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**Why the Human Rights Regime in the Americas matters**

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The hugely increased normative ambitions of international society are nowhere more visible than in the field of human rights and democracy – in the idea that the relationship between ruler and ruled, state and citizen, should be a subject of legitimate international concern; that the ill treatment of citizens and the absence of democratic governance should trigger international action; and that the external legitimacy of a state should depend increasingly on how domestic societies are ordered politically. The Americas provide a particularly important regional vantage point from which to analyse these developments. In part this is because legal and institutional changes have gone further in the Americas than in any other part of the world except Europe. In part its interest lies in the range of the challenges and problems faced by the regime and what these can suggest in terms of comparative experience.

This chapter is divided into three parts. The first considers some of the ways in which the legal and institutional landscape of the Americas has changed, highlighting three developments: the expansion and increased intrusiveness of regional norms concerned with human rights and political democracy; the increased pluralism of norm creation referring to the plurality of actors participating in regional fora; and the hardening of enforcement as regional structures are gradually strengthened and increasingly used for the implementation of regional norms. The second part of the chapter considers the ways in which the regional human rights regime may affect political actors. Here we lay particular emphasis on the emergence of a transnational legal and political space as the judicialization of domestic politics becomes more and more enmeshed with the regional human rights system. In the final part of the chapter we highlight four of many challenges faced by the regional regime: the changing character of human rights violations in the context of weak states and fragile social order; the character of democratization and the changing nature of challenges to democratic order; the problematic interface between continuing human rights violations and problematic democratization; and the changing context of US-Latin American relations and the impact of the broader security context.

**I. The Changing Character of the System**

Historically Latin America can be placed within a broadly pluralist conception of international law and international society. It is true that governments in the region (and still more Latin America's distinguished tradition of international lawyers) aspired from the earliest days of independence to a regional system of law that would accomplish ambitious goals and far-reaching purposes. These aspirations included the creation of formal regional organizations, mechanisms aiming at the peaceful settlement of disputes and, from the middle of the 20<sup>th</sup> century, the incorporation into regional law of ideas concerning human rights and democracy. There were also frequent appeals to

transnational solidarity based on shared culture and, at times, shared political or ideological values. And there was repeated invocation of the idea that regional law and institutions should embody a clear sense of Latin America's particular identity.

Although the achievements were not wholly negligible (for example diplomatic concertation and arbitration to manage contested borders), most of these aspirations towards more elaborate regional governance and more ambitious solidarist goals remained simply that: aspirations that were usually cloaked in legalistic and moralistic rhetoric. The norms that were politically most salient were those of the classical pluralist international society: sovereign equality, strict non-intervention, increasingly tight restrictions on the use of force; territoriality and the pragmatic use of *uti posseditis* to stabilize borders. Indeed, Latin American states were in the vanguard of the struggle to export pluralist understandings of European international society to the non-European world, playing a particularly central role in the struggle for equal sovereignty (for example in relation to the treatment of foreign firms and foreign nationals) and restrictions on the use of force (for example in relation to the collection of debts). Close proximity to an increasingly powerful and increasingly expansionist United States increased the value to Latin America of these, albeit fragile, pluralist protections. The area of human rights and democracy provide one of the clearest areas where this traditionally pluralist and sovereigntist picture has been progressively eroded.

### **1. Normative expansion/intrusion**

Despite the pluralist reality to the regional society of states, the norms associated with the principle of sovereignty in the Americas developed in parallel with those of democracy and human rights, often leading to inevitable institutional and political tensions. The original 1948 Charter of the OAS declared that American solidarity was based on respect for democratic governance and proclaimed the importance of individual rights. Traditionally, these tensions have been resolved in favour of state sovereignty as evidenced in the mute response by regional institutions to decades of undemocratic rule and widespread human rights violations as state policy in the region. Yet, through the latter part of the Cold War and particularly in the 1990s, we could observe a significant expansion of regional institutions and important changes in the ambition, scope and density of regional governance in the Americas. On the one hand, the inter-American system of human rights has developed into a legal regime that provides citizens with supranational mechanisms with which to challenge the domestic activities of their own governments. This challenge to the pluralist nature of the regional order could be seen in the light of the trend towards a transnational governance framework in the issue-area of human rights.

The other part of the challenge to the pluralist nature of the regional order comes from the emergence of a regional democracy regime, which is given its most recent expression in the Inter-American Democratic Charter. With the adoption of the Democratic Charter in 2001, the doctrine on the defence and promotion of democracy in inter-American relations has evolved from declaratory principles constrained by the notion of national sovereignty into a normative obligation that is being exercised through collective action. These institutional changes mark another significant departure from the traditional pluralist nature of regional governance in the direction of a system based upon notions of solidarism. Furthermore, these institutional developments are undeniably connected with domestic developments across the

region as more than two decades have passed since what has been described as *regional* processes of political democratization were set in motion. One of the most important features of the regional system is therefore the coincidence of a regional human rights system and a regional democracy system. The strengthening of regional institutions concerned with the promotion and protection of human rights and the defence of representative democracy represents a clear expansion and increased intrusiveness of the overarching regional normative context in which domestic political developments occur.

## **2. Increased pluralism of norm creation**

A second dimension concerns the pluralism of regional institutions and of the politics surrounding them. As the density and complexity of regional institutions grows, and as regionalization processes open up new channels of transnational political action, so the process of norm creation becomes more complex, more contested, and harder even for powerful states to control. Moreover, non-state actors as well as transnational and transgovernmental coalitions have played a considerable role in this normative expansion of regional institutions. Consequently, although states remain decisive actors in processes of regional institutionalization, the growing political pluralism that characterise these institutions has strengthened the normative salience of regional human rights and democracy norms.

The inter-American human rights regime has developed in an independent fashion with, at its most positive reading, benign neglect on the part of most OAS member-states vis-à-vis the system. Despite, or perhaps due to, this apparent general disregard, the human rights system has provided various civil society groups and individuals with transnational mechanisms of human rights protection that effectively seek to hold governments accountable for purely internal activities.<sup>i</sup> The inter-American democracy regime, on the other hand, has emerged with the active support of, and intensive lobbying efforts by, a number of influential as well as – and interestingly so – traditionally less-influential member-states. Although regional civil society groups did indeed play a considerable role in the process of drafting the inter-American Democratic Charter,<sup>ii</sup> the democracy regime operates with relatively little civil society participation and remains largely within the intergovernmental mould that has traditionally characterized regional institutions. As such, the notion of solidarism that underpins the democracy regime is still fundamentally state-centred.

## **3. The hardening of the system**

The third feature to be noted concerns the gradual hardening of implementation and enforcement mechanisms. Following the adoption of the OAS Charter and the American Declaration in 1948, states have developed human rights norms in the American Convention on Human Rights and a number of regional human rights instruments.<sup>iii</sup> Under the Convention, the regional human rights regime became a two-legged system. First, under the mechanisms developed under the OAS Charter, the inter-American Commission on Human Rights (the Commission) is authorized to supervise human rights in the territories of OAS member states. Second, the mechanisms set forth in the Convention authorize the Commission and the Inter-American Court of Human Rights (the Court), to handle individual complaints of human rights violations allegedly committed by any state party of the Convention

(under its contentious jurisdiction), and the Court has the further competence to render advisory opinions on matters of interpretation of the Convention and other human rights instruments.

With the incorporation of the Convention into the inter-American system, the regional human rights regime started the transition from what Jack Donnelly refers to as a purely promotional regime to one characterized by strong promotion with emerging enforcement mechanisms. From promoting human rights standards with significant exceptions, the Convention, in Donnelly's view, consolidated regional norms within a procedural framework that have the potential to yield authoritative regional decisions.<sup>iv</sup> Similarly, Jane Peddicord notes that "[t]he Convention culminates the first evolutionary stage of the inter-American human rights system. Eliciting binding commitments from states parties, it prescribes an international scheme to protect human rights."<sup>v</sup> In so doing, the inter-American system adopted a more judicial approach towards the promotion and protection of human rights in the region. On the basis of these legal instruments the inter-American system of human rights has emerged, from its roots as a quasi-judicial entity with an ill-defined mandate to promote respect for human rights in the Hemisphere, as a legal regime formally empowering citizens to bring suit to challenge the domestic activities of their own government. An independent court and commission are invested with the respective mandates to respond to individual claims by judging whether the application of domestic rules or legislation violates international commitments.

In the context of heightened Cold War tensions accompanied with region-wide systemic human rights abuses in the beginning of the 1980s this development towards the strengthening of the human rights regime would have seemed highly improbable. As Tom Farer has noted in comparison with the European human rights regime, the Commission had a wider mandate than its European counterpart, but while the European human rights regime "largely reinforced national restraints on the exercise of executive and legislative power", the Latin regime "was attempting to impose on governments restraints without domestic parallel."<sup>vi</sup> Indeed, throughout its existence the OAS – from which the regional human rights system derives its authority – has been comprised of member states many of which at numerous occasions have been governed by repressive regimes with scant regard for human rights. During the period of authoritarian regimes, none of the great malefactors – Argentina, Chile, El Salvador, Guatemala, Paraguay, and Uruguay – were parties to the Convention, and all were the subjects of multiple cases before or of investigations initiated by the Commission.

Yet, the regional human rights system in the Americas has developed into a normatively intrusive regime with a far-reaching mandate to regulate domestic political norms and practices of regional states. With the transition to democracy there seems to be an increasing willingness among states to formally declare adherence to international standards. An indication of the evolution of the regional human rights system as it extended its reach across issue-areas as well as into the domestic affairs of states could therefore be seen in the increasing number of ratifications of regional human rights instruments and the increasing acceptance of the Court's jurisdiction.<sup>vii</sup> Although there is no mechanical equivalence between ratification and 'compliance', the hardening of the regional human rights system should be seen in terms of an evolving and dynamic relationship between the regional regime and domestic

processes of political change. More specifically, the nature, direction and pace of the evolution of the human rights system should be seen in relation to the patterns of change of the processes of political democratization in the region. That is, the evolution towards a transnational human rights regime should be seen in the light of the demands and claims of domestic actors in turn interacting with external actors and pressures.

## **II. How the regime affects political actors**

It is clearly the case that the development of human rights presses up against the inherited statism of traditional international law and relations. Sovereignty in the sense of power of the state over its nationals has been eroded by human rights law and an increased availability of a variety of national courts and international tribunals. Hence the tendency to view sovereignty not as an absolute claim to independence or the sign of membership in a closed club of states, but rather as a changing bundle of competences; and as a status that signals a capacity to engage in an increasingly complex set of international transactions. But it is also important not to overlook the extent to which international human rights regimes in the post-1945 period continued to be marked by statism and sovereignty – not just in terms of the capacity of states to resist the transfer of effective authority but also in terms of how the system itself was conceived. As Louis Henkin noted:

In our international system of nation-states, human rights are to be enjoyed in national societies as rights under national law. The purpose of international law is to influence states to recognize and accept human rights, to reflect these rights in their national constitutions and laws, to respect and ensure their enjoyment through national institutions, and to incorporate them into national ways of life.<sup>viii</sup>

States, then, are the source of the system; the locus of responsibility, and the focus for pressure. The road to a common humanity lies through national sovereignty. This perspective suggests that we should think of the regime as affecting political actors primarily on an inter-state level and in terms of the dynamics of the inter-state system. For some, human rights only come to ‘matter’ when big and powerful states take them up and seek to use their own power to enforce human rights standards. On this view, human rights institutions are of only marginal importance. On this view, too, the role of NGOs and advocacy groups is principally to publicise human rights violations in order to sway public opinion within the political system of powerful states, especially in the US and Europe. For others, the system might matter but primarily because of what it can do to shift the incentives facing member states – by generating publicity, by naming and shaming, by creating positive or negative linkages with other issues.

However, this way of thinking about the human rights regime in the Americas underplays its transnational character: in terms of the transnational political spaces that have been created; and in terms of the increased dialogue and interaction between national legal orders and transnational and regional constitutionalism. It should be noted that the transnational element of the regime is particularly important because of the weaknesses of the regional system, especially in relation to its funding and to the absence of a clearly mandated political compliance mechanism (as in the role of the

committee of ministers in the European system). Four dimensions can be picked up with regards to the transnational character of the human rights regime.

First, we should note the importance of legal and normative developments within the regime itself and through the development of regional human rights jurisprudence. These include on the one side the strengthening over time of individual access to the human rights regime as the system has evolved into a judicial regime with a procedural focus on the force of legal argumentation and the generation of regional human rights jurisprudence. On the other, the system has increasingly exercised its jurisdiction to explicitly advocate the strengthening of regional democracies as the strongest guarantees for the protection of a wide range of human rights. The emergence of a regional democracy norm within the overall regional institutional framework has added further impetus to the trend towards the constitutionalisation of regional political norms on the basis of more ambitious and intrusive normative foundations explicitly concerned with the regulation of state-society relations.

One of the most important regional modifications to international law that came with the entry into force of the Convention was the establishment of a right of private petition, thereby legally strengthening the access of individuals to the enforcement process. Although the power of the Court to decide a case referred to it is conditioned on the acceptance of its jurisdiction by the state parties to the dispute,<sup>ix</sup> the competence to judge states for international human rights violations and to order states to award compensation to victims, has, as Christina Cerna notes, “virtually transformed the [Court] into a kind of international criminal court.”<sup>x</sup> Furthermore, the Court may pass judgement on the compatibility of national legislation with the Convention.<sup>xi</sup> The inter-American system has developed, in other words, regional jurisprudence in the direction of an increased procedural focus on the individual in that there has been a discernible evolution towards a more case-oriented existence in the interplay between the Commission and the Court. In this sense the human rights mechanisms provided by the inter-American system gives further impetus to the development in this era of the transnationalisation of international legal institutions. The general tendency observable in the 1990s – evidenced in the former Yugoslavia and Rwanda Tribunals, the establishment of an International Criminal Court, the Pinochet case, and the various tort cases taken before U.S. courts<sup>xii</sup> – is towards the ‘individualisation’ of allegations involving violations of human rights.

The inter-American system itself has also actively worked towards the legal consolidation of supranational supervision. The Court, for example, has stated that human rights treaties are different in nature from traditional multilateral treaties, since they focus not upon the reciprocal exchange of rights for the mutual benefit of the contracting states, but rather upon the protection of the basic rights of individuals. In other words, the obligations were *erga omnes*, rather than with regard to particular other states.<sup>xiii</sup> Furthermore, the Court has established that laws are referring to “general legal norms tied to general welfare, passed by *democratically* elected legislative bodies established by the constitutions of state parties for that purpose”.<sup>xiv</sup> This normative equation between ‘laws’ and ‘democracy’ received a further boost with a ruling on habeas corpus, where the Court made the reference to the “inseparable bond between the principle of legality, democratic institutions and the rule of law”.<sup>xv</sup> In short, through a number of rulings, the Court has explicitly coupled democratic form of government with the principle of legality in the promotion of

human rights in the region. Moreover, it has established the legal obligation of states under regional and international law to protect the rights of citizens, and in the light of the failure to do so, the international obligation to hold states accountable.

Second, thinking of the regime in transnational terms focuses attention on the interaction between regional human rights developments and national-level political and legal debates. The story of amnesty laws provides a good example. Characteristically, these laws have been enacted just before or just after transitions from military governments back to democratic governments, issuing legal immunity for perpetrators of human rights violations under authoritarian rule. As could be seen in the different approaches undertaken by governments, the issue of how to deal with the legacy of past abuses came to define the nature of transitions to democratic rule and the different conditions prevailing in the various countries. Holding perpetrators fully accountable for their crimes would include appropriate trial and punishment of each individual responsible for the crimes committed, together with appropriate reparations made by perpetrators to victims. However, in many contexts, some form of truth commission to ensure the credible and authoritative revelation, documentation and memorialization of the events in question became the favoured option.<sup>xvi</sup>

These internal dilemmas facing democratically elected governments were compounded as international legal obligations raised issues concerning the “proper balance between notions of sovereignty and non-intervention in internal affairs and effective ways to implement fundamental principles of humanity.”<sup>xvii</sup> This raised questions as to whether governments have a right to guarantee impunity to the offenders under the argument that it is necessary for national reconciliation or to maintain democracy; whether the state has an international obligation to provide individual victims of gross and systematic violations of human rights with an effective remedy despite the alleged concern for the ‘social good’; and whether amnesty laws are compatible with a state’s international human rights obligations, more specifically with the Convention. In its dealing with these issues the Commission unequivocally argued for there being international grounds for an official state investigation and dissemination of the truth, effectively promoting a ‘society’s right’ to know the truth to ensure human rights in the future.<sup>xviii</sup> As could be seen in the case of Uruguay – where an electorate threatened with the restoration of military rule had endorsed immunity – this ‘collective’ right to truth could not trump the individual victim’s right to due process or humane treatment.<sup>xix</sup>

Further impetus to the Commission’s approach to the international responsibility of states to provide individuals with domestic remedies and ensure accountability for human rights abuses came with an advisory opinion of the Court in 1994.<sup>xx</sup> In that ruling, the Court established the international duty to investigate and to punish human rights offenders, as it judged the promulgation of domestic laws in conflict with international obligations to be in violation of provisions of international law. Furthermore, it established the punishment of state agents violating human rights protected under the Convention to be an international responsibility of a state; and if the violation is an international crime, it becomes the responsibility of the international community to enforce accountability. Although the impact of these precedents are difficult to determine, Roht-Arriaza and Gibson note that “the trend has been from broader to more tailored, from sweeping to qualified, from laws with no reference to international law to those which explicitly try to stay within its

strictures.” They conclude that it is “possible to trace this result at least in large part to the growing importance of a discourse about impunity and accountability on an international level.”<sup>xxi</sup>

The cases dealt with by the system during this period of democratic transition in the region were predominantly concerned with the practice of forced disappearances under authoritarian regimes, the status of judicial guarantees in states of emergency, the legal and political admissibility of amnesty laws, the provision of domestic remedies for human rights victims, questions of accountability of past human rights abuses, and the right to individual access to the regional human rights system. Hence, national approaches to transitional justice, although reflecting different and country-specific political concerns across the region, interacted with the development of regional human rights jurisprudence. It seems, in other words, that the short-term advantages of political pragmatism that inevitably shape approaches to ‘transitional justice’ has over time led to a formal convergence along international norms; norms, in part, developed and formalized by the inter-American system.<sup>xxii</sup>

Third, viewing the regime in transnational terms suggests a number of important questions to be addressed in order to understand the ways in which the regime does affect political actors and also where the major constraints lie. It is important to ask how far (if at all) integration and interaction with the regime may affect the relative power of sections of the bureaucracy dealing with human rights; or may lead to processes of socialization on the part of those state officials involved. Whatever their original views, operating within the system, having to justify policy within the terms of the dominant discourse of the system, and having to engage with other related actors (especially the domestic human rights community) may well foster such socialization.

It is also important to see domestic judiciaries as political actors. Clearly the impact of the regional system and of regional human rights depends on the “value conferred upon them by the domestic laws of the states that have ratified the convention.”<sup>xxiii</sup> This points to the importance of developments at the domestic level as governments pass laws to ensure constitutional safeguards for the protection of human rights. In many states of the region and in various forms human rights have been ‘constitutionalized’. Nevertheless there is widespread variation not just in the effective enforcement of human rights within domestic legal systems but also in the willingness of judges to engage in the transnational legal culture of human rights and to take advantage of the potential legal and argumentative resources available. Understanding the sources of this variation (for example, divergent national legal traditions, patterns of legal education, engagement with the transnational legal community) forms an important part of understanding the ways in which the regime does or does not affect political outcomes.

And it is important to understand the capacity of transnational civil society groups to engage directly with the regional regime. Processes of regionalization open up space for transnational political agency. From this perspective democratization is partly shaped by the relationship that arises from the complex interplay between forces outside states and actors based within it. As political actors increasingly operate across state borders as a way of effecting changes within states<sup>xxiv</sup>, it also becomes increasingly important to identify the linkages and tensions that exist between the ‘inside’ and the ‘outside’ of domestic political action.<sup>xxv</sup> A similar picture can be seen

in relation to human rights. As Jean Grugel maintains “[h]uman rights is probably the most clearly defined issue area in which Latin American NGOs, social movements and political parties have developed transnational contacts.”<sup>xxvi</sup> The regional experience of Latin America offers, therefore, an instructive example of the logic of transnational political and legal activism conducted for essentially domestic ends. Since, although the practice of human rights conventionally adopts a universalistic discourse, Todd Landman correctly points out that “the history of human rights is one of the increasing internationalization of an idea that has traditionally been defended nationally.”<sup>xxvii</sup> In contrast to Europe, NGOs play a far more important role in taking human rights cases to the regional system. Thus, processes of regionalization with regards to human rights and democracy norms have provided domestic actors with transnational political and legal opportunities to pursue their interests. Here the political question emerges in terms of explaining why NGOs in some states are more active transnationally and also adopt divergent strategies corresponding to the legal and more political sides of the human rights movement respectively.

Fourthly, and finally, thinking of the regime in transnational terms shapes how we might best think about ‘compliance’ and ‘enforcement’. As Martha Finnemore and Stephen Toope emphasise in relation to international human rights law generally, “[o]utside of the European context, the entire law of human rights operates and affects world politics without any mechanisms of compulsory adjudication. Where modern treaties create mechanisms to promote implementation, they are often premised on the need for positive reinforcement of obligations rather than on adjudication and sanctions for noncompliance. There is no extensive delegation of decision-making authority.”<sup>xxviii</sup> Indeed, the implied subtext of many conventional accounts of international law is that it is an inferior form of law in relation to municipal law, mainly due to the absence of proper enforcement mechanisms on the international level. However, such positivist critiques of international law generally fail in their understanding of the complex force of international legal norms and practices. For example, Jack Donnelly maintains that although their weak capability to enforce their provisions, the importance of human rights instruments lies in their capacity to appraise state action.<sup>xxix</sup> Human rights instruments establish criteria, in other words, on which to judge the legitimacy of states’ behaviour in this issue-area. Hence, the merits of this view of international human rights law lie in that it takes a helpful step away from the traditional focus on enforcement (or, rather, lack thereof) of international human rights law.

Thus, the study of the role of law, and norms more generally, in world politics has suffered from inadequate attention given to the processes of legitimising law as well as from failing to properly recognize that international law consists of processes as much as of its structural manifestations of law in international institutions.<sup>xxx</sup> Again, drawing from Finnemore and Toope, international law is more than merely a matter of cases and courts or formal treaty negotiation. It has a constructive dimension in which actors participating in law’s construction “contribute to legitimacy and obligation, and to the continuum of legality from informal to more formal norms.”<sup>xxxi</sup> Law in this view draws attention to those rules, norms and decision-making procedures of institutions that shape expectations, interests, and behaviour. The force of law in politics – its ‘impact’ – therefore, does not merely manifest itself in the form of constraints, but it also has important creative, generative and constitutive influences on political practice.

In the context of the regional human rights system, this perspective on the role of law in shaping political developments brings to our attention the criteria established by the system on which to judge the legitimacy of states' behaviour. These define norms by which governments can be held accountable by their own citizens, as well as by others. In this sense the human rights mechanisms provided by the regional system gives further impetus to the development in this era of the transnationalization of international legal institutions. With the increasing participation of civil society groups within and around the regional system the transnational character of these developments is becoming increasingly significant. Furthermore, this points to the influence of the transnational human rights actors and their role in framing political demands in terms of human rights in countries undergoing processes of democratization. These various groups and coalitions have actively drawn from the pre-existing regional institutional framework and they have also found willing interlocutors within the human rights system. Therefore, the regional human rights regime matters in its dynamic interaction with country-specific patterns of political democratization. The transnational legal and political processes that result from such interaction create patterns of behaviour and generate norms of appropriate conduct that in turn influence domestic legal and political processes. Hence, the 'impact' of regional institutions concerned with the promotion and protection of human rights and the deepening of democratic rule lies in their ability to shape the nature and direction of the processes of democratization and the role of human rights in these processes.

### **III. Challenges and problems**

If the previous section opened up potential avenues for change and for thinking about the potential impact of the human rights regime, this section looks, rather more soberly, at the challenges and constraints. In this section we highlight four of many challenges faced by the regional regime.

#### **1. Changing character of human rights violations**

The first challenge comes from the changing character of human rights violations. Although the spread of elected governments has marked a significant improvement in the condition of human rights, cases of indisputable and grave violations continue to arrive at the Inter-American Commission. In particular, the Commission has begun to receive more cases from the "grey borderland where the state's authority to promote the general interest collides with individual rights".<sup>xxxii</sup> It has also had to confront cases of structural human rights violations the causes of which do not lie in the exercise of arbitrary state power but are rather the consequences of state weakness and failure to act. Clearly sustained and 'structural' human rights violations occur on a large scale and include low-level police brutality, the murder of street children, rural violence, and continued discrimination of indigenous peoples. In many cases the role of state authorities may be difficult to demonstrate, or may indeed be entirely absent. The capacity of weak and inefficient state institutions to address such violations may be extremely limited. It is important to note that this problem is by no means confined to cases of societal collapse, civil war and the total breakdown of central authority. Indeed working with a single and rigid category of 'failed states' is an extremely unhelpful way of approaching this phenomenon. Better is to consider the multiple forms of violence, the blurred character of relations between public and private power, and the

way in which really-existing Latin American states have always diverged from neat Weberian models. The historical legacies of processes of state formation has therefore continued to shape both the character of human rights violations and the capacity of states to address them (including, for example, the often difficult political and legal relationship between federal governments and local authorities, or between the army and different parts of the police service).

The overall human rights trend therefore could be characterised as a move away from ‘traditional’ human rights violations perpetrated by state agents as part of a deliberate state policy. Although much of the regional human rights agenda is still taken up by the legacies of authoritarianism and issues of transitional justice (amnesty laws, proper compensation, right to know about details of past violations), these forms of human rights abuses have tended to decline with the end of military governments in the region. Increasing attention has therefore been given to violations that involve challenges to the rule of law (access to justice, due process), to the rights of vulnerable groups (especially the rights of indigenous peoples in relation to land ownership and access to healthcare, the rights of women, and the rights of children). The focus of attention has shifted to structural violence by police on marginal communities, collapsed prison systems and deeply problematic judiciaries.

These trends pose major challenges for the regional human rights system that is geared towards the protection of individuals against actions of the state, built around legal notions of state responsibility, and that assumes, politically, that pressure can be exerted on states which possess the levers to improve the situation – in other words that states which are part of the problem can also be part of the solution. It also challenges those notions of human rights (especially deriving from the US tradition) that place almost their entire weight on the relationship between the individual and a potentially threatening state. And finally, especially when considering situations of protracted conflict and violence (as in Colombia), ‘traditional’ human rights law comes into an inherently closer relationship with other bodies of law, including international humanitarian law. Even assuming widespread goodwill, these changes pose major challenges for the mechanisms of a regional human rights system.

## **2. Changing character of democratization**

A second challenge concerns the changing character of democratization in the region. The deepening institutionalization of norms and practices pertaining to human rights and democracy are taking place in a regional context in which the majority of the countries have been undergoing complex and uncertain processes of democratization. Latin America has routinely been singled out as the prime example of a region of the world where the allegedly irreversible advances of (liberal) democracy have been the most prominent. For nearly two decades regional experiences with processes of political (and economic) liberalization<sup>xxxiii</sup>, political transitions from authoritarian regimes to democratically elected ones, and the institutionalization of democratic norms and practices (processes of consolidation in the jargon) have provided students of democratization with ample empirical material. Indeed, across the region, with the notable exception of Cuba, ‘democracy’ is widely considered to be ‘the only game in town’<sup>xxxiv</sup>.

The regional character of democratization has prompted observers to analytically construct systemic theories of change<sup>xxxv</sup>. But the crucial point is that the significant differences in terms of political outcomes from democratization across the region question the idea of a straightforward narrative of regional convergence around values of liberal democracy. Instead, what can be observed is the weakly institutionalised nature and practice of democratic regimes in the region. Indeed, these divergences between the formal and procedural characteristics of the political arrangements and the subjective perceptions of experiences with democracy of those living under its regime vary across as well as within countries.<sup>xxxvi</sup> In particular the instability of the advances of citizenship rights accompanying regional processes of democratization remains characteristic of the types of democratic regimes that have emerged in the region.

Accordingly, the challenges to democracy in the region have shifted. While the act of taking power by means of a coup d'état, for example, is rather unambiguous, the undemocratic exercise of power may be less obvious. There are indeed multiple ways in which power obtained through democratic means may be exercised undemocratically.<sup>xxxvii</sup> If democratic backsliding were simply a matter of military coups and the failure to hold clean elections, a regional consensus might be relatively easy to sustain. But contemporary challenges to democracy in Latin America have far more to do with the murky erosion of democratic systems ('authoritarian inclinations in democratic day-dress'), near-coup crises, and the erosion of the social and economic fabric and inter-personal trust that sustains democratic institutions.

It is also clear that there is increasing contestation as to the nature of democracy, increasing expectations as to what democratic systems should deliver, and increasingly discontent with the gap between inflated expectations and delivered outcomes. As the countries of Latin America have moved through the phase of transition to what is commonly referred to as the phase of democratic consolidation the concerns regarding the nature of the region's democracies change. Hence, departing from the minimalist and procedural conception of democracy as implied by the consolidation paradigm<sup>xxxviii</sup>, the expectations of what democracy *should* deliver, and how, expand. But, as the demands on democracy shift, reality does not necessarily follow. In particular, the gap between the claims and predictions of the consolidation paradigm and the subjective experiences of democracy in the region is wide and potentially growing. On closer examination therefore the really-existing democracies of the region give evidence of being weakly institutionalised and emerging citizenship rights are as a result unstable. Consequently, with democracy widely perceived the only legitimate form of political regime available, the concerns of the democratization scholarship have adjusted accordingly. The modernization literature focused on a number of social and economic prerequisites for democratization to occur.<sup>xxxix</sup> The transitology literature emphasised political processes and elite initiatives and choices to account for the move from authoritarian rule to democratic regimes.<sup>xl</sup> The analysis of consolidation processes shifts interests away from the search for preconditions or catalysts of change to the study of factors that enable or constrain the stabilization and legitimisation of new democracies. There is, therefore, a growing recognition that the nature and direction of democratization as a process is contingent and open-ended.<sup>xli</sup> As such, the scope for disputes surrounding the requirements of regional democracies is wide.

Hence, as processes of democratization continue apace, the analytical perspectives required to explain such changes need to adapt accordingly. Although the early literature on democratization tended to downplay international factors, there is a growing recognition of the ‘international dimensions’ of (regional) democratization processes.<sup>xlii</sup> In this vein, Laurence Whitehead argues that while questions of institutional design and representative procedures have been exposed to limited international influences, the broader issues of “democratic accountability, rule of law observance and rights protection, anti-corruption enforcement, citizen security, local democracy, and so forth, all take much longer and may require more international cooperation and support.”<sup>xliii</sup> The causal mechanism relevant to processes of consolidation differ, in other words, from those pertaining to processes of transition and whilst the latter might have a predominantly local flavour the former need to incorporate international actors and processes. Similarly, Charles Tilly maintains that it is important to understand how the international arena supplies domestic actors with ideas and practices concerned with how to construct and re-construct democracy.<sup>xliv</sup> While once democracy was seen as a contingent outcome of national struggles for power, international recognition is increasingly seen as part and parcel of the democratic idea in its contemporary form.<sup>xlv</sup> In this sense the regional developments reflect the broader normative changes in the international system that have contributed to the emergence of the democracy agenda. The respect for democratic principles has become the *sine qua non* for legitimate members of the world community with regards to political and economic systems of governance alike.<sup>xlvi</sup>

### 3. Interface between human rights and democratization

There is a long and powerful tradition of thought that asserts a close relationship between human rights and political democracy. Especially for those working within the human rights area democracy is often understood in human rights terms; and conceptions of democracy are advanced that take democracy to be the sum total of a number of political rights as enshrined in international legal instruments.<sup>xlvii</sup> For Cerna:

The existence of a democratic form of government – evidenced by fair and free periodic elections, three branches of government, an independent judiciary, freedom of political expression, equality before the law and due process – is a *sine qua non* to the environment of human rights. Consequently, the elements of democracy are found in the international human rights norms. For example, by becoming a party to an international human rights instrument, a state agrees to organize itself along democratic lines by establishing independent tribunals, allowing freedom of expression, and conducting free elections.<sup>xlviii</sup>

This view of the role of (international) human rights in (national) processes of democratization forms the dominant position within the human rights ‘community’: it stresses unequivocal positive reinforcement and supports the idea of a ‘right’ to democratic governance. Such a ‘right to democracy’ in the Americas would call into question the traditional notion that internal political legitimacy is essentially a matter under the state’s exclusive jurisdiction, and therefore that it is exempt *de jure*, although arguably not *de facto*<sup>xlix</sup>, even from a “soft intervention by international organizations or by the entire international community”.<sup>1</sup> To the extent that this is an accurate description of the normative changes in the region this development would constitute a gradual move away from the traditional pluralist nature of the

Hemispheric system towards a more solidarist model. This would mark a shift of international law from its *de facto* approach to statehood and government towards a normative commitment in favour of liberal democracy.<sup>li</sup>

And yet, although there may be an elective affinity between human rights and democracy, there are serious tensions that complicate the workings of the regional system. At a general level Isaiah Berlin and Jon Elster have underlined the extent to which formal political democracy can entrench murderous majorities of all kinds.<sup>lii</sup> Very large numbers of democratic states commit violations of human rights, especially highly unequal and stressed societies. Looking over the past twenty years (ie beyond the recent focus on counter-terrorism), nearly one in three institutional democracies have committed significant violations of human rights.<sup>liii</sup> It is also far from clear that the ‘right to democracy’ can be turned into a coherent, credible and enforceable right.<sup>liiv</sup> And, most importantly, the complexities and uncertainties of democratic consolidation in Latin America make the relationship especially tricky. In some cases (such as Colombia) relatively successful electoral democracy has coexisted with severe and persistent human rights violations. In other case (such as Argentina and Chile) there have been tensions between the political bargains associated with transition and the requirements of transitional justice. In the ‘really-existing democracies’ in the region the relationship between human rights and democracy is not straightforwardly progressive. Although the (re-)turn to democracy in the region has significantly improved the human rights situation compared to the period of authoritarian regimes, structural human rights violations constitute part of every-day life for many sectors of society. In other words, there is, as Laurence Whitehead reminds us, “no mechanical equivalence between democratization and the promotion of human rights”.<sup>liv</sup>

Rights are conceptually distinct from democracy. They are designed to protect their bearers from actions or conditions that threaten individual autonomy or well-being. The whole point of rights is to ring-fence certain activities from the decisions of day-to-day democratic politics and to insulate certain areas of politics from the control of others, and to set limits as to what may be legislated. The values protected by rights are more basic than the values of democracy. For the rights purist, rights are ‘trumps’ and belong to a normative sphere that lies beyond politics. This is their power and their particular appeal. But, despite the moral emphasis of ‘rights talk’, the apparently apolitical quality of rights is itself the product of political struggles, political compromises and political traditions that vary greatly across time and across space.

Why does this matter? It matters, first, because it creates divisions within the regional human rights movement as to the best way to secure ‘good’ outcomes. To what extent should the movement focus narrowly on human rights rather than joining broader political struggles? Isn’t it the case that human rights activism can easily lead to excessive expectations as to the role of law and the possibilities of legalizing progressive social change? Doesn’t it confine the human rights movement into the space that states and the human rights system allow it to play rather than pragmatic political engagement with what works?<sup>livi</sup> And second, it matters because of broader scepticism as to the value of human rights. Given the sorts of challenges described in the previous sections, the rediscovery of rights in the struggles against authoritarian rule in Latin America has, to a significant extent, lost ground to those who argue that political action is the best way to secure progressive goals. This might, for example, involve land reform, redistribution and direct assistance to the poor. Such action should not be impeded either by an

excessive concern with the procedural purity of democracy nor diverted by concern with human rights. Do human rights policies lead to a strengthening of the ‘quality’ of democracy, broadly defined? Or, is “a successful rights-based politics [...] parasitic on features of the polity that have nothing to do with rights – indeed, which may even be inimical to rights thinking”?<sup>lvii</sup>

If the relationship between human rights and democracy within individual countries is far from straightforward, so too is the relationship at the regional level. As has been noted, “[H]uman rights and democracy often appear disconnected on the inter-American agenda.”<sup>lviii</sup> One aspect of the relationship concerns the origins and relative strength of the human rights regime itself. On one much cited account, there is a powerful interest-based logic to the emergence of international human rights regimes. Thus Andrew Moravcsik has emphasised the ways in which the European process of post-war democratization coincided with the development of a strong human rights regime in that region.<sup>lix</sup> In his view, the emerging democratic regimes of Europe chose human rights as external institutional safeguards in order to ‘lock-in’ domestic political arrangements. This sort of logic can be discerned in some places in the Americas (perhaps Argentina under Alfonsín and, more recently, Mexico under Fox). But, in general, consolidating democracies have not sought to strengthen the regional human rights regime as much as this theoretical approach might lead us to suppose. Instead they have laid much greater emphasis on the construction of a regional system of protecting and promoting democracy – one which is far more directly under the control of states, which is politically and legally less constraining, and which is less susceptible to progressive development both from within the ‘system’ and by civil society groups.

The other aspect of the relationship concerns the operation of the system. Although the human rights challenges and democratic challenges of the region are indeed overlapping, the disconnect between the two regimes raises questions concerning the development of regional institutions and their interaction with domestic political developments. There is much less mutual reinforcement than might be expected. Although a people’s right to democracy is affirmed in the Democratic Charter, and the protection of human rights is deemed essential, above and beyond the holding of periodic elections, the mechanisms for evaluation and implementation contained in the Charter are unclear.<sup>lx</sup> Furthermore, on the terms of the Charter, the OAS will ultimately exercise its own discretion when choosing to intervene (or not) in the defence of democratic principles.<sup>lxi</sup> This puts the state concerned itself in the position to choose whether to solicit an inquiry, leaving civil society groups, or individuals, seeking to trigger an investigation into alleged violations of the Democratic Charter with no recourse provided for in the Charter.<sup>lxii</sup> Given these strong state-based biases inherent in the democracy regime, political considerations will inevitably influence, and could potentially override, the objective of defending democracy.

Moreover, there is no explicit reference to the inter-American human rights system in the Democratic Charter. While the human rights system – as outlined above – has been increasingly willing in explicitly making the connection between the protection of human rights and democratic form of government, the institutional mechanisms developed to meet these overlapping challenges remain distinct. The Inter-American Commission on Human Rights in particular could play an important role in monitoring human rights, initiating debate around situations that appear to threaten

democratic governance, helping to raise ‘early warnings’ about breakdowns in democracy, studying situations that merit the adoption of measures under the Democratic Charter, and evaluating the application of such measures.

#### **4. The changing regional context and the deterioration of US-Latin American relations**

As with the global system, much of the optimism of the 1990s regarding human rights and democracy within the region reflected a broader view of the changing character of US-Latin American relations and the apparently unprecedented degree of convergence that was taking place across the hemisphere. Indeed much of the liberal writing of the 1990s suggested, explicitly or implicitly, that power concerns were being driven to the margins of inter-American relations by four sets of factors: first, by deepening integration and interdependence that both created a powerful demand for interest-driven cooperation and effectively tamed or blunted US hegemonic power; second, by the pluralist character of politics within the United States; third, by the consensus that grew up around human rights and democracy; and finally, by the broader spread and internalization of shared liberal preferences and normative understandings. As a result, traditional concerns about sovereignty and non-intervention and traditional worries about US hegemony were becoming more muted and less disruptive to effective regional governance.

By early 2007 the picture looks very different. In the first place, the human rights and democracy regimes are clearly not embedded within a stable structure of hemispheric cooperation. The negotiations on hemispheric economic integration have broken down and there can hardly be a more striking contrast than that between the Miami Summit of the Americas in 1994 and the Mar del Plata summit of 2005. If the prospects for an FTAA have receded and become highly politicized, the OAS has become more marginalized from tackling the real sources of insecurity in the region and the progress made in the 1990s in relation to monitoring elections and promoting democracy is threatened by growing divergence between the US and much of South America. As very often in the past, but especially given the decline in the salience of the region to US foreign policy, Washington’s policy initiatives have been made with little attention to their impact on the region (as with the decision to strengthen the US-Mexican frontier). Policy for much of the Bush presidency was in the hands of people who brought a strong Cold War and ideological vision to their understanding of events in the region.

Second, the change in the broader security climate and the nature of Washington’s response to what it has termed the ‘long war on global terror’ has had clearly negative repercussions for human rights – in terms of the human rights violations committed by the US itself, most notably in Guantanamo; in terms of the cynicism that the mismatch between US words and US deeds has engendered across the region; in terms of the incentives and political space for other groups to emulate Washington’s rhetoric and behaviour.<sup>lxiii</sup>

And finally, even taking the US desire to promote democracy at face value, divergences over the nature of democracy between the US and many Latin American countries have grown starker. On one side the US denounces both the alleged move to the left in the region and what it saw as the abuses of ‘populism’ and ‘democratic cesarism’. On the other, there has been widespread discontent across the region with the results of

democracy and liberal economic reform; calls for much greater attention to the social agenda; and the loud proclamation of more 'authentic', 'redistributive' and 'participatory' modes of democracy (most notably in Venezuela and Bolivia). Whatever the exact truth of these respective claims (with both sides presenting far too simplistic a picture of political change in the region), the point here is simply to note the difficulty of promoting democracy when there is so little consensus on the meaning of democracy and the direction in which democratic change should proceed. Moreover the political space to support democracy and to accept the inherent unpredictability of democracy has also been affected by the reappearance of security issues that press the US to support illiberal regimes and to turn a blind eye to their violations of human rights.

## NOTES

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<sup>i</sup> Andrew Moravcsik, 'The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe', *International Organization*, vol. 54, no. 2, 2000.

<sup>ii</sup> Andrew F. Cooper, 'The Making of the Inter-American Democratic Charter: A Case of Complex Multilateralism', *International Studies Perspectives*, vol. 5, no. 1, 2004.

<sup>iii</sup> These regional human rights instruments are: the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ('Protocol of San Salvador'), adopted on 17 November 1988; the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, adopted on 8 June 1990; the Inter-American Convention to Prevent and Punish Torture, adopted on 12 September 1985 and entered into force on 28 February 1987; the Inter-American Convention on the Forced Disappearance of Persons, adopted on 9 June 1994 and entered into force on 28 March 1996; the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women ('Convention of Belem do Para'), adopted on 9 June 1994; and the Inter-American Convention on the Elimination of All Forms of Discrimination Against Persons With Disabilities, adopted on 8 June 1999 and entered into force on 14 September 2001.

<sup>iv</sup> Jack Donnelly, *Universal Human Rights in Theory and Practice*, Ithaca, N.Y.: Cornell University Press, 1989, pp. 24-25 and 215-17.

<sup>v</sup> Jane D. Peddicord, 'The American Convention on Human Rights: Potential Defect and Remedies', *Texas International Law Journal*, vol. 19, no. 1, 1984, p. 159.

<sup>vi</sup> Tom J. Farer, 'The Rise of the Interamerican Human Rights Regime: No Longer a Unicorn, Not yet an Ox', *Human Rights Quarterly*, vol. 19, 1997, p. 511-12.

<sup>vii</sup> For example, Argentina ratified the Convention in 1984 and accepted the jurisdiction of the Court in the same year. Uruguay followed suit in 1985, Paraguay 1989 (acceptance of jurisdiction of Court in 1993), Chile in 1990, and Brazil 1992 (Court's jurisdiction 1998).

<sup>viii</sup> Louis Henkin, 'International Human Rights and Rights in the United States', in Theodor Meron ed., *Human Rights in International Law: Legal and Policy Issues* Oxford: Oxford University Press, 1989, p. 25.

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<sup>ix</sup> A state party is not deemed to have accepted the jurisdiction of the Court by a mere ratification of the Convention. 22 out of the 26 signatory countries to the Convention have accepted the jurisdiction of the Court, with the notable exception of the US.

<sup>x</sup> Christina M. Cerna, 'The Structure and Functioning of the Inter-American Court of Human Rights, 1979-1992', *British Year Book of International Law*, vol. 135, 1993, p. 135.

<sup>xi</sup> In order for the Court to hear a case, the proceeding before the Commission must have been completed; a provision that locates the Commission in the centre of the inter-American system. After the Commission recognizes a petition or communication as admissible, investigates the facts denounced as violations to the Convention, and drafts the preliminary report, with its proposals and recommendations, to the accused states, the Convention empowers both the Commission and the state to submit the matter to the Court. Yet, it should be noted that only states parties to the Convention and the Commission have the right to submit cases to the Court, while individuals have no standing to do so. So, although the Convention establishes individual access to the inter-American system, "the deep-rooted idea that international law regulates relations between states, [is] reflected in the rule that in general individuals have no locus standi before international tribunals." Cecilia Medina Quiroga, *The Battle of Human Rights: Gross Systematic Violations and the Inter-American System*, The Hague: M. Nijhoff, 1988, p. 169. In its stead, the mechanism adopted is that any person or group of persons, or any nongovernmental entity legally recognized in one or more member states may file petitions with the Commission alleging violations of the Convention by states parties.

<sup>xii</sup> Ellen Lutz and Kathryn Sikkink, 'The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America', *Chicago Journal of International Law*, vol. 2, no. 1, 2001.

<sup>xiii</sup> Inter-American Court of Human Rights, *In Definition of Other Treaties Subject to the Interpretation of the Inter-American Court*, Advisory Opinion no. 1, 1982. With this ruling, the Court took the view that the objective of the Convention is to integrate the regional and universal systems of human rights protection and that, therefore, any human rights treaty to which American states are parties could be the subject of an advisory opinion.

<sup>xiv</sup> Inter-American Court of Human Rights, *The Word 'Laws' in Article 30 of the American Convention on Human Rights*, Advisory Opinion no. 6, 1986.

<sup>xv</sup> Inter-American Court of Human Rights, *Habeas Corpus in Emergency Situations*, Advisory Opinion no. 8, 1987.

<sup>xvi</sup> Contrasting experiences with and approaches to 'transitional justice' are to be found in Argentina (National Commission on Disappeared Persons), Chile (National Commission on Truth and Reconciliation), El Salvador (United Nations Truth Commission), Guatemala (United Nations sponsored Commission for the Historical Clarification of Human Rights Violations and Incidents of Violence that have Caused Suffering to the Guatemalan Population) and Honduras (Report by the National Commissioner for the Protection of Human Rights), and most recently Peru (Truth and Reconciliation Commission). On these issues, see Neil Kritz ed., *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, Vols. 1-3 Washington, D.C.: United States Institute of Peace Press, 1995.

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- <sup>xvii</sup> Juan E. Méndez and Javier Mariezcurrena, 'Accountability for Past Human Rights Violations: Contributions of the Inter-American Organs of Protection', *Social Justice*, vol. 26, no. 4, 1999, p. 84.
- <sup>xviii</sup> Jo M. Pasqualucci, 'The Whole Truth and Nothing but the Truth: Truth Commissions, Impunity and the Inter-American Human Rights System', *Boston University International Law Journal*, vol. 12, no. 2, 1994.
- <sup>xix</sup> Inter-American Commission on Human Rights report no. 29, 1992 on Uruguay. For further examples of Commission's views on amnesties see reports no. 26, 1992 (El Salvador) and no. 28, 1992 (Argentina).
- <sup>xx</sup> Inter-American Court of Human Rights, *International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention*, Advisory Opinion no. 14, 1994.
- <sup>xxi</sup> Naomi Roht-Arriaza and Lauren Gibson, 'The Developing Jurisprudence on Amnesty', *Human Rights Quarterly*, vol. 20, no. 4, 1998, p. 884.
- <sup>xxii</sup> Any consideration of the influences of the regional human rights system in these processes should not exclude the role played by other international and extra-hemispherical influences. For the latter, consider for example the role of European governmental aid agencies as well as European political party foundations in financially supporting local human rights initiatives and the development of political party structures respectively.
- <sup>xxiii</sup> Edmundo Vargas Carreño, 'Some Problems Presented by the Application and Interpretation of the American Convention on Human Rights', *American University Law Review*, vol. 30, no. 1, 1980, p. 128.
- <sup>xxiv</sup> Jean Grugel, 'Contextualizing Democratization: The Changing Significance of Transnational Factors and Non-State Actors', in Jean Grugel (ed.) *Democracy without Borders: Transnationalization and Conditionality in New Democracies*, London: Routledge, 1999, p. 12. For the influence of transnational political actors generally see, Thomas Risse-Kappen ed., *Bringing Transnational Relations Back In: Non-State Actors, Domestic Structures and International Institutions*, Cambridge: Cambridge University Press, 1995.
- <sup>xxv</sup> Hans Peter Schmitz and Katrin Sell, 'International Factors in Processes of Political Democratization', in Jean Grugel ed., *Democracy without Borders: Transnationalization and Conditionality in New Democracies*, London: Routledge, 1999, p. 24.
- <sup>xxvi</sup> Jean Grugel, 'Contextualizing Democratization: The Changing Significance of Transnational Factors and Non-State Actors', in Jean Grugel ed., *Democracy without Borders: Transnationalization and Conditionality in New Democracies*, London: Routledge, 1999, p. 15.
- <sup>xxvii</sup> Todd Landman, 'The Political Science of Human Rights', *British Journal of Political Science*, vol. 35, no. 3, 2005.
- <sup>xxviii</sup> Martha Finnemore and Stephen J. Toope, 'Alternatives To "Legalization": Richer Views of Law and Politics', *International Organization*, vol. 55, no. 3, 2001, p. 747.
- <sup>xxix</sup> Jack Donnelly, 'Human Rights and International Organizations: States, Sovereignty, and the International Community', in Friedrich Kratochwil and Edward

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D. Mansfield (eds.), *International Organization: A Reader*, New York: HarperCollins College Publishers, 1993.

<sup>xxx</sup> Martha Finnemore and Stephen J. Toope, 'Alternatives To "Legalization": Richer Views of Law and Politics', *International Organization*, vol. 55, no. 3, 2001. See also: Benedict Kingsbury, 'The Concept of Compliance as a Function of Competing Conceptions of International Law', *Michigan Journal of International Law*, vol. 19, 1998.

<sup>xxxi</sup> Martha Finnemore and Stephen J. Toope, 'Alternatives To "Legalization": Richer Views of Law and Politics', *International Organization*, vol. 55, no. 3, 2001, p. 744.

<sup>xxxii</sup> Tom J. Farer, 'The Rise of the Interamerican Human Rights Regime: No Longer a Unicorn, Not yet an Ox', *Human Rights Quarterly*, vol. 19, 1997, p. 544.

<sup>xxxiii</sup> For a study of the origins, transmission and evolution of economic liberalism in the context of political liberalization in Latin America see Rosemary Thorp ed., *Economic Doctrines in Latin America - Origins, Embedding and Evolution*, Basingstoke: Palgrave, 2005.

<sup>xxxiv</sup> Juan J. Linz and Alfred C. Stepan, 'Toward Consolidated Democracies', *Journal of Democracy*, vol. 7, no. 2, 1996.

<sup>xxxv</sup> Most prominent example of this tendency is of course: Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century*, Norman: University of Oklahoma Press, 1991.

<sup>xxxvi</sup> Guillermo A. O'Donnell, 'On the State, Democratization, and Some Conceptual Problems: A Latin American View with Glances at Some Postcommunist Countries', in Guillermo A. O'Donnell (ed.) *Counterpoints, Selected Essays on Authoritarianism and Democratization*, Notre Dame, Ind.: University of Notre Dame Press, 1999.

<sup>xxxvii</sup> For claims regarding 'illiberal' democracies, see Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad*, New York: W.W. Norton & Co., 2003. For a discussion of liberal democracy in Latin America, see Laurence Whitehead, 'The Alternatives to 'Liberal Democracy': A Latin American Perspective', in David Held ed., *Prospects for Democracy: North, South, East, West*, Cambridge: Polity Press, 1993.

<sup>xxxviii</sup> The status of consolidation is generally conferred upon those regimes that fulfil the minimal condition of organizing open or freely contested, fair, regular and competitive elections. Linz and Stepan outline three minimum conditions for the consolidation paradigm: (1) the existence of a State, (2) the holding free and contested elections, and (3) rulers who govern democratically. While (1) and (2) echo the minimalist and procedural aspects of the consolidation paradigm, the inclusion of the comprehensive and indeterminate third condition considerably raises the bar for admission to the club of democracies. Juan J. Linz and Alfred C. Stepan, 'Toward Consolidated Democracies', *Journal of Democracy*, vol. 7, no. 2, 1996. For general misgivings regarding the concept of consolidation see, for example, Guillermo A. O'Donnell, 'Illusions About Consolidation', *Journal of Democracy*, vol. 7, no. 2, 1996.

<sup>xxxix</sup> Seymour Martin Lipset, *Political Man: The Social Bases of Politics*, London: Heinemann, 1983; Barrington Moore, *Social Origins of Dictatorship and Democracy: Lord and Peasant in the Making of the Modern World*, Boston: Beacon Press, 1993; Dietrich Rueschemeyer, Evelyn Huber and John D. Stephens, *Capitalist*

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*Development and Democracy*, Cambridge, Chicago: Polity; University of Chicago Press, 1992.

<sup>xl</sup> Guillermo A. O'Donnell, Philippe C. Schmitter and Laurence Whitehead eds., *Transitions from Authoritarian Rule*, Baltimore: Johns Hopkins University Press, 1986.

<sup>xli</sup> Laurence Whitehead, *Democratization: Theory and Experience*, Oxford: Oxford University Press, 2002.

<sup>xlii</sup> Jon C. Pevehouse, *Democracy from Above: Regional Organizations and Democratization*, Cambridge: Cambridge University Press, 2005; Richard Youngs, *The European Union and the Promotion of Democracy*, Oxford: Oxford University Press, 2002.

<sup>xliii</sup> Laurence Whitehead, 'Postscript', in Laurence Whitehead (ed.) *The International Dimensions of Democratization: Europe and the Americas*, Oxford: Oxford University Press, 2001, p. 445.

<sup>xliv</sup> Charles Tilly, 'Democracy Is a Lake', in George Reid Andrews and Herrick Chapman eds., *The Social Construction of Democracy, 1870-1990*, Basingstoke: Macmillan, 1995.

<sup>xlv</sup> Thomas Franck, 'The Emerging Right to Democratic Governance', *The American Journal of International Law*, vol. 86, 1992.

<sup>xlvi</sup> In addition to the clear coercive dimensions to these international normative developments (e.g. donor conditionalities), particular attention needs to be given to processes of social construction of democratic norms of political legitimacy. See, for example, Martha Finnemore and Kathryn Sikkink, 'International Norm Dynamics and Political Change', *International Organization*, vol. 52, no. 4, 1998; Martha Finnemore and Kathryn Sikkink, 'Taking Stock: The Constructivist Research Program in IR and Comparative Politics', *Annual Review of Political Science*, vol. 4, 2001.

<sup>xlvii</sup> This view is most prominently espoused by Thomas Franck. See, for example, Thomas Franck, 'Democracy as a Human Right', *Studies in Transnational Legal Policy*, vol. 26, 1994.

<sup>xlviii</sup> Christina M. Cerna, 'Universal Democracy: An International Legal Right or the Pipe Dream of the West?' *Journal of International Law and Politics*, vol. 27, no. 2, 1995, p.295. See also Heraldo Muñoz, 'The Right to Democracy in the Americas', *Journal of Interamerican Studies and World Affairs*, vol. 40, no. 1, 1998.

<sup>xlix</sup> Stephen D. Krasner, *Sovereignty: Organized Hypocrisy*, Princeton, N.J.: Princeton University Press, 1999.

<sup>l</sup> Fernando R. Téson, *Changing Perceptions of Domestic Jurisdiction and Intervention*, Washington D.C.: Inter-American Dialogue Seminar, 1993.

<sup>li</sup> Thomas Franck, 'The Emerging Right to Democratic Governance', *The American Journal of International Law*, vol. 86, 1992.

<sup>lii</sup> Isaiah Berlin, 'Two concepts of liberty' in *Four Essays on Liberty*, Oxford: Oxford University Press, 1969, especially pp. 165-169; and Jon Elster, 'Majority rule and individual human rights' in Stephen Shute and Susan Hurley eds., *On Human Rights. The Oxford Amnesty Lectures*, New York: Basic Books, 1993, pp. 111-134.

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- <sup>liii</sup> Emilie Hafner-Burton and Kiyotera Tsutsui, 'Human rights in a globalizing world: The paradox of empty promises', *American Journal of Sociology*, vol. 110, no. 5, 2004.
- <sup>liv</sup> This raises also the fundamental question of how we think about institutions that are designed to be weak. On this point see, Jack Donnelly, *Universal Human Rights in Theory and Practice*, Ithaca: Cornell University Press, 2003.
- <sup>lv</sup> Laurence Whitehead, 'Democratization and Human Rights in the Americas: Should the Jury Still Be Out?' in Louise Fawcett and Monica Serrano eds., *Regionalism and Governance in the Americas*, Basingstoke: Palgrave Macmillan, 2005, p. 164.
- <sup>lvi</sup> On these broader struggles within the human rights movement see Stephen Hopgood, *Keepers of the Flame. Understanding Amnesty International*, Cornell: Cornell University Press, 2006, especially chapter 8; and David Kennedy, *The Dark Sides of Virtue. Reassessing International Humanitarianism*, Princeton: Princeton University Press, 2004.
- <sup>lvii</sup> Chris Brown, 'Universal Human Rights: A Critique', in Tim Dunne and Nicholas J. Wheeler eds., *Human Rights in Global Politics*, Cambridge: Cambridge University Press, 1999.
- <sup>lviii</sup> Andrew F. Cooper and Jean-Philippe Thérien, 'The Inter-American Regime of Citizenship: Bridging the Institutional Gap between Democracy and Human Rights', *Third World Quarterly*, vol. 25, no. 4, 2004, p. 732.
- <sup>lix</sup> Andrew Moravcsik, 'The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe', *International Organization*, vol. 54, no. 2, 2000.
- <sup>lx</sup> In particular, the Charter is vague in defining conditions that would constitute a violation of the charter – the “unconstitutional alteration or interruption” of the democratic order noted in Article 19.
- <sup>lxi</sup> The mechanism described in Article 17 of the Democratic Charter – “When the government of a member state considers that its democratic political institutional process or its legitimate exercise of power is at risk...” – suggests that member states must invite OAS intervention, at least in the first instance.
- <sup>lxii</sup> In case of a more dramatic ‘interruption’ of the constitutional order, such as a coup d’état, any member state can request that a process of assessment be initiated, the consequences of which could include suspension from the OAS of the violating member-state. However, the mechanism for collective action is weak because it is still unclear whether or not the acquiescence of the state in question is a precondition for collective action.
- <sup>lxiii</sup> See for example Rosemary Foot, ‘Human Rights and Counterterrorism in Global Governance: Reputation and Resistance’, *Global Governance*, vol. 11, 2005.