

# QUESTIONS ABOUT INTERNATIONAL RELATIONS IN LATIN AMERICA: HUMAN RIGHTS, DEMOCRACY AND RULE OF LAW<sup>1</sup>

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## Introduction

The birth of regional blocks in Latin America has a clear European inspiration. Not only the "economic" blocks but also the human rights block (Inter-American System of Human Rights) have inspiration in the European Union blocks and the European System of Human Rights (Council of Europe).

In Latin America, the process of economic and structural integration is very fragmented. There are five regional blocks (Mercosur, Andean Community of Nations, Pacific Alliance, Central America Integrative System, and Union of the South Nations). All of them have in their objective a goal of regional integration.

Besides that, there is a unique system of integration when the subject are human rights. That's the Interamerican System of Human Rights that was born in the late 60's.

Therefore, there are two groups of systems of integration. One, formed by five international processes and another one formed for one specific goal: protect human rights in the continent against acts or omissions performed by their member states.

Our intention is to present the situation of the relationship between internal organs and international ones in Latin America in the subject of the Interamerican System of Human Rights.

### 1. Questions about legitimacy democratic

The first question that is important to point is that the subject of human rights in the processes of regional integration inserts an important question about

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democratic legitimacy. That's because when talking about the regional integration, it is common to discuss the problem of democratic legitimacy of the blocks that often asserts itself with the creation of human rights charters.

The process of human rights integration derives from the long terms of dictatorial governments that were common in the sub-continent (Latin America) since the 60's until the 80's.

After that, many countries decided to improve a process of internationalization of the mechanisms for protecting human rights against acts committed by their own domestic authorities that uses the power to violate human rights.

Besides that, they promulgated new constitutions or reformed their old ones to establish the Rule of Law Clause and Democratic States Clause.

## 2. The absence of charters of human rights in other systems of regional integration in Latin America

Just to remember, Latin America currently has five regional blocs of economic and structural integration: Central American Integration System (SICA), the Andean Community of Nations (CAN), Union of South American Nations (UNASUL), Pacific Alliance and Southern Common Market (MERCOSUL). None of them established an own charter of human rights but four of them established a democratic clause. The function of this clause is to encourage the desire of economic integration for the democratic and undemocratic countries.

Despite the absence of human rights charters, there is an instrumental and purposive concern with the promotion and protection of human rights in a regional block witch predominately aim is economic. In other words, prevents the accession or the maintenance of states that have no commitment to democracy.

The overcoming of long undemocratic periods permeated the negotiations or profoundization of the integration goals.

The promotion of democracy and human rights establishes means of prohibition of the retrocess (throwback), in order to use a traditionally incorporated concept to the human rights speech.

This is a constraint, constant in treaties or other international instruments, which aims to submit any act that fits different purposes and liable to a minimum standard floor in human rights. Therefore, any decision depends on the fulfillment of this constraint, as important as it is democracy and human rights.

All the blocs that establishes the democratic clause provide a procedure for the verification of violation against that clause and the application of penalties for the states parties that violate the democratic clause.

Examples of these penalties are:

- a) suspension of a member country participation in any of the organs of the system;
- b) suspension of participation in international cooperation projects to develop the member countries;
- c) extension of the suspension to other organs of the system, including the disqualification to access facilities or loans from institutions; suspension of rights; and
- d) Moreover, other measures and actions taken in accordance with international law considered relevant. "

As seen, in our continent the democratic clauses guide the existing regional blocks. Therefore, clauses that have a material content guides the requirement for participating in integration processes.

The existence of democratic clauses<sup>3</sup> demonstrates that despite the variety of interests that guide the integration processes, there are minimal standards that informs these processes.

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<sup>3</sup> See PIZZOLO, Calogero. Derecho e integracion regional. Buenos Aires: Ediar, 2010, pp. 664 e ss.

Therefore, at least as a minimum content for its implementation, is crucial that mechanisms, which the goal is to protect minorities, are elements inside any minimal concept that presents itself as democracy.

In turn, we can not talk about protection of minorities without perceiving the achievement of human rights, because they are the shields that we establish to the slightly strengthened and represented against the states or others private actors, which protect themselves on relationships established asymmetrically. Thus, human rights inform these integration processes.

These substantial clauses inform the processes of integration, although their tone is more economical, infrastructural, cultural, political, etc. Thus, in the systems of regional integration in Latin America there, are substantial requirement/demand of concurrence between democracy, rule of law, human rights and integrative decisions.

It appears that even if we accept differ about the concept of democracy, if there is a more formal or substantive perspective, the necessity of realization of human rights is present in any of them, especially as assets for the protection of minorities.

### 3. The expansion of democracy in Latin America from the 1970S

In Latin American scenario, the problem of democratic fragility, which marks our constitutional history, is highly noticeable and widespread. We can also point towards an initial wave in the late 1960s, establishing the Interamerican System of Human Rights, at which point, paradoxically, there were many dictatorships in the continent. There would be a second wave, from the 1980s, where a democratization process happened on the continent and with which the protection mechanisms established in the Interamerican System of Human Rights developed. As I see it, such mechanisms continued acting until the end of the 1990s, when it a third wave would start, more focused toward the fulfillment of the promises, the theme for the concretization of human rights contained in international treaties, strengthening

institutions existing and fortification of the respect of the institutions by the national states.

It can be noticed, from the late nineteenth century, a trend, derived from the pacts between liberals and conservatives, to dictate the basis of these national constitutional orders, a period which features relative political and economic stability in these national states, including in an international environment, such as exporters of primary products<sup>5</sup>.

Among the features of this union, a deepening of a counter majoritarian politic perceives with very few moments of real popular participation<sup>6</sup>, making the political scene a fight between urban and rural elites, but not of the people in a broad perspective, worried, in its infancy, with the protection of freedom of contract and security of the property.

This initial project underwent two major reforms in the twentieth century: the first, aimed at not allowing the advance of socialism occurring in Europe, happens near the 30s, with the creation of states that are providers, with a social profile. The second seeks a strengthening of popular participation and the strengthening of the mechanics of checks and balances as well as of the instruments of distribution constitutional assets linked to well-being<sup>7</sup>.

Being the central object of this paper the relationship between the constitutional right of the Latin American nation states and international human rights law based on the Interamerican System of Human Rights, and the effects of this relationship, I will point out some characteristics of domestic constitutional laws of nation states (Brazil, Venezuela, Argentina, Colombia and Mexico).

Constitutional and political components that bring each other closer, placing emphasis on a time period beginning especially in the second half of the 1970s.

- a. . The wave of democratization that happened in Latin America from 1980S as a new phase in continental constitutional law

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<sup>5</sup> GARGARELLA, Roberto. Injertos e rechazos: radicalismo político y trasplantes constitucionales en América. In GARGARELLA, Roberto. Teoría y crítica del derecho constitucional. Tomo I. Democracia. Buenos Aires: Abeledo Perrot, 2010, p. 496.

<sup>6</sup> GARGARELLA, Roberto. Op. cit., p. 499.

<sup>7</sup> GARGARELLA, Roberto. Op. cit., p. 506.

In Latin America, specifically in the political and constitutional fields, the existence of similarities in some aspects that relate to institutional crises, fundamental rights, systems of government, separation of powers, hyper-presidentialism, corruption of state officials, social inequalities and economic remarkable, among other topics, can be observed<sup>8</sup>.

Waves of democracy followed by waves of authoritarianism that cover the majority of the continent are common. At a given time the military governments took place, with their dictators issuing orders. At another moment, democracy took place, even if only because of elections<sup>9</sup>. This is due to external influences such as the Cold War, military interventions and powers coups. Also social inequalities<sup>10</sup>. Neither the constitutional democracy nor the feeling of his need by the citizen settles. There is, however, a sense that the state and its provider duties (social rights) are requirements but democracy is not.

A few aspects seem to be important to deepen this process of constitutional approximation, like (a) dictatorship-democracy movement, with coups, (b) system of government, with hypertrophy of the Executive branch, (c) role of the Judiciary Branch; (d) fundamental rights system and (d) openness to international human rights law.

#### 4. The Inter-American System for the Protection of Human Rights as a point of intersection on human rights for the five regional blocs

The regional system of protection of human rights in the American continent has its core at the Organization of American States. The American Convention of Human Rights (1969) is its most important treaty.

The Inter-American System for the Protection of Human Rights is a response to non-democratic governments that fulfilled the political space during the 20<sup>th</sup> century, especially until the 1980S in Latin America.

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<sup>8</sup> GARGARELLA, Roberto. Op. cit., p.508.

<sup>9</sup> CARPIZO, Jorge. Tendencias actuales del constitucionalismo latinoamericano. In: CARBONNEL, Miguel; CARPIZO, Jorge; ZOVATTO, Daniel (Coord.). Tendencias del Constitucionalismo en Iberoamérica. México: Universidad Nacional Autónoma de México, Instituto de Investigaciones Jurídicas, 2009, p. 9.

<sup>10</sup> Carpizo, op.cit., p.9.

That's because the problem of democratic fragility that historically marks the continent is quite noticeable<sup>11</sup>.

In the current phase more than new treaties or other international instruments, we go through further realization of human rights as laid down next to the strengthening of inter-American institutions, especially the Inter-American Court of Human Rights and the Interamerican Commission of Human Rights.

##### 5. Lack of major countries of the continent and the process of resistance currently faced

The absence of large important countries within the Interamerican System of Human Rights in the continent are the United States and Canada.

These two countries never signed the American Convention on Human Rights. Therefore, they are members of the Organization of American States (as contracting parties to the charter of the OAS and American Declaration of Rights and Duties of Men). More recently, Venezuela denounced the American convention on human rights and left the system on September 2013.

These absences are a sensible concern for a system that wants to be continental.

Beside these problems, in recent years we have seen some attempts against the mechanisms for the protection of human rights on the continent.

These attempts were captained by countries that don't perceive that there is a need for independence for continental organs to the goal of protecting human rights against domestic decision (self-restriction forms of controlling power). It Should be treated as an important matter for a continent where civil and political rights are violated by designs very often originated in political anti-democratic domestic decisions

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<sup>11</sup> UPRIMNY, Rodrigo. Las transformaciones constitucionales recientes en America Latina: tendencias y desafios, p. 2. Available in: <http://www.juridicas.unam.mx/wcc/ponencias/13/242.pdf>, access in august 20th of 2014, quoting the several constitutions of the continent on the theme.

On the other hand, the Interamerican System continues moving strongly in the field of protecting human rights issues on the most diverse themes: forced migration, political rights, upset the amnesty domestic laws, indigenous rights, among others.

Mean to say that there are currently economic projects that are against traditional rights issues; political processes that aim to undermine basic rights; attempt to promote oblivion decisions to protect crimes committed in the past against people's rights; violation of rights of women, afro-descendants, among other minorities.

Of course, this activist way of moving promoted by the Interamerican System of Human Rights has bothered some states that are so anxious to protect their \_ domestic sovereignty. In recent years, we have accompanied the attempt of some states parties to weak some organs, especially the Interamerican Commission of Human Rights to protect their domestic decisions.

A process produces frictions between domestic and international political institutions. These institutions are always fighting for their own space on matters that are the same: democracy, rule of law and human rights.

If we could put labels in the some countries to put them in three roles establishing the more open, the not so open and the ones that are not susceptible to international decisions in themes of human rights we could separate them in:

- A) the more susceptible: Argentina, Colombia and Peru;
- B) The not so susceptible: Brazil, Bolivia and Equator.
- C) The unsusceptible: Venezuela, United States and Canada.

5. Risks of the system in questions of national or sub-national identity

To finish my paper I would like to point something that I think is a crucial question nowadays in our continent.



As seen, besides the process of developing of a culture of internationalization of the human rights we are confronting a problem that put some countries in a position of defense against the activist decisions that come from the interamerican organs.

This confrontation can cause a risk to the system if more countries follow the example of Venezuela denouncing the American Convention of Human Rights and leaving the Interamerican System.

Equator and Bolivia could be the next countries to do so.

What I think is important to point is that in some subjects we have to develop strategies of defining a more participating space for domestic decisions.

Indigenous rights and political rights have different questions to solve in a variety of countries and international organs can not treat them like if these questions are similar.

That's because the treatments established by states for questions like different cultures, the ethnic participation in the whole population of the country and their minority rights, their political participation, among other themes are very different if compared from a country to another.

The same question we can see in political rights where the domestic institutions and the protection they give to the people also are very heterogeneous if we compare these countries.

The point is that the organs of the system have to be sensible to these differences.

If they do not – and they are not doing that nowadays –, we could on one hand think that we are protecting strongly human rights but at the other hand we could not see the risks of ineffectiveness and confrontation with the participants of such an important system in a continent where liberty has been so violated in the last centuries.

Abstract: This paper aims to discuss about the development of democracy and human rights in Latin America, not only in the domestic space but also in the international plan. It puts the countries that are getting involved in this goal in a position of being more open to international standards. On the other hand, this process starts to become problematic when the international organs began to be more activist. It necessary to think about strategies to balance values in order to maintain more space for national decision in some subjects like indigenous rights and political rights.

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