HUMAN RIGHTS:
A SYSTEMIC PERSPECTIVE[1]

DIREITOS HUMANOS: UMA PERSPECTIVA SISTÊMICA

Vitor Galvão Fraga[2]

Abstract

Niklas Luhmann is a German sociologist who created a very unique theory of society, a society made of communication instead of men. His ideas help us understand the Law in a holistic way, and can make us reach different and illuminating conclusions about the dynamics of law and other kinds of communication as politics. The goal of this article is to observe through the lenses of Luhmann's theory the modern human rights regime. As explained below, human rights are seen in this article as a particular social mechanism uniting the legal and the political systems, making possible agency in both of this realms, leading to the conclusion of human rights being as a world constitution in Luhmann's sense.

Keywords: Human Rights. Luhmann. Systemic Theory. World Society.

Resumo

Niklas Luhmann é um celebrado sociólogo alemão criador de uma teoria bastante peculiar sobre a sociedade, uma sociedade feita de comunicações ao invés de homens, como ensinado pela sociologia clássica. Suas ideias nos ajudam a entender o direito de uma maneira holística, podendo nos levar a conclusões interessantes e aclaradoras quanto à dinâmica do direito e sua relação com outras espécies de comunicação como a política. O objetivo desse artigo é observar o moderno regime dos direitos humanos pelas lentes da teoria sistêmica de Luhmann. Como explicado abaixo, os direitos humanos são interpretados como um mecanismo social que liga o direito e a política, tornando possível a ação em ambos os sistemas, levando à conclusão dos direitos humanos como um rascunho de uma constituição centralizante da sociedade mundial, na acepção luhmanniana de constituição.

Palavras-chave: Direitos Humanos. Luhmann. Sociedade Mundial. Teoria Sistêmica.

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[2]   Graduate Student of the Faculdade de Direito do Recife – Universidade Federal de Pernambuco. Scientific initiation researcher PIBIC-CNPq 2012-2013. Exchange Student in the Eberhard Karls Universität Tübingen, Germany, 2014-2015. Member of the study group Direito em Foco, of Theory and Philosophy of Law (http://dirfoco.blogspot.com.br/). E-mail: <vitorgfraga@gmail.com>.

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1   INTRODUCTION

"The communication is the smallest unity possible of a social system" (LUHMANN, 2006, p. 58)[3]

Society is made of communication; that is the main assumption of Luhmann's theory of society; the society is not made of men, or actions, but of an ensemble of communications. This change of perspective in comparison to the classical sociological thought leads to a series of concepts and to the re-signification of others in order to create a solid theory of society.

That is the main goal of what we here call the 'Systemic Theory', Luhmann's theory of society, a society made of communication and divided in functionally differentiated systems. The view that this theory give us of how society works is rather different from the so-called 'classic sociology', centered in men as units and constructors of the social environment, as anthropologic actors in intersubjective relations, idea that mutatis mutandis dominate the concept of society from Durkheim to Habermas.

When addressing society trough the lenses of the 'systemic theory', one get different and unusual answers to old questions. The goal of this brief text is to show a systemic perspective on the role of human rights in the 'World Society', as both a mechanism of inclusion and a delineation of a world coupling between the legal and the political systems, what we could call a sketch of a 'world constitution'. Firstly, a little explanation on the luhmannian language is necessary before introducing Luhmann's idea of a world society, because it is a very specific theory and not so broadly known.

2   LUHMANN'S TERMINOLOGY

Luhmann's theory of society is called 'systemic theory', because in his theory the modern society is divided in lots of systems, and those (sub)[4] systems are

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[3]   Original quote: *"La comunicación es la unidad más pequeña posible de um sistema social".*

[4]   Considering society as a system, diferente from psychological systems, for example, the social systemas – part of the society – would be more properly called "sub-systems", but, as I wont go deep in this more general level of analysis, I will call them "social systems" or even only "systems".

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composed of communications that reproduce themselves in some specific way; for example, in the legal system labeling what is licit or illicit, or in the political system the issues of power in creating biding decisions. First, it is important to notice that the communication is the core concept of the systemic theory and it has a very specific meaning. Communication is the unity of three different selections: 'information (Information), utterance (Mitteilung) and understanding (Verstehen)'. (LUHMANN, 2006, p. 49).

It is important to notice that by "systemic theory" or "modern systems theory" I am indicating only Luhmann's theory of society. This observation is important because there are many theories that understand society by a "systemic" perspective, divided in social systems. For example, the theory of Talcott Parsons, a major influence of Luhmann, and also the social theory of Pontes de Miranda, a very known Brazilian jurist, but not as known by his sociological work.

The modern society is complex, which means that the world presents itself to the men in a multiplicity of possible experiences and actions (previous communications) in contraposition to the limited potential in terms of perception, assimilation of information, and action - each experience presents an evident content that refers to other possibilities. (LUHMANN, 1983, p. 45) In other words, every reality is a necessary exclusion of many other possibilities of reality. It may sound confuse, but it is possible to reduce the idea of complexity to a tautology: to be is not to be what is not. For a reality to be, other possible realities are not.

Complexity implies a selection of expectations, of possibilities; for example, when alter speaks to ego, he first suppose that ego is going to listen, or that ego speaks his language, and even that ego is awake, he selects a possible reality from the infinity of possibilities the world offers. In this sense, every communication is a selection made by both alter and ego, first about the information (one must select the content of a message), than the utterance (the information previously selected is uttered in some specific manner at the expense of another) and finally the understanding (it is understood in some specific way, again a selection).

The reaction to that communication is another communication itself, and it continues in a chain: communication produces communication. Historically, in this process of communication generating communication, in a constant increasing of

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complexity, society reacts "specializing" groups of communication, it starts to differentiate itself functionally in binary codes: truth/not-truth, beautiful/ugly, licit/illicit, etc. (LUHMANN, 2006, p. 444).

It means that in some moment of history the reproduction of the communication started to create some pattern, identities, starting to recognize itself, that's what is called the 'functionally differentiated systems', the codification presupposes identity of communication. (LUHMANN, 2006, p. 170)

A system is a differentiated form, it has two sides, the system itself (the inner side), and the environment (the outer side); only both sides make the system, and this is how it identifies itself, as a difference, as something other than the environment, the system is itself a difference, it is a closed differentiated form, since everything that is not part of it is part of the environment. "*… Everything observable and describable by this differentiation belongs either to the system or to the environment.*" (LUHMANN, 1997, p. 78)

A system reproduces itself by its own elements, its own communication, for that reason they are called autopoietic, using an expression from the biologists Humberto Maturana and Francisco Varela. The system moves itself, works with its own elements, and has as reference its own communication (auto-reference). As Günther Teubner[5] explains:

> The idea of auto-reference and autopoiesis presupposes that the pillars or bases of the system's behavior reside not in exogenous conditions imposed by the environment to which they have to adapt in the best way possible (how the theory of open systems understood), but after all in the own inward of the system.

For example, considering that 'The Law' is an autopoietic system that operates with the code licit/illicit (Recht/Unrecht), one can only say that some specific case was licit or illicit by appealing to previous legal communications, communications already within the system, as a statute or a judicial decision. One cannot communicate licit/illicit by using religious or economic communications, which means that something cannot

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5   "O direito como sistema autopoiético". Original title: Recht als autopoietisches System). (Original quote: "*A ideia de auto-referência e autopoiesis pressupõe que os pilares ou bases do funcionamento dos sistemas residem, não nas condições exógenas impostas pelo meio envolvente às quais tenham de se adaptar da melhor forma possível (como era entendido pela teoria dos sistemas abertos), mas afinal no próprio seio sistêmico.*" (TEUBNER, 1989, p. 32)

be labeled licit or illicit just because it was considered a sin or because someone either has or does not have money.

The systems operate within its own boundaries, it means that they are operatively closed, they recognize some communications as part of them and some as environment, and this differentiation occurs by the system's inner communication. The system determines itself autopoietically, by its own elements. Using the legal system as example again, only the system can recognize some communication as relevant – as a part of itself – for example: the law courts (pre-established inner communication) react to some other communication (E.g. a crime, a contract, a treaty, etc.) which are then labeled as licit or illicit by the system's criteria and others are just irrelevant (E.g. why penguins cannot fly or if Romero Brittos's paintings are artistically valuable). In this way, the system differentiates itself from the environment. (LUHMANN, 2005, p. 236)

At last, although operatively closed, the systems interact with each other; the most important of those interactions are the structural couplings. Luhmann refers to structural coupling *"…when a system supposes specific characteristics of its environment, relying structurally in it…"* (LUHMANN, 2005, p. 316) [6] a structural coupling is a paradox, because it includes and excludes the system at the same time. The structural coupling specifies a strict way through which both systems can 'irritate' each other, in order to maintain and stronger their independence from the environment. (CORSI, 2001, p. 169-189)

The coupling makes the functional differentiation stronger, allowing the systems to "influence" each other, because, when recognizing a strict way of inter-systemic communication, it is recognizing each system as a separate and independent unity, but also itself as a special unity. The coupling allows the systems to share a common structure, but it is not itself a part of any of the systems, in a way that they are not determining each other. The coupling makes the autopoiesis stronger, and that is how it cannot be mistaken by some kind of systemic corruption.

For us, the most important structural coupling is "The Constitution", a coupling between the legal and the political systems. From the Law perspective, it is a substitution of the notion of natural law, it is a positivation of its foundations; from the

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[6] Original quote: "*...cuando um sistema supone determinadas características de su entorno, confiando estructuralmente em ello...*"

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perspective of the political system it is the source of political power trough sovereignty; it is both a legal limit of the political power and a political limit of the Law.

By the power, for example, the political system can produce law, that will be a parameter for legal decisions, within the constitutional frame; and at the same time, law controls the legality and constitutionality of political decisions, inside the parameters of the constitution. Both systems recreate their own limits by the constitution, finding new constitutional ways of keeping each other in check. It is a manner of double legitimization; they do not need legitimization outside themselves, prejudicing autopoiesis, because they have this common structure. (NEUENSCHWANDER, 2011, p. 29-64)

3   WORLD SOCIETY

When conceiving communication as the component of society and recognizing that there is communication all around the globe (internet, television, etc.), it is undeniable, under these premises, the existence of a world society embracing these communications. From the idea of society as an omni-embracing system of communication follows that for all communication with global capacity exists only one society. (LUHMANN, 2006, p. 108)

The idea of world society drifts from other similar concepts such as the 'International Society' of the English School of International Relations. The international society of the English School refers to a society of states, in the sense of a community of states bounded together under common rules in their relations with one another. (BULL, 2002, p. 13)

The first notable difference is the central role states have in international society that emphasizes the idea of a community of states normatively or culturally bounded. In its turn, systemic theory concept of a world society is about communicative structures that reproduce differentiated communication worldwide. In some sense, it confounds what Bull calls (international) society and system, where States have such contact with each other that even indirectly they affect each other's behavior. (BULL, 2002, p. 9)

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For example, a war between two countries in the Middle East can influence Brazil's choice in constructing relations with one of them because the other is allied with the U.S.A. and Brazil, wanting a chair in UN's Security Council, needs U.S. support. This is what Bull calls an international system, States do not need to stablish direct relation to each other to be influenced be each other's behavior.

In Luhmann's theory, this is the sign of existence of a communicative structure worldwide between states, hence a world society; but it is important to notice that Luhmann's world society is not the same thing as an international system in Bull's connotation, because of the central role states play as unities of the system.

The expression world society is also used in some other sense outside the systemic theory, most prominently Barry Buzan conceptualizes world society as the '*interplay amongst the interstate, interhuman and transnational domains.*' (BUZAN, 2004, p. 269). As he argues, no domain is predominant over the other two as in the idea of international society; he even says that world society:

> …would be based on principles of functional differentiation amongst the various types of entities in play,(…) States and firms, for example, would have to accept the historical evidence that neither performs efficiently when it tries to do the other's job… (BUZAN, 2004, p. 203).

Although this concept excludes the protagonism of States, it only adds more 'members' to the society, and yet keeps the idea of members bounded together normatively or culturally. As it was already said, in Luhmann's sense, world society does not have to do fundamentally with norms and must be differentiated from more 'communitarian' concepts of society; society is not normatively integrated; in the words of Thomas Diez (2004, p. 34) :

> Luhmann's world society does not fall, at least at first sight, either into the "territorial trap", or into the normative trap. The systems of Modern Systems Theory are constituted and reproduced by a non-territorial force, communication – not a single norm within a particular territorial space, be it given or discursively "agreed" upon.

Of course the traditional 'agents' in the other theories, such as the people or the States, participate in the reproduction of the communication and the systems dynamics. When I talk about participation I am oversimplifying a very complex theory to fit the purpose of this text; strictly speaking in terms of the systemic theory,

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individuals cannot 'be part' of the society, they reproduce communication as part of the environment, they have their own autopoietic closure as minds and are structurally coupled with the autopoiesis of the social system (society with its subsystems).

As said above in a footnote, in this article I will not go further in a more general level of analysis, that is why I am using the term "participation" and its derivatives, but I left here this observation that strictly speaking one cannot talk about "agency" in the systemic theory, which means that, technically, individuals do not act or participate in the society, they interact with its communication as minds and bodies coupled with it.

When using the term 'agent' I am stressing that the idea of inclusion/exclusion does not only apply to individuals, but also to other entities such as firms or States. When talking about States as agents, you can either conceive it as the communication by men in the head of a country, its leaders whose decisions are received internationally as decisions of States, and in this sense we can absorb the idea above explained about minds structurally coupled with a social system. Alternatively, what I think is a better way of understanding, States are specific inputs in the political system.

Of course the action of firms and States are indirectly actions of people, they are human creation, a communication itself, and do not act independently of human will; in this sense, there are interesting studies that use it as a premise, as the adepts of Foreign Policy Analysis. However, one cannot undermine that firms and States are also something other than their people when they act, especially when referring to States acting in the international level; States are more than their people and much more than their government.

As an example, one can refer to the history of the Brazilian State and a Brazilian way of conducting international relations that cannot be reduced to Mrs. Rousseff's government or Mr. Silva's. The action of a State is severable from the action of its leaders, at least in theoretical terms. Such separation will be here taken in account, however it is relevant to left this observation about the State-individual relation that, depending on the theoretical premises, can be reduced to one or another. For this text, States will be considered as specific inputs in the political system.

Input is another problematic word in the systemic theory, because it can suggest some kind of determination of the system by the environment. It is important to specify that when I say that States are specific inputs I am just saying States are

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conceived by each system as a fiction with specific functions, most notably in the legal system a State is a subject of rights and obligations, it can litigate judicially, it can claim rights and it is obliged by international law. The important thing to notice is that it is only a concept, it can reproduce communication but strictly as the system allows it, as long as it fulfils its role as a subject of rights, a mere logical element of juridical relations.

By the political system it is conceived rather differently, it is no more a subject of rights, but a subject of power. In the world's political system states relate to each other under relations of power as making war, strategic alliances, discussing policies, and so on. However, a state is only conceived as so and only take part on these relations when it fulfils also a function in the system, not a subject of rights, as in the legal system, but as a sovereign political unit.

As explained above relatively to the legal and the political system, we can one more time assert that a 'State' is a 'agent' of a system as a kind of inner function of it, a specific fiction or program that reproduces the system's communication under its strict boundaries.

The systems react to this 'agency' by the metacode inclusion/exclusion, meaning that each system assigns 'roles' for the subjects to act. (LUHMANN, 2006, p. 492). Differently from stratified societies such as in the Middle Ages, the world society is functionally differentiated which means that the metacode inclusion/exclusion operates in each system; someone can vote and participate in the political system but at the same time not have means to participate in the economy. (VERSCHRAEGEN, 2002, p. 266).

Following this idea, some authors such as Marcelo Neves talk about a differentiation of center/periphery territorially in the world society, that happens because some systems based on cognitive expectations (that means they are more adaptable, they create new expectations based on rejection, they are more susceptible to changes in the environment) expand more easily worldwide; when thinking about any Phisics' rule – scientifical system – it is easy to see that only one case proving it wrong suffices to invalidate it.

Systems based in normative expectations, such as Law and Politics, tend to suffer this second differentiation territorially (a vertical differentiation) because they are

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more stable, norms are not invalidated by their violation. A red light, for example, does not stop to oblige the drivers by the fact that some of them have disrespected it.

According to Neves, this was even Luhmann's initial idea, although he changed opinion in later works (NEVES, 2006, p. 218). Therefore, there are some 'agents' excluded in the dynamics of the world society, primary in the world politics and world law communication, this happens, for example, with poor and small countries, that sometimes are not even recognized as a State.

4   HUMAN RIGHTS

As already said, systems such as Law and Politics, that operate with normative expectations tend to have more difficulties to expand worldwide and end up suffering a 'vertical differentiation'; In this sense, one could ask if there really are a political and a legal system in the world society.

About politics, the answer seems obvious when thinking about the existence of an international system, as in Bull's sense mentioned before. There are evident relations between States all over the world, States that are not even neighbors, but whose actions affect the behavior of other states. Using Bull's example:

> Nepal and Bolivia are neither neighbors, nor competitors, nor partners in a common enterprise (except, perhaps, as members of the United Nations). But they affect each other through the chain of links among states in which both participate. (BULL, 2002, p. 10)

It is a clear example of world communication under the political system, disputes over power and war, even the existence of the United Nations; all of these show the existence of a 'world politics' besides the 'domestic politics'.

Within the legal system there are also some structures that provide evidence for the existence of a legal system of the world society. First, the so-called 'international law' is today more than a bunch of advices; it acts worldwide stabilizing normative expectations. The problem of compliance is not that relevant to the recognition of a valid international legal system, as could argue some authors (HATHAWAY, 2002), not at least in the Systemic theory perspective, because the normative expectations

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are contrafactual, they do not adapt to eventual non-compliance. LUHMANN, 2006, p. 50).

This is not all; the legal system in world society is developed not only in international and supranational law, but also in neo-spontaneous forms of law. The supranational refers to those regimes characterized by the delegation of decisional autonomy from states to other independent juridical institution, for example the International Criminal Court or the European Court of human rights. The neo-spontaneous regimes are those without any participation of States; they are a material law form without treaties institutionalizing them; for example, the FIFA deciding matters of sporting law. (MASCAREÑO, 2007, p. 13-19).

Saying that, both systems would need mechanisms of inclusion, especially these also being 'vertically' differentiated; that is how we can conceive human rights, as both a mechanism that maintains the functional differentiation of world society and of inclusion of persons and states in the law and politics of the world society.

Subjective rights, as human rights, symbolizes that individuals are independent from social positions (that totally include or exclude) but are potentially included in the social systems. Freedom and equality, centered in the idea of the Human, inalienable condition of the being, indicates that each individual has access to the social systems, but it is up to him or her to decide how to exercise this.

The equality is the grounds for keeping off segmentary differentiation, making social positions to have no role in determining the inclusion of the person in society. The freedom aspect completes equality by maintaining the functional differentiation, keeping systems apart from controlling each other; for example, religious freedom is a way of keeping political decisions without control over religion. (VERSCHRAEGEN, 2002, p. 268-269). In Gert Verschraegen's (2002, p. 270) words:

> By encouraging the individual to participate freely in different function systems and by preventing one subsystem or social group from completely controlling him or her, human rights strengthen and protect the high degree of individual mobility and communicative openness upon which modern society is built. Thus, by protecting the individual, the social institution of human rights also protects the complex and differentiated order of modern society. Only by giving inalienable rights to the individual can society protect its own level of differentiation and weaken tendencies towards regression or dedifferentiation.

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The greatest fear human rights have is the expansion of the political system, and its tendency of totalizing. As a response fundamental rights of autonomy are born, either to institutions as to individuals. (TEUBNER, 2006, p. 172). This dominance of the political system means not only functional dedifferentiation, but also a strengthening of the vertical differentiation, meaning the exclusion of the world society. In this sense, human rights are an important mechanism of inclusion and the maintenance of society's functional differentiation.

5   GLOBAL CONSTITUTION

As said above, Luhmann developed a very specific concept of constitution, a constitution as a structural coupling between the legal and the political systems. The question that in some way is still open is about the possibility of a world constitution, a constitution of the world society in Luhmann's sense.

Some posterior developments of Luhmann's theory identified "conditions of globalization" of the constitution as it is separated from the State, because the political-monopolistic structure of the States and the exaggerated internalism of the national societies have become very fluid, which conducts to a fragmentation and pluralization of legal regimes. That means that even constitutional norms can be produced outside the state (THORNHILL, 2012, p. 125), as the above mentioned neo-spontaneous regimes. (MASCAREÑO, 2007, p. 13-19).

The consequence of that is the conception of "auto-constitutional regimes", collective bodies that develop a constitution outside a nation-state. Those regimes produce rather complex bodies of law – primary and secondary – that determine their own procedural norms on law-making and also a institutionalized way of making politics. (FISCHER-LESCANO; TEUBNER, 2004, p. 1015).

In conclusion, the tendency of the development of Luhmann's sociology of constitution is associating a global constitution with a highly pluralized perspective of many semi-politic bodies with multiple legal orders. The World Constitution is – taking this view – not a public and unified regime of international law, as would normally be thought, but a network of communications coming from diverse paths both in public and private governances. In Thornhill words:

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> In fact, it is about a constitution that necessarily compromises the traditional distinction between public and private law, and that conjugate simultaneously the power of public governance regimes (States, international tribunals, human rights tribunals) and private governance regimes (companies, professional associations, international banks). Moreover, since these constitutions cannot be remounted to any primary act or normative foundational demand, the norms they conjugate are produced inside law itself: are formed by plural legal actions or "communicative events" inside the global legal system and the institutions that apply the law. (THORNHILL, 2012, p. 116)[7].

It is in some way clear that the development of a world society would imply a drift of focus from a state centered theory, in a way that one must focus in a global law and global politics independent of a central organism, what can be called fuzzy law or fuzzy politics, and even a fuzzy global constitution. However, this is not the only path the development of a world constitution follows. It is important to point that the modern society shows a more centralized pattern of constitution. In this second sense, the Human Rights regimes have an important role; as teaches Teubner:

> (…) In international politics and in international organizations it is happening a real constitutionalisation process in a narrower sense, as observed by many International Public Law specialists, and shall not be disputed, but rather emphasized. The development of worldwide applied human rights in contrast with the powers of nation-States is the clearest proof of this start. (TEUBNER, 2003, p. 8)[8].

In this sense I point out the role human rights have in including States in the world's political system. That comes with the idea endorsed by Reus-Smith that the right of self-determination is tied with the satisfaction of basic human rights, being the right of self-determination a human (group of humans) right itself. (REUS-SMIT, 2001, p 535-536). To demonstrate this assumption, the author goes through explaining the communicative process surrounding the decolonization, especially by refuting the view

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[7] Original quote: "*De hecho, se trata de una constitución que necesariamente engloba la distinction tradicional entre derecho public y privado, y que conjuga simultaneamente el poder de los regimens de gobernanza pública (es decir, Estados, tribunals internacionales, tribunals de derechos humanos) y de regimens de gobierno privado (es decir, companies, asociaciones profesionales, bancos internacionales). Además, como estas constituciones no pueden ser remontadas a nindún acto primario o demanda fundacional normativa, las normas que comprenden son producidas internamente dentro del derecho en sí: son formadas por acciones legales plurals o 'acontecimientos comunicativos' en el sistema legal global y en las instituciones que aplican la ley.*"

[8] Original quote: "*(...) in der internationalen Politik und in den internationalen Organisationen im engeren Sinne ein realer Konstitutionalisierungsprozeß stattfindet, wie er von vielen Völkerrechtlern beobachtet wird, soll damit nicht bestritten, sondern gerade hervorgehoben werden. Die Entwicklung weltweit eltender Menschenrechte mit Verbindlichkeit gegenüber nationalstaatlichen Gewalten ist dafür der deutlichste Beleg.*"

of Robert Jackson that Human Rights were a reaction to the spread of ramshackle states in the decolonization process.

That's the main point of Jackson's argument to explain decolonization, that prior to the middle of the twentieth century sovereignty was seen as granted only to those States that could guarantee some standard of civilization; in fact an European standard of civilization, governments that could grant their peoples some sort of "political goods", what he calls a "positive sovereignty". In this sense, only a little number of countries could be part of the international society, and was grounded by this idea that the European justified their domain over their colonies.

On the other hand, by the middle of the XX century, this vision was supplanted by a new notion of sovereignty, a "negative sovereignty" granted to weaker states even if they could not show any of the trappings of empirical statehood. Only using this change in the concept of sovereignty is possible, as says Jackson, to explain the decolonization and the expansion of the international society. (REUS-SMIT, 2001, p. 523).

Reus-Smit diverges from Jackson in the matter of the role human rights plays in this process, for Jackson human rights were born as these ramshackle states, fruit of the decolonization, appeared. For Reus-Smit, on the other side, human rights were the reason of legitimation for those new states to become sovereign, not only because the first legal documents concerning human rights existed before the decolonization, but because the new states were protagonists in the promotion of the new instruments.

As you see, the human rights regime were developed not as a reaction to the decolonization, but was prior to it. More than that, the states of the "first wave" of decolonization, such as India and Pakistan, were very active in the debate and construction of this regime as it created the fundamental basis of self-determination for those ex-colonies irrespective of their levels of political, economic, and social development.

The new concept of sovereignty (negative sovereignty) that gave strength for the decolonization process was grounded on the human rights regime. After the Second World War, the principle of self-determination is linked to the satisfaction of basic human rights in a way that the self-determination is itself a human right and therefore all people, organized in governments, should have a right to sovereignty.

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Nevertheless, sovereignty itself is only granted if respecting the Human Rights regime. (REUS-SMIT, 2001, p. 536).

Back to Luhmann's theory, we can interpret these affirmations concluding that human rights work in the same way giving humans prerogatives to be included in the differentiated social systems, as in giving states legitimacy to act in the world political system. Sovereignty and human rights are not at all antagonists, but depend on each other in creating the legitimate international political agency.

As I see, human rights (elements of the world legal system) act in determining the conditions to political agency (category under the political system), while at the same time the political power is the central force in determining human right's content because the political activity of the states is the source of its positivation.

This seems to be some kind of complex interaction between the legal and the political systems of the world society, which can indicate a pattern of coupling. What I am trying to say is that, under the systemic theory, human rights can point to a central structural coupling between the politics and the law of world society, a sketch of a centripetal process of constitucionalisation.

6   CONCLUSION

Luhmann created a unique theory of society, a theory of society without men, driving us to see the social dynamics from a different perspective. The conceptualization of a society made of differentiated systems of communication implies also the existence of a world society functionally differentiated. The legal and political systems, by operating with normative expectations, are less adaptable in the evolutionary process of world society, suffering also a vertical differentiation. Human rights act as a mechanism of inclusion in the world society, maintaining also the functional differentiation; they also indicate some standard of interaction between the political and the legal system.

Of course, I do not say peremptorily that human rights are a global constitution in the same sense as the constitutions within States; especially because one of the results of a domestic constitution is a State of law, and I am not implying the formation

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of some global State. The point here is that human rights show some patterns of similarity with a national centered constitution concerning some interaction between politics and law.

Human rights make it possible for the legal system to innovate itself with politically induced norms, the own semantic content of human rights is politically created. For example, it is the States' leader's negotiations that produce the International Covenants and Conventions making human rights positive law. At the same time, human rights are parameters to political action; one conditions the other. Although the systems' operations do not mix, law is still law and politics are still politics, they share particular communications through human rights.

The same kind of conditioning happens with the constitutions in domestic context, the transformation of the law into positive law and the democratization of the politics are the consequences of the State of Law created by modern constitutions. (LUHMANN, 2006, p. 620).

In conclusion, human rights as we conceive today are definitely a notable structure of the modern society, a central piece in the developing of functional differentiation, and the global mechanisms of integration. Even beyond, they could point to a possibility of a central global constitution *in fieri*, in the sense of a coupling between law and politics in the world society. Or, paraphrasing Luhmann's maxim in the last paragraph of *Das Recht der Gesellschaft*: we shall face the danger of contingency and human rights end up being only an occidental anomaly losing strength within the evolution of world society.

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