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**IS THE STATE-CENTRIC CONCEPTION OF HUMAN
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A RESPONSE TO CRISTINA LAFONT**

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RIGHTS SUITABLE FOR A GLOBALIZED WORLD?
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RESUMEN

En su artículo “Human Rights and the Legitimacy of Global Governance Institutions” publicado en este mismo volumen de la RLFP, Cristina Lafont argumenta que si queremos imponer obligaciones de derechos humanos a las instituciones de gobernanza global, debemos reemplazar la concepción estatista de los derechos humanos que impregna la política internacional actual por una concepción alternativa de carácter pluralista. En esta réplica sostengo que, cuando la interpretamos adecuadamente, la concepción estatista no solamente es compatible con la imposición de obligaciones relativas a los derechos humanos a las instituciones de gobernanza global, sino que además puede conducirnos a una mejor comprensión de la naturaleza de esas obligaciones en un mundo globalizado.

Palabras clave: Cosmopolitismo, Derechos humanos, Estados, Autoridad política, Responsabilidad

ABSTRACT

In her article “Human Rights and the Legitimacy of Global Governance Institutions” published in this volume of RLFP, Cristina Lafont argues that in order to impose human rights obligations to global governance institutions, the state-centric conception of human rights that pervades current international politics must

be replaced by an alternative, pluralist account. In this response I claim that, when properly interpreted, the state-centric conception is not only perfectly compatible with imposing on global governance institutions the kind of obligations Lafont has in mind, but may also lead us to a better understanding of the nature of these responsibilities in a globalized world.

Key words: Cosmopolitanism, Human rights, States, Political authority, Responsibility

1. Introduction

The Universal Declaration of Human Rights was adopted in a world of states. This does not mean that states were the most relevant actors in the international domain. It rather means that they were almost the *only* relevant actors. However, since those times, the world has been deeply transformed. We do not live in a Westphalian world of completely autonomous states any longer. The deep integration of markets that globalization brought about entails that decisions taken in one country may have effects on the life prospects of people living thousands of kilometers away. (Singer 2002: 1-13 and 51-105; Guariglia 2010: 101-128; Beitz 1999: 125-154; Shue 1996: afterword). At the same time, a whole network of transnational institutions aimed at regulating the interaction among states was progressively set in place. This network, which is becoming more and more dense and comprehensive day after day, may also have considerable impacts on the satisfaction of people's basic needs worldwide (Pogge 2002: 199-202). This is why during the past decades human rights debates have revolved around the normative scope of human rights in a globalized era. Many authors claim, for example, that human rights are not a domestic but a cosmopolitan matter. Famously, Thomas Pogge argues that human rights standards apply not only or mainly to domestic institutions but to any institutional regime imposed on human beings, including

the global institutional regime (See, for example, Pogge 2002: 56-67). According to him, this regime should be rearranged in order to globally ensure that no person avoidably lacks secure access to the enjoyment of human rights (Pogge 2002: 46). This view is, of course, controversial and has been contested by other theorists. Some of these theorists maintain that the cosmopolitan approach as stated by Pogge is incompatible with the current states system. According to them, even if human rights impose responsibilities at the international level, these responsibilities cannot be conceptually on a par with the responsibilities they impose on domestic governments (Meckled-García 2007; Nagel 2004; Sangiovanni 2007; Montero 2007 and 2010). Pogge's cosmopolitan conception of human rights may perhaps be an appealing moral ideal, but according to these critics it is not suitable for the world as we know it.

In recent works, Cristina Lafont develops an alternative account of the normative scope of human rights (Lafont 2010a; 2010b; 2012; 2013). This account intends to accommodate the idea that human rights have cosmopolitan reach with the idea that political communities have a right to pursue their own goals and to prioritize the interest of their nationals. In her illuminating article "Human rights and the legitimacy of global governance institutions" published in this volume of RLFP, Lafont articulates three of her main theses on the issue of responsibility for human rights. The first thesis claims that, contrary to the view currently adopted by institutions of global governance, these institutions do bear obligations for human rights. In her view, this does not mean that they must work to promote or fulfill human rights worldwide. It simply means that they must respect human rights by not hampering their protection. More concretely, according to Lafont, the IMF must refrain from making loans to developing countries conditional on the adoption of public policies that may endanger human rights satisfaction; the World Bank must refrain from supporting infrastructure works that may have negative impacts on human rights enjoyment; and the World Trade

Organization must refrain from adopting regulations that may seriously undermine the capacity of poor governments to deliver on the human rights of the people. To this aim, these institutions should legally entrench a duty to exercise human rights due diligence by engaging in an impact assessment of their policies and by setting-up mechanisms for processing human rights complaints against the measures they recommend (Lafont 2013: 18-20).

The second thesis Lafont defends claims that imposing human rights obligations to global governance institutions does not entail the creation of a world state or the dismantlement of the current states system. The reason for this is that, as long as states respect their obligation to refrain from hampering the protection of human rights worldwide, they may continue to promote their national interest as strongly as they want. In other words, national interest, self-determination of peoples and the promotion of domestic justice can coexist with respect for the human rights of all human beings on Earth (Lafont 2013: 14-18).

Finally, Lafont's third thesis is that in order to impose human rights obligations to global governance institutions, the state-centric conception of human rights that pervades current international politics must be replaced by an alternative, pluralist account. This pluralist account, which she develops in detail in other articles (see, for example, Lafont 2012) ascribes obligations to respect human rights not only to states but also to non-state agents such as international organizations, transnational corporations, armed groups and individuals and makes them accountable to those people affected by their activities (Lafont 2013: 6-18).

I completely agree with Lafont's first thesis. Global governance institutions do bear obligations for human rights, including an obligation to take into account the impact their activities may have on the satisfaction of human rights worldwide. This is, in fact, an urgent moral imperative in a globalized world. Failing to fulfill this imperative may indeed render the

whole human rights project void and empty. I also agree with Lafont's second thesis: imposing human rights obligations to global governance institutions by no means entails, presupposes or requires the creation of a global state. It does not even require weakening national states or deeply revising the current states system. In the same way that imposing on individuals a duty not to harm others does not undermine their capacity to pursue their goals and life plans, imposing on global governance institutions and state representatives a duty not to hamper human rights satisfaction worldwide does not entail that they cannot pursue their own specific national aims.

I am not sure about Lafont's third thesis, however. I admit that some version of the state-centric view is sometimes invoked by the heads of global governance institutions and representatives of affluent states to show that human rights are not their business. Having said that, I think that when seen in its best light the state-centric view may be perfectly compatible with imposing human rights obligations to these agents. Furthermore, the state-centric view may lead us to a better understanding of the nature of human rights responsibilities of global governance institutions and other relevant international agents. I will start with a brief reconstruction of the state-centric view in order to show that it is compatible with imposing human rights responsibilities on global governance institutions and will then explain why I think this view has several advantages over the alternative pluralist account Lafont suggests. Before concluding I will try to tackle some other powerful reasons Lafont mentions for abandoning the state-centric perspective.

2. Institutions of global governance and human rights responsibilities under the state-centric view

There are several versions of the state-centric view available in the academic literature. For example, in his influential

The Law of Peoples, John Rawls defines human rights as standards any society must honor in order to avoid forceful interventions by other nations (Rawls 1999: 80). Joshua Cohen, in turn, regards human rights as norms founded on an idea of membership or inclusion in an organized political society. Thus human rights are, according to him, conditions that must be met by governments in order to avoid treating human beings as “no-accounts, with no part to play in the political society” (2006: 238-239). In *Justice for Hedgehogs*, Ronald Dworkin refers to human rights as rights to be treated by one’s government as a human being whose dignity fundamentally matters (Dworkin 2011: 335).¹ In spite of their differences, all these views understand human rights as standards aimed at regulating the way states treat their own residents. In a forthcoming article I compare and discuss these and other versions of the state-centric view. In this article, however, I shall focus on the account of the state-centric view developed by Charles Beitz in *The Idea of Human Rights*. Not only because this is the account Lafont challenges but also because it seems to be the most elaborate version of the state-centric understanding up to now.

According to Beitz’s account, human rights have three main features. First, they are requirements aimed at protecting some important individual interests against certain standard threats to which these interests are vulnerable in the modern world. Second, human rights apply in the first instance to the political institutions of states. Thus states have a first level responsibility not to harm these interests, to protect them against the activities of non-state agents subject to their jurisdiction, and to aid those who are non-voluntary victims of deprivations. Third, human rights are “matters of international concern”. This means that a government’s failure to carry

1. For other versions of the state-centric view, see Nickel 2007; Donnelly 2013; Higgins 2006.

out its first level responsibilities may be a reason for action for second level agents outside the state, such as other states, international NGOs, international organizations or the international community at large (Beitz 2009: 109). Therefore, although according to the state-centric view human rights standards refer primarily to the way governments treat their people, they also impose second level responsibilities for the protection of human rights to other agents acting in the international domain.²

Now these second level responsibilities may naturally be discharged by holding states accountable for the way they treat their citizens, by imposing several kinds of sanctions on them or, in cases of gross human rights violations, by resorting to military interventions (Beitz 2009:109). But they are not limited to this. Beitz explains that when states lack the capacity to fulfill human rights, well-placed international agents have *pro tanto* reasons to help them develop their economies or consolidate human rights-advancement institutions by transferring them money, knowledge or human resources (Beitz 2009: 36). He also explains that when a state’s failure to fulfill human rights can be attributed to the policies of other states, multinational agents, or international regimes rather than to its own lack of will, these agents have reasons to produce what he describes as an “external adaptation”. This is a practice aimed at revising the rules and structures of global governance institutions in order to eliminate any obstacles they may pose to human rights fulfillment (Beitz 2009: 116). In this vein, according to the state-centric view, if we discover that either trade regulations adopted by the World Trade Organization that discriminate against agricultural products,

2. Actually, it could be argued that Beitz’s account of human rights is not “state-centric” but rather internationalist. That is, an understanding imposing several sorts of international responsibilities for the realization of human rights in a world of states.

intellectual property rules that increase the cost of essential medications, or certain norms for labor practices established by international bodies are impeding human rights satisfaction in some poor countries, there would be a human rights-based responsibility to revisit these rules and introduce accurate reforms (Beitz 2009: 40, 116). I hope it is now clear why I claim that the state-centric view is perfectly compatible with imposing human rights obligations on institutions of global governance.

Lafont may perhaps choose to reply that according to the state-centric view human rights responsibilities of global governance institutions are merely residual as they would be activated only once states have failed to satisfy the human rights of their residents (Lafont 2013: 8). Thus these institutions would bear an obligation to revise their policies, aims and regulations once these have resulted in actual human rights violations, but they would bear no obligation to ensure in advance that their activities will not hamper the protection of human rights worldwide. I admit that this conclusion would be deeply problematic for the state-centric view. Not only because it would be incoherent to wait for human rights violations to take place before introducing accurate reforms, but also because this strategy would certainly have dramatic effects on the lives of millions of the most vulnerable human beings all over the world.

There may be a response to this objection, however. According to the state-centric view, not only actual but also *prospective* failures to fulfill human rights on the part of states provide reasons for remedial or *preventive* action for well-placed international agents (Beitz 2009: 12). From this it follows that if we can foresee that the activities of global governance institutions may result in human rights violations, we have reasons to adopt measures aimed at preventing those violations from taking place. Thanks to the research of authors such as Thomas Pogge (2007), Joseph Stiglitz (2002), Peter Singer (2002), Lafont (2012) and others there is now conclusive evi-

dence that the activities of international institutions such as the International Monetary Fund, the World Trade Organization, or the World Bank may seriously undermine human rights protection in some of the world's poorest countries. Therefore, the state-centric view could perfectly justify imposing on these institutions human rights-based responsibilities to engage in impact assessment practices of the kind Lafont has in mind.

3. Some advantages of the state-centric view

Now that I have explained why the state-centric view may be compatible with imposing human rights obligations to global governance institutions, I would like to suggest that this view may have three potential advantages over the pluralist account Lafont favors. The first potential advantage of the state-centric view has to do with its understanding of transnational responsibilities for human rights. The pluralist account seems to restrict transnational human rights responsibilities to a negative duty not to obstruct human rights protection worldwide. Fulfilling this negative duty may certainly require the adoption of positive measures such as setting-up special mechanisms aimed at ensuring that their policies will have no adverse effects on human rights protection or to redress the victims of bad regulations adopted in the past. But, under the pluralist account, global governance institutions have no further responsibilities to implement human rights advancing measures or to progressively enhance the capacity of poor states to deliver on the human rights of their residents (Lafont 2012: 14).

This view faces at least two problems. The first problem is that, under current conditions, even if global governance institutions observed the duty not to hamper the protection of human rights, the basic needs of millions of human beings living in the poorest countries may still remain unmet

(Meckled-García 2007; Montero 2007; Guariglia 2010: 118-119). In order to achieve the utopia of a world where human rights are fully realized we need much more than this. The second problem is that this understanding of transnational responsibilities for human rights seems to be inconsistent with human rights doctrine, which is pervaded by references to the need of international cooperation (for a detailed analysis of these demands see Salomon 2007).

The state-centric view may perform better than the pluralist account in this respect. In accordance with this view, global governance institutions not only bear negative duties not to adopt regulations that may hamper the protection of human rights around the world. They also bear positive duties to assist those societies lacking the means to comply with human rights standards and to introduce gradual political reforms aimed at enhancing their capacity to do so. Thus institutions such as the World Trade Organization should consider, for instance, the adoption of trade regulations allowing the poorest countries to protect their industries until they are enough developed to deliver on the human rights of their residents (Guariglia 2002: 106-122; Rodrik 2007: 227). Naturally, these would be *prima facie* duties, meaning duties that must be balanced against other obligations these institutions may have, including, of course, their obligation to achieve their particular constitutive aims. But these positive obligations for human rights could not be ignored by global governance institutions. This understanding may be far more effective in terms of human rights realization and may also be a good way of making sense of the references to international cooperation and of the right to an international order where human rights can be fully realized proclaimed by article 28 of the Universal Declaration.

The second potential advantage of the state-centric view is that it may be more coherent with contemporary human rights practice. Most experts on the subject-matter maintain that contemporary human rights were adopted to deal with a

risk latent in the states system that became crystal clear with the crimes of the Nazi regime: the risk that sovereign states may fail to treat their people with the concern and respect they are entitled to. To prevent this from happening again, the international community held them responsible for satisfying certain standards in their treatment of their residents, created several mechanisms for monitoring compliance with them and agreed to cooperate with states that lacked the capacity to satisfy human rights by providing them with assistance or removing international obstacles to human rights fulfillment. This commitment, which was vague and perhaps merely declamatory at the beginning of the human rights era, became more and more concrete in subsequent documents such as the Vienna Declaration and Program of Action, the Limburg Principles and the General Comments of the UN Committee on Economic, Social and Cultural Rights (Donnelly 2013: 77-94; Nickel 2007: 14-21; Beitz 2010: 31-42). This account of contemporary human rights practice seems to lead to a two-tier model of responsibility for human rights similar to the one put forward by the state-centric view, rather than to the pluralistic model advocated by Lafont.

The third potential advantage of the state-centric view is that it may better fit our considered judgments regarding the notion of human rights violation/violator. According to the pluralist account, any agent harming the vital interests of human beings should be regarded as a human rights violator. This includes governments, global governance institutions and occupation forces as well as transnational corporations, political groups and even individuals. Many people, however, would refuse to call human rights violators either a firm unduly firing a worker, a bunch or political activists vandalizing the offices of a news agency, or an ordinary thief stealing books from a library (Pogge 2002: 57-58; Valentini 2011; Nickel 2007: 10). There are at least two convergent kinds of reasons for adopting this attitude. The first kind is practical. This use of human rights language may seriously trivialize human

rights discourse. It may trivialize it in such a way that human rights discourse may end up losing its appeal and its particular political impact: almost every wrongful action would be a human rights violation (Clapham 2006: 33-35). The second kind of reasons is conceptual. For many competent participants of human rights practice, human rights violations constitute a specific type of offense, an offense somehow referring to the behavior of political institutions or to the use of coercive political power (Valentini 2011; Pogge 2002; Meckled-García 2007). To denounce offences from other agents we already dispose of a broad moral repertoire including plenty of moral as well as legal categories. But in the aftermath of World War II, it was discovered that we lacked a language to refer to offences committed by political communities or those acting on behalf of them against those subject to their authority. In accordance with many authors endorsing the state-centric perspective, speaking of a human rights violation means precisely that those in charge of administering political power have trespassed some fundamental moral barrier. The role of human rights norms is, they think, that of marking out those ultimate borders. Insofar as governments, occupation forces, armies, guerrillas, and international organizations may wield political power, they may eventually be accused of violating human rights. The state-centric conception does not need to exclude this use of human rights language. But extending this accusation to all other agents irrespective of their nature or function seems to be completely at odds with our considered judgments in this respect.

4. Other reasons for abandoning the state-centric view?

Before concluding I would like to consider three additional arguments for abandoning the state-centric view Lafont suggests. The first argument claims that the state-centric view renders human rights redundant since, according to this view,

human rights serve the exact same purpose as constitutional rights (Lafont 2013:9). The second argument claims that the state-centric view is inconsistent with the widespread belief, voiced even by International Law, that human rights are not territorial but universal (Lafont 2013:10). The third argument claims that the state-centric view leaves a gap with respect to any responsibilities that states may have in their treatment of people living outside their jurisdiction either through their actions as participants in global governance institutions or through their foreign policy activities (Lafont 2013:8). I will deal with these objections in turn.

It is not hard to discover why the state-centric view does assign a distinctive role to human rights norms. It is true that, according to this view, human rights refer to the way political communities may treat their people. However, this does not make human rights identical to constitutional rights. The reason for this is that constitutional rights are a purely domestic matter. They are a domestic matter as long as political communities are free to decide what human interests –if any– to protect through constitutional provisions based on their history, their political traditions, or their particular constitutional agreements or deliberations. Furthermore, for several authors, including Beitz, human rights do not necessarily require that governments incorporate them on their constitutions provided their satisfaction is ensured by the means of law, policies or other cultural devices (Beitz 2010: 114). Constitutional rights are also a domestic matter as long as a political community is not accountable to any external agent for fulfilling these rights. It is only accountable to its citizenry. Human rights, on the other hand, are matters of international concern. They are matters of international concern in three complementary ways. They are matters of international concern as long as political communities are not free to decide what human rights their people have as these are standards set by the international community at large; they are matters of international concern as long as political communities

are accountable to the international community for respecting them; and they are matters of international concern as long as the international community has a responsibility to contribute to their protection either by monitoring their fulfillment on the part of states or by undertaking various actions when they remain unmet.

The state-centric view may also be consistent with the thought that human rights are universal. Claiming that human rights are universal may mean that they impose obligations on all other agents with the capacity to harm or promote the interests these rights protect; or may mean, instead, that for some reason such rights belong to every human being and must therefore be respected by all political communities. According to the state-centric view, human rights are not universal in the sense of imposing obligations on all other agents –not at least primary ones. Actually, if they were universal in this sense, they would play no distinctive role in our moral repertoire as they would be exactly the same as natural rights. But they are indeed universal in the sense of being rights all political communities must observe. That is to say, rights their residents can claim regardless of social conventions, religious beliefs, acts of governments, decisions of courts, or country of residence. This understanding of the universality of human rights finds support in the opening articles of the Universal Declaration. In particular, article 2 claims that everyone is entitled to human rights “without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status” and stresses that “no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs”.

Finally, there may be reasons to think that the state-centric view leaves no gap with respect to the behavior of states as participants of global governance institutions. It is true that, according to this view, representatives of states that participate in these institutions are not, as the pluralist account pre-

tends, directly accountable to the citizens of other countries for the regulations they adopt (Lafont 2013:21). However, global governance institutions and their officials do bear second-level human rights responsibilities and are accountable to the international community for fulfilling them. When state representatives act as decision makers of these institutions their human rights obligations take, or should take, priority over their duty to promote national interests. Therefore, contrary to what Lafont claims, under the state-centric view, states are not off the hook as regards the policies or regulations they decide to adopt as participants of institutions of global governance. Moreover, this picture of accountability seems more suitable for our political reality. In terms of current International Law, global governance institutions are not cosmopolitan but international organizations under the authority of the UN, the political agent of the international community. Those ruling these institutions should then be accountable to the international community, not to individual human beings, for the decisions they make. The international community, in turn, should be accountable to individual states, not to individual human beings, for making it sure that those institutions subject to its authority are governed in accordance with the principles set forth in International Law, including, of course, human rights standards.

Neither are states completely off the hook concerning the impact their foreign policy activities may have on the basic interests and life prospects of non-nationals. Although, according to the state-centric view, states do not bear primary human rights responsibilities for people living outside their jurisdiction, human rights are supposed to operate as a component of the wider normative framework of International Law. Other domains of this network, such as International Humanitarian Law impose several restrictions on the external behavior of states and the way they may treat people not subject to their authority. Furthermore, the UN Charter compels state parties to “establish conditions under which justice

and respect for the obligations arising from treaties and other sources of international law can be maintained”, “to employ international machinery for the promotion of the economic and social advancement of all peoples”, “to achieve international cooperation in solving international problems” and to promote and encourage “respect for human rights and for fundamental freedoms for all...” (UN Charter, Preamble and article 1. See also chapter 9, especially 55-58). These general principles should suffice to prevent affluent states from adopting foreign policies that may seriously harm the basic interests of non-national human beings.

5. Some concluding remarks

In this paper I have argued that, contrary to the claims of Lafont and other cosmopolitan scholars, there are reasons to think that the state-centric conception of human rights that animates current international morality may be suitable for our times. Although the world experienced deep transformations since the Universal Declaration was adopted, this conception may perfectly meet the challenges issued to human rights protection by a globalized era of economic interdependence and supranational political structures. This does not mean, however, that the state-centric view *as* developed by Beitz or other statist authors meets those challenges. It rather means that it may meet them when we see it in its best light.

The point I would like to stress, however, is that my agreements with Lafont seem to be much more important and somehow much more illuminating than my disagreements. The key result of my discussion of her article is, I think, that either from the point of view of the novel pluralist account of human rights she suggests, or from the point of view of the more traditional state-centric view I have tried to defend, it is crystal clear that global governance institutions and other relevant non-state agents bear concrete responsibilities for

human rights. In particular, in view of the devastating experience of the last three decades, international financial institutions must immediately set mechanisms in place aimed at reducing the impact their policies may have on human rights fulfillment around the world. According to my understanding of the state-centric view, they should also consider the adoption of measures, policies and regulations aimed at progressively enhancing the capacity of the world's poorest nations to satisfy the human rights of the people. This is a human rights imperative even for a liberal sympathizer of the state-centric view as myself. Present reality is in this respect far behind the state-centric view.

Perhaps, the moral of this story is that the problem is not philosophical theories but rather lack of political will to do what theories tell us to do. I am afraid the only thing we philosophers can do is go on producing arguments that may lead people and political leaders to change their minds. In this practical respect too, the state-centric view may perform better than competing proposals such as the pluralist conception of human rights. The reason for this is that the state-centric view does not demand that we substitute our present web of convictions regarding international morality for an alternative cosmopolitan worldview. It simply requires that we realize what our own convictions on the matter demand and act in accordance with them.

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