-Mancini/dp/3659490261> TENERIFE: <http://www.cambridgescholars.com/redesigning-worldwide-connections>

BUDAPEST: <http://www.cambridgescholars.com/inventing->

the-future-in-an-age-of-contingency AMSTERDAM: <http://www.cambridgescholars.com/systemic-actions-in-complex-scenarios>

RIO DE JANEIRO: <http://www.cambridgescholars.com/governing-turbulence-risk-and-opportunities-in-the-complexity-age>

Nota bene: The 8th WCSA ROME Conference held at the Europarlament in November 2018 will have three (3) publication outcomes (all in progress); two academic journal special issues and one book. Approximately one (1) month after the 9th WCSA CONFERENCE takes place, all participants will receive a specific call for full papers and the appropriate editorial guidelines for Authors.

Hoping to see you at our next conference in Ischia, I remain sincerely yours,

Prof. Andrea Pitasi, Ph.D.

WCSA Honorary Life President D'Annunzio University

DIRECT EMAIL ADDRESS -- pitasi@da@gmail.com

International Conference

A Call for Tolerance in the EU

June 6-8, 2019. Oradea, Romania

University of Oradea's Department of Political Science and Communication

The **COMXEN Project** is an Erasmus + Programme (Jean Monnet module, 599379-EPP-1-2018-1-RO-EPPJMO-MODULE) run by the University of Oradea's Department of Political Science and Communication, which focuses on communicating as a means to combat xenophobia. The COMXEN Project aims to gather professionals, decision makers, academics and students willing to engage in combating xenophobic behaviors by using university knowledge and communication strategies. According to our hypothesis, the reasons for such negative attitudes are the objectification of the OTHER and the fact that targeted groups are DIFFERENT. It includes phenomena such as chauvinism, racism, antisemitism, anti-minority sentiment, anti-romanyism, anti-islam, sexism, homophobia, xenophobic nationalism ... It takes various forms; from hate speech and discriminative behaviors – theoretical and practical – to violence against marginalized individuals and groups.

Panel topics: 1. Xenophobic behavior in today's Europe: Political communication, social attitudes; 2. Xenophobia and anti-Roma manifestations; 3. Framing Xenophobia in the media; 4. Anti-Minority discourse/attitudes (gender, religion, sexual orientation, ethnicity); 5. How to revive the European humanist tradition of tolerance? (Overview on philosophy, art, fiction literature and films); 6. New strategies in combating Xenophobia.

Contributors are required to write in English. They are advised to follow the academic submission guidelines and style sheet.

Abstracts: The abstracts (max. 500 words, followed by 3-5 keywords) will be submitted for review in electronic MS Word format. Please provide the full names, affiliations and e-mail addresses of all authors. Authors are also asked to send a 100 words biographical note focusing on research activities, scientific interests and previous publications. Abstracts should be e-mailed to Irina Pop (popirinamihaela@gmail.com) and Gabriela Goudenhof (gabrielagoud@gmail.com) by February, 11 2019 at 16:00.

COMXEN committee will send acceptance/rejection notices to submitters on February 21, 2019. To avoid technical problems, early submission is strongly encouraged.

Papers must not have been previously presented, scheduled for presentation, accepted for publication, or published. The estimated duration of the peer review process is 6 months.

Accepted papers will be published in the Conference Volume – **Fighting Xenophobia in the EU** – at a recognized international publishing house by the next year.

Important dates:

11. February 2019: Deadline for submission of abstract

21, February 2019: Notification of acceptance

1 March 2019: Delivery of full Abstracts paper

6-8 June 2019: Conference in Oradea, Romania

Travel & Accommodation

There is no participation fee for the conference. Accommodation and meals during the conference will be paid by the organizers for one presenter of each accepted paper. There are no available funds for travel costs.

More info: **IRINA POP** popirinamihaela@gmail.com

BOOK REVIEW

László Tamás Vizi

Trianon 100 Years Later – From Border Revision to National Cooperation (1920-2010)

CEPoliti Ed., Budapest 2018. pp. 264

ISBN: 9786155771019

By János Simon

The volume comprises the chronicle of nine decades and analyses different historical eras and political situations regarding the fact that how Hungarian politics dealt with the Trianon Peace Treaty and its consequences. That Trianon trauma, which was the greatest national tragedy of the 20th century Hungarian history. Not even the two lost World Wars, the foreign military occupations, or the oppression of the revolution and freedom fight in 1956 can be compared to it.

This volume deals with one of the central issues of Hungarian politics, the Trianon dictate, as well as the solution attempts and plans to resolve it. Based on historical sources and essential records, the volume presents the revisionist idea in five chapters, the Trianon issue, the place of the national-policy concept in the history of Hungarian mentality, from the root of the problem to our present days. It demonstrates how the individual political systems – from the nationalism-oriented Horthy-era, through the Rákosi and Kádár periods' communist dictatorships, way up to the right- and left-wing governments after the Hungarian change of regime (1989) – dealt with the issue. It outlines such a historical arc, which from the dealing with

the Trianon issue in an “offended way” – a solution that empathized the suffered damages instead of the real-political solutions – to achievements within the given international circumstances by the implementation of the act of Testimony for National Cohesion in 2010.

The English publication of this volume was mostly justified by the importance of the topic. As the Trianon Treaty truncated the historical Great Hungary, forcing millions of Hungarians under foreign rule and this fact fundamentally redrew the political, ethnic, economic and cultural circumstances of Central Europe, which caused deep wounds that still exist, heal with difficulty and are constantly lacerating, both for the Hungarians and the people living in the Carpathian basin.

Together with the publisher, we found it indispensable that the non-Hungarian Reader should receive such a monograph from a Hungarian author, which is capable to propose a viable solution beyond the “offended-kind politics” for the almost 100-year-old Trianon problem. The latter was the act of Testimony for National Cohesion, which was passed by the Hungarian Parliament on 31st July 2010, and was symbolically proclaimed on 4th June 2010, which was the ninetieth anniversary of the signing of the Trianon Peace Treaty. The Testimony for National Cohesion was the way how Hungarian politics faced Trianon and its consequences, which became the fundamental element of a new and positive vision of national strategy.

The volume in English is basically is the revised version of the Hungarian one, which was published in 2016 in Budapest by the CEPoliti – L’Harmattan publishing houses. (The original Hungarian title is: “A sérelmi politizálástól a nemzeti összetartozásig. Trianon, revízió, határkérdés, nemzetegyesítés. 1920–2010.”.)

The book contains five chapters: The first part of the book deals with the Trianon Peace Dictate and his dramatical consequences for Hungary. The second part focusing to the alternative solutions of trauma between the years 1920 and 2010. The third chapter deals with the attitudes of the political leadership and elite of the socialist-communist period regarding Trianon and the situation of 4-5 million Hungarian minorities abroad. The fourth part of the book deals with the emergence of the new Hungarian national policy after the regime change (1989-2010). The last chapter of the book describes the creation of the above mentioned law as well as the controversy surrounding it. (The Memorial Law was proclaimed symbolically on 4th of June 2010 and declared by the Treaty of Trianon was signed (4th June) the Day of National Cohesion.

In the first part of the book the author published deals with the lost of Hungarian population and territory, the dismemberment of the historical Hungarian Kingdom. Trianon Peace Dictate and his dramatical consequences for Hungary (see the table 1).

Table 1. The Dramatical Loss of Hungarians

Hungarian loss	Before the Dictate	After the Dictate	Loss in proportion
Territory loss	282.870 km ²	92.963 km ²	2/3
Population loss	18.264.533	7.615.117	1/2

(Source: Vizi, L. Trianon... p.15.)

In the second chapter of the book the author focused on the mainstream issues, presented the most relevant plans which where proposed between the two WWs, as well as the short-lived revision results obtained between 1938 & 1941.

The third chapter is dealing with the human right situation of the Hungarian minorities in abroad who remained abroad. It showcases their servile attitude, as their policy was to fulfil Moscow's will, which was framed by the proletarian internationalism, while they refused to take notice of the problems and left Hungarian minorities to the mercy of their "brotherly and comrade" socialist states. This is why this chapter was entitled "Problem Swept Under the Carpet".

The fourth part of the book deals with the emergence of the new Hungarian national policy after the change of regime in 1989, while it continues describing the dilemmas of governments between 1990 and 2010, and also how these administrations defined national policy in their foreign policy goals as well as in the contemporary international environment. A clear distinction was made between the national policy goals of the centre-right and the socialist-liberal political formations, while the chapter details the unsuccessful referendum of 2004 which essentially caused a spiritual Trianon-like shock. Based on this referendum, the author concludes that by the mid-2000s Hungarian minorities living in the Carpathian Basin became the object of political struggle of the successor states' domestic policies as well as of the home affairs of Hungary. The moral crisis evolving from this referendum was solved by a new nation-unification political course and legal framework. First, this was achieved via the modification of Hungarian citizenship laws, second, via the ratification of the new "Act No. 45 of 2010 on The Testimony for National Cohesion" (Nemzeti Összetartozás melletti tanúságtételről szóló törvény). The final chapter of the book describes the creation of the above mentioned law as well as the controversy surrounding it. The law announced the new program of national self-construction of the Hungarians living in the Carpathian Basin so that "all the individuals

and communities of Hungarians who were placed under the jurisdiction of other countries can from that time on be part of the unified Hungarian Nation and the union over borders could become a reality, while simultaneously it is a fundamental part of the common identity of the Hungarian individuals and communities”.

László Kövér, as President of the Hungarian Parliament (Országgyűlés) closed the discussions in the Parliament with the following sentences. It is not quite clear how 9th of May, the day of the victors comes in here. In order to make it acceptable for everyone, even for the losers, we renamed it Day of Europe, as it still meant another horrible occupation and all its consequences for us. How could one juxtapose it with national conference?” The result of final vote on the act of the Act of Testimony for National Cohesion (31 May, 2010) out of the 369 MPs present, 302 voted “yes”, 55 voted “no”, while 12 abstained. The Declaration of National Cohesion also put the peace dictate itself into a new aspect and made the former “day of morning” and all the encroached resolution attempts during the long decades, the symbols of “national unification” across borders.

The comprehensive approach to the subject and the strong support of historical sources make this book a unique compendium of knowledge about the history and consequences of Transilvania-dictate.

The publication has a really attractive design, the graphs and tables are well-edited. The aim of the figures was not to increase the volume but to make the written text more understandable.

Abstracts

Andrea Pitasi and Emilia Ferone: Turbulent Convergence: A WCSA Presidential Systemic Agenda Setting for World Order Lawmaking and Policy Modelling

“Research determines policy which determines politics” is the key concept and motto of World Complexity Science Academy (WCSA) a think tank providing scenario analysis and strategic ones – through a complex system process based approach – about transnational, multinational and supranational organizations. This work is focused on a scenario analysis and strategic agenda setting of the Global Player Age (GPA) we began to live in since 1989 at least although (methodological) nationalism is still common sense for most of the uneducated public opinion while the new, acquisitive élite of the GPA is clearly shaped as Hypercitizenship.

Sara Petroccia and Tyler Adams: Civilization and Globalization

In this paper, globalization is considered as the expansion of human interaction as a global phenomenon above flows and relationships, featured by regularity, systems and structures; a phenomenon where relationships show interdependency features and mutually influence each other on a global scale (Martell 2010: 61), focused on Globalization as a process resulted of many processes with the potential of having a type of civilizing influence upon humanity and it may also contribute to the emergence of new forms of identity and the multiculturalism consisting of innumerable global contributions, coming mainly from civilization process. In the mean time civilization is considered as the totality of physical and metaphysical facilities, as the civilizational

ideas, practices and contestations have been integral to the constitution and diffusion of international society through their multifaceted role. These definitions lead to the elucidation of today's globalization and its impact on human society in a civilization perspective attempting to establish and homogenize the institutional framework for free market capitalism worldwide. By doing so, it marginalizes many societies and civilizations that have not yet espoused capitalistic freedom, as some modern and affluent societies have done. For these societies and civilizations, communal cooperation for survival is more important than individual emancipation and global relations are not globally inclusive, since globalization can overcome power relations, inequality and conflicts: cultures of different parts of the world give rise to dynamic hybrids and to the possibility of increasing fusion between different groups.

Farooq A Kperogi, Tyler Adams and Andrea Pitasi: Digitalization - The Internet of Things in the Turbulent Convergence of Our Times

The goal of this work is to show how the convergence of everything described in this special issue – that is, the social, economic, political, legal, and anthropological aspects of human evolution on this planet – are strongly enhanced by the key role of informatics – represented by the Internet – in serving as a digital global platform that connects human nature and the most advanced scientific, political and technological frontiers that humanity has evolved over the millennia. The high-speed evolution of the internet is the perspective this paper adopts in the general frame of the turbulent convergent scenarios we are living in, which serve as a piece of the wider puzzle called global convergence. It explores how digitalization evolved, mutated and then converged.

Irma Johanna Mosquera Valderra^{ma}: Processing Personal and Business Data and the Rule of Law in the Era of Digital Trade

This article addresses data protection including the automatic processing of personal and business data as a result of the flows of information and the digital trade. Nowadays, data is being collected, exchanged and used in small or large amounts by governments, international organizations and companies for medical, educational, social, industrial and tax purposes amongst others. The increasingly collection, exchange and use of data by companies and governments, calls for attention to the legal protection in the collection, exchange, use, monitoring and processing of this data. Furthermore, the use of big data also raises questions regarding the protection of privacy and also the safeguards in place for the data controllers among others. The main question of this article is *are the instruments in the era of digital trade, internet governance and taxation sufficient to guarantee the privacy and data protection of individuals and business?* In order to answer this question, this article will address the challenges and the instruments for the protection of the use of data and big data in three areas: trade and internet governance and taxation.

Olimpia Affuso and Antonella Coco: Big Data: a Challenge for Social Sciences - Criticisms for Social Knowledge and Politics

The increasing relevance of Big data constitutes a new challenge for social sciences. We focus on the relationship between Big data and social sciences, addressing some emerging breaks and gaps, namely: 1) theoretical-methodological; 2) technological; 3) political-regulative. With this regards, social scientists are required to explore

potentialities and limits of methods based on digital information in comparison to the tradition research methods. Are Big data challenging the role of theory in social research? Furthermore, problems concerning data reliability, control and scientific validation and the power of infrastructures appear to be crucial. In addition, we highlight some other aspects relevant to the use of Big data within social sciences, which require the regulative role of politics, such as inequalities in terms of data access, personal data abuse, costs of scientific Big data based research.

Mariavittoria Catanzariti: Data Sharing Beyond the Public/Private Divide

The paper explores how in the field of information sharing nation-states are increasingly in need of new actors' cooperation, whose either governmental or non-governmental role is no longer relevant. Due to the far reaching development of big data analytics and machine learning, the logic of data gathering and processing has been completely altered by new forms of social control. The relevant players in this new scenario are private companies, such as financial institutions, communication providers, or insurance companies, rather than political actors. Such private actors, once traditional contenders of the nation-state, tend to play a crucial role as intermediaries, in-between nation-states and individuals. As a result, in order to effectively pursue their own institutional aims, nation-states need to rely on systems of multi-layer governance which allow them systematic access to private sector data. The paper will interrogate the cooperative and competitive dimensions of the public and public sector in the field of transnational information sharing with the ultimate aim to address the challenges to state sovereignty.

Irma Johanna Mosquera Valderrama: Processing Personal and Business Data and the Rule of Law in the Era of Digital Trade

This article addresses data protection including the automatic processing of personal and business data as a result of the flows of information and the digital trade. Nowadays, data is being collected, exchanged and used in small or large amounts by governments, international organizations and companies for medical, educational, social, industrial and tax purposes amongst others. The increasingly collection, exchange and use of data by companies and governments, calls for attention to the legal protection in the collection, exchange, use, monitoring and processing of this data. Furthermore, the use of big data also raises questions regarding the protection of privacy and also the safeguards in place for the data controllers among others. The main question of this article is are the instruments in the era of digital trade, internet governance and taxation sufficient to guarantee the privacy and data protection of individuals and business? In order to answer this question, this article will address the challenges and the instruments for the protection of the use of data and big data in three areas: trade and internet governance and taxation.

Giovana Camila Portolese: The Hypercitizenship Systemic Vision - Aligning Digitalization, Intangibles and Taxation

The ICT revolution has dramatically helped the flourishing of the intangible economy (Haskel-Westlake 2017). The digitalization is, hence, one of the many manifestations of a broader phenomenon, which is the flow of dematerialized information (Normann 2001). Digitalization technologies speed up the rise of the intangible economy posing new

horizons for the taxation of cross-border transactions. The taxation of the digital economy are under scrutiny of the OECD/G20 BEPS Project for a common approach, however nation-states are still struggling to accept the reduction of their *de facto* sovereignty as well as are resisting to the ineluctable upward verticalization of normative production to the international/supranational level. The purpose of this paper is to investigate how the multidimensional conceptualization of Hypercitizenship (Pitasi 2012) can contribute to overcome the methodological nationalism (Beck 2006) permeating the debate regarding the taxation of the intangible economy.

Dalton Dallazem and Natália Brasil Dib: Is South Dakota V. Wayfair, Inc. Case Relevant to the Digital Economy Taxation?

On June 21, 2018 the United States Supreme Court decided the case *South Dakota v. Wayfair, Inc.* (138 S.Ct. 2080 (2018)), brought by the State of South Dakota against internet sellers with no employees or real estate in the State, seeking declaration that these sellers had to comply with recently enacted statute requiring internet sellers with no physical presence in the state to collect and remit sales tax. The Court held that a business does not need a physical presence in a State to meet the requirements of due process, which call for some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax. Also, the requirement that a state tax on interstate commerce must apply to an activity with a substantial nexus with the taxing State is established when the taxpayer or collector avails itself of the substantial privilege of carrying on business in that jurisdiction. The purpose of the paper is to analyze to what extent the reasoning adopted by the U.S. Supreme Court

has some relevance, if any, to the taxation of the digital economy, especially in the aftermath of debates arising from the OECD Interim Report published on March 16, 2018 – Tax Challenges Arising from Digitalization – and from the unilateral measures already made public, as the apparent decision of the EU to promote an equalization tax designed to target primarily United States MNE. It is important to note that some commentators have mentioned that the United States, which historically has disapproved taxation without physical presence, has now provided the appropriate precedent for the rest of the world to tax U.S. digital companies.

Marcio Henrique Sales Parada: Brazilian Tax System, Tax Reform and Taxation of the Digital Economy

Nowadays, digitalization is crucial in several economic fields and the discussion about how to tax the digital economy is present in almost all forums in tax matter. Brazil is one of the biggest economies in the world, it presents remarkable particularities in terms of taxation (federative structure, domestic competition for taxing rights, constitutional framework) and the country is just starting the debate about a model or a concrete proposal to tax transactions with economic substance, involving digitalization. The paper starts considering that tax law is particular and not easily transferable between different societies and cultures and, after providing a historical analysis, it is proposing a reflection about what could occur when introducing or adopting some models to tax digital economy, in Brazil. The analysis arose because the country once again discusses the need for a tax reform and digital economy should be a crucial point on that.

Lorenzo Termine and Francesco Lomonaco: Short-Term Advantages vs. Long-Term Uncertainty in Italy-China Cooperation

The Italian Five Stars-League government has on several occasion advocated enhanced cooperation with the People's Republic of China, especially within the Belt and Road Initiative (BRI), the massive infrastructure project launched by China in 2013. The goal of this paper is to contribute to the debate drawing from International relations theory's and political science's concepts to determine whether closer cooperation with China would be feasible and beneficial for Italy in the short term and, then, whether these advantages are sustainable in the longer term given Italy's trade position and economic system, the shifting international context and BRI's progress. The key finding is that while short-term benefits may stem from stronger ties with China, in the longer-term several factors will undermine the cooperation: the worsening of US-China and EU-China relations that may eventually push Italy to take a stand against China. the ambiguities surrounding BRI's future as it shows structural flaws, and the over-dependence that Rome could suffer from strengthening commercial ties with Beijing. The Italian government should consider these elements in order to ponder the advisability of strengthening relations with China.

ABOUT THE AUTHORS

Tyler Adams is an organizational change management specialist, focusing on transcultural competency and technological diffusion of innovations. Dr. Adams serves as the Editor-in-Chief of the World Complexity Science Academy Journal, and has published nine (9) books and numerous peer-reviewed journal articles and book chapters on communication in the online environment. A former Fulbrighter for the U.S. Department of State in Central Asia, Dr. Adams has also worked in Italy, Peru, Cambodia, Kuwait, Saudi Arabia, Mexico, and the Bahamas. He is Dean of Continuing Education and Lifelong Learning at the University of The Bahamas, currently managing a \$2 million curriculum portfolio. e-mail: tyadams.334@gmail.com and tyler.adams@ub.edu.bs

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