

Guido Rossi

Il gioco delle regole

Adelphi Milano, 2006

Review by Pierfranco Pellizzetti

Guido Rossi, an international expert in company law and a highly esteemed business lawyer from Milan, in this astute volume entitled “Il gioco delle regole” (The Rules Game), resumes the line of reasoning that he initiated three years ago in his previous book, “Il conflitto epidemico” (The Conflict Epidemic, Adelphi, 2003) and broadens its frame of reference.

In his first book, he wrote of imbalances (or “conflicts of interest”) in financial capitalism, which were then developing from an “endemic” status to an “epidemic” one; thereby tending to institutionalize inequalities (for example, by upsetting the normal function of exchange, conflicts of interest threaten the basis of the free-market economy). With his new book, Rossi’s analysis concerns the destruction of every form of control. This disturbing development puts the very principle of juridical order at risk.

Once again, the author identifies the cause of the change in rules as the transformation of the capitalist economy, especially in this period characterized by growing opposition to any form of control over financial activities. In particular, he draws attention to the tendency to substitute laws with agreements among the contracting parties (with advantages only for the strongest) as a way of escaping state jurisdiction.

A privatization of the rules that Rossi defines as “social contract theory”, a definition that can easily give rise to misunderstanding. This phenomenon was studied ten years ago by Saskia Sassen, professor of Urban Planning at the University of Chicago, who defined it as the outcome of “international private law” through the arbitration of the big Anglo-American law firms and the evaluations of the oligopolistic agency of the rating market; in particular, Moody’s and Standard&Poor’s (*Fuori controllo*, Il Saggiatore Milan, 1998).

Rossi makes the observation that:

“despite the lack of restraint of some of the supporters of the free market, the only instrument available today for the guardianship of the general interests is the law. The system is a prisoner of this paradox. In other words, the reduction of the entire social body to a crowd of contractors, and of the State to an intermediary among different contractual interests, causes a substantial loss of importance of the law.” (page 26).

In short, the recent tendency to deregulate the markets in all countries of advanced capitalism is further evidence that a rigorous legislative order no longer exists in the markets themselves. A trend that is accelerating.

What does the *irresponsible company* grow out of? On this point, the jurist Rossi can be helped by the sociologist Luciano Gallino who, in a book published last year, retraced the causes of these current tendencies. Namely, this is the offspring of “managerial shareholder capitalism”, which sees ownership—after a period of absence between the post-war period and the second half of the 1970s—as a way to re-direct management criteria of the companies, back into an alliance with the managers. This alliance was sustained by the division of hefty dividends of the stock exchange,

ensured by speculation. (*L'impresa irresponsabile*, Laterza Bari 2005, page 35). This proved to be a catastrophic trend, not only for its social effects, but also for the midterm results of some companies, who had become prisoners to the concept of short-term returns, and the subsequent spread of managerial irresponsibility.

The series of economic scandals of recent years—Enron and Parmalat come to mind—confirms this point. The proliferation of instruments for corporate self-government like the ethical codes (ironically defined by the author as “corporate good manners”) did little to improve matters.

On the other hand, the deregulation of the law at a global level not only disconnects the regulatory functions of the State, but it also strikes down attempts to create a world institutional system. For this reason, the crisis of the UN, during the war in Iraq, meant the emergence of the WTO (World Trade Organization) as the only international organization still working efficiently. Certainly this was not the best organization to defend human rights, to work against the international terrorism and to act as juridical supervisor of the accelerating moral dilemmas resulting from new technologies (from biological research to individual property rights).

What is the way out? Here, Rossi is deliberately more vague: he presents Kant’s utopia of a *ius cosmopolitanum* in contemporary terms and suggests a return to the capacity of the law to sanction and to a general culture that ostracizes improper behavior.

In other words, a social condemnation represented by the “sentence of shame” or *discredito* as it was once practiced in Genoa at the end of the Middle Ages. An insolvent creditor was put naked on a stone slab, exposed to the mockery of merchants and other passers-by in the central Piazza Banchi.