
**STATE RESPONSES FOR TACKLING CORONAVIRUS (COVID-19):
LEGAL REVIEW OF THE GLOBAL ECONOMY FROM A FRATERNAL
SOCIETY PERSPECTIVE**

***RESPOSTAS ESTATAIS PARA O ENFRENTAMENTO DA PANDEMIA
(COVID-19): UMA RELEITURA JURÍDICA DA ECONOMIA GLOBAL A
PARTIR DA SOCIEDADE FRATERNA***

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ABSTRACT

Objective: based on the hypothesis of transfer of the State's leading role to the Transnational Company (TNC) in the global economy, this paper aim to verify whether this also occurs during the tackling of the health crisis (COVID-19) and to what extent the State deals with the economic and social effects. In addition, presents a legal an ethical reinterpretation of global economic relations from the humanist perspective of the fraternity concept.



Methodology: hypothetical-deductive method, with bibliographic and documentary research, in which data is analyzed qualitatively, in a global and national scope (Brazil), from the main reports of governmental and non-governmental organizations carried out during the period of 2020 and beginning of 2021, focusing on the analysis of the following elements: 1 – main economic and social consequences deepened by the coronavirus pandemic crisis (COVID-19); 2 – fiscal and financial measures taken by developed and developing countries; 3 – legal re-reading on global economic relations and the relationship between the State and the Company from a humanistic ethical view of fraternity.

Results: it was found that: i) the hypothesis of replacement was not sustained during the pandemic, especially in relation to TNC, giving its place to a more active role of State (fiscal and financial measures), though there was significant differences between developed and developing countries; ii) the health crisis has no autonomy, but it presents itself as an involuntary reflection of the center-periphery economic system of technological asymmetry; iii) coping with the pandemic does not rely only on State measures, but above all on an in-depth legal review of economic relations, reinforced by the fraternity's ethics, using global compacts and assigning specific responsibilities even in relation to TNC's.

Contributions: deepening of the themes *Business & Human Rights, Law & Development*, with legal and ethical reflections on coronavirus pandemic (COVID-19), to build an epistemology that does not discard from capitalism crisis the normative scope of the concept of fraternity.

Keywords: Business & Human Rights; Law & Development; Law & Economics; Human Capitalism. Regulation.

RESUMO

Objetivo: a partir da hipótese de substituição do protagonismo do Estado pelo da Empresa na economia global, objetiva-se verificar se esta também ocorre durante o enfrentamento da crise sanitária (COVID-19) e em que extensão o Estado lida com os efeitos sociais e econômicos, realizando-se ainda uma releitura jurídica e ética das relações econômicas globais pela ótica humanista da fraternidade.

Metodologia: método hipotético-dedutivo, com pesquisa bibliográfica e documental, em que se analisa qualitativamente as informações, em âmbito global e nacional (Brasil), a partir dos principais relatórios de organizações governamentais e não governamentais realizados durante o período de 2020 e início de 2021, com foco na análise dos seguintes elementos: 1 – principais consequências econômicas e sociais aprofundadas pela(s) crise(s) da pandemia do coronavírus (COVID-19); 2 – medidas fiscais e financeiras



tomadas por Estados desenvolvidos e em desenvolvimento; 3 – releitura jurídica a partir de uma visão ética humanista de fraternidade sobre as relações econômicas globais e da relação entre Estado-Empresa.

Resultados: verificou-se que: i) a hipótese de substituição do protagonismo da empresa, durante o século XX e início do XXI, em relação ao desenvolvimento, não se sustentou durante a pandemia, especialmente em relação às Empresas Transnacionais, dando o seu lugar a posturas mais ativas estatais (medidas fiscais e financeiras), apesar de diferenças significativas entre Estados desenvolvidos e em desenvolvimento; ii) a crise sanitária não possui autonomia, mas apresenta-se como reflexo involuntário do sistema centro-periferia de assimetria tecnológica; iii) o enfrentamento da pandemia não depende apenas de esforços econômicos e financeiros estatais, mas sobretudo de uma releitura jurídica aprofundada das relações econômicas, reforçado pela ética da fraternidade, com utilização de compromissos globais e atribuição de responsabilidades específicas inclusive em relação às Empresas Transnacionais.

Contribuições: aprofundamento das temáticas Empresas e Direitos Humanos, e Economia e Desenvolvimento, com reflexões jurídicas e éticas aplicadas ao contexto da pandemia do coronavírus (COVID-19), para construção de uma epistemologia que não descarte da crise capitalista o alcance normativo do conceito de fraternidade.

Palavras-chave: Empresas e Direitos Humanos; Direito e Desenvolvimento; Direito e Economia; Capitalismo Humanista. Regulação.

1 INTRODUCTION

The pandemic of the new coronavirus (COVID-19) has already claimed 2.6 million lives in the world, of which 1.2 million in the Americas alone (WHO, 2021). In addition to the immediate losses, which per se are a major defeat for humanity, there remains a dismal and disastrous scenario in relation to the economic and social impacts, in prejudice to United Nation`s Sustainable Development Goals (SDGs). In this new context of global crisis, the following questions arise: i) Is the health crisis a specific problem or symptom of a more profound degradation in the heart of the global economy? ii) Who should take the lead towards development in the 21st century? iii) In the capitalist economy, would the current legal concept of fraternity be a utopia?



During the 20th and the beginning of the 21st centuries, transnational relations did not have the same space-time and technological limitations as in previous centuries. The way in which human beings interact in the context of markets – e.g: produce, exchange, organize and distribute factors of production – has become much faster, impersonal and global. In that context, the company, as a social institution, was praised as more efficient than the State, with transforming potential of global society.

The main hypothesis to work with is the replacement the role of the State for that of the Company in the global economy. The present study aims to verify if this was confirmed during the confrontation of the health crisis of Coronavirus (COVID-19) and to what extent the State cope with social and economic consequences, followed by a legal re-reading of global economic relations from the humanist perspective of fraternity.

The hypothetical-deductive method is used, with bibliographic and documentary research, in which the data is analyzed qualitatively, based on main reports of governmental and non-governmental organizations) produced between the year 2020 and beginning of 2021, focusing on the following elements: 1 – main economic and social consequences deepened by the coronavirus pandemic crisis (COVID-19); 2 – fiscal and financial measures taken by developed and developing States; 3 – legal re-reading from a humanistic ethical view of fraternity in global relations and the intricate relationship between State and Companies.

2 PROTAGONISM OF COMPANIES IN THE GLOBAL MARKET ECONOMY

The political-legal organization of the nation-state model, which insufficiently addresses economic and social issues, allowed the emergence of a new possible protagonist of development: the company – a social institution that received attention from several studies (BECK, 2008; COMPARATO, 2006; FARIA, 2002; NALINI, 2020), in such a way that one of the main hypotheses suggested for the 21st century was that legal



relations would adopt a new point of view endorsed by business (private), in spite of the State (public) perspective, considered itself economically inefficient¹.

Indeed, if the company is one of the institutional models that represent economic effectiveness, the transnational model is one of the most profitable for shareholders: according to The Global Fortune, as the 500 largest companies in the world increased their profits by 156% (from US \$ 820 billion in 2009 to \$ 2.1 trillion in 2019) and, according to the S&P 500, between 2009 and 2019, companies distributed about \$ 9.1 trillion in payments to shareholders, equivalent to 90% of their profits, including loans for that purpose (GNEITING; LUSIANI; TAMIR, 2020).

The intricate relationship between the State (which, although inefficient, aims at well-being, through development) and the company (which, though efficient, aims mainly at profits), both based on the capitalist model of production within global economy, is accompanied by technological revolutions – e.g: the way in which technology developers are produced, distributed and legally protected². On a global scale, this economic model

¹ As Brazilian professor Renato Nalini (2020) states: Company is an institution that has survived and can be considered a winner in the 21st century. While the State is grappling with the loss of sobriety, the concept that remains in theory, but increasingly relativized, the company integrates a competent system. If politics is involved in the endless discussion between the minimal state and the interventionist state, the company's path is efficiency. For the Government, it is more and more frequent to face the revival fundamentalisms, nationalisms and ethnicities. Antagonistic groups do not reach an agreement: Movement of the Landless (Brazilian "MST") and ruralists; sugarcane millers and harvesters; environmentalists and land grabbers, Indians and miners, homeless and idle property owners, homeless people and altruists who want to get them out of the situation. The relationship could continue to infinity. The contemporary State cannot stop fighting, internally and externally. While the company recycles and survives. It is true that the State is a blow to industrialization and the sophistication of society. 'Sociologists and economists, scientists and lawyers agree on the fact that the process of industrialization of modern societies has increased enormously as tasks of the State, contrary to what Spencer had prophesied and in compliance with what they predicted Durkheim and, of course, Max Weber. It is undeniable that this increase in the State's tasks determined an increase in the norms of organization, as Hayek maintains. However, given that among these tasks it is predominant to direct economic activity, it is also undeniable that the modern State increasingly uses the techniques of encouragement, in addition to the techniques of discouragement that were customary. 'To tame industrialized society, the State uses and abuses negative and positive sanctions. Brazilian companies that say so, about the absurd and bureaucratized impositions on free enterprise, so prestigious – at least rhetorically – in the 1988 Political Charter. Even so, companies resist.

² e.g: through the registration process of trademarks and patents, based on legal frameworks (national and international).



– which is also known as *center-periphery*³ – continues to reproduce itself within every technological wave thanks to globalization.

Currently, the world is in the *fourth technological wave*: frontier technology⁴ already had US \$ 350 billion in 2018 and has a potential to grow to US \$ 3.2 trillion in 2025 (UNCTAD, 2021a). But, unlike the developmentalism era, in which the State was responsible for heading the industrial infrastructure⁵, the path towards digital infrastructure is expected today to be led by Transnational Companies (TNCs) accompanied by flexible regulation and great fiscal and financial incentives to the private sector.

In this context, there was a transfer of economic protagonism provided by globalization, – without the corresponding transfer of social and legal responsibilities – which was endorsed by international policies that mitigate the power of the nation-State and reinforce global asymmetries⁶ (PÉREZ LUÑO, 2007).

In this sense, José Eduardo Faria's understands global economy as a stage in which the private company progressively replaced the State as the main actor, creating

³ In this regard, ECLAC (CEPAL, 2020) understands that the structuralist tradition of economic thought recognizes the international system as composed of a very heterogeneous set of countries, which could be divided into two groups: the *center* and the *periphery*. The center has a high level of per capita income and is located on the technological frontier, or very close to it, which allows it to be competitive in the sectors of greater technological intensity and dynamism of demand and, consequently, to have a dominant presence in the world trade. Its technological capabilities also allow it to sustain the creation of new processes, goods and services and to experience the productive diversification that this implies. The opposite situation is observed in the periphery, which shows a technological delay in relation to the center. This technological gap means that, in order to compete in the global market, the periphery depends mainly on static comparative advantages, based on natural resources or low wages.

⁴ Sectors such as Robotics, Nanotechnology, Artificial Intelligence, Blockchain, Big Data, Drones, Genetics.

⁵ Sectors such as energy, metals, transport, telecommunications.

⁶ As Pérez Luño (2007) rightly points out, globalization is the term that refers to the current integrating processes of the economy: financing, production and commercialization. These processes of integration and interdependence take place on a planetary scale, going beyond the traditional limits established by the borders of the States. Therefore, globalization implies carrying out the economic schemes of capitalist neo-liberalism. According to this author, among its most important effects, the following stand out: the overflow of the capacity of nations to carry out policies and / or economic controls in favor of international powers (International Monetary Fund) or private ones (companies and multinational corporations); the existence of large communication networks that enable financial and commercial activities on a planetary scale; the imbalance and asymmetry of the role of the different States in the interconnected economic networks, which determines the concentration of benefits in the first world countries (global-rich), and the correlative impoverishment of the third world countries (global-poor), in conformity with studies of Beck, Malem Seña, and Walter).



something qualitatively different from almost everything that had until now in matters of socioeconomic ordering and political-legal regulation (FARIA, 2002). Because, as Beck (2008) clarifies, the businessman, as soon as economic relations started progressive liberation from territorial boundaries – which, it is said, is not followed with the same breath and flexibility by the States – takes advantage of the inflexibility of the political-legal model to increase the profitability of its own enterprise, often oblivious to the social, economic and environmental consequences.

According to Beck (2008), the transnational businessman has several advantages: a) transfer of jobs to locations with reduced tax costs and charges; b) remodeling of national products and services based on the division of labor around the world; c) stimulating competition between national States following their own interests; d) mobility of production in a global chain allows convenient fractioning of the place of investment, production, private residence and tax domicile, in a way he has the privilege to choose the locals which best suits his interests⁷.

This scenario leads to an important question: the companies, considered as protagonists of development, assumed this same role in coping with the coronavirus (COVID-19) health crisis that emerged at the end of 2019?

3 ECONOMIC AND SOCIAL IMPACTS OF THE NEW CORONAVIRUS PANDEMIC (COVID-19): RETROSPECTIVE AND PERSPECTIVES

In a brief retrospective of 2020, according to the World Bank (2021a) there was: 1 – a break in the global supply chain as a result of the borders closure and lesser international mobility; 2 – a global reduction in the production of goods and great damage

⁷ As summarized by Comparato (2006), the activity of transnational companies is, therefore, only that of defining production strategies, acting tactically to exploit the most advantageous conditions (which is, of lowering cost), in terms of supply, assembly and distribution of goods or provision of services, in whichever country.



to sectors that provide services and tourism; 3 – a generalized dampening of consumption, accompanied by lower price of commodities, especially in relation to the oil sector; 4 – plenty of governmental policies (fiscal and financial) to support financial markets (similar to 2008 crisis); 5 – the weakening of the credit system, both in relation to public debt, which has become more expensive⁸, and in relation to the private sector, due to the increase in illiquidity and default likeliness.

From a social point of view, there was a sharp reduction in working hours, loss of formal jobs and workers' income. On the report of International Labor Organization (ILO, 2021), around 114 million jobs and \$ 3.7 trillion in income were lost, equivalent to 4.4% of the global GDP of 2019. The recovery is stark and uneven: while the low-qualified services sector was more impacted, the high-qualified sector grew.

In Brazil, there is still a discrepancy in income recovery between formal and informal workers, as well as in the treatment of the private and public sectors. In a recent national household sample survey (PNAD COVID-19), it is estimated that informal workers in the private sector remain the most affected during this pandemic⁹ (GÓES; MARTINS; NASCIMENTO, 2021).

In the economic field, although developing countries have suffered a smaller contraction (on average, 2.5% of GDP), due to the delay of the outbreak and less restrictive social distancing measures (UNDESA, 2021), there was a setback in relation to the Sustainable Development Goals (SDGs), in particular the *eradication of extreme poverty*¹⁰. Indeed, the world went well, with a reduction of 1.9 billion to 689 million people

⁸ The reason for this is multifactorial: generalized depreciation of national currencies, falling prices, reduced consumption of commodities, contraction of new debts for pandemic emergency spending.

⁹ As stated by Góes, Martins and Nascimento (2021), in November 2020, self-employed workers received 85.4% of what they usually received (and 83.2% in Oct./2020), while workers in the private sector without a formal contract received effectively 91.6% of the usual (and 90.7% in October 2020), but showing a 1.7% drop in effective income; workers in the private sector, on average, received 96.9% of the usual and those in the public sector, 98.4%.

¹⁰ Reference to the goals enshrined firstly in the 2000 Agenda (with its 8 objectives) and deepened by 2030 Agenda (17 objectives and 169 goals), in 2015. In both documents, the first objective is related to the eradication of hunger and extreme poverty, although the 2015 document has better defined and specific goals.



in extreme poverty between 1993 and 2015 (WORLD BANK, 2021b). However, since the economic slowdown, it is estimated that between 90 and 120 million people have returned to extreme poverty (UNCTAD, 2020), with the possibility of an increase to 797 million by 2030 (UNDESA, 2021).

Social distancing measures, although necessary, also brought a cruel and unexpected side effect for the poorest people, especially for children in schooling. In the last decade, basic education has served as an important support for reducing hunger through food programs. Thus, along with the pedagogical damage, there is a food risk: it is estimated that 75% of developing countries adopt such programs and around 370 million children were benefited (WFP, 2020).

On the other hand, there is an expectation that the world economy will grow 4% over 2021 and 3.8% in 2022¹¹ (WORLD BANK, 2021a). This share of optimism is backed by robust responses from States¹² and by the spread of news about vaccine development around the world (IMF, 2021a). In spite of this, the current economic growth – one of the three pillars of *sustainable development*¹³ – remains insufficient for the global pursuit of SDGs in relation to developing countries, and this trend is reinforced by massive loss of formal jobs and the slowdown in world trade¹⁴ (CEPAL, 2020).

¹¹ And this expectation, at least for 2021, is more favorable for developing countries (5.7% in 2021), including those with lower incomes, by about 4.9% (UNDESA, 2021).

¹² See section 4 of this study.

¹³ An interesting way of verifying sustainability would be based on the limitations between each other in the three spheres related to development, that is, there are elements such as economic growth, social development, and the environment, three elements that must be considered. That is, there can be no economic growth that sacrifices social advances or the environment, just as there can be no social advance without some economic growth and use of environmental resources, as well as a total abandonment of the use of natural resources would not be conceivable. resources for the preservation of the environment that end up making economic growth and the improvement of life unfeasible by social advances. From ECLAC's development equation, we could understand that there are three rates which defines three gaps that must be closed: between y_S and y_E (social gap), between y_E and y_A (environmental gap) and between y_S and y_A (sustainability gap). Given the centrality of equality in sustainable development, public policy must aim at the convergence of the other two rates with the growth rate for equality, which implies $y_S = y_E = y_A$.

¹⁴ According to ECLAC (CEPAL,2020), this scenario of economic decline appears as a combination of three frames, which must be faced: a) differences in the degree of specialization of economies, implications for the susceptibility of certain economies to imbalances to the external sector (for example, exchange rate fluctuations) , commodity prices, and the impact of external debt); b) capital mobility, favorable to short-term speculative processes and which reduces the scope for national policies of full employment and income



Even though the global economy is expected to recover, immunization is just beginning and totally uneven (IMF, 2021a, 2021b). The difference between the countries' financial, logistical and negotiating capacity to acquire doses in relation to the developing countries raises doubts about the universality and equity of the immunization efforts. Just to illustrate according to *Our World in Data*¹⁵, only 6% of the world population received some dose of vaccine and, in Brazil, about 7.5%¹⁶ (RITCHIE et al., 2021).

4 THE ASYMMETRY OF FISCAL AND FINANCIAL MEASURES ADOPTED TO TACKLE ECONOMIC EFFECTS OF THE NEW CORONAVIRUS (COVID-19): A STRUCTURAL “CRISIS”?

At the beginning of the pandemic, several TNCs announced investment cuts, like the McDonald's group, which planned a \$ 1 billion reduction in global investments, and MGM Resorts, which postponed 33% of its investments in 2020, with economic spillovers in developing countries (WEN, 2020).

At the same time, several fiscal and financial measures have been taken by States in order to address the social and economic effects indicated in the previous section. The most notable examples occur within G-20, which contributed with \$ 11.5 trillion in direct and indirect measures to assist the capacity of health systems, the livelihood of families and businesses, and job preservation (IMF, 2020a). However, even in this select group, there are differences between developed and emerging countries: while countries like Italy, Japan and Germany managed to inject around 40% of the GDP of their respective

distribution; c) the absence of adequate global governance, which corrects imbalances, since international governance is not a mechanism for stimulating expansive adjustments in surplus economies and to avoid speculative processes.

¹⁵ It is a digital scientific publication focused on global problems such as poverty, based on the efforts of the research team located at the University of Oxford and the NGO Global Change Data Lab, registered in England. More information is available at: <https://ourworldindata.org/about>.

¹⁶ Consulted on March 26, 2021: the data will change according to the collection and update. In addition, they do not measure the efficacy and quantity of doses required.



economies, in the other end, Russia, India and Mexico, did not reach even 10% (IMF, 2020a).

Besides, worth noting that the banking sector was not severely impacted, because before the pandemic it already had several positive factors¹⁷, mainly due to the strong support of the States, which guaranteed the flow of credit to families and companies (IMF, 2021a). In contrast, this aid did not necessarily revert to productivity or the generation of new jobs (UNDESA, 2021). Unfortunately, the higher credit exposure (e.g.: greater risk of widespread default) and the low interest rate can discourage the credit offer itself (IMF, 2021a) or serve to maintain unfeasible/low-productivity ventures, which will ultimately fall to the public account (WORLD BANK, 2021a).

From a historical perspective, the world is facing the *fourth financial wave*¹⁸. In the context of the health crisis, this brings a new risk of insolvency, which adds to the medium and long-term sustainability risks of indebtedness contracted in previous waves. In that regard, the World Bank (2021a) indicates at least five reasons why the world should have a greater concern: 1 – there is a significant increase in the size and speed of debt contraction to face the economic consequences, because public and private sectors alike are taking immediate financial risks without more robust guarantees or corresponding expectations of economic growth; 2 – risk to market stability, due to low global interest rates and strong pressure from investors, as there is an increase in spreads¹⁹ on developing public debt securities and a flight of capital to countries considered more stable, a situation that has been provisionally controlled through *asset purchase*

¹⁷ E.g.: large number of guarantees, capital and liquidity.

¹⁸ As specified by the World Bank (2021a), the world is currently in the fourth wave of global financing. The first wave (1970 - 1980), would be characterized by loans to countries in Latin America and other low-income countries, especially in the Sub-Saharan Africa region; the second wave (1990 - 2000), for loans to companies and banks (Asia) and governments (Europe and Central Asia); the third wave (2007-2009), consists of the private sector's run on loans in Europe and Central Asia, which ended when the global financial crisis interrupted bank financing in 2007-2009 and launched several countries into a deep recession.

¹⁹ This is the difference between the investment rate and the redemption rate for a given investment. In the case of public debt securities (which is still an investment), the investor can choose whether to remain or withdraw amounts to invest in more profitable or safer ones.



*programs*²⁰ by central banks; 3 – risk to national structural integrity for fiscal and financial policies based on the recurrent and extended use of exceptional measures, in order to generate discredit both for central banks (for example: by making credit conditions and financing rules too flexible), and for tax authorities who abuses of *exception clauses in the tax law*²¹; 4 – artificial changes in the financial markets due to the source of credit and loosening of regulation by regulatory authorities; 5 – inadequate loans to protect less productive domestic enterprises.

Inflation is likely to prevail, despite of the massive credit injection, which generates liquidity and a generalized low interest rates, and may generate two other side effects: the first, related to the risk of instability in the financial markets, the second, related to the risk of real increase in public and private debts, which could reach unsustainable levels. Thus, paradoxically, these measures have the potential to create the well-known “financial bubble”, which diverts resources from real investments, while unemployment grows and the loss of income remains (UNDESA, 2021). Furthermore, as the IMF (2020b) has already stated, in an attempt to reduce public spending, resources were relocated, and permission was granted for the dreaded easing of labor rights and wage reductions.

One question remains: what is the destination of these governmental resources? In developed countries, the main destination is to help large companies, with the exception of the United States, which faces a need for greater contributions for direct aid to workers and individuals due to its smaller social safety net (if compared to European countries). In line with this, it is worth mentioning that Germany, United Kingdom, Spain, France, the USA and the European Union allocated percentage is: 69.1% to help companies, 16.1%

²⁰ Central banks, when exhausting their capacity to influence general financial conditions in the definition of low short-term interest rates, they resort to a non-standard technical measure towards the acquisition of government bonds and private bonds in order to indirectly influence financial conditions and achieve price stability which, therefore, can assist economic growth and prevent a significant increase in inflation (ECB, 2019).

²¹ That is, many tax rules include exception clauses precisely for exceptional situations, such as the coronavirus pandemic (COVID-19) - however, this flexibility must be temporary and must follow transparent rules, under penalty of its maintenance being unsustainable and ineffective in the long run.



to directly serve the population, 7.9% for health support and 6.9% to national and subnational governments (AMITRANO; MAGALHÃES; SILVA, 2020).

One wonders: would these measures be sufficient for achieving long-term sustainable development? Not at all. First, it is clear that developed countries are able to take measures of greater and durable impact, especially for the benefit of the rich; developing countries, on the other hand, are on the edge of the cliff, since the space of reaction is smaller and tied to international agendas that are unfavorable to the full exercise of fiscal and economic sovereignty²².

Second, while support for companies is essential, there are serious accusations that TNCs profited substantially during the pandemic and did little to help tackle the pandemic from a social and economic development perspective. In this regard, the OXFAM report (GNEITING; LUSIANI; TAMIR, 2020) shows that: a) in the year 2020, there was an expectation of an increase in profits around US \$ 109 billion; b) 25 richest billionaires (shareholders) increased their fortunes to \$ 255 billion; c) the benefits of corporate philanthropy did not overcome tax avoidance and evasion because, on average, only 0.32% of 2019 earnings were donated²³. This inequality is ultimately reflected in the

²² Moreover, there is a historic weakness in the social safety net and a large international debt. This scenario presents a staggering difficulty due to several factors, such as the reduction in revenues due to the sharp fall in demand and price in the global market for its products and services; the mobility of foreign capital, which makes it possible to avoid investments in times of market instability; rising costs from borrowing in the financial markets, since credit risk increases with the ease with which they are granted; as well as the devaluation of national currencies, which implies even greater difficulty in the payment of external debts and also in the import of products and services indispensable for the maintenance of its own export-oriented production.

²³ As identified by the OXFAM report (GNEITING; LUSIANI; TAMIR, 2020, p. 24): “Companies around the globe have not been passive in response to COVID-19. The primary response by large corporations and billionaires to help address the economic impacts of COVID-19 has been philanthropic giving. This does not come as a surprise given the preference of many companies for voluntary contributions to social causes (rather than obligatory tax payments or pre-distributive mechanisms, such as higher wages or price premiums for suppliers). However, philanthropic contributions pale in comparison to corporate profits and billionaires’ wealth – and the potential good a fairer tax system or more inclusive economy would garner. Take the US as an example. While the US is estimated to have lost around \$135 billion in revenue due to corporate tax dodging in 2017⁸⁹, corporate philanthropy amounted to less than \$20 billion.⁹⁰ A similar disproportion can be observed in India where corporate social responsibility (CSR) contributions (\$6.8 billion annually) pale in comparison to the estimated loss in government revenue due to corporate tax dodging (\$47 billion annually).⁹¹ Oxfam analyzed the COVID-19 donations of the companies listed on the S&P



trend indicated by ECLAC (CEPAL, 2020) that the income of informal workers will fall 60% in the world and reach 81% in Latin America and Africa, while the richest 1% has already recovered part of their wealth. In this respect, between March and October 2020, the wealth of 644 American billionaires rose 31.6% (from 2.95 trillion to 3.88 trillion) and, from the richest 5, by 66% (from 358 billion to 596 billion) (UNDESA, 2021).

Third, technological gap²⁴ remains a major issue for developing countries, which are still concerned with meeting the most basic needs related to human capabilities and access to essential goods and services, including as a result of the lack of sufficient income – of course, we do not speak of absolute values, but according to the cost of living registered geographically and temporally – which only reinforces the internal inequality that already exists. It is never enough to stress that before the pandemic, Milanovic (2016) already demonstrated the high concentration of income in the world and in each community²⁵.

Global 100. While more than half disclosed their donations around COVID-19, the average amount a corporation donated was only 0.32% of its operating income for 2019.⁹² Philanthropic giving by corporations does not constitute an adequate contribution to the fight against COVID19 considering the financial needs and the size of corporate profits. In addition, there is little traceability and accountability for how such money is used and what it has achieved”

²⁴ This technological gap is well explained in the UNCTAD report on technology (2021a, p.10): “Inequality between countries may have been falling in relative terms, but in absolute terms it has never been higher and continues to increase. For example, in 1970, the average GDP per capita in developed countries was \$18,670, compared with \$1,242 in developing economies, resulting in a gap in absolute terms of \$17,428. By 2018, this gap had reached \$40,749. It is true that in percentage terms, the increase was greater in developing countries than in developed countries. However, the widening absolute gap means that in the global economy there is now much more inequality in the access to goods and services. This citizen penalty can lead to discontent and add to migration pressures. People feel that no matter how hard they try they cannot increase their general standard of living in a country that is growing slowly – and that the only way to close the income gap is to move to a country with a higher average income. In summary, between-country inequality is the most significant contributor to global inequality, and in absolute terms, the gap between developed and developing countries has increased. For policymakers in developing and developed countries, this is a critical trend that has to be reversed.”

²⁵ In the study by Milosevic (2016), real incomes are compared between 1998 and 2008, reaching four groups: the first, formed by the emerging middle class (located mainly in China and India), including even graduates from the extreme poverty during the 1990s that achieved an increase in their real incomes, although not reaching the same quality of life (e.g.: education, health, etc.) when compared to the middle class of developed countries; the second, global plutocrats, within the scope of the richest 1%, who have considerably increased their assets; the third and fourth groups, which comparatively received the least increase in income, belong to the middle class of developed countries and people in extreme poverty in developing countries.



Thus, it is not without good arguments that Boaventura de Souza Santos (2020) assumes a “permanent crisis” of the capitalist system. Far from being an exception to normality, the health crisis is a result of all the unresolved crises over the past 40 years, endorsed by neoliberalism as a negationist policy of the unsustainability of the exploitation model, in the center-periphery (or North South) economic system. That is, the pandemic is not an isolated fact, but a consequence of the social insufficiency of this global economic model and, as such, likely to repeat itself.

5 GLOBAL ECONOMY REVIEW FROM THE FRATERNITY LEGAL POINT OF VIEW: AN UTOPIA TO BE DISCARDED?

In 1516, the English philosopher and statesman Thomas More wrote *Utopia*. In his work, More (2003) idealized a republican and egalitarian society in which there was no religious intolerance, hunger, unnecessary vanities, based on the valorization of work²⁶, collective well-being and people's intellectual development, points that would be above material goods. The name he attributed to the place (*Utopia*) was not randomly chosen, as it has become synonymous, at best, with a non-existent place and, at worst, with a reverie to be discarded.

But, as Brazilian philosopher Marilena Chauí (2008) explains, the term *utopia*, which became famous just after More's work, could take on three meanings: the first, as a literary genre, which encompasses much earlier narratives, such as the ideal city (in the

²⁶ For example, by ensuring decent work, six hours a day, without excesses, with the right to freedom for intellectual development and leisure in other free hours. As indicated by More (2002, p. 50): “Of the twenty-four equal hours into which they divide the day and the night, the Utopians devote only six to work. They work three hours before noon, when they go to lunch. After lunch, they rest for two hours, then go to work for another three hours. Then they have supper, and about eight o'clock (counting the first hour after noon as one) they go to bed, and sleep eight hours. The other hours of the day, when they are not working, eating or sleeping, are left to each person's individual discretion, provided that free time is not wasted in roistering or sloth but used properly in some chosen occupation. Generally, these intervals are devoted to intellectual activity. (...) After supper, they devote an hour to recreation, in their gardens during the summer, or during winter in the common halls where they have their meals. There they either play music or amuse themselves with conversation.”



Republic of Plato), the architectural design of the perfect city (in Hippodammmus of Miletu), and the poems that describe the Golden Age (in Virgil and Ovid); the second, in a narrow literal sense (in Greek, *tópos* means place and the prefix *u* is used in a negative sense), which takes on the meaning of "not place" or "nowhere"; third, as a derogatory reference to socialist experiences that failed, especially during the 20th century, which brought discredit on the potential for transformation of the current capitalist system²⁷.

Among the most relevant characteristics of a *utopia*, as stated by Chaui (2008): 1 – being *normative*, that is, proposing the world as *it should be* in opposition to what *it actually is*; 2 – *totalizing and critical of the existing*, as it proposes other institutions, rules, values, standards of power, property and personal relationships; 3 – shows anguish in facing crisis, injustice, corruption, misery, hunger and privileges related to the present, elements which are perceived as violence against the members of that society; 4 – it is *radical*, insofar as it seeks freedom, individual and public happiness, through the reconciliation of man with nature, the individual with society, and society with the State, thus restoring values such as *justice, fraternity and equality*; 5 – combines *unrealism* and *realism*; 6 – it is formed by a without boundaries speech which, despite recognizing the premature nature of its undertaking/political approach, stimulates the exercise of the imagination and inspires concrete actions in the real world.

In fact, More (2002), critical above all in relation to the monarchic authoritarianism of his time, brings together all those elements, even resorting to exaggerated and comic situations. It is worth mentioning, for example, that Utopians do not value gold as a cultural symbol of power and wealth, destining it for unworthy purposes, such as the construction of chamber-pots and fetters – undoubtedly an allegory for the real degradation to which the unmeasured search for material goods imprisons humanity. However, some of his criticisms still resonates within the legal thinking embodied by current democracies

²⁷ Although, according to Chaui (2008), this label is inaccurate, since, among the socialist authors, Marx criticized those he considered "utopians" and Engels, in the same vein, made a distinction between utopian socialism and scientific socialism.



(e.g.: religious freedom, decent work, greater integration of the political community, and others.).

After this brief introduction, a question about fraternity is raised: *from a political-legal perspective, would the fraternal society foreseen by the Brazilian Federal Constitution (1988) be a utopia?*

In a general description of *fraternal society* by Pereira, Sayeg and Neves (2020, p. 39-40, *free translation*²⁸):

Some thinks there is no such thing as Fraternal Society. Others thinks that the Fraternal Society is the one that the law obliges to be, however, this is not the message of the Brazilian 1988's Federal Constitution, as inscribed in its preamble. The constitutional message of the Fraternal Society imposes a transforming gaze on our people and our nation, from materialism in consubstantiality with teleology in quantum singularity between positivism and the Dignity of the Human Person and the Planet. (...) The Fraternal Society is the constitutional secularization of Heavenly Jerusalem, a promised land flowing with milk and honey, which must be conquered, as it is a free, just and solidary one, fully developed, with poverty eradicated, without unacceptable rates of inequality and promoter of the common good, where everyone will live free, prosperous, healthy and happy, as pursued by the United Nation's Resolution "Transforming Our World": The UN 2030 Agenda for Sustainable Development, 2015; and, in fact, it is set out in its Article 3 as fundamental objectives of the Republic, within the core of the Fundamental Principles.

By this definition, it is clear that fraternal society – the one enshrined in the Constitution and which embraces the values of freedom, justice and solidarity – serves as an ideal for the *transformation* of an existing society. At this point, Brazilian CF/1988: 1 –

²⁸ Originally: "Há aqueles que entendem que não existe a tal Sociedade Fraterna. Outros pensam que Sociedade Fraterna é aquela que a lei obriga ser, porém, não é esta a mensagem do Constituinte de 1988, ao inserir textualmente a Sociedade Fraterna no preâmbulo da Constituição Federal. A mensagem constitucional de Sociedade Fraterna impõe a todos um olhar transformador do nosso povo e da nossa nação, do materialismo em consubstancialidade com o teleológico em singularidade quântica entre o positivismo e a Dignidade da Pessoa Humana e do Planeta. (...) A Sociedade Fraterna é a secularização constitucional da Jerusalém Celestial, a terra prometida que mana leite e mel, que deve ser conquistada, pois é aquela livre, justa e solidária, desenvolvida, com a pobreza erradicada, sem taxas inaceitáveis de desigualdade e promotora do bem estar geral, onde todos possam viver livres, prósperos, sadios e felizes, conforme almejado pela Resolução Transformando Nosso Mundo: A Agenda 2030 para o Desenvolvimento Sustentável da ONU, de 2015; e, de fato, está fixado no Artigo 3º, e seus incisos, da Constituição Federal, à título de objetivos fundamentais da República, no bojo dos Princípios Fundamentais."



proposes a world as *it should be*²⁹; 2 – proposes other institutions, rules, values and standards of power in opposition to those of pre-democratic Brazilian society; 3 – revolt against injustice, corruption, misery and hunger, elements considered as violators of the social and individual rights advocated therein; 4 – it is radical, insofar as, in denying the real, it seeks to reconcile freedom, happiness (individual and public) for the benefit of all (and not a few), safeguarding values such as justice, fraternity and equality; 5 – combines elements of realism (e.g.: global market economy, whose structure is capitalist), with a supposed unrealism (e.g.: valuing the human being, despite the neoliberal perspective imposed by economic agents); 6 – presents an unlimited speech, which stimulates the exercise of imagination and recognizes the “under construction” nature of this society, inspiring actions in the real world. Thus, the Federal Constitution / 1988 presents the characteristics of a utopia.

Nonetheless, far from the sense of the *unfeasible* or *rejectable*, the meaning assumed here is the *possible* and *desired* ideal, which impels its interlocutor to perform acts in real life. That is, daily confrontation, with responsibility, of what is understood as fair, of improving the capitalist system to something more balanced. In short: it is known that society, at the current stage, is far from accomplish those values in their entirety, though it should not be rejected in its successes.

It is worth mentioning that the image of fraternity is projected by the Brazilian constitutional text, already in its preamble, which in turn is endowed with normative force and summarizes the values that make up that fraternal society³⁰, which guides: a) the creation of rules, b) the formulation of public policies and, above all, c) the conduct of

²⁹See art. 170 on the economic order of the CF / 1988 that foresees, at the same time, both the values of liberal capitalism and social values.

³⁰ As written in constitutional text: “Nós, representantes do povo brasileiro, reunidos em Assembléia Nacional Constituinte para instituir um Estado Democrático, destinado a assegurar o exercício dos direitos sociais e individuais, a liberdade, a segurança, o bem-estar, o desenvolvimento, a igualdade e a justiça como valores supremos de uma sociedade fraterna, pluralista e sem preconceitos, fundada na harmonia social e comprometida, na ordem interna e internacional, com a solução pacífica das controvérsias, promulgamos, sob a proteção de Deus, a seguinte CONSTITUIÇÃO DA REPÚBLICA FEDERATIVA DO BRASIL. (BRASIL, 1988).



citizens, politicians, and public and private agents to achieve constitutional purposes. And, in this sense, a logical corollary of this new ethics of fraternal (ideal) society, would be the constitutional principle of Fraternity (FONSECA, 2019; PEREIRA, SAYEG, NEVES, 2020).

It cannot be ignored: there are some authors who identifies the principle of solidarity and fraternity as synonyms³¹. However, this understanding comes at the expense of the fraternity's ethical reach, with a structuring and signifier scope, since it delimits the values to be emulated to reach such a society, as a *political category*³². Thus, solidarity – which has a reduced, specific and partial scope – even though not less important, its oriented by fraternity³³, as a broad, general and total dimension.

Furthermore, this *fraternity ethics* is not restricted to the national sphere or internal inequalities, but it radiates effects beyond the territorial borders of each nation-State, to

³¹ As Pereira, Sayeg and Neves (2020) criticized in their work.

³² At this point, fraternity assumes itself as a legal and political category, with a much broader scope than solidarity, as Reynaldo Soares da Fonseca and Rafael da Fonseca (2020) indicates: as a political category, the fraternal ideal promises to refund democratic practice, by making the relationship between equality (peer relation) and freedom (difference) compatible, in favor of a single cause underlying the common good of humanity. Consequently, the content of this principle is expressed by the condition of equality between citizens in fraternal conditions that supports the free development of each person in their own diversity. In summary, fraternity consists of a method and content of politics and must be a constitutive part of the public decision-making process and hermeneutic guide to other norms in dynamic interaction. (...) By the way, there is significant utility in a normative category that indicates communication paths for solving social controversies and the common management of public life, in the light of humanistic values such as tolerance, compassion and brotherhood. After all, social, political, economic and legal transcendence of the fraternal imaginary also helps the governance of partially overlapping communities that share political space, decisions and civic bodies, taking into account the ethical and moral component of the fundamental legal categories.

³³ As Pereira, Sayeg and Neves (2020) highlights: solidarity, while very relevant, is a sub-aspect of the society that is intended, under the terms of Article 3 of the Brazilian Federal Constitution, which relates to the Fraternal Society, according to the constitutional preamble. Reducing the Fraternity to solidarity is negligible, since, for example, fraternity resides: a) in freedom and equality, because it permeates the spirit of the one who is rational and endowed with conscience, in accordance with Article 1 of the Universal Declaration of Human Rights; b) in national development; c) in the eradication of poverty and marginalization; d) in reducing social and regional inequalities; e) in the promotion of the good of all, without prejudice of origin, race, sex, color, age and any other forms of discrimination. The concept, already contemporary, of the material and indelible character of the Fraternity (as *philia* in the perspective of the legal secularization of Christian love) is a feeling of love between brothers, united by an original universal connection ensured not by religiosity, but by the quantum physics, which applies to everything, including the Law as expressly pontificated by Article 1 of the Universal Declaration of Human Rights.



welcome, for example, refugees against xenophobia³⁴. The reason why this concerns fraternity is based also in the argument of equal dignity of all human beings. Despite the flourishing in the midst of Western Christian religion and culture, there is a universalist claim and an eminently secular, non-dogmatic facet, endowed with a meaningful ethical sense for today and practical effects favorable to the construction of a more just humanity³⁵ (FRANCIS, POPE, 2020).

³⁴ Fonseca (2019) calls attention to a French example: in 2018 the French State took a decision favorable to the fraternity, canceling penalties applied to people who helped refugees. As indicated by this author, the principle of fraternity has shown its power in the issue of migration in Europe, in benefit of people who flee, either from a war scenario or from conditions of poverty in their countries of origin. For the first time, the French Constitutional Council, in July / 2018, recalling the motto of the French Republic ('Freedom, Equality, Fraternity'), decided that aid to illegal immigrants in the country will no longer be considered illegal and punished with 5 (five) years in prison and a fine of 30 (thirty) thousand euros. (...) It rules that migrants can be helped with advice, food, accommodation and medical attention, or any other help that seeks to preserve their dignity and physical integrity. It is a historic and contemporary breakthrough. The decision was taken in a context of great tension in the European Union. The Constitutional Council of France determined that people who help illegal immigrants in the country would not be put on trial, putting into practice for the first time, in the sphere of migration, the fraternity principle. In fact, the concept of fraternity points to the reciprocal relationship that links all human beings to each other and implodes all kinds of nationalism, border closings and xenophobia. In the other, 'another self' is visualized, regardless of culture.

³⁵ As recognized through the encyclical *Frattelli Tutti* (FRANCIS, POPE, 2020, p.2-3): "5. Issues of human fraternity and social friendship have always been a concern of mine. (...) 6. The following pages do not claim to offer a complete teaching on fraternal love, but rather to consider its universal scope, its openness to every man and woman. I offer this social Encyclical as a modest contribution to continued reflection, in the hope that in the face of present-day attempts to eliminate or ignore others, we may prove capable of responding with a new vision of fraternity and social friendship that will not remain at the level of words. Although I have written it from the Christian convictions that inspire and sustain me, I have sought to make this reflection an invitation to dialogue among all people of good will. 7. As I was writing this letter, the Covid-19 pandemic unexpectedly erupted, exposing our false securities. Aside from the different ways that various countries responded to the crisis, their inability to work together became quite evident. For all our hyper-connectivity, we witnessed a fragmentation that made it more difficult to resolve problems that affect us all. Anyone who thinks that the only lesson to be learned was the need to improve what we were already doing, or to refine existing systems and regulations, is denying reality. 8. It is my desire that, in this our time, by acknowledging the dignity of each human person, we can contribute to the rebirth of a universal aspiration to fraternity. Fraternity between all men and women. 'Here we have a splendid secret that shows us how to dream and to turn our life into a wonderful adventure. No one can face life in isolation... We need a community that supports and helps us, in which we can help one another to keep looking ahead. How important it is to dream together... By ourselves, we risk seeing mirages, things that are not there. Dreams, on the other hand, are built together'. Let us dream, then, as a single human family, as fellow travelers sharing the same flesh, as children of the same earth which is our common home, each of us bringing the richness of his or her beliefs and convictions, each of us with his or her own voice, brothers and sisters all.".



In fact, this thinking is in line with the recent criticism of the possible vaccine monopoly by developed countries³⁶ (PIQUÉ, 2021). And, at this point, fraternity becomes not only a political justification for better intercultural relations, but also essential in the global tackling of the pandemic³⁷ (LOUREIRO, 2020; FONSECA, FONSECA, 2020), as an urgent problem that affects everyone. A possible solution would be the consolidation of a global compact with shared responsibilities in relation to the production and distribution of vaccines, as a policy of continuity of the already advocated in Human Rights regarding the *right to development* (HUDLER; BENACCHIO, 2020).

6 FINAL CONSIDERATIONS

Overcoming the health crisis depends on unprecedented global legal cooperation on vaccine production and distribution technology. At this point, developing countries are at a disadvantage: on top of the lack of access, they must also balance budget expenditures to avoid both inefficient allocations and premature adjustments.

³⁶In this sense, the correspondence issued by Pope Francisco to the Argentine judge Roberto Andrés Gallardo:

Pope Francis, who more than once demanded access to vaccines and anti-coronavirus treatments for everyone,' especially the most vulnerable, went further. In a letter he wrote to the Argentine judge Roberto Andrés Gallardo to thank him for the work he is doing regarding the problem of the shortage of vaccines together with the Pan-American Committee of judges for Social Rights and Franciscan doctrine, he denounced those who 'hoard vaccines'. 'Those who hoard vaccines, those who put the accent on intellectual property, those who block the provision of medicines, are wrong and will ultimately be victims of their own myopia,' warned Pope Francis, in an epistle to this magistrate that was several times in the Vatican, where in June 2019 he constituted the Pan-American Committee of judges for Social Rights and Franciscan doctrine (PIQUÉ, 2021).

³⁷ As Loureiro well describes (2020), in this context, the pandemic brings up the discussion about fraternity, since it connects people all over the world, regardless of the consideration of frontiers and social classes, imposing the aspect of equality between human beings, since all are equal in law and dignity, even if the advance of capitalism, through the globalized world still intends to keep the world divided between central and peripheral countries. The pandemic has revealed the notion that all human beings are connected by the human condition and that there are no differences that justify the relationships of subordination, but rather the relationships of coordination, in a cross-cultural perspective of inclusion and non-discrimination.



If, on the one hand, the company became synonymous with efficiency and development at the beginning of the 21st century, on the other hand, throughout 2020, it was not the efforts of ETNs that won the spotlight in tackling the pandemic, but massive fiscal and financial measures taken by the States, which prevented a Great Depression all over the world. In this way, the elation of one to the detriment of the other is not only inaccurate but does not prove to be profitable and demands a legal reinterpretation. In addition to the health crisis, the economic-legal structure and technological asymmetry result in the concentration of income contrary to the legal model of sustainable development.

At the global level, there is difficulty in assigning specific legal responsibility and coordinated redirection of part of the profits of ETNs to an effective confrontation of the pandemic. Therefore, in facing this human tragedy, an innovative response is required with political demands for a more active role of ETNs, a message that must be reinforced precisely by a feasible fraternity ethics, accompanied by the consolidation of responsibilities, without this falling as cost to the most vulnerable.



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