

REVISITING THE IDEA(L) OF GLOBAL CIVIL SOCIETY IN THE LIGHT OF HUMAN RIGHTS

REVISITANDO LA IDEA/EL IDEAL DE LA SOCIEDAD CIVIL GLOBAL A LA LUZ DE LOS
DERECHOS HUMANOS

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Abstract: *In the past few decades, the proliferation of a “third sector” of nongovernmental and non-profit organizations that operate across borders has prompted a reformulation of the concept of civil society. A number of contemporary studies contend that the previously state-centric civil society is becoming international, transnational or global. Whether the emergence of an autonomous realm of world citizens is merely a projection of a cosmopolitan ideal or a real phenomenon is a contentious issue. The present article problematizes the idea of a global civil society by analysing its descriptive purchase and its normative implications. Drawing on a constructivist approach, the paper proposes the term “ideational infrastructure” to analyse its discursive and interpretive underpinnings. The analysis finds that global civil society is a reification rooted in human rights discourse as a contemporary ideal and a moral aspiration.*

Keywords: *Ideational Infrastructure, Reification, Constructivism, Globalization, Law Evolution*

Resumen: En las últimas décadas, la proliferación de un “tercer sector” conformado por organizaciones no gubernamentales y sin fines de lucro que trascienden las fronteras ha propiciado una reformulación del concepto de sociedad civil. Una serie de estudios contemporáneos sostienen que la sociedad civil estado-céntrica se está volviendo internacional, transnacional o global. Si la aparición de una esfera autónoma

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de ciudadanos universales no es más que la proyección de un ideal cosmopolita o un fenómeno real es una fuente de controversias. El presente ensayo problematiza la idea de una sociedad civil global a través de una valoración de su utilidad descriptiva y sus implicaciones normativas. En base a un enfoque constructivista, el artículo propone el término “infraestructura ideacional” para analizar sus fundamentos discursivos e interpretativos. El análisis concluye que la sociedad civil global es una reificación que tiene sus raíces en el discurso de los derechos humanos como un ideal contemporáneo y una aspiración moral.

Palabras clave: Infraestructura ideacional, Reificación, Constructivismo, Globalización, Evolución normativa

Summary. I. The globality of civil society. II. The idea(l) of global civil society. III. Reifying an ideal. IV. An excursus on the historicity of human rights. V. An ideational infrastructure for change. VI. A collapsing infrastructure? References.

I. THE GLOBALITY OF CIVIL SOCIETY

In the past few decades, the proliferation of a “third sector” of international nongovernmental organisations (NGOs), philanthropic foundations, transnational activist networks, and all sorts of advocacy groups that operate beyond the confines of the state prompted a reformulation of the concept of civil society. A number of contemporary studies contend that the hitherto state-centric civil society is becoming international (Colás, 2002), transnational (Florini, 2000) or—most prominently—global (Anheier, Glasius, & Kaldor, 2001). Yet these theses are not merely empirical since they are premised upon cosmopolitan ideals and beliefs. This is particularly true in the case of *global* civil society. Thus whether global civil society is merely a projection of a cosmopolitan ideal or a real phenomenon is a contentious issue. The key point of contention revolves around the descriptive purchase of the concept and its normative underpinnings.

In contemporary accounts global civil society as a descriptive concept denotes an emerging empirical phenomenon—if not a *fait accompli*. It identifies a growing nongovernmental sphere that transcends national boundaries and, thus, constitutes a realm of civilians (Frost, 2008), which is independent from the state. This realm is sustained by an underlying cosmopolitan ethos. In other words, as a normative idea, global civil society reflects a cosmopolitan belief. In opposition to these theses, the sceptics argue that the idea of a global civil society rests upon fallacious or even detrimental assumptions. On the one hand, there is no empirical evidence to support the idea that a cosmopolitan sphere of world citizens is emerging—or shall emerge (Brown, 2000). On the other hand,

the belief that globalization ought to bring about a deterritorialised political community is erratic, and may hinder local civil society (Chandhoke, 2002; Chandler, 2004).

Drawing on a constructivist approach, the present article discusses these contrasting appraisals of the idea(l) of global civil society and problematises the concept by analysing its descriptive purchase and its normative implications. The central thesis of the paper is that global civil society is a reified ideal, which is inextricably linked to human rights as a universal discourse. Thus, the term “ideational infrastructure” is proposed to analyse human rights as a discursive formation underlying the idea of global civil society. Ultimately, human rights and global civil society appear as mutually reinforcing and self-fulfilling ideals.

The article proceeds as follows. First, the concept of global civil society is analysed through authoritative definitions. Second, the paper proposes the term “ideational infrastructure” to analyse the discursive and interpretive underpinnings of global civil society as the reification of a cosmopolitan ideal. Third, the historicity of human rights is discussed in order to determine its relation to global civil society. Fourth, human rights and global civil society are appraised as interlocking ideals behind a particular form of transnational activism. Finally, some concluding remarks on the future of global civil society and human rights as modern ideals are presented.

II. THE IDEA(L) OF GLOBAL CIVIL SOCIETY

The phrase «global civil society» is a neologism of the 1990s (Keane, 2003). Its appearance coincides with the end of the Cold War and its accompanying narratives: the «complex interdependence» (Nye & Keohane, 2011), the «global village» (McLuhan & Powers, 1989), the «end of history» (Fukuyama, 2006), the «network society» (Castells, 2011), and the all-encompassing paradigm of globalization (McGrew & Held, 2007; Scholte, 2005). The fall of the Berlin Wall reinforced these narratives, which emerged predominantly during the period of détente. In its descriptive form, globalization refers to the «growing extensity, intensity and velocity of global interactions [as well as] a deepening enmeshment of the local and global» (Held & McGrew, 2007, p. 3). The world is thus construed as a single unit and a shared social space. This premise is at the source of the reformulation of the concept of civil society.

The concept encloses descriptive and normative elements. Interestingly, however, authoritative definitions are predominantly descriptive on the grounds of axiological neutrality (cf. Anheier, 2005). Such an approach eludes the normative burden of the concept of civil society, and its antagonistic

interpretations, thus postponing the discussion around its core meaning. It is often claimed that these descriptive definitions are preferred because they set a framework for further debate around normative questions. However, such an approach is highly problematic since it infers the existence of a global civil society as an empirical phenomenon from the outset. In addition, it assumes that descriptive and normative elements can be disentangled and treated as separate units.

Anheier, Glasius and Kaldor (2001, p. 17) define global civil society as a «sphere of ideas, values, institutions, organisations, networks, and individuals located between the family, the state, and the market and operating beyond the confines of national societies, polities, and economies». Drawing on modern conceptualisations of civil society, this definition states the empirical existence of a global nongovernmental sphere that transcends the state. It describes a deterritorialised civil society. In a similar vein, Keane (2003, p. 8) defines the term as «a dynamic non-governmental system of interconnected socio-economic institutions that straddle the whole earth, and that have complex effects that are felt in its four corners».

In many respects these definitions describe an empirical phenomenon known by social movement scholars as “transnational collective action”. As global civil society, transnational collective action is characterised by «coordinated international campaigns on the part of networks of activists against international actors, other states, or international institutions» (della Porta & Tarrow, 2005, pp. 2-3). However, the proliferation of transnational networks is not an attestation of the existence or the emergence of global civil society (cf. Keck & Sikkink, 1998, pp. 32-34). Tarrow, for instance, argues that there is no «single core process leading to a global civil society or anything resembling one, but—as in politics in general—a set of identifiable processes and mechanisms that intersect with domestic politics to produce new and differentiated paths of political change» (2005, p. 9). Ultimately, the problematic nature of the concept of global civil society is better understood in reference to its roots in political theory.

In its primal conception, civil society emanates from a restricted political community incarnated by the *polis*, the republic or the nation-state. Classic notions of civil society conflate society and the state, whereas modern notions distinguish it from the family, the state, and—conventionally—the market (Cohen & Arato, 1994). However, even if in modern political theory civil society is conceived of as an autonomous space *vis-à-vis* political society, it does not follow that it transcends the polity. This is because civil society does not operate in a vacuum: it is part of a body politic, i.e. it exists in virtue of statehood and citizenship. Indeed, as historical accounts demonstrate, civil

society emerged entwined with the modern state and, as a result, it is a creation of the state (Mann, 1986).

In this sense, *global* civil society, as a sphere that surpasses the state, suggests the existence, the viability, or the desirability of a «world polity» or—alternatively—«cosmopolitan law» (cf. Kaldor, 2003b; Keck & Sikkink, 1998). However, even if a host of contemporary phenomena such as the expansion of international law and the emergence of global governance yield important sociopolitical transformations, it does not follow that a global polity is emerging or shall emerge. As Tarrow (2005, p. 28) notes, «international institutions, regimes, and processes are not the expression of democracy, a global civil society, or a world polity: they are arenas in which conservative and progressive, global and antiglobal, religious and secular nonstate actors intersect». Global civil society, in this sense, is an ideal rather than a *fait accompli*.

The use of the term “global” to qualify civil society conveys an ideal that is linked to globalization-cosmopolitanism. Keane (2001, p. 26), for instance, contends that «the terms “world civil society” and “international society” still have their champions, but from the standpoint of the new concept of global civil society their “governmentality” or state-centeredness are today deeply problematic». Similarly, it is argued that the term “transnational” understates the magnitude and extension of the phenomenon and fails to embed it within the framework of globalization (Anheier *et al.*, 2001, p. 16). Thus, the “global” in global civil society introduces a substantive reformulation of the stem concept as it seeks to liberate it from any remaining trace of state-centeredness.

III. REIFYING AN IDEAL

A significant part of the scientific reflection around the idea of global civil society was undertaken by the Civil Society and Human Security Research Unit at the London School of Economics and Political Science. The aim of the research project was to grasp the process of «globalization from below». The flagship publication of the unit was the *Global Civil Society Yearbook*, which was published annually from 2001 to 2012. In its initial publications, from 2001 to 2006-7, the *Yearbook* explored the objective conditions in which global civil society operates in a section entitled “Infrastructure”. This section features analyses of a host of factors including the Internet, networks, movements, legal frameworks, trade unions, social forums, NGOs, and religious institutions, among others.

From a social movement theory perspective, infrastructures appear either as organisational structures or political opportunity structures. On the one hand, parallel summits, trade unions, NGOs, religious groups, philanthropic

foundations, and others, constitute an organisational resource for transnational mobilisation. On the other hand, the UN system, human rights law, and global governance institutions, incite and support mobilisation by providing a political platform for advocacy. In this sense, infrastructures are understood as enabling factors. This sort of analytical approach tends to reify the ideal of global civil society as it indicates that the empirical phenomenon sustains the normative inferences of the concept. Accordingly, in its basic formulation, the infrastructure approach ignores the fact that objective conditions do not automatically generate movements. As Della Porta & Tarrow (2005, p. 12) point out, «resources and opportunities (...) are perceived and constructed by the activists». This means that objective factors are not enabling factors unless they are constructed as such through discursive and interpretive work.

The ideational components of opportunity—e.g. cultural themes, myths, belief systems, worldviews—have been studied from social constructionist and constructivist perspectives through the concepts of “ideology”, “mentality”, “discursive field”, “master frame”, among others (cf. Gamson & Meyer, 1996; Tarrow, 2013). These concepts point to the delusion of objective determinism, and emphasise the importance of subjective factors as an *explanans* of social practice. Drawing on the terminology of the Global Civil Society Yearbook, I refer to these factors as an “ideational infrastructure¹”, which is not an objective condition but rather an intersubjective understanding of external conditions that justifies, motivates and guides action. The focus on ideational infrastructures, as opposed to objective infrastructures, sheds light on the concept of global civil society as a modern ideal.

The ideational factors underlying the concept of global civil society have been analysed through different historical processes. Keane (2003) adopts a *longue durée* approach whereby the origins of the idea of global civil society are traced in remote historical periods when universalistic religious traditions emerged. A historical account of this sort further reifies the concept by stating its perennial truth. Based on a different perspective, Kaldor (2003a, Chapter 3) traces the origin of the concept in the “ideas of 1989”, i.e. the dialogue between peace and human rights movements from Eastern and Western Europe, which was prompted by the Helsinki Final Act. The author contends that these foundational ideas «were demands both about going beyond the state and transforming the state» (Kaldor, 2003a, p. 76). In a similar vein, Keck & Sikkink (1998, p. 14) posit that «the new networks have depended on the creation of a new kind of global public (or civil society), which grew as a cultural legacy of the 1960s». These analyses point to ideational factors as the source of global

¹ I prefer the term “infrastructure” to “superstructure” because it is free from Marxian theoretical inferences of base causality.

civil society, however they fail to identify a core ideational infrastructure in virtue of which the idea emerged.

In the following sections, I contend that human rights constitute *the* ideational infrastructure of global civil society. Previous treatments of the issue tend to consider human rights either as a resource or a political opportunity structure. Kaldor (2003b), for instance, considers the growth of «cosmopolitan law»—i.e. the combination of humanitarian and human rights law—as an enabling factor. From another perspective, Fries (2004, p. 223) conceives «human rights as the underpinning of civil society law». Instead of construing human rights as an objective factor, the following analysis posits that it is an ideational infrastructure upon which modern cosmopolitan ideals rest, in particular global civil society. In order to analyse the ideational historical process whereby the ideals of human rights and global civil society emerged, it is essential to clarify the historicity of human rights.

IV. AN EXCURSUS ON THE HISTORICITY OF HUMAN RIGHTS

The idea(l) of Human Rights—in capitals—is fraught with foundational appeals to eternal truths which are, by definition, ahistorical and indeed anti-historical. The discourse of human rights is structured along these lines. The Universal Declaration asserts, in its Preamble, that human rights are rooted in the «inherent dignity (...) of all members of the human family», thereby assuming that their foundations lie beyond social conventions, which is tantamount to asserting that they are devoid of historical contingency. Certainly, the nature of these foundational theses is distinct from historical reasoning in that it seeks to grasp ultimate causes and ends from a philosophical or metaphysical stance. Its logic is, nonetheless, present in historical accounts of human rights in the form of a metahistorical narrative that distorts its historicity. An assessment of the logic of metahistorical accounts is therefore an inevitable preliminary step for any historical analysis of the recent evolution of human rights.

The metahistorical accounts of human rights are premised on the dual thesis of “human nature”, on the one hand, and Providence, on the other. These two ideas are in several respects inseparable and mutually reinforcing. The argument proceeds as follows: if human rights are ontologically inherent to individuals, they are pre-institutional, which means that they are tantamount to “natural rights” in so far as they belong to people «solely in virtue of their common humanity» (Beitz, 2003, p. 41). As a consequence, the history of their realisation and positivisation is conceived as a providential manifestation of human nature deriving from nature’s teleological order. This is a circular

argument in which history is at best epiphenomenal since it conceives human rights as if they had been «discovered rather than made in history» (Moyn, 2012, p. 6).

A number of modern accounts of human rights reproduce these metahistorical theses. Khushalani, for instance, contends that «the concept of human rights can be traced to the origin of the human race itself» (cited in Donnelly, 2005, p. 71). Evidently, an argument of this sort utterly denies the historicity of rights. Although it may be argued that ideas such as fairness, justice and dignity have existed in all societies since the beginning of time, rights as «entitlements that ground claims with a special force», and human rights as «equal and inalienable entitlements of all individuals that may be exercised against the state and society», are relatively recent Western inventions (Donnelly, 2005, p. 284). To be sure, this stance does not negate natural law as such, but it does problematize its teleological understanding in historical accounts. Thus, in considering the historicity of human rights, it is crucial to shift the focus from natural foundations to historically-situated social practices.

Conventional historical accounts consider the “rights of men” declared by eighteenth century revolutionaries as the prodigious precursors of the 1948 Universal Declaration (Donnelly, 2013). Yet, the transition from the rights of men to human rights is in fact a substantive reformulation of a core idea. This is because the universalistic and cosmopolitan invocations of the Enlightenment are not equivalent to the “globality” of contemporary human rights. The rights of men are inextricably linked to the construction of the modern nation-state and citizenship (Moyn, 2012, p. 20). In contrast to modern human rights, the rights of men did not intend to *transcend* the state in any substantive manner. Certainly, the Declaration of the Rights of Men and of the Citizen is antagonistic to *raison d'état*, yet its overarching concepts are civil society and citizenship within the sovereign state². Contrary to the state-centred rights of men, human rights are construed «as entitlements that might contradict the sovereign-nation from above and outside rather than serve as its foundation» (Moyn, 2012, p. 13). In this sense, the transition from the “rights of men” to “human rights” is a substantive one as it ushers in a global aspiration that transcends the state. As Moyn (2012, p. 43) puts it, «the true key to the broken history of rights, then, is the move from the politics of the state to the morality of the globe, which now defines contemporary aspirations».

The history of human rights as a modern ideal and as an activist movement is recent. Moyn (2012) demonstrates that the Universal Declaration did not immediately spark a transnational human rights advocacy movement. The

² It is worth noting that sovereignty has been construed not only as an attribute of the state, but also of the individual. The paradox of this dual sovereignty was solved by social contract theories.

geopolitics of the post-war period and the anticolonialist moment impeded the consecration of human rights as *the* moral aspiration of the globe. As states crafted the UDHR they «unanimously agreed that these rights could not be used to pierce the shield of national sovereignty» (Douzinas, 2000, p. 118). The decade of the 1970s marked the exhaustion of revolutionary struggle for self-determination and gave rise to the consecration of human rights as President Jimmy Carter placed them at the forefront of US foreign policy, and the Nobel Peace Prize was awarded to a hitherto marginal human rights organisation, Amnesty International (Hunt, 2008; Ishay, 2008; Moyn, 2012). These events coincided with the return of civil society discourse in the context of democratic transitions and the Helsinki Accords. Thus the scene was set for the articulation of a cosmopolitan ideal linking civil society and human rights.

V. AN IDEATIONAL INFRASTRUCTURE FOR CHANGE

As mentioned above, the underlying logic behind the idea of human rights is to transcend the state. In conventional explanations, rights emanate from citizenship. This idea is premised on a paradox whereby the state becomes the «principal violator and essential protector» of rights (Donnelly, 2013, p. 33). In a more lapidary statement, Douzinas (2000, p. 119) points out that «the government-operated international human rights law is the best illustration of the poacher turned gamekeeper». In this sense, the ideal of human rights is different from international human rights law. In law the paradox of the poacher and the gamekeeper subsists, whereas in the deterritorialised ideal of human rights the paradox is eluded. As Emmanuel Levinas argues, «concern with human rights is not the function of the state. It is a non-state institution inside the State—an appeal to humanity which the State cannot accomplish» (cited in Douzinas, 2000, p. 343). But if concern with human rights—as an ideal—is not the function of the state, then, whose function is it? I argue that in contemporary cosmopolitan ideals, global civil society takes up this burden.

Human rights law is not the foundation of a law-based global civil society. There is no global polity in virtue of cosmopolitan law. In the ideal of global civil society cosmopolitan law is a meta-legal claim and not an operating institution. As Keane (2003, p. 58) notes, the networks of individuals and organisations behind transnational activism «act *as if* viable bodies of global law already existed». It follows that global civil society is not a consequence of human rights law; it is a self-fulfilling ideal based on an «as if game». To be sure, the human rights regime, its treaties, institutions and norms are actually a political opportunity structure for the transnational advocacy groups that are often identified with global civil society. However, human rights as a discourse

is not a political opportunity structure but an ideational infrastructure for global civil society.

The discourse of human rights was purported by a number of advocacy groups which may be construed as the progeny of global civil society. These groups operated on a transnational basis and promoted a novel understanding of socio-political change, which was radically different from national liberation movements, revolutionary guerrillas and other movements of the sort. Human rights NGOs in particular proliferated in the 1970s and 1980s. Amnesty International, founded in London in 1961, is considered to be the first global human rights advocacy NGO (Hopgood, 2013, p. xi). The nature of the organisation reflects the spirit of global civil society and introduces an archetype for cosmopolitan activism. When Amnesty International was awarded the Nobel Peace Prize it stated in its acceptance speech that human rights will not be protected if left solely to the governments. Individuals of goodwill must everywhere concern themselves with and act to curb repression, and to defend human rights. The ordinary individual can make a difference (Soysal, 1977).

This fragment lays out the essence of human rights as a utopian project which must be taken up by individuals around the world, i.e. global civil society. It is a moral duty which bears no political ties. Moyn accurately points out that the principal innovation of AI was «its powerful claim to be above and beyond politics» (2012, p. 132). Interestingly, the claim to transcend politics was also present in the renewed civil society discourse of Eastern and Central European dissidence (Kaldor, 2003a; Moyn, 2012). Václav Havel, for instance, insisted on the primacy of morality over politics as «living in truth», while Hungarian writer George Konrad encouraged the creation of «networks of sympathy» and referred to «anti-politics» as the ethos of civil society (Kaldor, 2003a, Chapter 3).

The legacy of the human rights movement as a reified global civil society is divers and ambiguous. As mentioned above, these pioneering actors of the human rights movement acted as if cosmopolitan law were already in place. On this basis, these groups promoted the creation of legal or political instruments to materialise the ideal. Indeed, it may be argued that in some respects the incipient creation of cosmopolitan law is a realisation of global civil society. The human rights movement is at the source of contemporary developments in international law that actually incarnate the ideal of a deterritorialised community of civilians. Glasius (2005), for instance, contends that the International Criminal Court (ICC) was an achievement of global civil society. However, if we were to admit that global civil society exists not only as an ideal but as a reality, then, as the preceding discussion suggests, it should be understood as a self-fulfilling prophecy in so far as it came into being as a result of its own advocacy.

VI. A COLLAPSING INFRASTRUCTURE?

The ideal of human rights sustains the ideal of global civil society as a cosmopolitan aspiration. As the ideals have materialised through law and institutions, the impetus of the struggle has receded. The elation that surrounded the activities of the human rights movement in its first global campaigns is turning into apathy and discouragement. Some even argue that human rights as a global mobilising ideal is coming to an end (Douzinas, 2000; Hopgood, 2013). In many respects, it is somehow paradoxical that the demise of human rights seems to be at least partly explained by the inefficacy of its own creations, its legal formulation and its antipolitical invocations.

The demise of human rights occurs as these are objectified, thus becoming abstract and detached from tangible experience and concrete demands. This leads to a situation in which the utopia becomes an abstraction in the form of legal or meta-legal claims to rights. Indeed, the rights discourse is embedded in a legal logic that emphasizes «process and rights at the expense of politics and substance» (Mutua, 2008, p. 1033). In this context, contentious issues are arbitrated by reference to abstract principles, rules and procedures instead of politics. As Mutua (2008, p. 1033) puts it, human rights are failing since «[b]y casting themselves as doing the work of the law, [human rights] movement activists perpetuate the myth of objectivity». In a similar vein, Douzinas (2000, p. 380) claims that «the end of human rights comes when they lose their utopian end».

In particular, the proliferation of norms, laws and courts has not been accompanied by effective compliance. The role of the ICC has been ineffectual and biased. Its virtually exclusive focus on African indictees and its feeble results do not escape the logic of geopolitics. Responsibility to Protect (R2P) is yet another illustration. As a norm it is practically inexistent unless a coercive threat held by a hegemon sustains it. This explains its arbitrary application. As Hopgood (2013) notes, it seems that the end of the unipolar international system and the rise of non-Western states is causing a relapse into a «neo-Westphalian world». The preponderance of power relations represents, in this sense, the negation of human rights and determine the futility of their transnational advocates, i.e. global civil society.

Finally, the anti-political and abstract legal principles of human rights are losing their mobilising force. The proliferation of anti-globalization movements, which promote a counter-hegemonic alternative, appear as an alternative to the AI archetypical human rights advocacy. The Porto Alegre World Social Forum, Occupy, EZLN, ATTAC, among others, are examples of this a novel activism that is imminently political. Instead of circumventing politics through the moral language of rights, these groups express political

demands that oppose global capitalism and cultural hegemony to vindicate communitarianism and emancipation. Kaldor (2003b) refers to these movements as the “outsiders” of global civil society. In the light of current crises, these outsiders seem to be the ones that can bring global civil society as a mobilising ideal back in.

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