

ECONOMIC CRISIS, DEGLOBALIZATION AND HUMAN RIGHTS: THE CHALLENGES OF THE COSMOPOLITAN CITIZENSHIP IN THE VIEW OF DISCOURSE THEORY

Eduardo C. B. Bittar

Post-Doctor and Doctor in Philosophy and General Theory of Law from the School of Law, Associate Professor at the Faculty of Law – University of São Paulo (USP - Brazil). 2o. Vice President of ABRAFI (IVR/ Brazil).

ecbbittar@gmail.com

Abstract: This article ‘Economic crisis, deglobalization and human rights discusses the challenges of the cosmopolitan citizenship in the perspective of discourse theory, reflecting on the devices and perspectives of human rights culture in the contemporary changing legal paradigms.

Keywords: Human Rights -Cosmopolitan Citizenship – Deglobalization

1. GLOBALIZATION IN CRISIS

“...globalization may very well express the acknowledgment of new parameters in the relationship between States, removing previous monetary transfer barriers; yet, in no respect does it achieve global integration of human societies and national groups as one world population belonging to one single State.”¹

In the chapter “*One single world, integrated by globalization,*” of the book *The Future of the State*, Dalmo de Abreu Dallari notes that globalization, far from offering a path for the integration of peoples, is

¹ DALLARI, Dalmo de Abreu, *The Future of the State*, Saraiva, 2010, p. 156.

characterized by a form of pseudo global integration. In fact, and in agreement with the diagnostics extracted from his reflections, one can say that globalization has caused serious changes to world economies, and that it persists in causing new injunctions in a critical framework that will be analyzed, considering the complexity of past phases and stages of integration, alongside trends indicating the growing isolation of economies within their boundaries, leading to protectionist measures against increasing market instability. Therefore, if the crisis is a consequence of the historical expansion of a model, dialectically, the crisis harbors opportunities and potential for social change. The crisis of globalization puts an end to the ideology of an era, to the economic hegemony engendered in favor of the international expansionism of late capitalism, but it does not signal the end of history, only the end of a particular history, or even the end of an ideology in history.

If 'globalization',² viewed as an expansion process of capitalistic action borders,³ is responsible for a series of problems prompting the rearrangement of global relations to the beat of capitalist movement beyond national borders,⁴ and if the term 'globalization' may harbor, according to Habermas, in *The Postnational Constellation*, a 'process,' and not a 'final condition,' then, the globalization crisis calls for a mid-way reassessment.⁵ It all takes place as if a traveler, with all bags packed, were obliged to rechart his course en route.

In this manner, one meaning of 'globalization' is compromised and damaged; however, this is not true for all meanings of the term, or yet, for all 'potential' meanings contained in 'globalization.' Globalization does not simply point to the structuring of integrated markets; rather, it simultaneously involves improved communications, exchanges and movements transcending Nation-State borders.⁶ The point of no return has been reached in this respect; the traveler may rearrange the position of wagons, but he may not change the direction taken on the tracks.

Therefore, on the global landscape, in view of current economic

2 FARIA, José Eduardo, *The Law in a Globalized Economy*, São Paulo, Malheiros, 2004, ps. 59 a 64.
IANNI, Otavio, *The Era of Globalism*, 8. ed., Rio de Janeiro, Civilização Brasileira, 2004.
LEWANDOWSKI, Enrique Ricardo, *Community Law and Sovereignty: some reflections*, in Revista da Faculdade de Direito da Universidade de São Paulo, São Paulo, 1997, ps. 231-242.
LINDGREN ALVES, José Augusto, *Citizenship, Human Rights and Globalization*, in Human Rights, Globalization, Economy and Regional Integration (Piovesan, Flávia, Coord.), São Paulo, Max Limonad, 2003, ps. 77-96.

3 ADORNO, Theodor, *Lessons in Sociology*, Lisboa, Edições 70, 2004, p. 63.

4 BARROS, Sergio Resende de, *Dialectic Contribution to Constitutionalism*, São Paulo, Millenium, 2007, p. 71.

5 NEVES, Marcelo, *Symbolic Constitutionalization*, 2.ed., São Paulo, Martins Fontes, 2007, p.192).

6 Cf. HABERMAS, Jürgen, *The Postnational Constellation: political essays*, São Paulo, Littera Mundi, 2001, p. 84.

instability, first-world crisis, and a slowing global economy, recharting one's course to new global destinations may come as a daunting challenge for first-world economies, not to mention for developing economies. 'Economic sustainability' has become an issue of global importance, affecting global economic power in all its interconnected forms of expression.⁷

The economic crisis, along with its cascading effects, is capable of generating widespread and continuous imbalances, both simultaneous and contagious, causing the world economies to oscillate between ominous instability and unemployment, and mild euphoria and intermittent stabilization, accompanied by disseminated social violence.⁸ The trend towards economic protectionism, the menace of pandemic unemployment, the imbalance of national economies, volatile speculative capital, as well as economic social disorders provoked by neglected social rights – often pressured to conform to international agendas of State reform – make for very difficult social conditions on a global scale. These ghosts loom menacingly over Nation-State economies affecting decision-making, threatening security structures, and influencing markets and economies.

In this sense, views of the 'world economy' embracing continuous contradictions are confirmed with the global financial crisis of 2008-2011; however all elements were available for an early diagnosis: "Instead of a symmetrical, harmonious, equal distribution of competencies, tasks, responsibilities, roles, functions and conditions for the generation of knowledge, jobs, profitability and wealth, the 'world-economy' stands out, in this analytical perspective, in view of its deep inequalities and distortions in commercial dealings, in the flow of payments, in the transference of technology, in the exchange of information, in the relationships between national economies to their regional blocks, in the interaction between central, semi-peripheral and peripheral countries and in the articulations between mercantile, financial, productive and investment capitals. Therefore, the 'world-economy' is a far cry from featuring consensual confluences, synchronies and accommodations. On the contrary, in all its complexity, not merely economic but social, political and even cultural, the world-economy is stigmatized by profound contradictions, by permanent conflict and continuous tension."⁹

These questions underscore the need to reassess our current

7 BRESSER-PEREIRA, Luiz Carlos, *The Global Financial Crisis and beyond: a new capitalism?* in Revista Novos Estudos CEBRAP, n. 86, março, 2010, p. 51-72.

8 PINHEIRO, Paulo Sérgio; ALMEIDA, Guilherme Assis de, *Urban Violence*, São Paulo, Publifolha, 2003.

9 FARIA, José Eduardo, *The Law in a Globalized Economy*, 1ª. edição, 4ª. tiragem, São Paulo, Malheiros, 2004, p. 94.

models of economic sustainability, job creation, social organization and, also, to discuss the meaning of strictly economic globalization.¹⁰ If there has been an uptrend in growth and if countries have come to depend on each other economically, numerous other questions fail to be addressed, such as the resulting conditions of humanity, devoid of itself. This owes to the fact that globalization does not allow diverse realms of life to be categorized in contained national realities since it is increasingly evident that everything is connected in a complex and mutually interdependent reality. Other factors, such as natural cataclysms, ecological issues, sustainable development, the use of scarce energy resources, productive interchange, mutual interests, cultural exchanges... become the language of a time that begins to experience the coalescence of horizons, prompting a new awareness of what is common to all as opposed to what is local, even in the sense of preserving what is local. Hunger in Africa, millions of youth enlisted as militias, educational needs and barely no access to institutions, hunger and abyssal economic differences, generalized unemployed and famine of people in less fortunate countries, environmental consequences of global warming on a local scale, the results of generalized instrumentation of nature affecting rudimentary economies and traditional forms of life – these remain unsolved in view of the globalization of solutions addressing the needs and indispensable elements of human rights. Here, we notice the *continuous* in the *discontinuous*. And more, we notice that the process of globalization and its ensuing circumstances "...divides the world," but simultaneously, "...challenges it, as a community at risk, to act cooperatively."¹¹

2. DEGLOBALIZATION AND ECONOMIC DECELERATION

The shock resulting from neoliberal doctrines, which seemed to reign for two decades as an untouchable doctrine and a hegemonic economic ideology, is open not only criticism, but to reassessment and relegation. The task of economists through economic policies, considering current risks and the impending urgency of economic priorities, envisioning structure for the economy of the future, and allowing it to rise to higher levels, seems to be a matter closer to the philosophical sphere than to economic competence.

The 'world-economy' still suffers under the aftermath of the US national crisis of 2008, and the American economy, due to its importance, continues to generate ripples of insecurity affecting

10 TOSI, Giuseppe, *War and Law in the Debate about the Conquest of America*, in *Verba Iuris: Anuário da Pós-Graduação em Direito*, Ano 5, n. 05, ps. 277-320, Paraíba, jan./dez. 2006, p. 318).

11 HABERMAS, Jürgen, *The Inclusion of the Other: studies in political theory*, São Paulo, Loyola, 2002, p. 206.

economies on a worldwide scale. In an interview to *Die Zeit*, following Obama's victorious presidential election, Jürgen Habermas noted: "The US are presently in a profound state of insecurity owing to the failure of the unilateral adventure, to the self-destruction of neoliberalism and also to its failure to act on its perception of atypical circumstances."¹²

More recent studies of political theory point to the idea of a multilateral globe and also to a scenario in which the Western hegemony will disappear. Therefore, in face of the crisis and the challenge of establishing a new global governance model, the US will maintain a strong influence on the global scene, though it will have company. Unilateralism may fail, along with neoliberal logic. These issues will demand that all economies and global societies join in charting new courses, creating instigating spaces for new ventures, similar to those in emerging economies, an omen of transformation in the political roles of great global deliberations, recognizing that these experiences may well provide the seeds for new global growth towards common destinies and the interests of all.

The 'deglobalization' era, referred to as such after British Prime Minister Gordon Brown used the term, conveys the idea of an era marked by economic deceleration, by market apathy, with clearly identifiable consequences from a macro-economic point of view, as from a political point of view. Examples show nationalism, trends towards economic protectionism, the strengthening of anti-immigration politics, a growing rejection of foreigners with xenophobic reactions, heightened tensions resulting from local politics and religious narrow-mindedness, conservative votes and the dissemination of calls for fanaticism and fundamental religious doctrines, all expressions of a time of disorientation in which the enemy is rapidly identified in the face of the other, an altered projection of all fears of a troubled society suffering a material crisis. Zygmunt Bauman notes that: "The fate of freedom and democracy of any given place is decided on the global arena – and it only has a sporting chance of permanent success if defended on this arena."¹³

In respect to political and democratic instances of modern history, globalization has had a disruptive and disorganizing role, delivering feeble economies, at the threshold of the 2008 crisis, weakened from the point of view of judicial regulatory parameters and participative political structures. The delicate deconstruction caused by globalization, evidences the feeling of social abandonment. In the view of Günther Teubner: "Increasingly so, global private regimes establish material rights independently from the State, in the absence of national

12 HABERMAS, Jürgen, *Still a Power; in Caderno Mais!*, Folha de São Paulo, Nov 9th, 2008, São Paulo, 2008, p. 09.

13 BAUMAN, Zygmunt, *Europe: an unfinished adventure*, Rio de Janeiro, Jorge Zahar, 2006, p. 37.

legislation or international treaties. Everywhere, the metastasis of private regulations spreads, along with agreements, conflict resolutions, in other words: the construction of rights takes place ‘in the absence of the State.’¹⁴ The growing instability weakens on a global scale and strengthens the demands of self-affirmation and economic stability,¹⁵ linking internal issues to international conjunctures. Based on this, Habermas asks: “How does globalization affect a) the judicial security and the effectiveness of the administrative State; b) the sovereignty of the territorial State; c) the collective identity and d) the democratic legitimacy of the Nation-State?”¹⁶

Threats to local traditions and arrangements, to national identity, to the territoriality of rights, to battles won in favor of social wellbeing,¹⁷ to established cultures, among others, are the effects of a process of the internationalization of self-affirmation mechanisms of the developing economic system.¹⁸ Therefore, globalization has not only given rise to the meeting between peoples, but it has created conditions for the development on a global postnational scale of forms promoting the use of man and nature to intensify prevalent production policies in international relations. Among other symptoms, to accompany the thoughts of Honneth, the reification of nature reveals a symptomatic phase of civilization that takes large strides towards unbearable and alarming natural processes as a result of the dominance of instrumental reasoning, impinging on the world the face of utilitarian barbarianism.¹⁹

The hazards brought on by the (de)intensification of capitalism on a global scale allow for the updating of warnings by the first generation of Frankfurt scholars concerning instrumental reasoning. Razing human and natural spaces, globalizing machinism tends to establish relationships that place an exaggerated emphasis on gathering wealth while it devalues human elements. Here too, the topic is the formation of a hegemonic language, capable of producing and intensifying a condition of instrumentation of everything, leading to dehumanization. In this respect, the consideration of instruments that promote human elements becomes vital, enabling a place to promote greater levels of democratic

14 TEUBNER, Gunther, *Justice, System and Polycontextuality*, São Paulo, Unimep, 2005, p. 109.

15 FARIA, José Eduardo, *Justice in a Globalized Economy*, São Paulo, Malheiros, 2004.

16 HABERMAS, Jürgen, *The Postnational Constellation: political essays*, São Paulo, Littera Mundi, 2001, p. 87.

17 (AVELÁS NUNES, Antonio José, *The European Constitution and Fundamental Rights*, in *Verba Iuris*, v. 5, n.5, UFPB, João Pessoa, 2006, ps. 426-427).

18 SANTOS, Boaventura de Souza, *Socialism in the 21st Century*, in *Folha de São Paulo*, 07 de junho de 2007, São Paulo, A 3.

19 (HONNETH, Axel, *Reification: a study in the theory of recognition*, Buenos Aires, Katz, 2007, p. 104).

participation in decision making regarding a common destiny for all humanity, from the perspective of an intensified, awareness-promoting dialog, capable of realizing the macro-ethics of responsibility, taken from the perspective of Apel's warnings.²⁰

If previously, from the perspective of the Nation-State, borders drew the lines connecting State, society and economy, globalization managed to destroy these lines. Of course, it is precisely as a result of the disassemblage of a once-solid structure that it is possible to understand the extent to which the damage to this structure is responsible for the balances and imbalances that characterize our present day, the birth of a postnational constellation.²¹ The adjustment of these tectonic plates in motion causes tremors and decompositions, which takes away the superficial sense of stability, balance, order, continuity, and solidity. If the smoldering magma of the interior plates of history have never truly coalesced, and if history corresponds to this continuous flow of uncontainable dialectics, humanity is generated and regenerated over experiences, traditions, values, concepts and models that offer a perception of relative stability, over the transitory nature of a historical-herculean flux. Here, once again, we verify the extent of the Nation-State experience as a mere epiphany, fundamental and defining, though no more than *another* page in the great history of humanity itself.

The late 20th century brings an awareness of the crumbling of the very elements that defined the historical condition which had propelled existing institutions up to that point. The ensuing transformations challenge previous convictions established in the interpretations of the Nation-State culture dragging with it, in its demise, a set of certainties, models, practices, institutions and values acknowledged during this period.²²

Therefore, the globalization process has brought with it a series of effects that have not retreated or disappeared, resiliently remaining in evidence: 1. the loss on the part of the State of the capacity to control through its internal politics, considering the presence of new pressures from spontaneous sources (organized crime, epidemics, international trafficking, etc.) and intentional measures (international economic decisions, international legislation, international economic sanctions, etc.) of the globalization process; 2. the lack of legitimacy that spreads within internal decision grounds, in the sense that decision making has moved to beyond national borders, and the new political venues

20 APEL, Karl-Otto, *Studies of Modern Morals*, Petrópolis, Vozes, 1994, p. 194.

LINDGREN ALVES, José Augusto, *Citizenship, Human Rights and Globalization*, in Human Rights, Economic Globalization and Regional (Piovesan, Coord.), São Paulo, Max Limonad, 2003, ps. 77-96.

21 HABERMAS, Jürgen, *The Era of Transitions*, Rio de Janeiro, Tempo Brasileiro, 2003, p. 103.

22 IANNI, Octavio, *The Era of Globalization*, Rio de Janeiro, Civilização Brasileira, 2004, p. 87).

lack any type of matured popular legitimacy or any form of access or transparency in terms of its decisions; 3. the State's growing incapacity to render essential legitimizing services, considering that national arenas have become vulnerable parking facilities for volatile international capital agendas, certainly weakening the liberating potential of internal measures in terms of its autonomy, since international capital is always open to seeking new and more favorable arenas catering to the interests of international investors.²³ If sovereignty (*super omnes*), as a concept developed over modern history persists, even in terms of political means, as an element of State self-definition and a form of interaction in international relations, this is not to say that our current experience concerning this concept remains untouched.²⁴

As a result, all attempts to break loose from the global net may be described as 'difficult or downright impossible.'²⁵ This is also the opinion expressed by Habermas in *Era of Transitions*, where he states: "Even if we take into account the rational core of these defensive reactions, it is easy to understand why the Nation-State is unable to reclaim its former power by simply closing itself off."²⁶ This failure to reestablish an entity's lost sovereignty, in terms of its values and meanings, turns political and economical autonomy and independence measures into elusive facades for transformations imposed to a model, along with the attempts to rescue it, relegating Nation-States to increasingly marginal conditions relative to the decision-making centers of a globalized arena.

Our present-day situation, concerning a global space, presents an immense expansion of international capital, guided by the explosive force of mercantile parameters which reaches new dimensions, once freed from the entrails of the Nation-State. In this respect, the strong transforming potential of capital is undeniable in its role of discovery and guidance. The real problem of giving capital free reign in an international globalized environment is its complete anomia, in other words, its full disposition to cause whichever effects intentionally. As a consequence, capital stimuli only reacts, according to Habermas in *The Era of transitions*, "...to codified messages in the language of pricing. This means that they are deaf towards the external effects that they themselves cause on *other* spheres."²⁷

One cannot bestow credibility on a mode of international

23 HABERMAS, Jürgen, *The Era of Transitions*, Rio de Janeiro, Tempo Brasileiro, 2003, ps. 106/ 109.

24 BARROS, Sergio Resende, *Dialectic Contribution to Constitutionalism*, São Paulo, Millenium, 2007, ps. 38-39).

25 IANNI, Octavio, *The Era of Globalization*, Rio de Janeiro, Civilização Brasileira, 2004, p. 90.

26 HABERMAS, Jürgen, *The Era of Transitions*, Rio de Janeiro, Tempo Brasileiro, 2003, p. 112.

27 HABERMAS, Jürgen, *The Era of Transitions*, Rio de Janeiro, Tempo Brasileiro, 2003, p. 101.

relations based exclusively on this criterion, economic power, without the necessary justice counterpoint in the international landscape.

Under an antagonistic and mutually competitive paradigm between Nation-States, acting becomes a mere form of strategic positioning and unilateral imposition of forces in relations which only become equal in terms of the demands inherent to the process of exchange itself. The idea of justice demands more from international order since, under the bastion of unleashed and out-of-control globalization, the security of the international community and human dignity are at stake. The ship has sailed in terms of considering circumstantial and private matters since the surfacing of the current logic of international exchanges has become a survival issue for the human race.²⁸

When instability and fear have become the catchphrases of international debates, and when 'security' represents an uncomfortable issue for the majority of Nation-States, one sees clearly the extent to which international order is defined by interests and ideas that debunk any possibility to follow rational premises, besides instrumental reasoning, as a form of action and engagement in international relations. With this, we must weigh the consequences, in other words, we must recognize that all other habits, trends and conquests that pointed towards a democratic version of the world are discarded. In fact, what we have nowadays is a landscape determined by an increasing level of intolerance, of egocentrism, of protectionism, of competition, of xenophobia, of arms races... which, once again, close the cycle of conquests leading to a cosmopolitan culture demanding the end of xenophobia and nationalistic hostilities.²⁹ This process was sparked by the intensification of a global agenda focused on terror and security. The process of 'deglobalization' is also marked by a series of effects which reverberate in these same fields, once economic efficiency is directly associated to the concrete condition of citizens lives in a number of Nation-States; unemployment, social disorder, the fear of social guarantees, the reduction of public investments in social development sectors, unbalanced money exchange rates and political instability form a landscape where the combination of explosive factors allow for an international forecast of rain and thunder.³⁰ It is clear that changes have been made in the latest efforts in the so-called Obama Era, with positive indications towards the construction of a unified global agenda based on premises which include multilateral participation.

28 Cf. BAUMAN, Zygmunt, *Europe: an unfinished adventure*, Rio de Janeiro, Jorge Zahar, 2006, p. 47.

29 SAID, Edward, *Humanism and Democratic Critique*, São Paulo, Companhia das Letras, 2007, p. 26.

30 ÁVILA, Sergio, *Displaced Nations*, in Folha de São Paulo, São Paulo, Caderno Mais!, Domingo, São Paulo, 15 de fevereiro de 2009, p. 5.

In this sense, a series of historically established rights (opinion, privacy...), freedoms - established through the suffering of generations, and fights for equal rights (race, origin, social condition...) are revoked in name of a one-size-fits-all global logic: security.³¹ Bush's security in terms of terror and Obama's security in terms of the financial crisis – no difference – in both cases, the fight for security seems to be a common theme for the past decades in terms of establishing internationally cultivated values. Therefore, when territorial financial insecurity is accompanied by international market insecurity, still haunted by the fight against different forms of terrorism, the mixture becomes even more volatile.

Actually, according to Habermas, on the solid grounds of democratic experience which has consolidated itself since early modernity, State, society and economy seemed to intertwine with relative commitment, representing a coexistence in which interdependence and a mutual control were established in a relatively stable manner. The postnational constellation, however, has been consuming the potential of this relationship and, stealing the State and sovereignty, handing autonomy to the economy, breaking the “natural” order of things established over the past centuries. The increased flow of people, the greater circulation of merchandise and information, the intensified flux of relations provokes a dismemberment of the previously victorious “unity” which seemed to establish itself over the “natural” phenomenon of nationality. This represents the demise of a foundation over which certain experiences were structured, making room for a new foundation that has yet to be clearly defined. In this respect, there is a loss of previously established political practices, especially because “... the State, increasingly entangled in the world's economic and societal interdependencies, is set back not only in terms of autonomy and competency for action, but also in terms of democratic substance.”³²

It is undeniable that the policies of Nation-States suffer the influence of outside factors determined by pressures arising on a global scale, but they are also affected adversely by globalization-related problems on the home front.³³ The dismantlement of the internal politics of Nation-States comes as a direct consequence, since the pressure of globalized capital determines and guides government actions, stripped of their identities under the risk of losing massive sums in international finance agreements, foreign investments and speculative monies. As a result, internal politics become subservient and vulnerable in the face

31 BAUMAN, Zygmunt, *Europe: an unfinished adventure*, Rio de Janeiro, Jorge Zahar, 2006, ps. 36/ 37).

32 HABERMAS, Jürgen, *The Era of Transitions*, Rio de Janeiro, Tempo Brasileiro, 2003, p. 106.

33 Cf. HABERMAS, Jürgen, *Beyond the National State*, México, Fondo de Cultura Económica, 1998, p. 173.

of daunting obstacles to the establishment of an independent political entity in each Nation-State. This notion is attributed to Habermas in *The Era of transitions*, in which he states: “Capital in search of new investment and speculative profit opportunities does not submit to any obligation to settle in any nation, roaming freely from here to there. Therefore, whenever a government makes demands affecting social standards or work stability, generating a burden on the market or on the government itself, capital can react with threats to leave the country.”³⁴

Certainly, the States will not cease to exist, nor should they. However, it is also certain that in an hiererarchic society, the correlation between norms and validation are profoundly altered, creating the need for structural answers based on the capacity of approximating realities on the political, economic and judicial spheres, according to terms used by Teubner.³⁵ These are the decisive, definite and fundamental protagonists in building a new operative logic for a cosmopolitan culture. Diluted borders, compromising national traditions in terms of world organization, affect society, culture and economy, but the Nation-State “...continues to be, nevertheless, the source of the most important collective agents for the political landscape.”³⁶ What is new in all of this is not only the participation of Nation-States in the international arena, considering it is forcefully chared by other global players, among which we find multinational corporations, non-governmental organizations seeking to influence decisions through their clout, money or argumentation.³⁷ The fact is that the State will not be alone in the task of establishing a cosmopolitan arena in order to build, following pragmatcal guidelines, a society capable of creating its own criteria of cosmopolitan justice, which shall necessarily observe ethical-discursive presets in the production of its institutional and axiological profile.

Between pure and simple nationalism of modern traditions and globalism as a new and manifold erupting and transforminig force, emerges an intermedite element in the form of regionalism, an alternative force born from precicely from the pressure of the latter and as a mediating agent between it and nationalism. In part, the survival, in midst this transition, of Nation-States depends on the mediation process in face of globalization, established though regionalism, leading in its political-judicial-economic structure to an improved capacity of interaction and integration of the Nation-State on larger scales than

34 HABERMAS, Jürgen, *The Era of Transitions*, Rio de Janeiro, Tempo Brasileiro, 2003, ps. 106/ 109.

35 TEUBNER, Gunther, *Justice, System and Policontextuality*, São Paulo, Unimep, 2005, p. 114).

36 HABERMAS, Jürgen, *The Era of Transitions*, Rio de Janeiro, Tempo Brasileiro, 2003, p. 104.

37 HABERMAS, Jürgen, *O Ocidente dividido*, Rio de Janeiro, Tempo Brasileiro, 2006, ps. 183/ 184.

those previously limited to territorial borders established throughout modernity.³⁸ Thus, we observe that the experience of Nation-States in terms of modernity moves towards the transformation of interaction conditions on a greater arena of international relations, prompting, herewith, a series of new efforts towards adapting political organizations to a concrete reality in terms of satisfying the challenges that are projected in this field. Here, again, dialog and the capacity to build dialogal coexistence and politicizing mechanisms of the common space appear to be the best direction to follow in terms of the challenges that will arise along the 21st century.

3. NEW DIRECTIONS IN GLOBAL CITIZENSHIP, COSMOPOLITANISM AND HUMAN RIGHTS

Economic deceleration may spell out instability, may be a synonym of financial losses, may be the epicenter of institutional, political, economic and structural crises. However, economic deceleration may be followed by an acceleration of new social, political and cultural dynamics.

Historical periods of crisis are traumatic in that they evidence the need for rethinking current tried-and-true procedures of achieving goals. Therefore, the incubation of new alternatives may be triggered by a crisis in the old order of things. In order to closely follow Habermas' political philosophy on postnational issues one must peer through the fog to verify the accumulated potential and make a smooth and slow transition, meaning that, "...for a long time now, we have been in the midst of a transition from classic international law to what Kant foresaw as cosmopolitan."³⁹ Thus, all efforts towards the development of a dialog culture among cultures and peoples, of a consensus regarding common global needs, challenge political destinies of the international community in terms of the formation of a cosmopolitan society (*Weltbürgergesellschaft*). For this to take place, clearly, more than simple efforts towards the integration of markets is needed.

This brings up the discussion as to the important role that the development of a human rights culture may play in an international setting in terms of cultivating a common idea of human dignity,

38 "O globalismo tanto incomoda o nacionalismo como estimula o regionalismo. Tantas e tais são as tensões entre o globalismo e o nacionalismo que o regionalismo aparece como a mais natural das soluções para os impasses e as aflições do nacionalismo. O regionalismo envolve a formação de sistemas econômicos que redesenham e integram economias nacionais, preparando-as para os impactos e as exigências ou as mudanças e os dinamismos do globalismo" (IANNI, Octavio, *A era do globalismo*, Rio de Janeiro, Civilização Brasileira, 2004, p. 101).

39 HABERMAS, Jürgen, *The Divided West*, Rio de Janeiro, Tempo Brasileiro, 2006, ps. 25/ 26.

positioning itself as the core and source of expression of global ethics.⁴⁰ If international law itself questions the fundamentals of its reach and its capacity to adapt to modern-day needs, in part, facing the crisis of postmodernity carries the issue of human rights with it and the need to ponder its values and basic questions.⁴¹ The theme that has been widely discussed in contemporary philosophical politics, philosophy of law and, in fact, international law of human rights,⁴² is of special significance for the formation of an international community capable of a dialogal practice of the tolerance needed to fight for transformations and demand from sovereign Nation-States conformity in safeguarding minimal parameters of human dignity. The question of human rights is of such paramount importance that it has become the crux of a world agenda, as long as conceived to form an international community capable of mirroring principles of justice. This is what motivated Sergio Vieira de Mello to say: “It must be understood that the time is ripe for all States to redefine global security, with human rights at the core of this debate.”⁴³

With its *human dignity protection* aspect, rights in this category should not be restricted to the dimension of fundamental rights as internationalized by the constitution of each Nation-State.⁴⁴ Furthermore, in respect to the validation process of regional experiences, as is the case in Europe, fundamental rights established on a community level may not fall short of those conquered and acquired by Nation-States, which would represent a regression in terms of these rights on an international scale.⁴⁵ The constitution itself of each Nation-State must be capable

40 AVELÃS NUNES, Antonio José, *The European Constitution and Fundamental Rights*, in *Verba Iuris*, v. 5, n.5, 2006, p. 395.

BARACHO, José Alfredo de Oliveira, *General Theory of Common European Constitutional Law*, in *Revista Forense*, v. 367, 2002, ps. 105-127.

BELLI, Beroni, *The Human Rights Council of the United Nations and Resolutions Concerning Countries: the end of politization and selectiveness?* LIII Curso de Altos Estudos do Ministério das Relações Exteriores, Instituto Rio Branco, Brasília, 2008, p. 98.

41 CASELLA, Paulo Borba, *Reading and Learning – in the context of judicial postmodernity*, in *ABZ: didactic essays*, São Paulo, Imprensa Oficial, 2008, p. 168

LEISTER, Margareth Anne, *Theory in Practice*, in *Coleção Direitos Humanos*, Osasco, Edifício, n. 8, 2008, p. 16).

42 MAIA, Antonio Carlos, *Jürgen Habermas: philosopher of law*, Rio de Janeiro, Renovar, 2008, p. 32). ALMEIDA, Guilherme Assis de, *Sovereignty, Cosmopolitanism and International Human Rights*, in *External Politics*, São Paulo, Universidade de São Paulo; Instituto de Estudos Econômicos e Internacionais, São Paulo, Paz e Terra, v. 15, n. 01, jun./ ago. 2006, ps. 93-104.

43 MELLO, Sergio Vieira de, *Five Issues Regarding Human Rights*, in *SUR, International Magazine of Human Rights*, São Paulo, 2004, p. 172.

44 NEVES, Marcelo, *The symbolic force of human rights*, in *Philosophy and social criticism*, Boston, v. 33, n. 04, 2007, p. 416).

45 AVELÃS NUNES, Antonio José, *The European Constitution and Fundamental Rights*, in

of, instead of being refractive, absorbing elements of a cosmopolitan culture of human rights. The importance of human rights must not be local in nature in the sense of being confined to a Nation-State, nor should it be restricted to perpetuating itself as an integrating element of Occidental culture.⁴⁶

3.1. Universality, diversity and the recognition of the fundamentality of human rights

In approaching the theme in *The postnational constellation* Jürgen Habermas does not neglect to consider the cultural issues involving the human rights debate, especially in his admonition: “The discourse concerning human rights, based on normative arguments, is actually accompanied by the fundamental doubt in terms of whether a form of political legitimacy born in the West would be, generally, accepted under the premises of other cultures. In a radical approach, Western intellectuals actually support the statement proposing that behind claims of universal human rights validation (*Gültigkeit*) hide perfidious Western claims to power (*Macht*).”⁴⁷

Human rights in this sense may not be confined in their significance to their European origin, as notes Habermas: “Western intellectuals must not confuse their discourse about their Eurocentric partiality while engaged in debates that others hold with them. Clearly, we also find arguments in intercultural discourse extracted from European power and reason critiques by representatives of other cultures to demonstrate that the validation of human rights remains, in spite of it all, tied to its European birth. But those critics of the West that obtain their self-awareness from their own traditions do not, in any way, reject human rights as a rule. One observes other cultures and regions on the planet exposed to the challenges of social modernity in a similar process to Europe’s “discovery,” in a manner of speaking, of human rights and the democratic constitutional State.”⁴⁸

The tension surrounding global issues also motivates an increasing shift of focus towards the theme of human rights,⁴⁹ in that the cleavages caused by globalization aggravate the propensity towards conflicts and the production of inequalities, placing the globe in a

Verba Iuris, João Pessoa, Paraíba, v. 5, n.5, 2006, p. 406).

46 NEVES, Marcelo, *Between Themis and Leviathan: a difficult relationship: the Democratic State From and beyond Luhmann and Habermas*, São Paulo, Martins Fontes, 2006, ps. 275/ 276).

47 HABERMAS, Jürgen, *The Postnational Constellation*, São Paulo, Littera Mundi, 2001, p. 151.

48 HABERMAS, Jürgen, *The Postnational Constellation*, São Paulo, Littera Mundi, 2001, p. 153.

49 MAIA, Antonio Cavalcanti, *Human Rights and the Discourse Theory of Justice and Democracy*, in Human Rights Archive Celso de Albuquerque Mello; Ricardo Lobo Torres, orgs.), Rio de Janeiro, Renovar, 2000, p. 65.

condition of one single community, driven to competition, but also a community of shared risks, which demands a stronger positioning of global actors in forming a cosmopolitan culture capable of supporting the effective implementation, application and development of human rights. “In face of the blatant social conflicts and injustice of a largely fragmented world society, disappointment grows with every failed attempt en route to the constitutionalization of international rights for the peoples (initialized after 1945).”⁵⁰

Moreover, human rights offer the conditions for the only possible fundamentation of measures designed to govern a community of peoples and, therefore, they become the protagonists of international community integration. According to Habermas: “In the transition from an order marked by Nation-States to a cosmopolitan order, it is hard to determine the greater danger: the (waning) world of sovereign players of national rights who have long lost their innocence or the confusion and mix-up of supranational institutions and conferences that may generate questionable validation, but that remain subject to the goodwill of powerful States and alliances. In this delicate situation, it is true that human rights offer the only base of legitimacy among any applicable to the political community of peoples; almost all States adopted the content of the UN Declaration of Human Rights (meanwhile perfected).”⁵¹

Human rights are, without a doubt, the only possible means for the integration and legitimation of an international entity that seeks to safeguard human dignity as a whole from the various possible forms of violation.⁵² Its appropriate demeanor must necessarily mirror a transcultural outline that distances it from its European character, given that these rights, having originated in the West, should not remain confined to the West, since they offer a strong argument in emancipatory struggles. Human rights: “They represent nowadays – in spite of their European origins – a universal language as a means to regulate world relations. Also in Asia, Africa and South America, they are the sole language used by opponents and victims of murderous regimes and civil wars to raise their voices against violence, repression and persecution, against the violation of human dignity. However, as human rights are accepted as a transcultural language, the discussion is aggravated between cultures as to its adequate interpretation. As long as the transcultural discourse about human rights is subject to reciprocal recognition, it may also lead to a decentralized understanding in the

50 HABERMAS, Jürgen, *Between Naturalism and Religion: philosophical studies*, Rio de Janeiro, Tempo Brasileiro, 2007, p. 122.

51 HABERMAS, Jürgen, *The Postnational Constellation: political essays*, São Paulo, Littera Mundi, 2001, p. 150-151.

52 ROUANET, Sergio Paulo, *Jürgen Habermas: 60 years*, in *Revista Tempo Brasileiro*, Rio de Janeiro, v. 1 - n°. 1, 1998, p. 57).

West of a normative construction that no longer reflects the exclusive view of a single culture,” as states Habermas.⁵³

The universal aspects of human rights are what guarantee a structure capable of embracing diversity, though not meaning, therefore, a category that is capable of representing a mere local-global projection of power. Habermas’ view, invoking the universality of human rights, roots itself in a universal and non-abstract perspective, based on cultural pluralism and in the belief in a dialog among peoples and nations, elements that may offer mobilized citizens forms of integration and mechanisms for the solution of legal procedures that allow for social coexistence.⁵⁴

In this respect, a cosmopolitan society must, necessarily, incorporate this in the structural organization of its operations. Human rights are positioned as internal parameters of Nation-States, through their internal constitutional order, but they seem to enjoy, above all, a “super-positive validation,” as notes Habermas in *The inclusion of the other*.⁵⁵ This super-positive validation, is not only rooted in international cosmopolitanism logic, but is mainly present in the dialogal meeting, mediated by law,⁵⁶ though linked to a minimal foundation of presuppositions that allow for the defense and integrity of the human being. Even in cases involving war crimes, genocide, torture, crimes against humanity, these violations of human rights may not be judged by a cosmopolitan society from an exclusively moral point of view; they must be judged in accordance with established laws that especially safeguard unbiased judgement and the protection of distinctions that make up the human being.⁵⁷

The universality (U) implied in the theory of discourse is not *a priori*; universality is *a posteriori*.⁵⁸ At its side, the principle of discourse (D), here, maintains its meaning of fostering procedures that favor a greater access, interpretation and generation of human rights in view of procedural demands founded in democratic criteria, since, as

53 HABERMAS, Jürgen, *A Dialog about the Divine and the Human*, in Israel o Atenas, Madrid, Trotta, 2001, p. 191.

54 MAIA, Antonio Cavalcanti, *Public Space and Human Rights: considerations on the Habermasian Perspective*, in Revista do Departamento de Direito da PUC-Rio, Rio de Janeiro, nº 11, ago./dez., 1997, p. 21).

55 HABERMAS, Jürgen, *The Inclusion of the Other: political theory studies*, São Paulo, Loyola, 2002, p. 213.

56 NEVES, Marcelo, *Transconstitutionalism, Tese para Titularidade*, São Paulo, USP, 2009, p. 107).

57 NEVES, Marcelo, *Transconstitutionalism, Tese para Titularidade*, São Paulo, USP, 2009, ps. 217-18.

58 MAIA, Antonio Cavalcanti, *Human Rights and the Theory of Discourse and of Democracy*, in: Celso de Albuquerque Mello; Ricardo Lobo Torres, *Human Rights Archives*, Rio de Janeiro, Renovar, 2000, p. 21).

noted by Apel, "... the pleas for Human Rights may be derived from the principle of discourse (in the sense of the transcendental-pragmatic fundamentation of the universal-moral aspect of Human Rights) and must be mediated by the interests of citizens, according to criteria of the respective reason of the State – that is, if it is possible to implement this through democratic means."⁵⁹ As a product of discourse, certain human rights norms are established, and these norms are recognized as the likely candidates to reach out in its efforts to all concerned.

3.2. Discourse theory, cosmopolitan citizenship and integration through human rights

The theory of discourse developed by Jürgen Habermas, concerning international politics, projects itself over the double debate that permeates the development of human rights on a global scale: the debate concerning the preeminent need to develop a human rights culture as a base element of communicative integration among people, centered in politically differentiated communities; the debate concerning the need to expand human rights to conciliate them with cultural elements from other parts of the world, allowing for the development of a discourse capable of bringing together the many perspectives on human dignity.⁶⁰ Habermas notes in *The postnational constellation*: "In the dispute concerning the adequate interpretation of human rights, it is not a question of wishing for a modern condition, rather an interpretation of human rights that is fair with the modern world *also from the point of view of other cultures*."⁶¹ This clearly shows that Habermasian universalism is not an expression of a mere preconceived Eurocentric idea of the world; the recognition of diversity and pluralism is something that takes part in the protection and realization logic of human dignity, in view of the cultural condition of each people.

On the one hand, national rights should be capable of promoting the integration of liberal and communitarian perspectives and, on the other hand, cosmopolitan rights should be capable of developing conditions for providing a venue for a form of internal world politics

59 APEL, Karl-Otto, *The Dissolution of the Discourse Theory?*, in: Luiz Moreira (org), With Habermas, against Habermas: justice, discourse and democracy, São Paulo, Landy, 2004, p. 313.

60 MARTÍNEZ, Gregorio Peces-Barba, *Human Dignity from the Perspective of the Philosophy of Law*, 2. ed., Madrid, Dykinson, 2003; SARLET, Ingo Wolfgang (org.), *Dimensions of Dignity: philosophical essays on justice and constitutional law*, Porto Alegre, Livraria do Advogado, 2005; LAFER, Celso, *The Reconstruction of Human Rights: a dialog with the thoughts of Hannah Arendt*, São Paulo, Companhia das Letras, 2001; and, COMPARATO, Fábio Konder, *The Historical Affirmation of Human Rights*, São Paulo, Saraiva, 1999; SANTOS, Boaventura de Souza, *Recognize to Liberate: the paths of multicultural cosmopolitanism*, São Paulo, Difel, 2003.

61 HABERMAS, Jürgen, *The Postnational Constellation*, São Paulo, Littera Mundi, 2001, ps. 156-157.

(*Weltinnenpolitik*).⁶² This implies in the need for human rights to be capable of embracing, in their core, perspectives of recognition of rights and of non-interference, but at the same time, perspectives offering material conditions of life that allow the conditioning of higher material conditions of world co-existence. Habermas points out this problem as an indication of a route to follow, on the path of victories on this plane, previously elaborated within the United Nations: “The protection of world citizens (*Weltbürger*), clearly stated on human rights pacts, no longer simply limits itself to fundamental liberal and political rights: it reaches far beyond to offer material conditions of life that allow the overwhelmed and suffering people of this world to effectively exercise their formally assured rights.”⁶³

Integration on the international sphere, especially considering the advances towards the formation of a cosmopolitan society, may not be effected based on traditions or even on religion. These are not factors that bring people together as brothers, but the condition of acting and speaking beings, therefore, empower them as authors of their own condition in history. Modernity, which is mostly limited to the Western world, causing the de-differentiation and secularization of culture, provokes disjunctures that can only be compensated through integrating elements founded in principles restricted by the human rights discourse. Therefore the European answer to modernity of life seems to also come as necessary response to a world society, as modernization distributes equal effects all over,⁶⁴ safeguarding respect, comprehension and solidarity as base norms of human rights.⁶⁵

However, the difficulties to deal with these issues are many, and here we include a cultural struggle, in the sense that cultures established along religious outlines do not offer dialogal conditions towards the acceptance of secular alternatives as a political means for advances along the path of building mutually acceptable alternatives. Habermas is aware of this obstacle and notes: “Not only as an aspect of autonomy – the individualistic shortcut of subjective rights – the European idea of human rights offers a facade that is vulnerable to spokesmen of other cultures, however, by the same token, with a different focus – it offers the secularization of a political domain, disassociated from any religious or cosmological images. From the Islamic, Christian or Jewish point of view, seen from a fundamentalist perspective, the

62 NEVES, Marcelo, *Between Themis and Leviathan: a difficult relationship: the Democratic State From and beyond Luhmann and Habermas*, São Paulo, Martins Fontes, 2006, ps. 275.

63 HABERMAS, Jürgen, *Between Naturalism and Religion: philosophical studies*, Rio de Janeiro, Tempo Brasileiro, 2007, p. 361.

64 HABERMAS, Jürgen, *The Postnational Constellation*, São Paulo, Littera Mundi, 2001, p. 159.

65 HABERMAS, Jürgen, *The Postnational Constellation*, São Paulo, Littera Mundi, 2001, pp. 156-157.

quest for truth is absolute, also in terms of, when needed, the use of force and political violence. This idea brings consequences to the exclusivist character of the community; legitimization on religious bases or following similar views of the world is incompatible with an equalitarian inclusion towards members of other faiths.”⁶⁶ However, the hurdles presented to the human rights discourse are founded, to a lesser degree, on the internal dynamics and, to a larger degree, on the revelation of a rejection to domination processes which have permeated conformity discourse itself with the interests of Western nations. In reality this represents a resistance towards accepting the human rights discourse involving criticism towards the westernization of traditional ways of life in the East, as well as criticism in relation to *modernization* as a form of access to and validation of human rights.

Western individualism is, in this sense, and at the root of human rights statements, shielded by the illuminist idea of autonomy and validated through the forging of modernization processes involving society and enlightenment. If Westerners have few strong characteristics bonding them as a brotherhood beyond economic policies, business interests and a similar view of civilization. Eastern peoples, Eastern cultures, Eastern religions, such as Islam, all share strong collective identities which they do not want to relinquish.⁶⁷ In the case of Muslims, religious unity defines a single world community, linking all to Islam.⁶⁸ Differently from the West, Islamic culture does not simply express a commitment towards one’s private faith in which religious issues are, essentially, a question of conscience and freedom; rather, Muslims embrace their religiosity as a full commitment in terms of life, permeating their existence in all dimensions, whether in their relationships with others, whether in terms of their social duties, in the definition of family roles, in education and in social interactions, in politics and public affairs, in justice, in the arts and in reflection. Therefore, its unifying cultural force has a considerable effect on each person.⁶⁹ However, this has not kept Muslim peoples from reaffirming the importance of human rights, as demonstrated by the interconnected religious values and the number of regionally published documents that demonstrate the proximity between the language of human rights and that of religion, which we can observe in the *Universal Islamic Declaration of Human Rights* (1981), in the *Cairo Declaration of Human Rights in Islam* (1990), and the *Arab Charter on Human Rights* (1994).

Only within a proficuous dialogal context, internalizing measures towards reducing cultural gaps, could an assimilation of mutually

66 HABERMAS, Jürgen, *The Postnational Constellation*, São Paulo, Littera Mundi, 2001, p. 160.

67 DEMANT, Peter, *The Muslim World*, São Paulo, Contexto, 2004, p. 360).

68 DEMANT, Peter, *The Muslim World*, São Paulo, Contexto, 2004, p. 14).

69 DEMANT, Peter, *The Muslim World*, São Paulo, Contexto, 2004, p. 35.

interesting issues be attainable to a cosmopolitan community. In this respect, Habermas notes: “However, not only to the fundamentalists, a profane legitimation of human rights, in other words, a break between politics and the divine authority, poses a provoking challenge. Hindu intellectuals, as well, as Ashis Nandy, issue “anti-secularization manifestoes.” They expect reciprocal tolerance and influences between Islamism and Hinduism preferably through a mutual crossing of religious perceptions than a neutral cosmopolitan State-sponsored alternative. They remain skeptical in face of enlightened political neutrality that only neutralizes religion in its public meaning. In such considerations, this certainly confuses the *normative* question – how to find the common ground for a just political coexistence – with the *empirical* question. The differentiation between religion and State may in fact weaken the influence of privatized religious power; however, the principle of tolerance is not adverse to the authenticity and claims in terms of truth of creeds and forms of religious life; it must solely enable the equal existence of its members within a political community.”⁷⁰

In spite of the notion of human rights as a mere product of Western culture and the consequent uselessness of discussing human rights in its universal reaches, due to misconceived premises surrounding the issue, Habermas, nevertheless, believes in the possibility of developing a line of reflection that is amiable to intercultural dialog, since a cosmopolitan society is directly dependent, in terms of its formation, on a regulatory mechanism for international communities to define individuals as relevant actors on the international landscape. The cosmopolitan culture is that of the *Weltbürger*. “The innovative core of this idea lies in international law revisions pertaining to the rights of *States*, while cosmopolitan laws would affect *individuals*: These are not only citizens affected by the laws of their respective States, but also, members of an ‘international cosmopolitan entity under one director.’ Human rights and citizenship should also include international relations”.⁷¹

In this respect, discourse theory’s contribution should be understood as fundamental in that it resolves opposing forces of individualism (West) *versus* collectivism (East), conscious of the fact that both portray a unity focused on socializing the individual while individualizing society. The intersubjectivist concepts of the discourse theory, that convey legal process precepts regarding human rights within a context in which there are no legal rights prior to the mutual co-responsibility of reciprocally dependent agents towards a dialog, favor the fundamentation of basic processing cores that should be contained in the rules that determine the formation of a cosmopolitan society.

70 HABERMAS, Jürgen, *The Postnational Constellation*, São Paulo, Littera Mundi, 2001, ps. 160-161.

71 HABERMAS, Jürgen, *The Divided West*, Rio de Janeiro, Temp Brasileiro, 2006, p. 126.

Stepping back from the dichotomy that promotes the dichotomic threading of these concepts, discourse theory rejects the prevalence of collective considerations over those of individuals (Eastern thesis) and rejects the prevalence of the individual over the collective (Western thesis), in order to embrace the reciprocal and two-way dependency between the individual (subjectivity) and the collectivity (intersubjectivity).⁷² It therefore states, "...human rights concepts must rid themselves of the metaphysical supposition of individuals existing before any form of socialization, entering the world with birth rights. Along with this "Western" notion, "Eastern" antithetic ideas positioning community interests above any individual rights must equally be discarded. The 'individualistic' versus the 'collectivistic' alternatives are voided when abridging fundamental concepts of rights concerning antagonistic forces of individuation and socialization. Because individual legal persons are only individuated on the path to socialization, the integrity of a private person may only be protected in the presence of free access to the interpersonal relations and cultural traditions in which it may maintain its identity. Individualism, taken in a correct perspective, remains incomplete without this dose of "communitarism."⁷³ In this respect, the elucidations of the philosophical position, extracted from the passage in *The Postnational Constellation*, are of fundamental importance to gauge the equidistance of Habermasian thought in relation to merely Westernizing elements, as well as to understand that the idea of *universalism* (law) is not incompatible with the idea of relativism (cultural).

In this line of thought, the intersubjectivist concept of human rights, focused on the formation of a cosmopolitan society does not embrace the jusnaturalistic fundamentation, neither does it withhold preliminary criteria on an international level, essential for the formation of a core of rights, and without which it would be impossible to coexist in this world: the dignity of human beings. Human rights, thus conceived, serve as a catalyst in integrating and bringing cultures closer, in that it represents an outpost of support in protecting humans in face of the systemic determinations of *power* and *money*. A human rights culture, developed along these molds, points to other fronts in the interchange between people and things. Therefore, human rights practiced in terms of a dialogal process, constitute a support base for emancipatory practices and for cultural congruence, in contrast with unilateral and incisively dominating measures form a *military* or *economic* point of view.

72 ABED AL-JABRI, Mohammed, *Introduction to the Arab Critique of Reason*, São Paulo, UNESP, 1999, p. 54).

73 HABERMAS, Jürgen, *The Postnational Constellation*, São Paulo, Littera Mundi, 2001, ps. 158-59. ABED AL-JABRI, Mohammed, *Introduction to the Arab Critique of Reason* São Paulo, UNESP, 1999, ps. 153-166).

Cosmopolitanism is synonymous to and equilibrium in the international political tug of war and, precisely for this reason, it is the germ of a postnational identity of fundamental importance for the international community, blossoming under a defined set of principles, in spite of the fact that, "... cosmopolitan pluralism blossoms even in the core of those societies still subjected to strong traditions."⁷⁴

4. CONCLUSIONS

The reflective tasks of the present article involve the understanding of the challenges brought on by the crumbling of the driving core of globalization, which have defined the prevailing form of equating world economy relations. If deceleration has projected a crisis, affecting various aspects of Nation-States, as well as more advanced economic regionalisms, simultaneously, it may represent a historical opportunity for the fulfillment of tasks yet to be engaged on a more extensive agenda of cosmopolitan rights and obligations. In this respect, globalization and its effects, and deglobalization and its effects, are analysed as provisional diagnostics of a historic moment. However, the task of reflection on this theme induces the need to face the idea that a *postnational culture of human rights* may represent a link of great significance for an equation of international *meta-economical* exchanges, fostering the formation of a *cosmopolitan citizenship*. Thus, systemic imbalance may be seen as a dialectic scission in history, but also as forms of expression of new global political action, in view of civilization processes focusing on a path of democratic and human rights parameters.

In spite of the great difficulties found in establishing a plan for human rights on an international scale, the philosophical stance that Jürgen Habermas proposes, clearly, that cosmopolitan identity does not occur in the realms of a national citizenship, neither does it occur in terms of narcissistic cultural validation, nor does it occur based on the dicotomy between individualism and collectivism. This means that the theory of discourse recognizes dialog as an instrument for closing the gap, enabling, after a revision on both sides of the discourse, the approximation between the diverse, the coexistence between differences and the creation of links based on common needs and interests.

Beyond occasional ab-uses of the human rights discourse by the US, this cultural conquest of civilization, built with blood, hardship and fire, has signified, from north to south, east to west, the most potent instrument for a possible promotion and protection of rights. In this sense, philosophically, the idea of subjectivity lacks intersubjectivity

74 HABERMAS, Jürgen, *The Postnational Constellation*, São Paulo, Littera Mundi, 2001, p. 161.

and vice-versa, knowing that the quality of human interaction, in a world with diminishing borders, depends intrinsically of the form in which tensions resulting from coexistence will be handled, and the form in which strategic interests and communicateve social actions will take place. If the living community increasingly depends on supra-national political deliberations, it is the responsibility of international entities to be more deliberative, transparent and democratic and permeated by human rights in economic and political decision making, or be at the mercy of businesses, corporations and nationalistic hegemonies.

From a political-economical point of view, where strategic interests subvert the order of political demands, the distortions caused by the unbridled stampede of hegemonic world politics are to be expected. In the combat against hunger, poverty, deficient schooling, infant malnutrition, common plagues and pests, and vulnerable in face of global warming catastrophies, the fact that they have yet to find an echo in global governance is a sign of being off-course in handling global responsibilities and obligations. If these maledies persist, then critical thought must persist. Therefore, the task of sculpting the grooves along which cosmopolitan citizenship cultures will travel, between self-sentient critical and autonomous subjectivity and intersubjectivity materialized into solid, secure, democratic and participative institutions that are capable of promoting desirable forms of dialogal and cultural interaction, as well as catering towards human requirements, practicing a protective and caring spirit, reflecting a cosmopolitan culture, challenging horizons of peoples' concrete agenda and present-day perspectives, moving forward into the future.

REFERENCES

- ADORNO, Theodor W. *Lessons in Sociology*. Translation by João Tiago Proença; Manuel Seca de Oliveira. Lisboa: Edições 70, 2004.
- ABED AL-JABRI, Mohammed. *Introduction to the Arab Critique of Reason*. Tradução Roberto Leal Ferreira and Mamede Mustafá Jarouche. São Paulo: UNESP, 1999.
- ALMEIDA, Guilherme Assis de. *Sovereignty, Cosmopolitanism and International Human Rights, in Foreign Politics*, São Paulo, Universidade de São Paulo; Instituto de Estudos Econômicos e Internacionais; Paz e Terra, v. 15, n. 01, ps. 93-104, jun./ ago. 2006.
- APEL, Karl-Otto. *Discourse Ethics as the Ethics of Responsibility, in Translation Notebooks*, (Translation by Maria Nazaré de Camargo Pacheco Amaral), São Paulo, Departamento de Filosofia, Universidade de São Paulo, n. 03, p. 08-40, 1998.
- _____. *Studies of Modern Morals*. Translation by Benno Dischinger.

Petrópolis: Vozes, 1994.

APEL, Karl-Otto; OLIVEIRA, Manfredo Araújo de; MOREIRA, Luiz (org.). *With Habermas, against Habermas: justice, discourse and democracy* by Cláudio Molz. São Paulo: Landy, 2004.

ÁVILA, Sergio, *Misplaced Nations: an interview with Francis Fukuyama*, in Folha de São Paulo, São Paulo, Caderno Mais!, Domingo, 15 de fevereiro de 2009, p. 5.

BARACHO, José Alfredo de Oliveira. *General Theory of Common European Constitutional Law*, in Revista Forense, v. 367, 2002, ps. 105-127.

BARROS, Sérgio Resende de. *Dialectic Contribution to Constitutionalism*, São Paulo: Millenium, 2007.

BAUMAN, Zygmunt. *Globalization: human consequences*. Translation by Daniel Zadunaisky. 2. ed. México: Fondo de Cultura Económica, 2001.

_____. *Europe: an unfinished adventure*. Translation by Carlos Alberto Medeiros. Rio de Janeiro: Jorge Zahar, 2006.

BELLI, Beroni, *The Human Rights Council of the United Nations and Resolutions Concerning Countries: the end of politization and selectiveness?*, LIII Curso de Altos Estudos do Ministério das Relações Exteriores, Instituto Rio Branco, Brasília, 2008.

BRESSER-PEREIRA, Luiz Carlos. *The Global Financial Crisis and beyond: a new capitalism?*, in Revista Novos Estudos CEBRAP, n. 86, p. 51-72, mar. 2010.

CASELLA, Paulo Borba, *Fundaments and Perspectives of International Postmodern Law*, in Revista da Faculdade de Direito da Universidade de São Paulo, São Paulo, USP, v. 101, ps. 433-466, jan./dez. 2006.

_____, *Reading and Learning – in the context of judicial postmodernity*, in ABZ: ensaios didáticos, São Paulo, Imprensa Oficial, ps. 159-170, 2008.

COMPARATO, Fábio Konder. *The Historical Affirmation of Human Rights*. São Paulo: Saraiva, 1999.

DALLARI, Dalmo de Abreu. *The Future of the State*. São Paulo: Saraiva, 2010.

DEMANT, Peter. *The Muslim World*. São Paulo: Contexto, 2004.

_____. *The Muslim Dilemmas in Europe*, in *Panorama da Conjuntura Internacional*, Informativo do Grupo de Conjuntura Internacional da USP, n. 39, ano 10, p. 01-03, out./nov. 2008.

FARIA, José Eduardo de O. C. *Justice in a Globalized Economy*. 1ª edição, 4ª. tiragem. São Paulo: Malheiros, 2004.

HABERMAS, Jürgen. *The European Nation-State in Face of Globalization Challenges: the past and future of sovereignty and citizenship*, in Revista Novos Estudos, Translation by Antonio Sérgio Rocha, São Paulo, CEBRAP, n. 43, ps. 87-101, nov. 1995.

_____. *Beyond the National State*, Translation by Manuel Jiménez Redondo. México: Fondo de Cultura Económica, 1998.

_____. *Israel or Atenas: essays about religion, theology and nationality*. Translation by Eduardo Mendieta. Madrid: Trotta, 2001.

_____. *The Postnational Constellation: political essays*. Translation by Márcio Seligmann-Silva. São Paulo: Littera Mundi, 2001.

_____. *The Inclusion of the Other: studies of political theory*. Translation by George Sperber; Paulo Astor Soethe. São Paulo: Loyola, 2002.

_____. *The Era of Transitions*. Translation by Flávio Beno Siebeneichler. Rio de Janeiro: Tempo Brasileiro, 2003.

_____. *Fundamentalism and Terror*, in: Philosophy in Times of Terror diálogos com Habermas e Derrida (Giovanna Borradori), Translation by Roberto Muggiati, Rio de Janeiro, Jorge Zahar, ps. 37-55, 2004.

_____. *The Divided West*. Translation by Luciana Villas-Bôas. Rio de Janeiro: Tempo Brasileiro, 2006.

_____. *Between Naturalism and Religion: philosophical studies*. Translation by Flávio Beno Siebeneichler. Rio de Janeiro: Tempo Brasileiro, 2007.

_____. *Still a Power, in Caderno Mais!*, Folha de São Paulo, Translation by Érika Werner, São Paulo, p. 09, 09 de novembro de 2008.

HONNETH, Axel. *Reification: a study into the theory of recognition*. Traducción de Graciela Calderón. Buenos Aires,: Katz, 2007.

IANNI, Octávio. *The Era of Globalism*. 8. ed. Rio de Janeiro: Civilização Brasileira, 2004.

LAFER, Celso. *The Reconstruction of Human Rights: a dialog with the thoughts of Hannah Arendt*. São Paulo: Companhia das Letras, 2001.

_____. *The Declaration of Human Rights – Its relevance for the affirmation and tolerance of pluralism*, in The Universal Declaration of Human Rights – sixty years. (MARCÍLIO, Maria Luiza, org.), São

Paulo, Edusp, ps. 27-44, 2008.

LEISTER, Margareth. *Theory in Practice*. In: Collection of Human Rights. n. 08, Osasco, Edifio, 2008.

LEWANDOWSKI, Enrique Ricardo, *Community Law and Sovereignty: some reflections*, in Revista da Faculdade de Direito da Universidade de São Paulo, São Paulo, Universidade de São Paulo, v. 92, ps. 231-242, 1997.

_____. *The Formation of a Fundamental Rights Doctrine*, in Revista da Faculdade de Direito da Universidade de São Paulo, São Paulo, Universidade de São Paulo, v. 98, ps. 411-422, p. 2003.

LINDGREN ALVES, José Augusto, *Citizenship, Human Rights and Globalization*, in Human Rights, Economic Globalization and Regional Integration: challenges of the international constitutional law, São Paulo, Max Limonad, ps. 77-96, 2003.

MAIA, Antônio C. *Public Space and Human Rights: considerations on a Habermasian perspective*, in Justice, State and Society, Revista do Departamento de Direito da PUCRJ, Rio de Janeiro, n. 11, p. 15-40, ago./dez. 1997.

_____. *Human Rights and the Theory of Discourse of Law and Democracy*, in Human Rights Archives (MELLO, Celso de Albuquerque; TORRES, Ricardo Lobo), Rio de Janeiro, Renovar, v. 02, ps. 03-80, 2000.

_____. *Cultural Diversity, the Brazilian National Identity, and Constitutional Patriotism*, in Brazilian Cultural Diversity, (Antonio Herculano Lopes e Lia Calabre, orgs.), Rio de Janeiro, Casa de Rui Barbosa, ps. 115-156, 2005.

_____. *Jürgen Habermas: philosopher of law*. Rio de Janeiro: Renovar, 2008.

MARTÍNEZ, Gregorio Peces-Barba. *Human Dignity from a Philosophy of Law Perspective*. 2. ed. Instituto de Derechos Humanos 'Bartolomé de las Casas' de la Universidad Carlos III. Madrid: DYkinson, 2003.

MELLO, Sérgio Vieira de. *Five Issues on Human Rights, in SUR, Revista Internacional de Direitos Humanos*, São Paulo, Ano 01, número 01, 1º. Semestre, ps. 173-180, 2004.

NEVES, Marcelo da Costa Pinto. *Transconstitutionalism*. Tese de Titularidade. Departamento de Direito do Estado da Faculdade de Direito da Universidade de São Paulo. São Paulo: USP, 2009.

_____. *Symbolic Constitutionalization*. 2. ed. São Paulo: Martins Fontes, 2007.

_____. *The Crisis of the State: from central modernity to peripheric modernity – notes on the German philosophical and sociological thoughts*, in *Revista Trimestral de Direito Público*, São Paulo, Malheiros, n. 5, ps. 49-57, 1994.

_____. *Between Themis and Leviathan: a difficult relationship. The Democratic Rule of Law Based on and beyond Luhmann and Habermas*. Translation by Marcelo Neves. São Paulo: Martins Fontes, 2006.

_____. *The symbolic force of human rights*, in *Philosophy and Social Criticism*, v. 33, n. 04, Boston, SAGE, ps. 411-444, 2007.

NUNES, António José Avelãs. *The European Constitution and the Fundamental Rights*, in *Verba Iuris*, UFPB, João Pessoa, v. 5, n.5, ps. 373-436, 2006.

PINHEIRO, Paulo Sérgio; ALMEIDA, Guilherme Assis de. *Urban Violence*. São Paulo: Publifolha, 2003.

SAID, Edward. *Orientalism: The East as an Invention of the West*. Translation by Tomás Rosa Bueno. São Paulo: Companhia das Letras, 1990.

_____. *Humanism and Democratic Critique. Translation by Rosaura Eichenberg*. São Paulo: Companhia das Letras, 2007.

SANTOS, Boaventura de Souza. *Recognize to Liberate: the multicultural cosmopolitan paths*. São Paulo: Difel, 2003.

_____, *Socialism of the 21st Century*, in *Folha de São Paulo*, Tendências e Debates, São Paulo, A3, Quinta-feira, 07.jun. 2007.

SARLET, Ingo Wolfgang, *Dignity Dimensions of the Human Being: building a necessary and possible legal-constitutional comprehension*, in *Dignity Dimensions of the Human Being: essays on the Philosophy of Law and Constitutional Law* (SARLET, Ingo Wolfgang – org.), Porto Alegre, Livraria do Advogado, ps. 13-43, 2005.

TEUBNER, Gunther. *Justice, System and Polycontextuality*. Translation by Brunela Vieira de Vincenzi, Dorothee Susanne Rüdiger, Jürgen Volker Dittberner, Patrícia Stanzone Galizia, Rodrigo Octávio Broglia Mendes. São Paulo: UNIMEP, 2005.

TOSI, Giuseppe. *War and Law in the Debate about the Conquest of America*, in *Verba Iuris: Anuário da Pós-Graduação em Direito*, João Pessoa, Universidade Federal da Paraíba, Ano 5, n. 05, ps. 277-320, jan./dez. 2006.