Inequality, Democracy and Sustainable Development in Latin America

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7 Human Rights in a Global World - The New Role Played by Transnational, National and Local Actors*

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7.1 Introduction

This article suggests a re-interpretation of human rights accountability taking into account the globalization process, the crisis of the modern nation-state and the new role-played by transnational, national and local actors in implementing and developing human rights law. The focus on impact and accountability is meant to demonstrate the importance of, and the legal basis for, broadening human rights advocacy in addressing additional actors.

Moving human rights beyond its "state-centric paradigm" serves three purposes:

1 to strengthen the role of advocacy networks, "new international legal subjects", operating across borders within political systems, irrespective of their nationality, and occupying a legal and social space that ignores the boundaries between states;

2 to provide a legal framework that will make influential "non-state actors", such as transnational companies and financial institutions (e.g. World Bank, International Monetary Fund), more accountable in their role of creating and sustaining poverty, social exclusion and violations of human rights;

3 to support the establishment of an *International Criminal Court* and the enforcement of a "universal jurisdiction" for crimes against

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humanity and genocide. In this respect, it is to de-legitimize the "sovereignty discourse", and the efforts of governments to justify violations by claiming their actions to be an "internal affair".

7.2 Human Rights, National Sovereignty, and the Inter-State System

For three centuries, international relations have been organized around the principle of sovereignty. States, the principal actors in international relations, are seen as sovereign, and are subject to no higher political authority. The duty correlative to the right of sovereignty is non-intervention, which means an obligation not to interfere in matters that are essentially within the domestic jurisdiction of sovereign states. "Human rights" were traditionally seen as just such a matter of domestic jurisdiction, within the international law of human rights and the inter-state system (Donnelly, 1998:3-17; Held, 1996:83-89; Bartolomei, 1994:55-66).

In many cases, violations of human rights have their origin directly or indirectly, actively or passively, in "state actions or omissions" and are justified as prerogatives of sovereignty, as well as in the name of state-national interests and national security objectives.

Given the fact that the current inter-state system is "state-centered", the implementation and enforcement of international norms of human rights is left to the initiative and political will of the individual nation-states. In this respect, the existence of international human rights regimes has proved "impotent to prevent or punish" major violations in human rights (Santos, 1995:327-337; Bartolomei, 1997a:162-170).[1]

Looking briefly at the history of the modern state in Europe, some authors have explained how the concept of sovereignty mediated the rise of the modern state, while framing the development of democracy and the processes through which it was developed. At the same time, the state became the primary focus of public decision-making, and the liberal

[1] For instance, during the 1980s, an estimated 70,000 Salvadorans were killed, abducted, or tortured by state security forces or paramilitary organizations. Across the border in Guatemala, between 1978 and 1989, the government was responsible for the death or disappearances of over 100,000 civilians, mainly indigenous peasants, while approximately 450 rural villages were razed by the armed forces. In response to these atrocities, a network of internationally based nonstate actors targeted the governments of El Salvador and Guatemala (Burgerman, 1998:905). Between 1976-1983, 30,000 people disappeared in Argentina (Bartolomei, 1994). Amnesty laws were sanctioned in these countries, after these human rights violations (Roht-Arriaza & Gibson, 1998).

democratic nation-state became the dominant form of the modern state over a period of time (Held, 1996:31-46; Santos, 1995:403-416).

The history of the formation of the modern state, as Held explains, is in part the story of the formation of Europe, and vice versa. The development of a distinctive European identity is closely tied to the creation of Europe by states. The states system of Europe, moreover, has had an extraordinary influence on the world, well beyond Europe: European expansion and development, for instance, had a decisive role in shaping the political map of the modern world. At the same time, debates about the nature of the modern state derived from European intellectual tradition, although to recognize this is by no means to claim that everything of importance about the state has been said in Europe alone (Held, 1996:31-32).

There are *six* important developments in the history of the state system, according to this author:

1. the growing coincidence of territorial boundaries with a uniform system of rule;
2. the creation of new mechanisms of law-making and enforcement;
3 the centralization of administrative power;
4 the alteration and extension of fiscal management;
5 the formalization of relations among states, and;
6 the introduction of a standing army" (Ibid., 1996:36).

The emergence of the modern state signaled a new discursive terrain including claims to sovereignty, independence, representation and legitimacy, which radically recast "traditional understandings of law community and politics" (Held, 1996:37). In other words, the core idea within the modern state is an "impersonal or constitutional order", limiting a "common structure of authority", which specifies the nature and form of the control and administration over a given community (Ibid. 1996:37-38).

The history of modernity in Europe is also analyzed from another perspective by authors like Santos, who relate this process to the historical trajectory of modernity in the peripheral and semi-peripheral countries: "Europe did not just enter modernity; it invented it and imposed it upon other civilizing projects throughout the world with the exclusive purpose of extracting benefits thereby" ... "For non-European countries, modernity was... rather a partial and, to a great extent, a painful experience of unequal contact and exchange. Due to their position in the world system such countries were not able, in general, to set the agenda or the pace of modernity, and only to a very limited extent could they modify it to their advantage" (Santos, 1995:271). In this way, the routes toward modernity

are broader patterns, which continue to unfold in a sea of contingent variables and multiple combinations. Even so, it is a "history that works backwards, from the present to the past" (Ibid., 1995:272).

Nation-states, furthermore, have traditionally performed a rather ambiguous role in relation to the process of cultural diversity and uniformity. "Externally", they have been the champions of "cultural diversity", of the authenticity of the "national culture", but "internally" they have been the champions of "homogenization" and "uniformity". The rich variety of local cultures coexisting in the national territory was crushed whether by power of the police, the educational system, the mass media, the legal system, or by all of them in conjunction. This role has been played in very different forms in core, peripheral and semi-peripheral countries. Today, however, the political struggle over homogenization and uniformity through the process of globalization transcends the territorial borders, which is outside the area of the nation-state (Santos, 1995:257-58; Bennett, 1998; Bartolomei, 1997a:157-179).

This process of homogenization, at the internal level of the nation-state, affected directly and indirectly the rights of minorities and indigenous peoples, at both the national and local level. Stavenhagen explains how the paradigm of Western modernity, which is based on this idea of the "modern nation-state", has developed, on the basis of a number of policies regulating the relations between states. This includes the diverse ethnic groups who are integrated in those territories of the existing countries. This issue of minority rights can only be understood within the framework of the concept of the modern nation-state, at the present time, and in relation to the policies of States in regard to minorities. In the worldwide process of modernization, it was expected that sub-national ethnic identities would tend to disappear and lose their former relevance. Local, communal, and ethnic identifications would be replaced by wider loyalties to the nation and the state. At the same time, in "the Marxist paradigm", questions related to ethnic identity were not deemed relevant, either in the analysis of concrete social situations, or in the structure of political organization and action (Stavenhagen, 1994:12-13; see also Bartolomei, 1997a:173-179).

Looking at the inter-state system, democracy in nation-states has not been accompanied by democratic relations among states and societies during the 19th and 20th centuries. The grafting onto this structure of the United Nations in the aftermath of the Second World War did not fundamentally alter its core features. In fact, the UN Charter enhanced the role of the "great powers", and further legitimized their claim to leadership in international politics (Held, 1996:73). "Hegemonic states" have subordinated international human rights to their geopolitical interests and objectives, which are defined in narrow national terms, with the result that

the double standards, especially during the cold war, still continue to dominate in the post-cold war period (Donnelly, 1998:86-114; Bartolomei, 1994:299-307).

Besides this, the Human Rights Regime centered on the United Nations, which came into being after the adoption of the "Universal Declaration of Human Rights" on December 10, 1948, has been from the beginning a rather weak regime and it remains so today. Strong declarations and promotional activities have not been translated into strong implementation and enforcement practices. In other words, implementation and enforcement of international human rights were designed largely as a matter for national state action. The undisputed supremacy of the principle of national sovereignty ensured the states against embarrassment. It was implicit that the idea of an effective promotion of human rights would be at odds with the proper functioning of the state system (see here Donnelly, 1998:3-17; Santos, 1995:327-337; Bartolomei, 1994:87-198).

In relation to human rights issues, the nation-state has been a focal point in human rights struggles, both as violator and as promoters-guarantor of human rights. However, in the light of recent changes in the "principle of sovereignty", and as a consequence of the process of globalization and the transnationalization of the legal field, the State's monopoly of international legal subjectivity is challenged by transnational collectivities. For example, non-governmental organizations -NGOs- and the human rights movement) and TNCs (transnational companies) (Santos, 1995:347-353 and Bartolomei, 1997a:184-190).

In this respect, international regimes refer to international normative consensus among nation-states and, as such, they raise two major issues that remain unresolved. First, the extent to which the "normative consensus" collapses whenever the overriding imperatives of national sovereignty are considered because of violations of human rights. Second, the extent to which the inherent statism of "implementation and enforcement mechanisms" blocks the emergence of new international legal subjects with a more "cosmopolitan orientation" and a transnational practice of greater efficiency (Santos, 1995:334-35; Bianchi, 1997:179-204).

7.3 The Process of Globalization and the Crisis of the Modern Nation-State

In the past few decades, the intensification of regional and transnational interconnectedness and the spread of global relations, on the one hand, raise several questions about the ability of states (however powerful) to deal effectively with demands placed upon them by transnational forces. On the other hand, questions the accountability of states for those who are deeply affected by them (Held, 1996:73-89; Beck, 1998:167-194).

According to Santos, "In the last three decades, transnational interactions have known a dramatic intensification, from globalization of production systems and financial transfers, to worldwide dissemination of information and images through the mass media and communication technologies, and to mass translocation of people, as tourists, as migrant workers or as refugees" (Santos, 1995:252).

A number of authors believe that this growing global interdependency can lead to a decline or crisis of state authority, and the requirement of Nation-States to collaborate ever more intensively with one another or develop new forms of collaboration. The Nation-State has lost its traditional centrality as the main unit of economic, social and political initiative. The globalization process diminishes the capacity of the Nation-State to steer and control the flow of people, goods, capital and ideas (Held, 1996; Kothari, 1995; Santos, 1995; Beck, 1998:41-90).

Held briefly describes this relation between the states system and global politics in the following way (Held, 1996:89-98):

- The traditional conception in international politics of the relation between state and society, in which the former is posited as the fundamental unit of order in the world, presupposes the relative homogeneity of the state and other key types of actor, i.e., they are entities with singular purposes. Even so, the growth of transnational organizations and collectivities, from within the UN and its organizations, to special lobby groups and social movements, has altered the form and dynamics of both the state and society. Intensification in the processes of transnational interconnectedness, as well as the proliferation of international agreements and forms of intergovernmental co-operation to regulate the unprecedented growth of these phenomena in the post-Second World War period has eroded the distinction between external and internal affairs, and between international and domestic policy. The state has become a fragmented policy-making arena, permeated by international groups (governmental and non-governmental) including domestic agencies and forces (see also Kothari, 1995).[2]

- With the increase in global interdependency, the number of political instruments available to individual governments and the effectiveness of particular instruments show a marked tendency of decline. This tendency, for instance, occurs because of the loss in a wide range of border controls--whether formal or informal--which formerly served to restrict economic transactions in goods and services, production factors and technology, people, capital, ideas and cultural interchange (see also here Santos, 1995).

- States can experience a further diminution in options because of the expansion in transnational forces and interactions, which reduce and restrict the influence particular governments, can exercise over the activities and lives of their citizens. The impact, for example, of the flow of private capital across borders can threaten economic policies, exchange rates, taxation levels, salary policies, social security, welfare and other government policies.

- In the context of a highly interdependent global order, many of the traditional domains of state activity and responsibility (defense, economic management, communications, administrative and legal systems) cannot be fulfilled without resorting to international forms of collaboration (e.g. the European Union, NATO, MERCOSUR, NAFTA, etc). As demands on the state have increased in the post-war years, the state has been faced with a whole series of policy problems, which cannot be resolved without cooperating with other states and non-state actors. Individual states are no longer the only appropriate political units for either resolving key policy problems or managing a broad range of public functions.

- States have consequently had to increase the level of their political integration with other states (for example, in regional networks such as the European Union and the Organization of American States). They have also had to increase multilateral negotiations, arrangements and

[2] In the case of India, Kothari explains: "There is evidence of growing marginalisation of the state in the face of a variety of globalising intrusions – in fact a growing disempowerment of the state and of the national elite both in its power to enforce national priorities and its power over subordinates, whether this be the bureaucracy which is found to increasingly receive signals from external agencies, or the state governments many of whom are vying with each other to get direct access to foreign corporations" (Kothari, 1995:1593).

institutions to control the destabilizing effects that accompany interdependency. For example, the International Monetary Fund (IMF) and the World Bank (WB), which, along with other international agencies, generated an organizational environment for economic management and inter-governmental consultation especially since after the Second World War).

- The effect has been a vast growth of institutions, organizations and regimes that have laid the foundations for the orderly management of global affairs, i.e. "global governance". This is by no means to confuse these developments with an emerging "integrated world government". According to Held, there is a crucial difference between an international society, which contains the possibility of political cooperation and order, and a supranational state, which has a monopoly of coercive and legislative power.

To summarize, the capacities of the state have both been "curtailed" and "expanded", allowing it to continue to perform a number of functions which cannot be sustained any longer in isolation from transnational and regional relations and activities. In the case of peripheral and semi-peripheral states, their political autonomy and effective sovereignty weakens further, including their capacity to resist and negotiate with regard to the hegemonic states (e.g. USA, Europe, Japan) and international institutions (e.g. World Bank, International Monetary Fond, European Union, NAFTA, etc.) (Santos, 1995:252-258; Baxi, 1998; Kothari, 1995).

At the same time, we can also observe that this process of globalization and homogenization is contradictory, not linear and uneven. It combines new forms of globalization together with new or renewed forms of localization; international sources with local diversity, national and ethnic identity, popular and community grounding (Santos, 1995; Beck, 1998).

In Held´s words: " Globalization, a process reaching back to the earliest stages of the formation of the modern state and economy, continues to shape and reshape politics, economics and social life, albeit unevenly with differential impacts on individual countries. The stretching of social relations across space and time, via a variety of institutional dimensions (technological, organizational, legal and cultural), and their intensification within these institutional domains create new problems for and challenges to the power of the state and the inter-state system. Against this background, the effectiveness and viability of the sovereign, territorially bounded Nation-State seems to be in question. How far exactly it is so remains to be explored, especially since the Nation-State continues to command loyalty, both as an idea and as an institution" (Held, 1996:98).

As we noticed before, over the past half-century, the vision of the powerful state sovereign has become a more and more old-fashioned reality. Today's Nation-States are surrounded by a host of outside actors over whom they have ever-decreasing capacity to control (e.g. TNCs, International Financial Institutions- WB, IMF, etc.). Rapid privatization, free trade agreements, economic integration, and the increase of transnational corporations (TNCs) have limited government prerogatives, particularly among the smaller, peripheral and semi-peripheral states. TNCs exercise an inordinate influence over local laws and policies (e.g. lex mercatoria) (Beck, 1998; Santos, 1995).

Their impact on human rights ranges from a direct role in violations such as abuses of employees or the environment, violations of children's, women's and indigenous rights, to indirect support of governments guilty of widespread repression (Jochnick, 1999:57-68) [3]. Beyond pushing for explicit acknowledgement of accountability, the challenge for human rights advocates lies with the elaboration of specific duties and obligations beyond a "state-centric paradigm". Global economic integration has limited the capacity of governments to intervene in markets to protect human rights or environmental standards. Yet, international human rights law is the domain of the state system (Santos, 1995; Baxi, 1998; Kothari, 1995).

Baxi explains, in the following way the new role of the state in the field of human rights and the process of globalization: "The Universal Declaration of Human Rights model assigned human rights responsibilities to states; it called upon the state to construct, progressively and within the community of states, a just social order, both national and global, that could meet at least the basic needs of human beings. The new model denies any significant re-distributive role for the state. It calls upon the state (and world order) to free as many spaces for capital as possible, initially by fully pursuing the "Three-Ds" of contemporary globalization: de-regulation, de-nationalization, and disinvestment. Putting an end to national regulatory and re-distributive potentials is the *leitmotiv* of present-day economic globalization, as anyone who has read several drafts of the Multilateral Agreement on Investment (MAI) knows. But the program of rolling back the state aims at the same time for vigorous state action when the interests of global capital are at stake. To this extent, de-regulation signifies not an end of the Nation-State but an end to the re-distributionist state" (Baxi, 1998:164).

[3] TNCs account for almost half of the top one hundred economies in the world, and approximately 200 of them are estimated to control a quarter of the world´s productive assets (Jockhinck, 1999:65).

7.4 The Globalization of the Legal Field and the New Role Played by Transnational, National and Local Collectivities

The intensification of transnational interactions in the last three decades and its impact on the legal field can be considered as a new development, without any considerable roots in the past. We refer to this phenomenon as the globalization of the legal field or the transnationalization of the legal field. This process, according to Santos, has been promoted by practicing lawyers, state-bureaucrats, international institutions, transnational companies (TNC), as well as by popular movements and NGOs at the end of the 20th century. This is a very complex, diverse, and ambiguous phenomenon, which combines uniformity with local differentiation, top-down imposition with bottom-up creation, and boundary-maintaining orientation with boundary-transcending orientations (Santos, 1995:250-274).

This process questions the state monopoly of the production of law "because the national legal field is increasingly interpenetrated by transnational legal forms, which unfold uncomplex relations with both the state legal order and the local legal order"(Ibid., 1995:250). National legal fields are transformed by transnational legal movements, while at the same time "legal forms that can be national or local in origin reproduce themselves transnationally by mechanisms other than those typical of interstate relations"(Ibid.).

In fact, some authors question the orthodoxy of the law-making monopoly of the Nation-States by looking at the experience and development of international human rights law and doctrine. They analyze their development in terms of a self-reproductive legal discourse on the global scale which is elaborated through an intellectual community and is closely bound to the social processes and social movements that support the basic principles of the discourse (Bianchi, 1997:179-204; Bartolomei, 1997a:162-70).

Non-state actors therefore play a vital role, and this needs some analysis, for instance:

- Human rights organizations,
- Professional organizations,
- Public opinion and the mass-media,
- The community of legal scholars, and

- The interaction of courts on different levels (e.g. the case of Pinochet and the struggle against impunity in Latin America, see Bartolomei, 1997a-d; Bermúdez & Gasparini. 1999).[4]

As we can clearly see, the result shows that it is no longer traditional international law mechanisms, but their interaction with "transnational social process", with the mediation of non-state actors, that is the appropriate method of law-making and law enforcement in a emerging global society (Teubner, 1997: xiii-xvii).

Susan Burgerman explains how, in the field of human rights, there are intersecting levels of advocacy, which form today a transnational human rights network. This consists of "diverse, often overlapping entities, which can include international and regional organizations, international non-governmental organisations, domestic non-governmental organizations, private agencies and foundations, church groups both domestic and international, and agents of state governments. These various individuals and agencies, 'shared values, a common discourse, and dense exchanges of information and services'" (Burgerman, 1998:907-908). As we see, transnational activism leads to international cooperation in enforcing human rights principles.[5]

An analysis of the activities of transnational advocates is necessary to explain the co-operation with the international human rights regime. For this author, to be able to explain the establishment and institutionalization of a human rights regime, it involves both cross national boundaries and the recognition of the centrality of non-state actors who operate transnationally. In this respect, the research agenda on transnational issues networks is designed to capture the increasingly complex webs of non-

[4] In the case of Argentina, in March 1996, relatives of Spanish citizens killed during the Argentine Dirty War brought charges in Spanish courts against some forty high-ranking officers, alleging genocide, terrorism, and more generally, the death and disappearances of thousands of people. Similarly, over a hundred Italian families of victims of the Dirty War have brought claims before the Italian courts. Additional cases have also been presented in Germany and France (Roht-Arriaza and Gibson, 1998:857-861; Bermúdez & Gasparini, 1999; Gutiérrez C. and Villegas D., 1998).

[5] Envisioned as an interconnected single entity, the issue network operates at both the international and domestic levels. Internationally based actors exert external pressure, for instance via media campaigns, UN resolutions, or by mobilizing diplomatic pressure. They also become internalized in domestic politics, on a short-term basis as in the case of election observers, human rights monitors, or police and military advisors. They also become long-term participants in the local system, as members of forensic teams, legal aid staff, or consultants to local

state actors who participate in other people's politics without resorting to the power base of either their own governments or that of the target state (Ibid., 1998:908-909).[6]

"The strategies typically employed by transnational networks are those which use the relatively weak power base of non-state actors to the best advantage. They go directly to the public with their appeals, mobilizing moral outrage, crafting their discourse to resonate most effectively with broad audiences. They take advantages of new communications technologies available to the public. They frame issues and norms in such a manner as to build a wide consensus among supporters" (Ibid., 1998:910).

However, international law-making mechanisms still focus on the conduct of the Nation-States. The intention of establishing a multilateral forum of negotiations in the handling of complex issues does not seem to have notably transformed the state-oriented approach to a positive law-making process. As it is well known, treaties, customs and soft law instruments, which provide the traditional normative structure of international law, rely on state action and are ultimately found in the agreement of states either expressly or tacitly. Law enforcement processes are approved or given consent by Nation-States. Even so, on closer scrutiny, the above paradigm shows an unexpected degree of insecurity. *Non-state actors*, due to developments over the past few decades, have begun to play an increasing role in the development of the international human rights doctrine and in those norms which deeply limit the once indisputable prerogatives of the nation state. Although such processes are still predominantly state-centered, both the development of consistent practices of intervention by non-state actors, and the legitimacy that their actions have recently acquired, may ultimately undermine the states monopoly in the production and implementation of international norms and laws (Bianchi, 1997:179-182; Donnelly, 1998:3-18).

Thus, the shaping and progressive consolidation of an international human rights doctrine and law has had remarkable repercussions on the concept of state sovereignty and its traditional notion of domestic jurisdiction. The steady erosion of the notion of domestic jurisdiction has led to a profound change in the related concept of a sovereignty of states. International law no longer grants absolute protection to the sovereignty of

[6] For example, human rights network activists of European origin may be found lobbying the US Congress advocating aid to an African nation, a London-based Amnesty International letter writing campaign will mobilize individuals of many nationalities to address protests to the Syrian or Chinese government, and so on (Ibid. 908).

states. Some commonly shared values, such as the protection of human rights, allow the international community to interfere with the once indisputable internal power that states had vis-à-vis their own subjects. Today, the way a state treats human beings under its jurisdiction and control, in some way or another, has become a matter of international concern (Bianchi, 1997:180).

International legal scholars find it difficult to elude the restraints imposed upon them by the legacy of positivism. This is particularly evident when one looks at the doctrine that still dominates the issue of who are considered the subjects of international law. In international law, there is little room for those subjects other than the Nation-States, international or regional organizations. States, of course, aim to support such a theoretical framework, and this is obviously instrumental in retaining control over international law-making and law-enforcement mechanisms (Ibid. see also here Bartolomei, 1994:87-186).

Nevertheless, in practice, an international human rights doctrine and method has inevitably and irrevocably affected the main principles of the traditional paradigm of international law. The shaping of the doctrine of international human rights has proved to be a catalyst for a process. Not only has it progressively led to a steady erosion of the positivist notion of state sovereignty, but also to the practical necessity of framing international law in a different context (Bianchi, 1997:185-190; Donnelly, 1998:51-85).

In this respect, the activities of non-governmental organizations (NGOs) in the field of human rights have been very important. This has varied, in the first instance, from information-gathering and processing, with a view to disclosing human rights violations by states, to lobbying of national governments and international organizations in order to influence and/or control relevant policies. Furthermore, NGOs have become increasingly involved, sometimes in cooperation with governmental organizations, in the complex machinery of international law making and law-enforcement (Donnelly, 1998:36-50; Santos, 1995:265-268; Bartolomei, 1994).

There are examples of the participation of NGOs in the international human rights law-making processes, particularly the contribution of Amnesty International, including the international human rights movement in the development and adoption of the "UN Declaration on Torture" and the "UN Convention against Torture" (1986). More recently, certain NGOs working in the defense of childhood, made notable contributions to the drafting and shaping of the "UN Convention on the Rights of the Child" (1989) (see Bianchi, 1997:186-87; Bartolomei, 1997a:166-170).

We can also find other examples of contributions made by NGOs in the implementation of international human rights law. Participation of NGOs in international investigative procedures, involves a wide array of activities and depends on the international legal instruments on which they are based. An important contribution to the implementation of human rights has to do with the possibilities of submitting communications to various organs that are established within the framework of international organizations like the United Nations or the Council of Europe, or by specific human rights treaties.[7]

Furthermore, by mobilizing the public and drawing attention to state conduct, which does not conform to international standards, non-state actors exert effective control on the international legal process. The mobilization of shame on the state in question is a good example of how non-state actors contribute towards sanctioning violations and fostering compliance (e.g. the case of Pinochet and the Military Junta in Argentina; see Bartolomei, 1997a-d; Bernúdez & Gasparini, 1999; Guitiérrez Contreras & Villegas Díaz, 1998).

Other reasons exist for not evaluating the parallel institutionalization of state and the non-state actor's activities in the field of human rights in a negative way. A consistent pattern of intervention by non-state actors in highly institutionalized regional frameworks also leads to the general acceptance of such a practice. Through the different institutional centers, non-state actors and transnational coalitions operate and draw their legitimacy from a strong social commitment to human values which is seen as fundamental in the well-being of humankind (Bianchi, 1997:199-204).

Given the structural constraints of an international community that is state-centered, non-state actors are bound to act in limited spaces. The coupling of their action with the transnational social process sets off a process of transnationalization of the legal field that goes beyond the normative structure of the current international arrangements. Over a period of time, the episodic character of the participation in human rights law-making by non-state actors and the processes of law-enforcement, develop into a pattern and eventually achieve a dynamic stability (Ibid.; Bartolomei, 1999).

As we have noted, the relation between the state and non-state actors in the development and expansion of a transnational human rights doctrine and praxis cannot be understood if one does not take into account public opinion. The increasing role of the media has caused policy- and law-

[7] e.g. ECOSOC Resolution 1503- see Bartolomei (1994), the case of Argentina under the 1503 procedure.

making mechanisms to become increasingly influenced by public opinion. The necessity of consensus and legitimacy for decision-makers causes any legal or political stance to be subjected to a prior evaluation of its possible impact on the public (Bianchi, 1997:192-194; Burgerman, 1998).

In this way, the recognition of the existence of a variety of different legal discourses closely coordinated and closely interacting with one another may very well clash with the traditional tenants of legal positivism. A theory of legal pluralism, however, may better explain the complexities of the contemporary international community and the process of transnationalization of the legal field which is taking place in the world today (Teubner 1997:3-28; Cotterrell 1995:275-337; Bartolomei 1999).

Explaining the conception of legal plurality and inter-legality, Santos says "the conception of different legal spaces superimposed, interpenetrated and mixed in our minds, as much as in our actions, either on occasions of qualitative leaps or sweeping crises in our life trajectories, or in the dull routine of eventless every day life ... Our legal lives our constituted by an intersection of different legal orders, that is, by inter-legality. Inter-legality is the phenomenological counterpart of legal pluralism, and a key concept in a post-modern conceptions of law" (Santos 1995:473). He adds that this interpretation of legal plurality does not mean the legal pluralism of "traditional legal anthropology" where the different legal orders are considered as "separate entities coexisting in the same political space" (Ibid.,1995).

In other words, in analyzing the structure and the use of law, as an alternative concept to state order, we find both a complex and internally diversified legal landscape, consisting of a "plurality of legal orders". This includes, besides national or state law, local or infra state, as well as transnational or supra state laws. Within this concept, we need to distinguish three major legal areas: the local, the national and the transnational legality. The identification of multiple social relations crystallizes with the different forms of law, the different forms of power and the different levels of legality, to become part of the research agenda, particularly in the field of human rights (Santos 1995:456-473).[8]

7.5 Final Remarks

It has to be conceded that the law of the international community and human rights are still state-oriented. States, however, can no longer be regarded as the only subjects of the International Law of Human Rights.

[8] For further development on the issues of legal pluralism, interlegality and the transnationalization of the legal field, see Bartolomei (1999).

Non-state actors contribute to the production, interpretation and implementation of international human rights norms either directly or indirectly. They have also contributed toward underlining a core of basic values and common concerns on which to build a new normative people-centered framework. In this respect, Santos writes:

"The most promising transformative practices in the agendas of cosmopolitanism and common heritage of humankind in recent decades have come from the 'South', the 'periphery' or the 'margins', from social actions and worldviews in which modern western concepts, such as human rights, are combined with the struggle for modes communal and cultural identity foreign to modernity, a struggle to protect them from hegemonic projects of modernization. Learning from the South is thus no vain slogan. It is an invitation to a de-westernized, de-centered conception of globalization and what it means as a civilizing process. To learn from the South, however, it is necessary to know the historical trajectory of its encounter with western modernity" (Santos 1995:271).

As we noticed before, networks of activists operate across borders. They infiltrate government and intergovernmental bureaucracies; they attempt, with varying degrees of success, to engage in the arena of international politics, formally considered the sole preserve of states. Transnational activism transgresses the distinction between local and international issues; human rights, for example, refer to state-society relations and have traditionally been considered a quintessentially domestic issue. This has resulted in a change in sovereignty discourse that de-legitimized the governments to justify violations by claiming the principles of internal affairs and national security. However, sovereignty discourse has not been replaced by human rights discourse, and many governments still refer to their sovereign authority in order to avoid criticism. "What is important here is that this discourse is no longer readily accepted as legitimate, either by civil society or by other governments. This evolutionary change in the normative context has provided an auspicious environment for transnational human rights activism" (Burgerman 1998:923).

Furthermore, even entities which would traditionally deserve the qualifications of state actors, such as domestic courts, occasionally act to foster or implement normative values, which do not necessarily coincide with the interest of the state. Transnational praxis shows that international human rights law is better described as a social process rather than a set of normative prescriptions, and that the range of entities which participate in it has expanded to include several transnational, national and local non-state actors.

In this respect, NGOs and transnational, national and local coalitions, already mentioned in this paper, may link up with the demands of a prospective "global civil society" and international law machinery. It is these actors who create our understanding of human rights and mobilize shame on the states, and work independently of the existing binding obligations under international law. However, the new legal status of local, national and transnational cosmopolitan coalitions must be inscribed and strengthened both in domestic and international law.

In creating a counter-hegemonic politics of human rights, we need to recuperate the emancipatory potential and the utopian character of human rights, which can represent and protect the human suffering across the world today. A cross-culturally reconstructed concept of human rights is therefore crucial, as well as, the uncoupling of law from the state and state sovereignty. Included in this analysis are the increasing inequalities in the world system, the relation between the North and the South, the problem of double standards in human rights policies and implementation, and the praxis and experiences of transnational coalitions. To counteract the limits and weakness of the Nation-State, it is imperative to strengthen the transnational advocacy of promotion and protection of human rights, which can create a "cosmopolitan consciousness of human rights" in the global world.

In addition, the establishment of an International Criminal Court and the enforcement of universal jurisdiction for universal crimes such as genocide and crimes against humanity constitute the relevant steps in the process of building a transnational system of "global justice".

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