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Interview: Alain Supiot

Alain Supiot joins IUR to reflect on a landmark proclamation concerning the right of all human beings to pursue together their material progress and their spiritual development

IUR spoke with **Alain Supiot**, Professor Emeritus at the Collège de France, Corresponding Fellow of the British Academy, and author of *The Spirit of Philadelphia: Social Justice vs. the Total Market*

Why are the tools for conflict resolution so often missing?

To be fulfilled, the pacifying function of the law presupposes the possibility of recourse in the event of a dispute to an impartial third party with the authority to enforce it. Freedom of association is part of this ternary structure, but enriches and consolidates it by authorising collective organisations to act peacefully so that their concrete experience of the injustice of the established order is taken into account. In addition to the right to take legal action to obtain the enforcement of the law, it adds a right to act collectively to ensure that the law is reformed. The justice of the rule is then no longer posited as an indisputable axiom, any more than it is supposed to result spontaneously from pure and perfect competition or from the struggle of classes or races; it becomes the very object of a collective contestation governed by the Law. This is why trade union freedom implies not only the right to be represented, but also the right to act and to bargain collectively. The use of these three rights (to organise, to act and to negotiate collectively) makes it possible to metabolise social violence, to convert relations of force into relations of law in an endless movement to approximate justice. These rights to challenge the law are not a factor of legal disorder, but on the contrary of the durability of this order in societies faced with technical, ecological or sociological change.

This new way of achieving justice was the greatest legal invention of the twentieth century, and it is to the labour movement that we owe its international consecration at the end of the First World War. This war was the first full-scale experiment in "total mobilisation", i.e. the transformation of the belligerent countries "into gigantic factories, producing armies on the assembly line that they sent to the battlefield both day and night where an equally mechanical bloody maw took over the role of consumer"[1]. The appalling toll of this first massacre on an industrial scale forced the victorious countries to respond to the aspiration for international social solidarity that the workers' movement had been working towards throughout the 19th century. The Great War was a stinging setback for this workers' internationalism, but also a decisive argument for trying to implement it once peace was restored. In November 1914, the American Federation of Labor, meeting in Philadelphia, adopted a resolution calling for a meeting of workers' representatives from all countries at the same time and place as the Peace Conference "to the end that suggestions may be made and such action taken as shall be helpful in restoring fraternal relations, protecting the interests of the toilers and thereby assisting in laying foundations for a more lasting peace"[2]. A little later, in July ~~20~~1916, a conference of trade union leaders from the allied countries meeting in Leeds called for the creation at the end of the war of an international organisation that would "insure to the working class of all countries a minimum of guaranties of a moral as well as of material kind concerning the right of coalition, emigration, social insurance, hours of labor, hygiene, and protection of labor, in order to secure them against the attacks of international capitalistic competition". The ILO was created by the Treaty of Versailles to meet this demand. While the United States condemned the League of Nations to failure by refusing to join it, it joined the ILO under the New Deal, which enabled it to survive the Second World War. In 1944, it was the only major international organisation with competence in economic matters. It was in this context that it adopted the Declaration of Philadelphia, which states that "experience has fully demonstrated the truth of the statement in the Constitution of the International Labour Organisation that lasting peace can be established only if it is based on social justice". Indeed, if democratic regimes resisted dictatorships throughout the twentieth century, it was largely thanks to trade union freedom, the legalisation of which made it possible to subject market forces to mechanisms of social justice and thus to combine political and economic democracy. It is in this way that democracies have managed to overcome the crisis of capitalism without sinking into fascism. Unlike political democracy, which confers power on an electoral majority of formally equal individuals, economic democracy allows for the expression of the diversity of experiences of reality that different categories of the population may have. Its scope can therefore extend to the defence of interests other than those of employees and employers, such as those of the self-employed or environmentalists. By bringing leaders back into touch with reality, it reduces their "disconnection" from the problems faced by ordinary people.

1916

These legal foundations of the social state have always been the target of neoliberal ideology, which also took off in the wake of the First World War, as Quinn Slobodian has shown[3]. This religious ideology is based on the belief in the existence of a spontaneous justice of the market, which, like divine providence, is intended to apply to the entire surface of the globe. The immanent laws of the economy that govern this process of globalisation take the place formerly occupied by divine law, and governments

must facilitate their free play, like a watchmaker who "oiled a clockwork, or in any other way secured the conditions that a going mechanism required for its proper functioning"[4]. The first success of the globalists was to torpedo in 1948 the project for an International Trade Organisation, the creation of which had been envisaged by the Havana Charter to implement the programme of international social justice set out in the Declaration of Philadelphia. This failure has not prevented the development of the social state at national level, based on a variety of social models, the three pillars of which are labour law, social security and public services. But these institutions were called into question everywhere from the late 1970s onwards, with the political triumph of neo-liberalism and the conversion of Communist countries to capitalism.

The scale and pace of this dismantling of the welfare state have not been the same in all countries. It has proved more resilient in countries where it had a constitutional basis than in the United States or the United Kingdom. But the pressure exerted by international competition and offshoring has everywhere destroyed the balance of power between trade unions and governments, whose action is limited by national borders, on the one hand, and big business, whose economic power is exercised on a global scale, on the other. The feeling of powerlessness in the world of work that results from this collapse of democracy obviously contributes to all kinds of identity-based withdrawals and to the scapegoating of social misery. We are thus repeating a process that had already been observed between the wars in countries that had not taken the path of economic democracy and that President F.D. Roosevelt had perfectly identified when he declared in his Second Bill of Rights Speech in January 1944 that "true individual freedom cannot exist without economic security and independence. 'Necessitous men are not free men'. People who are hungry and out of a job are the stuff of which dictatorships are made".

Is the digital world necessarily grim? Can digital work even be regulated?

Having devoted an entire book to this subject[5], I will try to summarise the essential points for our purposes. In the long history of human labour, every major technical change has been accompanied by a change in institutions. It seems that the ruling classes have always been inclined to see the world of work as what the seventeenth-century French engineer Vauban called "the immense crowd of bipedal instruments", and to treat workers like the instruments of labour of their time. For example, they were treated like draught animals, i.e. like things that could be bought (as in the case of slaves) or rented (as in the case of labour contracts). From the second industrial revolution onwards, this model was no longer the animal, but the machine. As Fritz Lang and Chaplin showed so well, workers were reduced to cogs, mechanically obeying the impulses they received. The fetish object with which Western culture identified the order of the world was still the clock. Today that object is the computer: it is no longer a watch or a rosary that each of us wears from morning to night as a sign of belonging to that order, but a smartphone. The invention of computers and the rise of cybernetics were accompanied by a managerial shift from Taylorism to management by objectives. Human beings are treated like bipedal computers. From then on, making them work no longer meant subjecting them to orders they had to obey, but programming them, i.e. implanting 'software' in them that would lead them to spontaneously achieve the objectives assigned to them by reacting (feedback) to the quantified signals they received from their environment. This idea of adapting human beings to an immanent order has been and remains common to theorists of neoliberalism and artificial intelligence.

Governance by numbers is the normative expression of this imaginary. It can be seen not only in labour relations within companies, but also in relations between companies within supply chains, or in relations between companies and states, or between states and international economic institutions. What is radically new is not so much "numbers" (already omnipresent in the Taylorian industrial world), but the replacement of government by "governance", in other words the project of a society on automatic pilot, where programming takes the place previously given to legislation. On a global scale, this vision is expressed in the 17 "Sustainable Development Goals", broken down into 169 targets and accompanied by 244 performance indicators. The world is no longer conceived as a concert of nations that must agree on rules based on a shared vision of justice, but as a vast enterprise governed by numbers. Social justice, which was at the heart of the Declaration of Philadelphia, is totally absent from this agenda. Assuming ternarity, it has no place in the contemporary computer imagination, which is binary and tends to substitute governance by numbers for the rule of law.

This programming is leading to new forms of dehumanisation of work. The *denial of thought* which characterised the Taylorist reduction of workers to the status of cogs in a vast clockwork has been replaced by the *denial of reality* suffered by workers programmed to satisfy performance indicators cut off from the concrete experience of their task. This has led to a spectacular rise in psychological disorders and unhappiness at work, the root of which hospital staff in France have grasped perfectly well by denouncing the fact that they are being asked to "look after the indicators rather than the patients".

To break down this kind of resistance, behavioural economics recommends the use of *nudges*. Awarded prestigious prizes[6] and actively promoted by the World Bank[7], this behaviourist approach claims to have turned economics into an experimental science. It borrows the technique of randomised trials from medicine, with the aim of getting people to behave well in the world as it is, rather than questioning the justice of that world. The

Everywhere, we see the dismantling of solidarity systems inherited from tradition or the welfare state leading to the exacerbation of identity-based withdrawal

techniques used for this purpose are not about learning, but about dressage - in other words, a degraded form of education that the great technologist Gilbert Simondon has shown traps the individual in social fatalism[8]. These behavioural techniques are destined to extend to all aspects of human action, as shown by the "social credit" system now in force in China, which is one of the most advanced aspects of the "surveillance capitalism" so accurately described by Shoshana Zuboff[9].

The situation of platform workers - the "Uberised" - is as emblematic of this governance of work by numbers as the situation of assembly-line workers was of Taylorism. Ken Loach showed this in 2018 in his great movie *Sorry we missed you,* which is the contemporary equivalent of Chaplin's *Modern Times.* These workers are controlled and evaluated by algorithms. This control mainly concerns transport and deliveries, but it is destined to extend to many other activities. All over the world, the platforms are lobbying hard for these workers to be classed as self-employed, despite the fact that case law is fairly unanimous in seeing them as subordinates falling within the scope of employment law.

As Fritz Lang and Chaplin showed so well, workers were reduced to cogs, mechanically obeying impulses. Now they are treated like bipedal computers

From a legal point of view, Uberised work is not as radically new as it is made out to be. It resurrects the structure of serfdom. Under feudal law, the serf was not an employee, but the tenant of the "servile tenure" granted to him by his master, in return for a fee. This is exactly what the platforms are trying to impose. They want to benefit from the activity of workers whom they manage, control and, if necessary, "disconnect", without having to assume any employer liability or social security contributions. Such a dissociation between the places where power is exercised and the places where responsibility is attributed is a characteristic feature of the neo-liberal economy. The work under the platform illustrates how governance by numbers resurrects links of allegiance and leads to the establishment of veritable chains of irresponsibility.

But our computing tools do not condemn us to this downward spiral into the dehumanisation of work. They are marvellous instruments that could help us to meet the social and ecological challenges of our time. In the twentieth century, the scope of social justice was limited to the question of economic security. The alienation resulting from the so-called "scientific organisation of work" was deemed inevitable in both communist and capitalist countries. Today, our new tools should make it possible to extend the scope of social justice to work as such, by giving everyone autonomy and responsibility at work. This presupposes that we do not see human beings as extensions of the so (wrongly) called "intelligent machines", but that we put these machines at the service of human intelligence. The demand for justice at work must extend to work "beyond employment", whether self-employment or "invisible work", in particular the educational work carried out in the family sphere, whose importance for society is more vital than any market product or service. It must also extend to the ecological footprint of work, both in terms of its products and the way they are produced[10].

The Declaration of Philadelphia is the only international standard to have addressed this question of "work as such", its meaning and content. It does not merely proclaim the right of all human beings to pursue together their material progress and their spiritual development. It defines the system of work that will ensure this. It is a system that ensures workers "the satisfaction of giving the fullest measure of their skill and attainments and make their greatest contribution to the common well being" (§.III, b). This concise definition of what the preamble to ILO Constitution called (only in its French version!) a *"regime de travail réellement humain"* (genuinely humane work regime) perfectly outlines the horizon of social justice in the 21st century. Advances in robotics and artificial intelligence suggest that machines may take over everything that can be calculated. This in no way means the "end of work" for us, but rather the possibility of concentrating on tasks that require the very human qualities of concern for others, experience, imagination and creativity. We have inherited from the industrial era the idea that all human institutions obey a logic of power, so that to work well would be to submit to power. But the kind of work we need today must be based on authority rather than power. Placed at the service of the idea of work, of the "raison d'être" specific to each company or organisation, authority is exercised by legitimising the expression of workers' skills and knowledge, rather than claiming to dictate or programme their conduct.

In the row over the right to strike, have employers abandoned compromise?

As recently as 1982, the employers' representatives at the ILO did not challenge the freedom of trade unions to strike when it came to condemning the repression of the Solidarność movement by the Polish Communist government. But things changed precisely at that time, with the conversion of Communist China to a market economy and the subsequent implosion of the Soviet system. Since then, we have witnessed throughout the world, in obviously diverse forms, what I have called "the holy union of capitalism and communism"[11]. This process of hybridisation consists, on the one hand, of removing economic policy choices from democracy and, on the other, of allowing the ruling classes to enrich themselves to an extent that neither real communism nor capitalism tempered by the social state would allow. It began with the assimilation of capitalism by Communist China, which then (in 1982) adopted a new Constitution that no longer mentions the right to strike (which had appeared in the Constitutions of 1975 and 1978) and prohibits "any organisation or individual from disturbing the economic order of society" (art. 15). This constitutional provision is the perfect expression of the neoliberal programme to "dethrone politics" and "limit democracy", whether political or social. In all cases, the aim is to prevent

elections or trade union action from disrupting the "spontaneous order of the market".

Unlike China, the European Union could not abolish the right to strike, which is enshrined in its Charter of Fundamental Rights. However, in 2007, the European Court of Justice (ECJ) ruled in the Viking and Laval cases that the exercise of this right should not hamper the freedom of companies to apply national social rules that are less favourable to employees. This case law was condemned in 2010 by the ILO Committee of Experts, which found it to be contrary to Convention 87 guaranteeing freedom of association. It was this dissenting voice that the International Organisation of Employers decided to silence in 2012, by challenging the legitimacy of the Committee of Experts and blocking the system for supervising international labour standards. In a system governed by law, such a conflict of interpretation can only be resolved by a judge, which is why the ILO's constitution provides that it can set up its own tribunal or, failing that, appeal to the International Court of Justice. Employers' representatives have joined forces with the world's most authoritarian states to oppose any recourse to an impartial judge.

But as you pointed out, this hostility to international recognition of the right to strike is in the minority among States, and so in November 2023 the ILO Governing Body finally decided to refer the matter to the Court in The Hague. This revival of the ILO's standard-setting role is good news, as it serves as a reminder of the primacy of the rule of law over the power relations in the international order. As Convention 87 does not list the types of action that trade unions are free to take, to prohibit them from taking action not covered by the Convention would be to render this freedom meaningless. There are also sound reasons for accepting that the right to strike is part of customary international law (*jus cogens*), as it has been enshrined in a great many regional and international instruments. International recognition of the right to strike does not, of course, mean that there are no limits to it, but that it is a matter for the Member States to regulate, under the supervision of the ILO.

By forcing us to consider the issue of the right to strike at its root, which is trade union freedom, this case is a timely reminder of the diversity of forms of collective action. Strikes are not the only form of non-violent action that can serve to promote social justice. It still occupies a central place, but its effectiveness is reduced by the casualisation of jobs and the reticular organisation of the globalised economy. In supply chains, labour relations no longer have the binary structure that opposed a clearly identifiable employer and an equally identifiable group of workers. The holder of economic power may be a principal established in another country, and the employer in title may in reality be a dependent worker. Fixed-term or self-employed workers cannot strike either. In this type of situation, pre-industrial forms of collective action are re-emerging, far more accessible and effective than strike action, because they can mobilise the international solidarity of workers and consumers.

This is the case with labels and, above all, boycotts. The European Court of Human Rights has recognised that the right to boycott derives from both freedom of association and freedom of expression. Like the right to strike, it must of course be reconciled with respect for other rights and freedoms[12]. This centrality of the principle of trade union freedom is worth noting at a time when trade unions are not only retaining a foothold in the reality of working life that political parties have lost, but are experiencing a new vigour in many sectors of activity (including outsourced work) and in many countries (including the United States).

Do we need a new Declaration of Philadelphia? Is there any prospect we might get one?

The principles that define the normative missions of the ILO – as set out in its Constitution and in the Declaration of Philadelphia – have lost none of their value or relevance. The circumstances in which those missions are carried out have, however, changed profoundly. The results of forty years of market globalisation are catastrophic: accelerated global warming, destruction of biodiversity, retreat of democracy, isolationism, armed conflicts, epidemics, financial crises, explosion of inequalities, riots, migration of populations driven out by war, poverty or the devastation of their ~~homes~~... The objective interdependence of nations has never been greater, and they all face three challenges that can only be met by joint efforts: a technological challenge, an ecological challenge and an institutional challenge. To meet these challenges, the ILO could be expected to promote three principles, in line with its constitutional missions: the principles of solidarity, economic democracy and socio-ecological responsibility. When I took part in the Commission on the Future of Work, which the ILO convened in the run-up to its centenary, I hoped that this anniversary would provide an opportunity to adopt a declaration committing it to these principles[13]. But this would have presupposed that the ILO revive its central mission as the world parliament of labour and set itself the task of reforming international law in the light of these principles. In other words, it would have required boldness on the part of its leadership, and farsightedness and determination on the part of its members comparable to that shown at the end of the Second World War. It has to be said that these political conditions have not been met, and that everything is pushing the ILO to shirk its normative responsibilities in favour of the more comfortable short-term position of a resources agency in the service of the sustainable development objectives we have mentioned.

Does this mean we should give up? Certainly not! The first essential step in escaping despondency or resignation is to agree on a vision of the world we want for ourselves and for the generations that follow us. The first step out of the darkness is to turn

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on a light, however small. In the worst moments of the Second World War, men and women set about thinking about "the world after", a better and fairer world that would learn from the terrible ordeals they were going through. Think, for example, of the Beveridge Plan in Great Britain or the programme of the *Conseil National de la Résistance* drawn up in France during the Nazi occupation.

Today we are caught between two contemporary forms of capitalism. The first is anarcho-capitalism, or globalism, which consists of oiling the wheels of a market that has become total, supposedly abolishing borders and uniformly governing the planet. As the ILO Constitution warns, this process of standardisation and over-exploitation of mankind and nature can only involve " such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled". The second form, now in full swing, is ethno-capitalism, which, without tackling the economic causes of this social anger, directs it towards scapegoats, designated by their religion, sex or origins, and thus offers a mix of neo-liberalism and identitarianism. The standardising pressure of the Total Market and the identity-based reactions it provokes are the two pliers of the same pincers. Everywhere, the dismantling of solidarity systems inherited from tradition or the welfare state is leading to the exacerbation of identity-based withdrawal.

The feeling of powerlessness in the world of work that results from the collapse of democracy contributes to identity-based withdrawals and the scapegoating of social misery

So there is no choice between globalism and identitarianism, between opening up a world without borders and closing it off with walls and barbed wire, because just as Jaurès said about capitalism, globalisation carries the fury of identity with it like the cloud carries the storm. The narrow way out of this false dilemma would therefore be true "mondialisation", in other words, promoting solidarity between nations rather than competition under the aegis of globalisation. The diversity of experiences and cultures is a major anthropological resource for tackling the ecological and social challenges facing all peoples today. Hence the importance of economic democracy, which is the only way to counter the overhanging universalism of *globalisation* with universalism in crucible of *"mondialisation"*[14].

Legal analysis requires a minimum of terminological rigour. We cannot seriously use the same concept to describe the attempt, at the end of the Second World War, to base a new world economic order on solidarity between nations and the attempt, 50 years later, to base this order on competition between all against all. A policy of 'mondialisation' was outlined in the Declaration of Philadelphia in 1944, when it called for "all economic and financial measures and programmes of action" to be subordinated to the achievement of international social justice, and in the Havana Charter in 1948, when it drew up the statutes of an International Trade Organisation (ITO) whose mission would have been to combat both balance of payments surpluses and deficits, to encourage economic cooperation rather than competition between states, to promote compliance with international labour standards, to control capital movements, to work for the stability of commodity prices, and so on. In short, its role would have been more or less the opposite of that assigned to the World Trade Organisation (WTO) in 1994 by the Marrakech Accords, which implemented a policy of "globalisation".

Ignored by the English language, the notion of *mondialisation* comes from the Latin word *mundus,* which designated the inhabited earth, as well as ornamentation or finery. Just as in Greek the *cosmos* is opposed to *chaos,* so in Latin *mundus* is opposed to *immundus,* i.e. filth and refuse, and more generally to anything that threatens human life. In the same spirit, but in a more precise legal sense, in Roman law the mundus was used to designate a monument built at the founding of a city, symbolising both its territorial location and solidarity between generations and between communities of different origins. Unlike the "globe", a geometric object governed by the immanent laws of physics in a Cartesian space, the *monde* (world) refers to the web of relationships that people have with each other and with their living milieu. This fabric, woven from the common fabric of our biological being as *homo faber,* is adorned with motifs as varied as the times, places and cultures.

A "world", thus understood, is an environment made liveable and embellished by the work of its inhabitants. The latter may be of diverse origins, but their cooperation must, from generation to generation, take account of the physical, climatic, historical and cultural particularities of this vital environment; so that the World, in the sense of the inhabited Earth, necessarily contains a plurality of different worlds, which may ignore each other, fight each other or cooperate. ~~Globalisation,~~ 'Mondialisation' understood in this way, is the process of establishing this cooperation. It corresponds to the recommendations made after the war at UNESCO by the great anthropologist Claude Lévi-Strauss: "We can see the diversity of human cultures behind us, around us, and before us. The only demand that we can justly make (entailing corresponding duties for every individual) is that all the forms this diversity may take may be so many contributions to the fullness of all the others"[15].

That's why I'm always urging people not to confuse *globalisation* with *mondialisation.* The distinction is very difficult to translate into English, so the task is probably hopeless. But I thank you warmly for at least giving me the opportunity to promote the idea!

1 E. Jünger, *Die totale Mobilmachung* [1930], Translated by Joel Golb and Richard Wolin

2 See Report of the *Proceedings of the Thirty-Fourth Annual Convention of the American Federation of Labor,* held at Philadelphia, November 9 to 21, 1914 (Washington, DC, 1914), 289-90.

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3 Cf. Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism,* Harvard University Press, 2018,
4 Friedrich Hayek, *Law, Legislation and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy, vol. 2: The Mirage of Social Justice,* Routledge 1982, p. 128
5 *Governance by Numbers. The Making of a Legal Model of Allegiance,* Oxford & Portland, Hart Publishing, 2017, 336 p.
6 The work of Richard Thaler & Cass Sunstein (*Nudge: Improving Decisions about Health, Wealth, and Happiness,* Yale University Press, New Haven-London, 2008) has been awarded the so called 'Nobel Prize in Economics' and the Holberg Prize in the Social Sciences,
7 Cf. World Bank, *Mind, Society and Behavior,* World Development Report 2015, 215 p.
8 G. Simondon, *Prolégomènes à une refonte de l'enseignement* (1954), in Sur la technique, Paris, PUF, 2014.
9 Shoshana Zuboff, *The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power,* Profile Books, 2019, 704 p.
10 These points are developed in the following publications : "Labour is not a commodity: The content and meaning of work in the twenty-first century", *International Labour Review,* Vol. 160 (2021) n°1, pp. 1-20; *La Justice au travail. Quelques leçons de l'histoire,* Paris, Seuil, 2022; *Beyond Employment. Changes in Work and the Future of Labour Law in Europe,* Oxford University Press, 2001
11 Cf. *The Spirit of Philadelphia. Social Justice vs. the Total Market,* London New-York, Verso (2012), Ch.1,
12 See ECHR 11 June 2020 (*Baldassi v. France*) and 10 June 2021 (*Norwegian Confederation of Trade Unions (LO) and Norwegian Transport Workers' Union v. Norway*).
13 A. Supiot, "The tasks ahead of the ILO at its centenary", *International Labour Review,* Vol. 159 (2020), n° 1, pp. 117-136.
14 Cf. A. Supiot, "Globalisation or 'Mondialisation'? Taking Social Models Seriously", in Brian Langille and Anne Trebilcock [eds] *Social Justice and the World of Work: Possible Global Futures – Essays in honour of Francis Maupain,* Oxford, Hart, 2023. pp. 13-22.
15 Claude Lévi-Strauss, *Race et history,* Paris, Unesco, 1952 p. 49.