SOCIAL JUSTICE AND
THE WORLD OF WORK

Possible Global Futures

Essays in honour of Francis Maupain

edited by BRIAN LANGILLE
and ANNE TREBILCOCK
In this book, leading international thinkers take up the demanding challenge to rethink our understanding of social justice at work and our means for achieving it – at a time when global forces are tearing the familiar fabric of our working lives and the laws regulating them. The authoritative commentators examine the lessons revealed by the pandemic and other global shocks for our ideas about justice at work, and how to advance that cause in the world as we now find it.

The chapters deliver critical re-assessments of our goals, explore our new challenges, and creatively re-imagine trajectories for progress on two global fronts – via international institutions and by a myriad of other transnational techniques.

These forward-looking essays are in honour of Francis Maupain, whose international career and scholarly writing are inspiring models for those who, in a changing world, seize opportunities for creativity in the pursuit of global justice at work.
Social Justice and the World of Work

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*Essays in Honour of Francis Maupain*

Edited by
Brian Langille
and
Anne Trebilcock
Francis Maupain is one of the most influential and respected figures in international labour law. One of his many strengths is his ability to engage at the leading edge of academic discourse while at the same time playing a key institutional role and deploying extraordinary administrative, diplomatic, and political skills in the name of real reforms. This book of essays celebrates this remarkable combination of talents and the resulting career which describes a magnificent arc in the heavens of the discipline of the international law of work. This volume also celebrates the man whose humanity and dedication to the advancement of basic values made him a personal mentor to many, and an inspiration to countless others.

Maupain was born in Montpon, Dordogne in occupied Southwestern France on 1 October 1941. His grandfather and father were notaries there. He graduated from the Lycée St Genèse La Salle in Bordeaux before studying at the University of Bordeaux from 1960 to 1964. He earned a law degree (licence en droit) and a diploma in political science in 1964. This habit of combining law and politics remained a constant – both as a student and in his career at the International Labour Organization (ILO). He spent the following year at the Collège d’Europe in Bruges, Belgium. From 1965 onwards, he studied at the Sorbonne in Paris, first earning a diploma and then being awarded a Doctor of Law degree by the Faculty of Law at Paris-Panthéon in 1976. Maupain’s academic record was outstanding throughout, and after Bruges he was awarded a Harkness Fellowship for two years study at Harvard. Maupain continued his ‘law and politics’ agenda at Harvard in 1966–1968, earning a Master of Laws from Harvard University Law School in 1967, and a Master of Public Administration from the Kennedy School of Government in 1968. While both faculties glistened with many famous professors, Maupain particularly enjoyed his time at the Kennedy School – taking classes with JK Galbraith and Henry Kissinger, among others. At the law school, Professors Abram Chayes and Paul Freund stood out for him.

After Harvard, Maupain returned to Bruges and began work as a legal assistant in the Collège d’Europe, where he learned of a vacancy at the International Labour Office. He was doing his French compulsory military service when he was invited to sit an examination at the ILO office in Paris that required written legal analysis and a translation exercise. Some time later, the head of the Director-General’s office invited him for an interview, conducted by Davis Morse (the Director-General), Nicolas Valticos (then Director of the International Labour Standards Department), and the head of personnel. In 1969, the ILO

1 Now the line extends to four generations.
2 The Harkness is often described as the ‘American Rhodes scholarship’. It also came with some rather extraordinary perks – such as a car and an instruction to travel across the country in the summer between the two years. This Maupain did – including ventures into Mexico and Canada.
appointed Maupain to a post in the Director-General’s Office (‘CABINET’). This entailed a three-month, very informative, internship in the Standards Department, where he worked on a General Survey for the ILO Committee of Experts on selected conventions, including the Equal Remuneration Convention, 1951 (No. 100), among those then designated as involving ‘workers’ fundamental rights and freedoms’. Then suddenly, in early 1970, Director-General Morse announced his decision to leave the ILO.

In May 1970, C Wilfrid Jenks became Morse’s successor and Maupain continued working in CABINET. This work came to an abrupt end following Jenks’ death in October 1973. Jenks had fallen gravely ill a few weeks before, while attending a United Nations coordinating meeting in Rome, and Maupain was sent to accompany him back to Geneva. Jenks died while Maupain was en route. It thus fell to this young official to inform Jane Jenks of her husband’s death and to take charge of the arrangements for the return of Jenks’s body.

The ILO Governing Body elected Francis Blanchard to succeed Jenks. As a francophone, Blanchard needed fewer native speakers in CABINET, and Maupain transferred to the Office of the Legal Adviser (‘JUR’). There he worked directly with Francis Wolf, who had been Legal Adviser since 1956, on a long-term undertaking involving reform of the ILO structure. This eventually led to the International Labour Conference adopting the 1986 Amendment to the ILO Constitution, a politically tricky undertaking to alter the composition of the ILO Governing Body, among other changes (at this writing, this instrument is nearing but not yet in force). After the Deputy Legal Adviser, Felice Morgenstern, decided to take early retirement in 1983, Maupain succeeded her in that post. Upon Wolf’s retirement a few years later, Blanchard appointed Maupain as Legal Adviser in early 1987.

A decade later, Maupain successfully shepherded adoption of the 1997 Amendment to the ILO Constitution; it empowers the Conference to abrogate an ILO Convention that has lost its purpose or no longer makes a useful contribution to attaining the objectives of the Organization. Results such as these draw on long-term reflection. Maupain later publicly acknowledged the debt that he felt to mentors and friends, mentioning, in particular, Nicolas Valticos, Francis Wolf, Felice Morgenstern and Jacques Lemoine in the years leading up to and during his tenure as Legal Adviser (from 1 February 1987 to 31 May 1998).

At the June 1998 session of the International Labour Conference, Maupain was designated as Legal Adviser of the Conference Committee on the Declaration of Principles. The Declaration on Fundamental Principles and Rights at Work adopted at that session

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5 See new para 9 of Article 19B of the Constitution, which entered into force on 8 October 2015. A number of instruments have been abrogated under this provision. See the chapter by La Hovary in this volume.
7 The newly designated Legal Adviser, Dominick Devlin, served as the Legal Adviser for the Conference as a whole. Along with Maupain, the ILO Secretariat was represented on the Committee by Kari Tapiola and Lee Sweepston (ILO Human Rights Coordinator).
8 For the draft report of the Conference Committee, discussion in plenary, final text and vote adopting the Declaration, see International Labour Conference, 86th Session, 1998, Record of Proceedings, Vol. II.
has proved of primordial and perhaps existential importance for the ILO. The result wove together several threads to which Maupain made key contributions: tripartite consultations on workers’ fundamental rights beginning in 1989, the Director-General’s report to the Conference on the 75th anniversary of the ILO in 1994, the subsequent report on ILO standard-setting and globalisation in 1996, and the establishment and work of the open-ended ILO Governing Body Working Party on the Social Dimensions of the Liberalisation of International Trade (later renamed the Working Party on the Social Dimensions of Globalization) as from this period. Maupain, as Director-General Michel Hansenne’s envoy first to the Marrakesh Ministerial Meeting in 1994, which transformed the General Agreement on Tariffs and Trade into the World Trade Organization (WTO), and then to the WTO’s Singapore ministerial in 1996, influenced the reaffirmation of the ILO’s competence to ‘set and deal with’ ‘internationally recognised core labour standards’. This is enshrined in the Singapore Declaration along with a renewal of states’ commitment to observe them. Into the mix came the outcome document of the United Nations World Summit for Social Development of 1995 (chaired by Juan Somavia, who succeeded Hansenne and served as ILO Director-General from 1999–2010), which picked up the theme of ‘basic workers’ rights.

The influential research of the Organisation for Economic Co-operation and Development (OECD) on trade and labour standards buttressed an emerging consensus in the ILO as to what constituted ‘fundamental labour principles and rights’ and their utility for economic development. With the ILO Legal Department technically backstopping the ILO Governing Body Working Party, this brought Maupain into contact with Raymond Torres, then of the OECD. Later, after Torres became Director of the International Institute for Labour Studies (since abolished) at the ILO and Maupain had officially retired, the Institute offered him a place as a Fellow. Among the results was Maupain’s important book, The Future of the International Labour Organization in the Global Economy.

As Hansenne wrote in his introduction to the text of the 1998 Declaration, it ‘established a social minimum at the global level to respond to the realities of globalization.’

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17 For an analysis of Maupain’s legal crafting behind this concept, see the chapter by Agusti-Panareda in this volume.


To paraphrase, all ILO Member States have an obligation ‘to respect, to promote and to realise, in good faith’ ‘the principles concerning the fundamental rights’ on ‘freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation’. At the same time, the Declaration sets out the ILO’s obligation to assist its members, ‘in response to their established and expressed needs’, to attain these objectives through full use of its resources. This mutuality of obligations was key to the Declaration’s adoption and its successful implementation. In support of both duties, the Declaration established a promotional follow-up. When Kari Tapiola, the ILO Executive Director leading the follow-up, reflected on the twentieth anniversary of the Declaration, he accurately described Maupain’s role: ‘As Legal Adviser, he was both the brain and the pen behind many responses and innovations when globalization hit the ILO. Francis provided the strategic guidance for the 1998 Declaration exercise while I was concentrating more on tactical manoeuvres. Throughout the process, we coped the best we could with the inevitable unforeseen hazards.’ And cope they certainly did. The 1998 Declaration stands among the best illustrations of Maupain’s combination of legal and diplomatic skills. Perhaps the latter benefited from an assignment he was given by the teetotaller Director-General: to become the ILO’s wine taster for its special events.

Following Maupain’s official retirement a few years later, Director-Generals of the ILO continued to reach out to him for various ad hoc assignments, performed on short-term contracts subject to UN rules, often part-time in name if not reality. From 1969 to today, from David Morse to the newly elected Gilbert Houngbo, six ILO Director-Generals have lent an open ear to Maupain on a range of issues. This has meant handling delicate negotiations with and about Myanmar, informally advising on possible requests for an advisory opinion from the International Court of Justice, and serving as the shadow architect of the 2008 Declaration on Social Justice for a Fair Globalisation. This Declaration ‘institutionalized the Decent Work concept developed by the ILO since 1999, placing it at the core of the Organization’s policies to reach its constitutional objectives’, marking what Director-General Somavia termed ‘the most important renewal of the Organization since the Declaration of Philadelphia’. The 2008 Declaration also changed the format of the follow-up foreseen in the 1998 Declaration, in light of experience. It would be very difficult to overestimate the central role, again both legal and political/diplomatic, played by Maupain in the creation of the 2008 Declaration. For both the 1998 and 2008 Declarations,
smooth interaction with the skilful Government chairs of the Conference Committees – Mark Moher of Canada and Jean-Jacques Elmiger of Switzerland, respectively – paved the way for the successful outcomes acceptable to both the Employers and the Workers.

Effective leaders have teams behind them, and Maupain, as Legal Adviser, was no exception. A workaholic, he set high standards for the staff. He also led by example in terms of academic engagement. A very generous boss, he would invite staff and ‘friends of the Legal Department’ such as Christine Cornwell (Director of Personnel) and Antonio Busca (who headed the internal services unit) to a summer outing on the shores of Lake Annecy.

Maupain nurtured and/or attracted talented individuals to the Office of the Legal Adviser who went on to make significant contributions to other institutions as well as to the ILO. With apologies to anyone inadvertently overlooked, we can name a number, some with contributions in this volume: Jordi Agustí-Panareda (now ILO Ethics Officer); Froujke Boele (now Head of Public Policy at the Organisation for Economic Co-operation and Development Centre for Responsible Business Conduct); Dominick Devlin (who succeeded Maupain as ILO Legal Adviser); Janelle Diller (who became Deputy Legal Adviser and served as Legal Adviser for a Conference session); Cleopatra Doumbia-Henry (former Director of the International Labour Standards Department and now President of the World Maritime University); Sophie Dufour (long-term legal researcher); Hillary Kellerson (who succeeded Maupain as Deputy Legal Adviser); Tomi Kohiyama (now Deputy Legal Adviser); Juan Llobera Serra (recently retired Director of Conference Services at the ILO); Makane Moïse Mbengue (Professor of International Law at the University of Geneva and affiliate Professor at Sciences Politiques Paris); Loïc Picard (who succeeded Devlin as the Legal Adviser after 2001 and went on to lecture at the René Cassin International Institute of Human Rights); Georges Politakis (ILO Legal Adviser since 2015); Guido Raimondi (who succeeded Anne Trebilcock as ILO Legal Adviser in early 2008 and was then appointed to the European Court of Human Rights, soon becoming its President); and Monique Zarka (later of the ILO Standards Department and Ethics Officer).

Over the years, Maupain also mentored many interns and research assistants. As an example, in his 2013 book, he thanked Xavier Beaudonnet, Mathieu Charpe, Franz Ebert, Marieke Louis, Konstantinos Papadakis, Roberto Recalde, Liam McHugh Russell, Dieudonné Somda, and Marie Walter (in addition to Agustí-Panareda and Kohiyama).

Maupain has influenced the careers of many others through his periodic engagement with the Graduate Institute attached to the University of Geneva and other academic institutions, including at the University of Toronto and in his Hague Academy lectures. And of course through his thought-provoking writing. A list at the end of this collection shows the breadth and depth of his published legal inquiry in English and French.

In his work, Maupain has counted on the loyal and highly competent support of ILO general service staff, among whom Marie-Anne Plantard deserves special mention along
with Maree Moore and Marie-Pierre Ducret. The editors of this volume are grateful to Plantard as well as to Legal Adviser Politakis and Deputy Legal Adviser Kohiyama for the suggestions they made in the initial stages of the project. Thanks go as well as to Angie Agulto and Vanessa Zhang of the University of Toronto for their assistance in preparing this manuscript. And, of course, to each and every one of the distinguished contributors to this volume. While some have been full of praise for the ILO, others have been rather critical of it and other institutions. We have a hunch that Maupain would welcome such debate, and look forward to his reaction.

This short note cannot and does not do justice to the life and career of Francis Maupain – a full biography would be required to get closer to that goal. Maupain is widely admired because of his genuine and deep humanity, his good will, a first-class mind, sense of humour, and his indefatigable pursuit of justice at work. And in looking back over his career (thus far!) there is that persistent and singular talent – of not only creating legal solutions to complex problems, but also knowing how to foster the political consensus required make those legal ideas real. One European diplomat put it this way, admiringly, in connection with Maupain’s role in the creation of the 2008 Declaration: Maupain deployed what he called ‘a reverse Cheshire Cat strategy – you start off with a smile … but end up with the whole cat.’ That is a lovely and clever compliment which points to a fundamental truth about Francis Maupain – that he not only generates novel and important legal ideas, he also brings them to life.

Brian Langille and Anne Trebilcock
July 2022

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Introduction: A Framework for Thinking about the Future of Social Justice

BRIAN LANGILLE AND ANNE TREBILCOCK

I. The World as We Now Find It

As Amartya Sen keenly observed, 'Human beings are the agents, beneficiaries, and adjudicators of progress, but they also happen to be – directly or indirectly – the primary means of all production. This dual role of human beings provides a rich ground for confusion of ends and means in planning and policymaking.'

The world of work is an enduring and vital dimension for sustaining human life. It is also the anvil upon which our best ideas about, and ambitions for, social justice are hammered out, in detail, in our daily realities. As Sen notes, this ‘dual role of human beings’, as both means and end, provides ‘rich ground’ for confusion. One result: work can be either a fertile location for advancing human flourishing and social justice – both intrinsically and instrumentally – or work can be corrosive for decent lives and for our ambitions for a just world. For a long time this has been clear: social justice, and the world of work, are crucially intertwined.

It is also true that, for at least some time, we have known that this intertwining was being stretched, perhaps to the breaking point, by what we have come to know as ‘globalisation’. For those concerned about the world of work the globalisation story is a familiar one – there are powerful external forces in play, which in some quarters and from time to time have been viewed as inevitable. Among them: financialisation, mobile capital, the dominance of shareholder value theory in corporate law, new and ever more concentrated monitoring/communications technologies, artificial intelligence, robotics, trade in goods and ideas, demographic change, and migration. And effects on the citadel of work law are also very familiar – fissuring, vertical disintegration of firms, gig and platform work, offshoring,

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2 For a recent, but long, view of this idea, see J Lucassen, The Story of Work (New Haven, Yale, 2021).
3 We borrow the terms ‘fertile’ and ‘corrosive’ from J Wolf and A De-Shalit, Disadvantage (Oxford, Oxford University Press, 2007).
5 Former United States President Bill Clinton, cited by Richard Baldwin in The Great Convergence (Cambridge, MA, Harvard, 2016), 17, called globalisation ‘the economic equivalent of a force of nature, like wind or water’.
6 D Weil, The Fissured Workplace (Cambridge, MA, Harvard, 2014) (Harry Arthurs has noted, accurately, that the correct geological phenomenon to be invoked is not the natural process of fissuring, but the intentional human activity of fracking.)
production/supply/commodity chains, deregulatory competition, more power to firms and less to states, dilution of individual and collective worker power, enfeebling of both domestic work law and of global labour governance, more inequality, ‘losers’ as well as winners in the new economic dispensation, the rise of right-wing anti state/anti science/anti education ideologies, and so on, and on. Many can see in all of this Sen’s insight at work – a confusion of ends and means with corrosive effects.\(^7\)

All of that is very familiar and, indeed, it has been for some time the dominant structure of discourse about the world of work. Imperials of ink have been spilled about this state of affairs.\(^8\) It also, in the world as we find it in 2022, seems rather quaint and, perhaps, overly simplistic as a description of our challenges. In these times this familiar understanding seems too small and too fragile to bear the weight of the events and issues which dominate our lives now – the COVID-19 pandemic, accelerating climate change, war, increasing inequality, attacks upon and erosion of the rule of law and democracy, concentration of media power, and the weakening of the international legal order.

The world as we now find it thus puts renewed and further strain upon the familiar fabric of our thinking about the interdependence of work and social justice and also upon our set of common and received ideas about cause and effects upon the relationship of ‘globalisation’, the world of work, and the law which is the bridge between them. Labour law, whether transnational, international or national, cannot do it alone.\(^9\)

That is where the idea for, and ideas in, this volume come onto the stage in the enduring drama of work and social justice. In this volume leading thinkers outline the necessary adjustments in our reflection, both about the relationship between work and justice, including historical and structural exclusions, and of our received ‘globalisation’ account, all in light of our new realities. They do so with a view to describing the trajectories of possible futures. The animating instinct is to seek and to describe future and possible arcs of justice.

That this rethinking is a critical and current need has been made abundantly clear by, to take one example, the COVID-19 pandemic. The pandemic has been, for several years now, a cloud which darkens but, at the same time, illuminates. Obviously the pandemic is a comprehensive storm darkening many dimensions of the lives of people in all parts of the world. Like many large storms it seems to come and go, and then come again. It has become much more than a health crisis and is best seen as a vector for other sorts of social challenges. The world of work is one dimension of our lives which has been rocked by the pandemic. There is, most obviously, the direct impact on work itself – that is, in the labour market in terms of loss of jobs, and thus income (as well as government revenues.) ‘COVID-19 has resulted in the most severe crisis in the world of work since the Great Depression of

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the 1930s … with those already disadvantaged being hit hardest.10 Much has also come to light about disruptions in global supply chains. All of this has had a knock-on effect for economic and gender equity and much else. But there has also been the indirect impact on our thinking about the value of work – perhaps especially ‘care’ work but also provision of other basics of life, and about work/life balance, and what is ‘important in life’, all as new technologies allowed, for some jobs but not others, ‘working from home’. Much more has happened, but we need to see that beyond the direct impact on work there is the indirect impact upon the world of work law – on our labour laws and policies. Here there have been, in many places, direct assaults upon the familiar understanding and conceptual framework of labour law itself. The traditional organisational categories of the law of work, such as ‘employee’ or ‘independent contractor’ were seen as irrelevant to the solution of our problems in the modern world of work, with some countries making financial relief during the acute phase of the pandemic available ‘across the board’, regardless of technical legal rubrics.

There are other remarkable impacts upon the world of work – such as a sharpening of our focus upon international supply chains and other modern complex structures of production whose frailties were suddenly laid bare, not only in connection with vaccine production, but with our reliance upon many basic commodities. ‘Supply chain disruption’ has become, along with ‘you’re on mute’, a signature phrase for our times. In this regard the pandemic looks like a dry run for a much more fundamental challenge: climate change and its impact on the world of work.11 And then, war in Europe and its global effects, shedding an even harsher light on the current global economic and political dispensation, its interdependencies and its fragile structure.

These realities and challenges in the world of work and production are altering, or at least giving us the opportunity to change, the world, which Dani Rodrik has described one of ‘hyper-globalization’.12 That world and its problems were not created by the pandemic, climate change, or war; rather these existing problems were starkly highlighted, put much more sharply into focus, and moved to centre stage for policy makers. Thus, a key impact of the pandemic has been to reveal deep flaws in dominant modes of thought and legal arrangements. Along with rapidly accelerating climate change, and war, the pandemic acts as a set of sharp prods to regroup, to reconsider, to reimagine, to take even more seriously fundamental problems which have worried us for some time but now dominate our thinking. We have some new questions and need new answers. We see more clearly than ever the value of work and the role it plays in the ‘justness’ of our social protection arrangements. We also see our ‘globalisation story’ in a harsh new light that illuminates persistent inequalities. We need to search now for pragmatic ideas for new and renewed arrangements, aimed at securing and making more sustainable our commitments to social justice.

In the world as we now find it these large questions, and opportunities, open before us. The fabric of many aspects of our lives have been ripped apart by the pandemic (and all the rest), including the fabric of our law of work. But it is precisely when that fabric is torn that we are offered the opportunity to peer into it – to see the warp of our values, and the woof of


the legal institutions we deploy to advance them. This volume seeks to do what needs to be done – to look deeply into the fabric of justice and work in our globalised world and to seize our current opportunity to make a vital contribution to answering our deep and complex questions about the future of social justice and work.

But there is another point which must be made in order to appreciate the reason for this volume. Just as the fabric of our work law and our ambitions for social justice are put under great stress and also simultaneously put into prominent play, our faith in our ability to do anything about it is also threatened and under equal strain. Put simply, these are hard days in which to remain optimistic about rethinking possible futures. We can start with the invasion of Ukraine and the ongoing war in Europe, which has shattered what we had taken as the basis of the world legal order and provoked a hunger crisis of global reach.

But this is part of, or perhaps a product of, a larger story of intellectual and political disillusionment. Many have lost faith in the power of human reasoning to understand the world, to think rationally and helpfully about its current state, and to imagine possible futures. All of this is contestable and contested in our world of ‘fake news’, received wisdom, echo chambers, consumer ratings, slanted advertising, hidden agendas, influencers, ‘reality’ TV, ‘social’ media, big data, opinion polls, political correctness, corruption, algorithms – and all of the unfortunate, if familiar, rest. Some are now joining with Alan Hyde who, a while ago, claimed that ‘it is really over’ for the very idea of the law of work.

Yet this project is evidence that many still hold to the academic project and believe, with Stephen Pinker, that reason is not negotiable. There is space for hope. As Philip Allott has written:

Law is the possible made actual. Law is a bridge between the ideal and the real. … [It] is a vehicle that a society uses to carry it into the better future that it chooses and its citizens desire.

It is, as already noted, precisely when the fabric of our lives is torn apart that we can see clearly into it. That is a very real ‘silver lining’ upon which this volume focuses. Thus, this book proceeds on the following understandings: That the relationship between social justice and work is a profound one, long understood and debated. That our current and familiar story about the strains visited upon that relationship by globalisation, although also well rehearsed, stands in need of reconsideration. That the pandemic, climate threat, and war have conspired to provide the harsh light which makes such reflection not only urgently required but also possible. That human minds can, though reflection and study, understand our world, articulate ambitions of social justice, and construct legal institutions to bridge reality and our ideals. ‘The law is a bridge between the ideal and the real.’

While this is a forward-looking volume, and not a classic Festschrift, the volume is dedicated to Francis Maupain, one of the most respected and treasured figures in the field of international labour law. He has that stature because he has embodied in his life’s work – diplomatic and academic – this approach of continued reflection upon enduring values and

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17 ibid, 27.
the need to build new legal machinery to bridge them to changing realities. Moreover, as explored in the Preface to this volume, he provides the concrete example that such progress is possible in the world as we know and find it.

II. Carving Out Social Justice and the World of Work: Possible Global Futures as a Vital and Difficult Part of Re-Imagining Our Global Future

Many subject matters need to be re-evaluated at a global level and in light of our current realities – health, climate, work, development, equity, gender, demographics and geographical mobility, the relationship of the economic and the social, and the role of artificial intelligence, among them – and from a multitude of disciplinary perspectives. A range of responses will emerge, from various disciplinary angles of attack, with different appreciations of both theory and practice, and levels of concern with institutional detail (or not).

All who take up the challenge of attempting serious rethinking about possible global futures of social justice will have to carve the large set of issues which the world faces – all that has been darkened but also illuminated by the pandemic – at some set of meaningful joints. This is a necessary prolegomenon to any possible critical thinking. Indeed, finding the joints is the first part of a critical understanding – knowing how to frame our issues in the first place.

The joints at which this project carves, and which provide its resulting shape as well as its weight, are first, law and legal institutions (very broadly conceived); second, the problem of justice at work; and third, a multilateral and transnational, as well as a local, perspective.

Because this is a legal project it must be pragmatically grounded while also philosophically and empirically sophisticated. This is the burden which lawyers carry – not only to grasp and bring to bear the lessons of political, economic, and social theory (to be interdisciplinary in a sophisticated way) – but also to worry about how to operationalise those lessons in a way which satisfies the demands of the rule of law – of legality. But this means that this project cannot be, at its core, simply an intervention in, for example, debates in pure political theory about ‘global justice’, debates in pure development theory, the international economic order, sustainability, gender equity, or the impact of artificial intelligence, and so on. It is a contribution to serious thinking about all of that – but with a sharp institutional and pragmatic focus. That is, this project is certainly about ends, but importantly about concrete means as well. That is where its centre of gravity, and its value added, will be found.

III. ‘The Past is a Foreign Country – They Do Things Differently There’

Part of our reality is that legal and institutional concerns about local, or global, or international or (our preferred word) transnational labour justice have a long history spanning the

modern era. The International Labour Organization (ILO), created in the aftermath of the First World War as part of the Treaty of Versailles, held its 100th birthday party in 2019.\textsuperscript{19} This is, in part, a benefit, but also a challenge in exploiting the opportunity and need to re-imagine the future of justice at work in a transnational perspective. We have to come to grips with the idea that much of what is available involves reshaping approaches which have been with us for some time, while not being captured or confined by them. To put this another way – while being open to, and seeking new horizons and techniques, being prepared to salvage what is of value in our past and present is also part of the job at hand. To accomplish this difficult task, this project draws upon many of those intellectual leaders with both the experience and knowledge of our efforts thus far, and also the courage and imagination to think afresh in light of our current circumstances.

IV. The Necessary Structure of the Volume

These basic internal commitments, and external demands, lead to the following structure and approach to thinking about possible futures for social justice and the world of work. Our fundamental divide is, of course, between ends and means. Part I is centred upon discussions of our goals, and challenges, as we can now best understand them. The chapters here seek to clarify the idea of social justice in work and then explore some of its most critical dimensions. Part II centres upon illustrations of means and methods for removing obstacles to achieving social justice. In turn, it is divided into sections – the first about reimagining key international institutions, the second about imagining and re-imagining alternative means to our ends, and the third refocusing our gaze on labour law itself.

As our table of contents and list of global experts both attest, this structure exposes a lot of terrain. This is ground which no single volume of essays will ever completely, let alone finally, cover. While the views and topics are not a complete map of possible futures, we believe that the volume does provide a fixed star for future navigation of this vital, if changing, terrain. It will do so not because of its comprehensiveness but rather the suggestiveness of its structure – which describes a project both about the scope of our ideals, and an architecture for the varied means of pursuing them. The book casts a clear light on both current crises and the opportunities for reassessment provided by a world in difficulty and in flux.

The volume begins, then, with chapters about our best understanding of possible meanings of social justice in the context of work. They dig deeply, probing the future of global justice at work through multiple lenses – environmental sustainability,\textsuperscript{20} post colonialism,\textsuperscript{21} immigration,\textsuperscript{22} and gender equality,\textsuperscript{23} along with re-examination of the relationship of markets and social justice.\textsuperscript{24} This part probes the meaning of social justice conceptions today and in historical perspective.\textsuperscript{25}
The chapters in Part II on means divide, as mentioned, into three main channels of ideas. The first is a series of chapters in ‘retrieval’ or ‘re-imagination,’ of existing international processes and institutions such as the ILO\textsuperscript{26} (including, wonderfully, consideration of the role which Maupain himself played as Legal Adviser\textsuperscript{27}) and the World Trade Organization,\textsuperscript{28} and a sampling of regional institutions.\textsuperscript{29} The second channel, and series of chapters, pursues possible global futures of social justice at work ‘by other means’ and by other transnational actors,\textsuperscript{30} both public and private, focusing on litigation,\textsuperscript{31} investment and other arbitration regimes,\textsuperscript{32} supply chain regulation and procurement policies,\textsuperscript{33} and trade and development law.\textsuperscript{34} The third channel leads us to dissect labour law ‘itself’.\textsuperscript{35} In paying attention to labour law itself, the chapters recall that, in a truly interdisciplinary approach, it is not simply other institutions and processes which must be subject to critical scrutiny in order to advance the legal cause of social justice at work – but ‘work law’ itself which needs a rethink. This two-way street is the key to true interdisciplinary thinking which, in turn, is at the heart of any worthy inquiry into the possible global futures of social justice and the world of work. We hope that this collection will provoke others engaged in the pursuit of social justice to come up with still more creative and workable responses.

\textsuperscript{26} See Kohiyama and Lieby; Servais; La Hovary; Routh, Chapters 13–16 in this volume; see also Agustí-Panareda; LeClercq, chapters 5 and 18.

\textsuperscript{27} See Klabbers as well as Agustí-Panareda, Chapters 12 and 5 in this volume.

\textsuperscript{28} See Charnovitz; LeClercq, Chapters 17 and 18 in this volume.

\textsuperscript{29} See Caruso and Papa; Ebert; Mbengue, Chapters 19–21 in this volume.

\textsuperscript{30} Such as the International Organization for Standardization; see Daugereilh, Chapter 26 in this volume.

\textsuperscript{31} See Fudge and Mundlak, Chapter 22 in this volume.

\textsuperscript{32} See Mbengue; Yiannibas, Chapters 19 and 23 in this volume.

\textsuperscript{33} See Martin-Ortega and Trusgnach, Chapter 24 in this volume.

\textsuperscript{34} See Charnovitz; LeClercq; Horsey, Chapters 17, 18 and 25 in this volume.

\textsuperscript{35} See López López and Colás Neila; Scheiwe; Peirera and Nicoli; McHugh-Russell; Goldin; Chapters 27–31 in this volume.
PART I

Goals and Challenges
A. Clarifying the Idea of Social Justice in Work
Globalisation or ‘Mondialisation’? 
Taking Social Models Seriously

ALAIN SUPIOT

I. Introduction

Our debt to Francis Maupain is considerable. Since the creation of the International Labour Organization (ILO) in 1919, very few experts in international law have placed, as he has, social justice at the heart of their reflection. And even fewer have enriched this with an intimate knowledge of the rather arcane aspects of this international organisation. The ILO is unique among international organisations due to its long existence and to the governance role it reserves for representatives of the world of work alongside those of States. The ILO seems thus better equipped than others to meet the legal challenge that every multilateral organisation faces: how to articulate the universality of the fundamental rights and principles of which it is the guardian, given the cultural, social and economic diversity of its members.

At the beginning of this century, this challenge was given new life by two narratives of the future of the world, both coming from the United States: ‘the end of history’ and ‘the clash of civilisations’. According to the first, the collapse of the Soviet Union marked the definitive and universal triumph of liberal democracy and the market order, toppling the world into an eternal present. According to the second, the end of the Cold War instead opened the path to a dangerous and uncertain world, dominated by competition between several great civilisations defined by their religion.

The history of the past 20 years has been one of extreme Hegelian dialectal ‘sublation’ (Aufhebung) of these two visions. In many countries, the undivided reign of the market order has been matched by the arousal of identitarian passions, following a political path identified by Karl Polanyi already in the 1930s. This sublation should not surprise us, since the true historic moment of the end of the twentieth century was not the fall of the Berlin Wall.
in 1989, but rather ten years earlier with the progressive adoption of the market economy in China under Deng Xiaoping. This embrace of the market economy in a political system that remains communist marked, from this moment on, the true nature of the change that had taken place: not a victory of West over East, but rather ‘the Holy Union of Communism and Capitalism’,\(^5\) that is to say their hybridisation through means and processes as varied as the world’s history, traditions, cultures, religions and languages.

As Marcel Mauss observed just after the First World War,\(^6\) ‘the growing interdependance of nations’ has increased all the more in the past 40 years. But the objective factors of this interdependence of technology, the environment and health do not automatically lead to the unification of nations under the aegis of market globalisation. On the contrary, globalisation awakens and exacerbates differences and inequalities both between nations and within each of them. In this context, it is more than ever the task of the ILO to build peace based upon social justice, converting these objective interdependencies into solidarity. However, it is not possible to advance on this path without relying on the diversity of social models. Today it is evident that the development model embodied by the West since the first industrial revolution has led the world into an ecological impasse. It is time to move away from the philosophy of history that considers it already written,\(^7\) with so-called ‘less developed’ (or ‘developing’) countries following the path already taken by ‘advanced’ or ‘developed’ countries.

\[\text{II. The Diversity of Social Models}\]

Inspired by the work of Fernand Braudel, the notion of ‘model’ as used here indicates a collection of cultural traits that characterise a society and that can have an influence on others.\(^8\) It may be illustrated by art history, which owes much to the contribution of each nation and to their reciprocal influences, as shown by Élie Faure.\(^9\) This interplay of influences is not limited to Europe. Japan was greatly influenced by the ‘Chinese model’ before it was by the West, and in turn Japan influenced the way in which China received this western model. Globalisation tends to erase this diversity of peoples and cultures and tends to deny, as did Prime Minister Margaret Thatcher, the very existence of society. The globalists preached nomadism of the ‘Anywhere’ while ignoring the attachment that true nomads have to their lands, and her followers challenged the very idea of a social model. What such doubters have in common may be summed up by this formula attributed to the former chief economist of the World Bank, Larry Summers: ‘One of the things I have learned in my short time at the bank is that whenever anybody says, “But things work differently here”,

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they are about to say something dumb. Nations are themselves seen as buildings that must follow a single blueprint. This conception of ‘nation building’ is condemned to encounter its catastrophic limits, as seen, for example, in Afghanistan over the past half century. Not only does globalisation not erase national, cultural or religious identities; it stirs them up and engenders histrionics.

More precisely, the idea of ‘social model’ indicates the manner in which each nation in the nineteenth century faced the mortifying consequences of masses of uprooted peasants being subjected to the ‘despotism of the industrial factory’. Such was the function of the first ‘Factory Acts’, out of which labour law and social security law emerged (referred to, together, as social law). In contrast to civil law, enriched by a common Roman-canonical heritage, social law developed within a purely national framework. Along with public law, social law expresses most clearly the diversity of legal cultures. The fact of this diversity should, however, not lead one to think that national models are unaware of one another. Operating within the same dynamic of capitalism, they are subject to common influences while, at the same time, influencing each other.

The legal philosopher Alfred Fouillée (1838–1912) was one of the first to draw up a typology of European social models, in a pioneering article on ‘the idea of social justice’. Two of the types belonged to what he called ‘economist naturalism’, because they all subjected society to ‘natural laws’ of the economy. But while ‘individualist naturalism’ (the English type) stressed the omnipotence of the individual, ‘collectivist naturalism’ (the German type) instead stressed the omnipotence of society. Fouillée placed these two models back to back to sketch a third way, that of ‘moral and social idealism, which is particularly French and which, by extension of the idea of justice, pursues the simultaneous development of the individual and the State. Shortly after the First World War, a similar typology appeared in the writing of Georges Scelle, an eminent figure in international law who was one of the first French jurists to develop the then emergent labour law. According to Scelle, each great European nation is doomed, in virtue of the crisis it confronts, to again take up its ‘traditional approach’: for Germany, this was ‘state paternalism’, for England it was ‘autonomous organismic’ and for France it was ‘political interventionism’. Looking at these three countries, one can indeed say that the English model tackles the social question in terms of the labour market, which must be permitted to self-regulate by means of collective bargaining; the German model, which focuses on occupational communities (at the enterprise, branch, Länder and federal levels) whose rank in importance and coordination must be ensured; and the French model, which approaches the social question in terms of political equality that the State is obligated to promote in labour relations. In France, such relations were perceived neither as natural communities nor as a market, but rather as loci of power. With the promise of liberty and equality that arose out of the 1789 French Revolution having been belied by subordination at work, the State intervened to establish a social citizenship that is

12 A Fouillée in Supiot, La Force, 65.
an extension of political citizenship; it did so by inserting rules of public order (ordre public) into every contract of employment.

Acknowledgement and recognition of this diversity of social models offered a solid foundation for the elevation of social justice to the international plane. Scelle himself worked towards this while occupying high-level posts in the ILO; his friend Albert Thomas, the organisation's first Director-General, had chosen the motto 'si vis pacem, cole justitium' (if you desire peace, cultivate justice). This internationalism, enriched by the diversity of social models, enjoyed a new expansion near the end of the Second World War with the adoption of the Declaration of Philadelphia in 1944. Largely inspired by the American model of the New Deal, this Declaration laid the foundation for a new international order based on social justice. It thus responded to the need expressed by United States President Franklin Roosevelt for a 'Second Bill of Rights' which would draw lessons from the fact that 'true individual freedom cannot exist without economic security and independence' and that 'People who are hungry and out of a job are the stuff of which dictatorships are made'. The implementation of the economic provisions of the Declaration of Philadelphia was to have been assigned to an International Trade Organization, foreseen in the Havana Charter (1948), but the Charter was rejected by the United States Senate, and did not enter into force. The principles of the Declaration of Philadelphia have nonetheless inspired major post-war social reforms adopted by many democracies, including newly independent India. The principles owe their success in part to the fact that they were not implemented in a uniform fashion, but rather in line with the social model of each country. Thus, in France, the nationalisation measures taken by President de Gaulle put strategic economic sectors back into the hands of the State and laid the basis for the country's industrial and economic renewal. Germany, on the other hand, escaped the nationalisations envisaged by the Allies, reviving plans for co-determination found in the Weimar Constitution of the early 1920s – a plan that Nazism had nipped in the bud.

Each one of these models is the fruit of complex historical and cultural balancing acts that cannot be reduced to a few clichés. For example, the French social model is certainly 'state-centred': As we know, the Revolution 'wiped out' the corporations of the Ancien Régime in favour of a new individual – the citizen – and of a radical conception of the unity of the State. But this social model owes much to another intellectual tradition, ie trusting in individuals' capacities for self-organisation and mutual assistance. Proudhon was one

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14 For an overview, see J-M Thouvenin and A Trebilcock (eds), Droit international social, 2 vols (Brussels, Bruyant, 2013).
15 FD Roosevelt, Second Bill of Rights Speech, 11 January 1944. The recording of this speech, long thought to be lost, was found by Michael Moore, who included an excerpt from it in his film Capitalism: A Love Story (2009).
of the principal inspirations of this tradition of mutual aid societies, which promote social and economic democracy.\textsuperscript{18} This tradition is just as wary of the power of the State as it is of power wielded by the wealthy.

Trade unionism in France was born under the banner of this school of thought, encapsulated in the 1906 'Charter of Amiens'.\textsuperscript{19} The tradition of mutual aid societies also heavily influenced French plans for social security, introduced after the end of the Second World War. Although influenced by the Beveridge report,\textsuperscript{20} this plan rejected the state-based system introduced in the United Kingdom in favour of social democracy as the basis for its funding and its management. In France, social security was not conceived of as a service of the State in support of the market economy, but rather as an extension of the principles of mutual assistance to the entire nation. The State should be the guarantor – not the manager – of solidarity mechanisms financed not by taxes but by contributions of the persons insured, in institutions administered by their representatives. Enterprises that were nationalised after the Liberation, and particularly public industrial and commercial enterprises, followed the same model. These enterprises were not absorbed into the state apparatus but retained managerial autonomy in order to meet the goals of general interest set by the State. These hybrid models of public law and private law turned out to be remarkably effective, and some of the ‘economic champions’ of France today were their direct descendants.

It is also within this perspective that ‘social Gaullism’, particularly the establishment of works councils (comités d’entreprise) after the Liberation, need to be situated. They foreshadowed a type of participation that, in de Gaulle’s thinking, was the heir to ‘French socialism’ of the 1840s. This was to have led to a ‘factual and contractual association of workers with corporate management, and not substitutes for this in the form of performance bonuses, worker shareholding, and profit sharing, by which some – thinking themselves clever – attempt to divert it.’\textsuperscript{21} Misunderstood at the time on both the right and the left of the political spectrum, the steps he took were fully within the spirit of the French social model. Aimed at extending citizenship to the realm of the economy, this model presupposes complementing democratic representation of the quantitative type – one person, one vote – by a qualitative representation reflecting the diversity of social conditions and economic interests. This articulation between political democracy and social democracy forms the foundation of the French democratic pact. It is all the more necessary today since representatives of the ‘popular classes’ are almost entirely absent in parliament. In spite of all their faults, trade unions remain anchored in the reality of conditions of life and of work, a feature all political parties have lost. The weakening of trade unions inevitably leads to the emergence of revolts such as the ‘yellow vest’ protests, as well as of resort to the courts, as substitutes for a faltering democracy.


\textsuperscript{20} WH Beveridge, Full employment in a free society (London, Allen and Unwin, 1944); see also 2nd edn 1960.

III. The Mirage of Globalisation

Globalisation tends to ignore or suppress the diversity of these social models. Globalisation is the final step in a process which the great historian and economist Karl Polanyi stressed as having a religious dimension: ‘The mechanism which the motive of gain set in motion was comparable in effectiveness only to the most violent outbursts of religious fervor in history.’\(^{22}\) In fact, globalisation relies on faith in immanent economic laws (principle of maximisation, market self-regulation, constancy of human nature …) whose influence persists independently of human consciousness or the rationality or irrationality of human behaviour.\(^{23}\) It follows from this that governments should not frustrate these laws but, on the contrary, should facilitate their dynamics, like a watchmaker who, in Friedrich Hayek’s words, ‘oiled a clockwork, or in any other way secured the conditions that a going mechanism required for its proper functioning’.\(^{24}\) In such a notion, the sole function of democracy is to persuade ignorant peoples to let themselves be directed by these immanent laws which govern societies.

This universalism hanging over our heads, which aspires to submit all of humanity to laws which science supposedly discovered, has been in the works since the period of the Enlightenment. Condorcet, a mathematician and father of ‘political arithmetic’ (ie the economic and demographic statistics of a political unit\(^ {25}\)), was a figure revered by the ‘Society of Ideologues’ (which supported the enlightened dictatorship of Napoleon Bonaparte). Condorcet sharply critiqued the attention given by Montesquieu to the diversity of cultures in the latter’s Spirit of the Laws (Esprit des Lois). According to Condorcet: ‘Since truth, reason, justice, and human rights (…) are the same everywhere, one cannot see why all States should not have the same laws (…) One good law should be good for all men, like one proposition is true for all.’\(^ {26}\)

This scientism prospered in the nineteenth century with ‘the audacious but legitimate pretension to organise society scientifically’ as Renan admitted.\(^ {27}\) He even found, in the first half of the twentieth century, terrible off-shoots such as the Nazis shaping the life of peoples according to genetic judgements. At the end of the Second World War, the experience of these monstrous deviations led to a legal and an institutional leap, that of the ‘Spirit of Philadelphia,’ as mentioned above. This was expressed in France in the programme of the National Council of the Resistance, and in the Preamble to the Constitution of 1946, which was then picked up in the 1958 Constitution.\(^ {28}\)

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Globalisation or ‘Mondialisation’?

The neoliberal shift of the 1980s marked a return to faith in the immanent laws of a market that had become total now that it was freed from national legal frameworks. Once again, work, the Earth, and money were treated as commodities, even though they are not commodities but rather preconditions for the production of all commercial goods. As Polanyi stated, these are ‘fictional commodities’, sustainable in the long term only by means of legal constructs (labour law, environmental law, monetary law) which require taking account of the length of human life, the fragility of our living spaces, and the fiduciary nature of money. But in the Total Market regime created by globalisation, the law itself is considered to be a commodity in competition in a ‘world market in standards’ governed by a quest for the lowest social and environmental bidder. Globalisation tends to de-territorialise laws and to eliminate the cultural and geographic diversity of societies in order to submit them uniformly to the regime of the self-regulating market.

As we saw in 2008 with the financial sector, this movement is condemned to run into its catastrophic limits. And above all, it is not irresistibile, as demonstrated by the economic success of a country, such as Germany, that has not proceeded to ‘methodically dismantle’ its social model, but instead has relied upon it to defend its interests and its influence in Europe and beyond.

One could hope – without being certain – that the reality check inflicted by the COVID-19 pandemic, on top of disasters in ‘nation building’, will wrench the leaders of countries in the West out of their dogmatic slumber of the past decades. Among other lessons, this unprecedented experience testifies to the growing interdependence of nations, the economically and ecologically unsustainable nature of globalisation and, last but not least, the crucial role of States in the preservation of human life, whether seen from the economic, health or ecological point of view. Today as earlier, it is States that take on all the incalculable risks that their populations face, that is to say ecological, social and health risks, that no insurer would be able to cover. They do it under conditions particular to each country, without prejudice to international solidarity, whose need is especially clear in relation to health.

One must hope that lasting lessons will be drawn from this crisis. The ILO, which has been a favourite target for those denouncing the ‘mirage of social justice’, should play a leading role in the necessary redefinition of a social and ecological pact responding to the challenges of the twenty-first century. But one cannot hide the risk of repeating the scenario of the financial implosion of 2008. Once States had paid the debts owed by bankers intoxicated by the fiction of money as a commodity, it was argued that States needed to ‘shift gears’ (in the words of the Organisation for Economic Co-operation and Development) to address these public debts by adopting ‘structural reforms’ required by the financial markets.

32 On this ‘liquidation’ see the ground-breaking work of Zygmunt Bauman, Z Bauman, Liquid Life (New York, Polity Press, 2005).
34 Shifting gears was the headline of an editorial by the chief economist of the OECD, Pier Carlo Padoan, when he presented the report, Economic Policy Reforms: Going for Growth 2010. Available at: www.oecd.org/economy/44661994.pdf.
The management of the COVID-19 pandemic has given rise to useful lessons: it has taught us much about both the limits and the potential of telework; it has made us appreciate the critical importance – and the very poor living conditions – of ‘essential’ workers, and it has revealed the most glaring impasses wrought by governance by numbers, as well as the dangers of blind budget cuts. The European Union now has a decisive card to play by showing that its sole function is not to ‘grease the wheels’ of the market but, on the contrary, to promote new instruments of sovereignty by organising genuine cooperation between States around the strategic challenges of common interest, such as digitisation. Reinvention of action by trade unions and mutual aid societies will also be needed to find a way out of the current impasse, evident in France for instance, where the State is far too present in social issues, ignoring its traditions of mutual assistance and cooperatives.

IV. Homage to ‘Mondialisation’

The paths of social justice are not those of an abstract universalism, nor of societies retracting into themselves. The diversity of social models emerges from an anthropological fact already remarked upon by Montesquieu: ‘in every nation there is a general character, which affects every member more or less.’ It was this anthropological fact – the diversity of languages, cultures and societies – that led Mauss, as the First World War was ending, to distinguish cosmopolitanism from internationalism. Cosmopolitanism – which we might today instead call ‘globalism’ – is, he said, ‘the end result of pure individualism, whether religious and Christian, or metaphysical.’ What is involved is ‘an ethereal theory of a monad human being who is identical everywhere, an agent of a moral doctrine incapable of conceiving of any homeland other than humanity, or laws other than those of nature.’ The propensity of this utopia to ‘destroy nations’ is doomed to failure, because it does not reflect any social reality. Internationalism, on the contrary, is defined by Mauss as ‘the entirety of ideas, feelings and rules, as well as collective groupings, which have as their goal originating and guiding the relations between nations and between societies.’ He also fought against nationalist furore but, starting from reality – that of nations and their ‘growing interdependence’. The narrow path traced by Mauss remains one that would permit avoidance of the pitfalls of globalism and of identitarian self-withdrawal, which are the two faces of capitalism today.

The first of these is anarcho-capitalism, which consists of ‘greasing the wheels’ of an historic process of globalisation. The notion of globalisation comes to us from cognitive

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37 Mauss, above n 6.


39 Mauss, above n 6, 629–630.

40 ibid.

41 Mauss, above n 6, 630.
Globalisation or ‘Mondialisation’?

science. It appeared at the beginning of the twentieth century in writings of the Belgian biologist Ovide Decroly (1871–1932) to indicate the ‘globalisation function’ which consists in taking on board reality as a whole, thus gaining a first overall impression that precedes and guides an understanding of the elements of which it is composed. After the Second World War, Marshall McLuhan, theorist of information and communication technologies, was the first to describe our planet as ‘a global village’ to mean a process of economic, social and cultural integration of all the peoples of the Earth. McLuhan was said to have himself been inspired by the concept of the ‘noosphere’ developed a few years earlier by the Jesuit savant Pierre Teilhard de Chardin, according to whom, ‘thanks to the phenomenal biological event of the discovery of electromagnetic waves, every individual is henceforth (actively or passively) simultaneously present throughout the entire ocean and continental space – coextensive with the Earth’.

Globalisation is thus a techno-theological concept that brings together the real leaps in information and communication technologies and religious faith in a sense of history, whose term itself (globalisation) would entail a return of humankind to the unity of the divine – at the ‘Omega Point’, to use Teilhard’s words. It was from a similar eschatological perspective that, as from the eighteenth century, Divine Providence took the secularised form of the invisible hand of the market, leading ‘human beings on the paths established by God, even when they were not aware of it’. In this way, globalisation today designates an historic process which, combining on a global scale the extension of ‘the spontaneous order of the market’ and the development of information technologies, must lead to uniformity of peoples and of cultures. This process of ‘homogenisation’ and overexploitation of people and of nature is linked to the dynamic of capitalism. It can, as admonished in the Preamble to the ILO Constitution, only ‘produce unrest so great that the peace and harmony of the world are imperilled’.

The second contemporary form of capitalism is itself produced by this feeling of discontent: this involves ethno-capitalism which, without grappling with the economic causes of this social anger, diverts it to scapegoats identified by their religion, sex or origins, and thus offers a mixture of neoliberalism and identitarianism. Ethno-capitalism is at work in the United States and in the United Kingdom, both of which were champions of neoliberalism. However, it is present around the world, in countries as different as Brazil, India, Japan, Hungary and Turkey. Everywhere, the dismantling of systems of solidarity, whether organised by tradition or the welfare State, has led to an increase in solidarity based on belonging.

42 O Decroly, La Fonction de globalisation et l’enseignement (Brussels, Lamertin, 1929).
46 See the definition given by the International Monetary Fund at the beginning of the century: ‘Economic “globalization” is an historical process, the result of human innovation and technological progress. It refers to the increasing integration of economies around the world, particularly through trade and financial flows. The term sometimes also refers to the movement of people (labor) and knowledge (technology) across international borders. There are also broader cultural, political and environmental dimensions of globalization that are not covered here’ (IMF, Globalization: Threat or Opportunity? 12 April 2000. Available at: www.imf.org/external/np/exr/ib/2000/0412000i.htm).
to a particular identity, and thus to the allocation of human beings by the colour of their skin, their sex or sexuality, their religion, their ethnicity ... In this way we see a reprise of the phenomenon revealed by Karl Polanyi at the time of the rise of fascism in the 1930s, which Roosevelt had summed up perfectly when warning about the danger of hunger and joblessness for the rise of dictatorships.

We will not escape from these two pincers of capitalism without embarking on the path of a true mondialisation, which must not be confused with globalisation. A word unknown in English, the idea of mondialisation in French comes from the Latin word mundus, which designated the inhabited world, as well as the form of a globe in an ornament or a jewel. Just as the Greek word cosmos had chaos as its opposite, the Latin word mundus has as its antonym immundus, connoting whatever has not been fashioned by the work of human beings. In the same vein, but in a more precise sense, mundus in Roman law meant a temple erected when a city was founded which served as its centre for the purposes of boundary delimitations, both physical and legal. This underground monument, located under an altar on open ground, contained a pit into which representatives of the communities that made up the city dropped a handful of earth from their places of origin.

In light of its etymological roots, mondialisation consists of making a physical universe humanly habitable, ie making our planet a liveable place. This requires humans to recognise the limits of their influence on the Earth, whether these limits are geographic or ecological, and to rely on the cultural and geographic diversity of societies to respond to ecological, technological, social and health risks, and to invent new forms of solidarity between nations, rendered more interdependent than ever by the digital revolution and the increase in ecological hazards. Mondialisation aims to establish a crucible of universalism, based on respect and mutual learning, not on a universalism imposed from above, convinced that it is the embodiment of reason. Avoiding the pitfalls of globalisation and identitarian self-withdrawal, mondialisation turns the diversity of languages and cultures into a force, and not an obstacle, on the way to a new conception of justice at work, which links the equal dignity of human beings and the preservation and embellishment of the environment in which we live.

48 K Polanyi, The Essence of Fascism, n 4, and K Polanyi, The Great Transformation, n 23, 305 et seq. This analysis may be compared to that found in G Bataille, La structure psychologique du fascisme [1933] (Paris, Lignes, 2009).
51 On this primary meaning of ‘mondialisation’, see A Berque, 'La mondialisation a-t-elle une base?' in G Mercier (ed), Les Territoires de la mondialisation (Quebec, Presses de l’université Laval, 2004) 73–92.