

GLOBAL CHALLENGES TO LEGAL REGULATION OF STATE AND CIVIL SOCIETY RELATIONSHIP

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ABSTRACT

The objective of this paper is to present the role of law in structuring and regulating the state- civil society relationship and the extent of the challenge globalization poses to this triangular relationship. While there are a number of different conceptualizations and formulations of the state- civil society relationship, it is only through a legal framework that this relationship is formally defined. The article begins by providing a conceptual framework for the state and civil society distinction and then introduces the evolution of law into a legal system as the precondition for differentiating the civil society as a non-state actor. A comparative evaluation of civil society development in totalitarian, liberal and welfare state systems provides an analytical backdrop for the contemporary transformations generated by globalization and how that affects legal systems, states and civil societies within the realm of the nation-state as well as in the larger context of a global political economic structure.

Keywords: State-civil society relationship, Legal system, Globalization

1. INTRODUCTION

The basic knowledge with respect to the triangular relationship between the state, civil society and law is that law does not possibly exist without the existence of a state and that civil society is not possible without an autonomously functioning law. The last line of the triangle shows that the contemporary social structure necessitates a thorough discussion of state-civil society dichotomy, which is an important determinant of the power relations in the political, economic as well as the social sphere. In directing a discussion of the role of law in outlining the state-civil society relationship, it is important to state the definitions of state, civil society, and law and more specifically law as an autonomous entity developing a certain pattern of relation with the state and

the civil society. These definitions will provide the limits of each entity, to what extent they compromise in their relations, moments of cooperation and conflict in their interests and how they form a certain balance of power in a society that keeps it together and in peace.

The limits of state, civil society and law differ in different environments; therefore the balance of power they form is not the same either. Therefore this paper more specifically will refer to state-civil society relationship under liberal, totalitarian and welfare state models and how in each one the extent of the autonomy of law varies, and how the role of law is different due to its relations to the state and society. Each of these models represents a different praxis of major political science paradigms and one needs to bear in mind that these models in fact diverge from the paradigmatic basis on significant terms. However, they are instrumental in a comparative analysis of the legal transformations that shape state- civil society relationship.

The disintegration of the Soviet Union marked the end of the totalitarian alternative to democracy. Each newly independent country had a unique transition to liberal democracy. On a different end, global transformations, especially deterritorialization and intensification of global trade posed a serious challenge for the highly regulated welfare state systems, which were forced to give up on their commitment to social and economic equality for the sake of greater integration with and competitiveness in the global economy. The breakup of collective bargaining systems, disputes over the de-commodification process are some indicators of the global pressures on welfare systems. While totalitarian systems are out of the scene and the welfare state is weakened, then the only alternative remains to be the liberal democracy. However, liberal democracy has its own limitations, especially due to the inherent inequalities it is built upon. These limitations underline the importance of legal regulation of state-civil society relationship as a warranty of democracy.

2. CIVIL SOCIETY AS A NON-STATE ENTITY

Although the historical origins of civil society can be traced back as far as Cicero or Aristotle, the valid definition that will be used in this context depends on the modernization of the term. The use of the terms the state and civil society interchangeably by Locke and Rousseau is an important indicator of their necessity for each other, that they constitute the *sine qua non* conditions for each other (Bobbio 1988: 78). However it was with Hegel that a theoretical separation of the two came into existence for the first time. Here the state solely referred to the political sphere and civil society represented the “promotion of particular goals” as well as the “civil’ sphere of public institutions such as the courts and various regulatory and welfare agencies”. This radical separation produced the civil society that is related with the modern state, as “an arena in which modern man legitimately gratifies his self-interest and develops his individuality, but also learns the value of group action, social solidarity and the dependence of his welfare on others, which educate him for citizenship and

prepare him for participation in the political arena of the state.” (Pelczynski 1988: 364, 379 n7). This conceptualization does not only refer to the power of the individual who seeks his interest in the private realm, more specifically in the market, but also to the civil rights given to him from the public realm as in the case of courts and welfare agencies. It is in terms of these civil rights that civil society gains its legal acceptance and the reach and control of the state over civil society is limited. Other important characteristics of civil society are its promotion of individualism and diversity; that it does not stand vis-à-vis the state as a homogeneous totality but it embeds in it interests that may clash or diverge (Hall 1995: 25-26). Different scholars focus on different aspects of civil society; where Gellner focuses on the modularity of the individual in civil society, Mardin sees it as “a Western dream, a historical aspiration” (Mardin 1995: 278). Or when some emphasize the implications of civil action in the economic arena over the political, others simply see civil society as the sum of institutions representing the interest of the individual whether economic, political or social. But the consensus in contemporary context is that civil society is a legal entity that balances the power of the state at the other end of the seesaw. It is associated with the market, in relation to the conduct of the modern capitalist state. It is against the concentration of power in the form of despotism or tyranny; it represents the private interests of the individuals that make up the civil society against those that hold political power in the state. The issue at stake is the peaceful coexistence of the state and the civil society in a legally accepted, socially legitimate framework. The question is what is it that stops the state or the civil society to go beyond their limits?

3. A LEGAL FRAMEWORK FOR REGULATING STATE-CIVIL SOCIETY RELATIONSHIP

The role of law is to arbitrate the confrontations that may arise between the state and the society due to the imbalances in power relations. More clearly, law defines the limits of their power and their action for a stable social and political environment. In many cases because the state is the ultimate authority in law making, it has a comparative advantage in the power structure for it can easily limit the power and the activities of the civil society. The totalitarian states of former Eastern Bloc countries provide concrete examples of how law totally controlled by the state also comes to mean the absence of civil society. This is why the *sine qua non* condition of law is not merely its existence but also its autonomy, its independent functioning from the state and state’s jurisprudence. The intermediary position of law between state and society entails with it a qualitative distinction between the relations with the two sides. More clearly, such distinction is understood with the existence of different types of law, where bureaucratic law, legislature and jurisprudence of the state represents the state-law relationship and civil law independent of the control of the state jurisprudence, referring to individual rights and liberties represents the civil society-law relationship. As Unger suggests, specifying different types of law will help in defining the above mentioned relationships in which law is the medium (Unger 1976: 47). Unger’s elaboration on customary law, bureaucratic law and

legal order as the successive development stages of law accompanying those of the state and society is very meaningful in terms of indicating the overlap of the legal order with civil society.

Customary law is the broadest category of law that refers to the implicit rules and regulations of the social interactions in the society. At this point there is no separation of the state and society and therefore there's no enforcement action by the state over the society with respect to a formulated set of rules and regulations. Customary law is an informal form of law which does not necessarily have an internal coherence or a generality in its application. It could clearly be associated with societies that are more traditional in their conduct. In terms of the state civil society relationship, a certain degree of arbitrariness can be assumed under such circumstances, which may also suggest a tendency towards conflict rather than compromise or resolution.

Bureaucratic law on the other hand entails the separation of state from society, where state with its legal institutions and professional staff has complete control over legal matters. "It is a law deliberately imposed by government rather than spontaneously produced by society." (Unger 1976: 51). Although this is a more developed type of law due to institutionalization, specialization of staff, and state-society distinction; with complete control of law by the state the emergence of civil society as an alternative control mechanism to the totalitarian state is not possible. As the sole sovereign of law, state will not propagate the existence or the emergence of alternative powers that would challenge its control; rather it will oppress them in order to guarantee its total control over the society. The first examples of this has been seen in the imperial states which through their centralized governments used customary standards common in the society and the holy law such as Islam or Hindu sacred law, not only to regulate the social interactions of everyday life but also to legitimate the state's sovereignty by basing the dominant ideology on such sacred law. Although these can be considered as the prototypes of a legal framework towards structuring state-civil society relationship, these legal systems are one-sided, hence cannot establish a balance of power among different social actors.

The narrower and most significant concept of law in the context of state-civil society relationship is law as a legal order, as a legal system. The existence of such a legal system is essential condition for the existence and functioning of a civil society. Certain characteristics of legal order are that it is public and positive, general and most importantly autonomous (Unger 1976: 52). Not only that it is a written set of rules that regulate social relations and that it is enforced by legal institutions, but also a legal order aims to reach all individuals in the society. Most specifically it is the autonomy of law that has a determining power over the functioning of civil society. Knowing that civil society, through its non-governmental organizations and publicized activities balances the power and control of the state over the society; one also has to realize that law without any autonomy may only serve the purpose of legitimating state's total power and control over the society. Therefore only law that is autonomous from state's

jurisprudence, state's dominant ideology -whether the political culture that the regime entails or the political objectives of the ruling class-, and state's physical control, will allow the representation of individual interests through civil society. It is important for the mutual consent between the state and the society that law as an arbiter should be impartial in settling down disputes, or simply establishing a peaceful coexistence.

Although Unger discusses several aspects of this autonomy he also states that these aspects whether methodological, institutional or occupational are all interdependent (Unger 1976: 53). More clearly the autonomy of lawmaking activity is not meaningful when there is no autonomy in its application by legal institutions. Autonomy has to be applied at all levels and all aspects of a legal order, theoretically, practically, temporally and spatially. Given the fact that state is the ultimate lawmaker basically in the form of constitutional law, the total autonomy of law is impossible. The public private division in economics where market, independent of the state is able to determine certain economic outcomes is simply impossible in the case of law, where the state is inevitably responsible for the persistence of the legal order. This is a moment where politics intervene in the sphere of law, because the ongoing political system determines to what extent the state is involved in law and legal action; therefore to what extent the involvement of the state hinders the autonomy of law and therefore the nature and functioning of a civil society. It will be clearer when one looks at the available cases in which the involvement of the state in different political models resulted in different forms of civil society. It seems more relevant to look at the extreme cases of Eastern Europe and Western Europe respectively, where in the former the totalitarian regimes impeded the existence of civil society let alone its functioning, and the latter carried the ideal of a fully autonomous legal order in which possibilities of representation of individual interests were promoted to the full extent. Finally, the welfare state in its intermediate position with respect to state control will provide a more moderate take towards the state's involvement in the legal order.

4. COMPARATIVE ANALYSIS OF STATE-CIVIL SOCIETY DISTINCTION UNDER TOTALITARIAN, LIBERAL AND WELFARE STATE SYSTEMS

4.1. Civil Society under Totalitarian Rule

The first extreme case is that of totalitarianism, more specifically seen in the case of former communist countries of Eastern Europe. The state-civil society relationship under totalitarian regimes is very clear-cut, since there is no civil society. State has total control in all spheres of life, whether economic, cultural or legal. "The polymorphous party' is the sole autonomous organization in a system in which all other institutions of state and society are subordinate." (Rupnik 1988: 275). State holds in its hands not only legitimate means of violence but also the whole of the legal system which regulates the state-society relationship. Therefore the individual in the society is absolutely alienated from

the right to seek justice, or to demand an interest vis-à-vis the state; because for the totalitarian system, “The goal is to create ‘complicity’ with the system and to smash the individual as the ‘last step in the subjugation of civil society.’”(Rupnik 1988: 275). State creates cultural unity through means of education, telecommunications, or even art under the totalitarian rule, as there is not an alternative institutionalization in the private realm. State uses every possible means to control the society and under such circumstances the lack of civil society is due not only to the lack of legal grounds for it to function but also to the lack of a conscious and voluntary solidarity among the individuals. Another very important aspect through which state pursues its totalitarian control is that of employment, because the state is the “sole employer of labor” it is not very likely that individual demands will gain any rewards for its pursuers (Rupnik 1988: 276); although the Solidarity movement in Poland is a very challenging example that illustrates the potential of civil society in these countries (Pelczynski 1988: 361).

Following the trend of revisionism that started in Eastern European countries in 1956 as a reaction to Stalinism, Solidarity movement in Poland started out as a trade union movement where workers expressed their demands from the state. By both Eastern and Western European scholars, it was considered to be an intellectual movement that signified the rebirth of civil society in Eastern Europe. Though it was quite an exceptional case depending on the impact of revisionism and de-Stalinization on totalitarianism in Poland it could not be generalized when considering strictly totalitarian systems elsewhere.

More than the impossibility of either an autonomous legal system or a civil society under totalitarian systems, the process of Westernization, democratization and the crawling of civil society in former communist countries today is a point of interest. First of all the pace of this change is important in order not to create adverse effects in the society. This is one area where legal reform becomes important. Social change in this context has to be accompanied by legal change at a complimentary pace. Also, the nature of the change is also important, for which we have to turn to our principal equation that civil society is not possible without an autonomous legal system. Establishment of a legal order should be freed from the controversies of the political arena. Václav Havel’s concept of anti-political politics is relevant in the search of an alternative way of dealing with the remnants of totalitarianism in Eastern Europe today. This will help not only in establishing a retrospective understanding of what was totalitarianism in Eastern Europe but also in overcoming the prevalent image of politics. Through anti-political politics, Havel proposes to see politics “not as the technology of power and manipulation, of cybernetic rule over humans or as the art of the useful, but politics as one of the ways of seeking and achieving meaningful lives, of protecting them and serving them.” (Havel 1988: 397). Although it may sound way too idealistic or extremely naive, this proposal may prove valid in the future, even when such practice is hindered by corruption and black-market in Eastern Europe. There’s truth in Hirst’s reference to Havel as a “political romantic”, because Havel rejects Western parliamentary democracy as

an alternative in the post-communist era and prefers instead to refer to an imaginary alternative of “social self-organization” for the “independent life of society” (Havel 1987:119 quoted in Hirst 1997: 164). Western parliamentary democracy has its pros and cons in both theoretical and practical terms as well as in terms of its feasibility in Eastern Europe today. Whether it is an alternative or not is another question and it does not alter the strength of Havel’s critique of totalitarianism.

4.2. Legal Framework of State- Civil Society Relationship in the West

State and civil society relationship has a certain history in Western societies. In a more general understanding the Western parliamentary democracy as a system of governance represents the second model in this paper, which not only highlights the Western experience but also displays to what extent and of what kind of a nature it could be an alternative to totalitarianism in the post-communist era of Eastern Europe. However under more specific terms, ideological distinctions within the Western experience, with that of a more liberal creed vis-à-vis a conservative one will clarify the benefits and obstacles within the Western experience.

The liberal experience of state society distinction is based on the lessening, minimal involvement of the state and provision of legal unity under the rule of law. In classical liberalism state stands for public and political spheres and its basic role is to protect private property and individual rights, which are the necessary and sufficient conditions of a market economy. State as the sole actor of the public sphere functions through a representative government and rule of law, where law represents general norms and is applicable to all. Private sphere on the other hand is of individual interaction through contracts and market exchange (Hirst 1997: 116). The minimalist tendency of state’s involvement indicates a greater space for civil society actions. It is a significant intersection point that both liberal state and civil society promote individualism, and this accordance between state and civil society is reflected in the legal order as well. Provision of legal unity through an almost fully autonomous legal order also enables maximum representation of individual interest, that is to say, more pluralism. The ideal liberal state is one where there is a totally autonomous body of law. How much of this ideal is realized may be derived from the prevalence of the liberal state -unlike a revolutionary collapse of the totalitarian systems-, however a much more challenging explanation comes through the transformation of power relations and control mechanisms over the society.

As the state leaves power and control to the private sphere, those that are dominant in the market, multinational, transnational companies, and their managerial elite end up creating a bureaucratic monoculture under which not only the individual liberty is threatened but also the interests of the individual are shaped, controlled or imposed from above (Hirst 1997: 122-123). Therefore the political culture is replaced by a corporate culture; the bureaucratic elite of the

state leave the power to the managerial elite of the market. The minimal involvement of the state also entails autonomy of law from the state which also results in a greater variation in the representation of individual interest. The structure of the liberal model within which the roles of the state, market and law are defined is balanced in such a consistent way that they all point towards the individual as the center of the society. Such a structural balance may be more problematic to handle in the case of a conservative model which is the next point of discussion under the Western experience.

The conservative model, too, puts greater emphasis on the market rather than the state. However the elitist tendency of conservative ideology results in top-down and managerial governing in both public and private spheres (Hirst 1997: 137). The structural imbalance mostly depends on the domination of bureaucracies of public and private spheres over the society and therefore marginalization of the civil society in an environment where market serves as the arena in which gladiators of the state fight against the lions of the market. Also the centrality of the individual is taken over by the community, therefore community and its traditions, norms and values hinder the pluralism that may arise in this confrontation of public and private spheres.

The proposal by David Green of civic capitalism founded upon an independent body of laws and organized around stable traditional families, is an interesting model to represent conservative ideology. On the one hand he sees the legal sphere as captive of modern governments as an instrument of executive power; on the other hand by emphasizing the unifying role of traditional families he himself captures the civil society in the moral limits, substantive rationality of traditionalism (Hirst 1997: 136-7). Therefore Green is not strictly for a civil society legalized under autonomous law; in fact he prefers the traditional family to modern state when it comes to providing the legitimate bases for a civil society. The main distinction of conservatism from liberalism is that although market still dominates, bureaucracy of the state continues to keep up with that domination; it is not necessarily in a minimalist trend. Also, no matter how autonomous law is from the state, the tendency in the ideology is towards some substantive rationality provided by the traditional norms, values of family life, community activity, etc. With respect to the emphasis on communal ties and interests rather than those of the individual; rule of law is formalized around the substantive rationality, the custom that keep the community together.

4.3. The Welfare State Compromise

Similarly the welfare state intervenes in the spheres of market as well as of law in order to fulfill the demands of the community. It hinders the autonomy of law like the conservative state, though for much better purposes, considered in ideal terms.

The initial welfare state model empowers the state in a way that would regulate the market in order to prevent commodification of labor force and provide public

services at a maximum level. De-commodification as a characteristic process to the welfare state would strengthen the position of the worker vis-à-vis that of the employer (Esping -Andersen 1990: 22). Therefore the state as the regulator of social relations within the market would provide the workers an option of unemployment in order to prevent commodification of labor, enslavement of the individual in the market (Esping-Andersen 1990: 23). This would also entail an extensive provision of public services, therefore more taxation. As this domination of the state-society-market relationships by the state is evident, autonomy of law from the interventionist welfare state is neither as strictly impossible as in totalitarianism nor as feasible as in the liberal model. The domination of the state is also problematic for the civil society since the extensive provision of public services does not leave space for pursuing individual interests or choices, i.e. in the consumption patterns of provided services. Welfare state aims a perfectly orderly society where irrespectively everybody achieves the minimum standards of living. Welfare state does enable the individual to opt out of work (Esping-Andersen 1990: 23); however does not enable him to opt out of the system.

Scheuerman addresses the confrontation between the regulatory welfare state and the classical liberal rule of law. The tendencies he discusses among the liberals on formal law and the regulatory state all agree on the fact that the welfare state is incompatible with the rule of law that formal law would provide, therefore it is necessary to make a choice between the rule of law and greater social and economic equality (Scheuerman 1994: 204). He provides a theoretical background of the issue of rule of law and the state in reference to classical political thinkers. These thinkers such as Montesquieu, Bentham, Locke, Hegel etc. discuss the demand for “cogent, general (formal) law” in the rule of law ideal. That is to say, rules should be clearly formulated so that there would not be any gap for specific cases to be excluded. Also the generality of law means law should be applicable to all, without any particular categories to be treated differently. Generality of law would also protect individual rights vis-à-vis the state authorities by limiting the latter’s ability to exercise discriminatory or non-general standards (Scheuerman 1994: 196).

Still, when looking at the 20th century context, the discrepancy between the rule of law ideal and the interventionist welfare state becomes more problematic with the increasing deformed legal standards in the welfare state (Scheuerman 1994: 201). Habermas for example, attributes the possibility of welfare state to the existence of amorphous, deformed legal standards. Scheuerman states that although legal deformedness decreases legal predictability it will be supportive to expansion of democracy (Scheuerman 1994: 203). So the new discrepancy that 20th century societies face is between formal law (legal predictability) and democracy (individual representation).

In fact Scheuerman makes a clear-cut differentiation between the ideal of rule of law and the reality it stands for. The distinction supports his argument that the “either...or” situation between formal law and welfare state, or the necessity of

formal law for capitalism is not necessarily true. The existence of deformed law does not alter the existence of contemporary capitalism, nor of the welfare state. He concludes that the tension between the rule of law and the welfare state is a false assumption.

Legal delegalization is an important variable to define the state-civil society relationship in the welfare state context because it supports the expansion of democracy and therefore the representation of individual interests. However, if both formal and delegalized law exist together with a welfare state, the equation in which the former two stand in is not very clear. If delegalized law helps democracy expand, and cogent formal law protects citizens from irregular political interventions and limitations, it could be concluded that they work together. However it is not very clear how they regulate the juridical power of the welfare state since the state itself is highly regulatory and interventionist.

5. IMPACT OF GLOBAL TRANSFORMATIONS ON LEGAL REGULATION OF STATE-CIVIL SOCIETY RELATIONSHIP

Globalization generated significant transformations in state structures, political systems and the legal frameworks associated with state-civil society relationship. The dissolution of the Soviet model brought about a deeper questioning of totalitarian systems and pushed these countries to embrace democracy. With the end of the Cold War and the threat-led conceptions of international relations, more and more countries in the world leaned towards establishing institutions and legal systems towards liberal democracy.

In addition to the transformations in the political realm, greater integration of national markets into a global market, the weakening of territorial boundaries and the increasing efficiency of regional blocs created a more interdependent political economic environment. The move towards a liberal democracy in the political sphere is concurrently completed by a move towards neo-liberal economic policy. As capitalism perpetuates its overriding persistence, the harmonious relationship of capitalism and democracy suggests that liberal democracy is the only way out for a complementary political stability. Despite discussions of "radical democracy" that seeks to overcome the practical limitations of liberal democracy, there seems to be limited change in the institutional and practical backdrop of liberal democracy.

The aforementioned changes in integration of global markets and the diffusion of liberal democracy as the predominant political system held a direct impact for the global society. The developments in information and communication technologies enabled greater mobility for people around the world and intensified social interactions. What Castells conceptualizes as the network society began to determine the roles and statuses of individuals on a global scale, and led to the emergence of new identities and new interests that were organized into new social movements that operated on a global scale (Castells 1996). From a different vantage point, the global society is also conceptualized

as a risk society in which individuals hold different risk positions and abilities of risk aversion (Beck 1992).

The impact of these global transformations on the state-civil society relationship and the legal framework encircling it need to be analyzed on two analytical levels. These separate yet interrelated levels are the nation-state level and the global level. Considering the nation-state level, there are varying views on how the process of globalization challenges the nation-state, not only in terms of its territorial integrity or power and authority, but also in terms of its legitimacy in a continuously integrating world. While hyperglobalizers argue for the transformation of the nation-state to a merely administrative structure, skeptics of globalization insist that the nation-state remains intact. The in-between view of the transformationalists underlines the persistence of the institutional structure of the nation-state yet with new roles and responsibilities (Held et al, 1999). It is according to this view that the global challenges towards legal systems in nation-states be analyzed.

On a global level of analysis, there are a number of new structural elements that develop concomitantly and in an interrelated manner. First and foremost, greater global integration in both political and economic terms is institutionalized in several different structures. In addition, the emergence of new institutions together with older ones suggests a new distribution of authority. Second, the emergence of a global civil society, in which a variety of interests are conjoint into global social movements that connect individuals in remote geographies, indicates a need for a legal framework and an institutional structure to support it that operates beyond the realm of the nation-state. Finally there are the transformations in international law that complement the aforementioned developments.

While both levels of analysis are equally relevant for a coherent understanding of the contemporary challenges to the legal regulation of state civil society relationship, they also coexist in a symbiotic relationship. "Domestic and international politics are interwoven throughout the modern era: domestic politics has always to be understood against the background of international politics; and the former is often the source of the latter" (Held 1995:19). Held's well cited discussion on the transformation of the independent modern state into an actor within the interdependent context of the wider political framework of globalization generates a new agenda for democratic theory and practice. The capitalist expansion on a global scale challenges the nation-state bound liberal democracy in the political sphere. Especially with increasing interdependence of nation-states and greater integration in the global market democracy as a political systems needs to match these developments practically and institutionally and Held's two line of argument are democratic autonomy and cosmopolitan democracy (Held 1995: 249). Two legal transformations that will build a framework for these changes are cosmopolitan democratic law and democratic public law. While both legal concepts essentially focus on the democratic practice defined by law, they differ in the domain of practice they

focus on. Cosmopolitan democratic law as an international structure of law aims to regulate the relations between political and economic actors on a global scale. "By cosmopolitan democratic law I mean, in the first instance, a democratic public law entrenched within and across borders" (Held 1995: 227). On the other hand, democratic public law aims to open up new participatory channels for the public. "Rethinking the relationship between democracy, the state and constitutionality requires conceiving the power and authority which comprise the constitutive features of a public regulatory agent, whether a person or body of persons, as derivative of, and justified in relation to, a system of empowering rights and obligations, that is, democratic public law" (Held 1995: 157).

While Held's conceptualization of the legal framework of the emerging global order is impressive in its theoretical basis and comprehensive in its outreach, it has certain limitations due to its disregard towards increasing particularism in global society, emphasis on multiculturalism and the diversity of political, economic and social structures. Therefore while efforts of establishing a cosmopolitan democracy are justified through their good intentions, they are not enough to fulfill the need for legal pluralism due to aforementioned global diversity. Santos and Rodriguez-Garavito introduce a discussion of subaltern cosmopolitan legality in order to overcome the universalistic limitations of globalization. As they focus on "globalization from below" they cover a wide range of issues from the subaltern, the counter-hegemonic aspects of globalization. Accordingly, they seek to establish a study of law that embraces the counter-hegemonic movements, resistance of those at the disadvantaged, excluded ends of the global society. "In line with its analytical focus on detailed case studies of counter-hegemonic legal forms and its goal of furthering the potential of the latter, subaltern cosmopolitanism calls for a conception of the legal field suitable for reconnecting law and politics and reimagining legal institutions from below" (Santos and Rodriguez-Garavito 2005: 15). As a critical theorist of law, Santos underlines that neo-liberal globalization is more tolerant of non-threatening, more consensual groups and more hostile towards counter-hegemonic and resisting ones. Santos criticizes the mainstream understanding of law as the modern legal utopia, conceptualized as the state law regulating the society and foreseeing its development on scientific basis. While this modern legal utopia is inefficient in resolving the tensions between capitalism and democracy, subaltern cosmopolitan legality aims at this task as a political strategy that benefits from not only nation-state law but also local, international or even transnational law. Also, legal knowledge is not simply professional, certified knowledge but also that of the individuals involved in various subaltern movements. Finally legal mobilization under the modern legal utopia is replaced by political mobilization with the instrumental use of a variety of political tools (Santos 2005).

Frankfurt School analysis of critical theory requires special attention in discussing the legal repercussions of globalization. Scheuerman provides an in-depth review of the Frankfurt school interpretation, with special emphasis on

Franz L. Neumann as the first-generation and Jürgen Habermas as the second-generation representative of the Frankfurt School. While both scholars focus on the legal responses to globalization, it is with the later works of Habermas that Frankfurt School held a definitive response to the challenges of globalization. A thorough review of the works of Habermas and his contribution to political and legal theory is beyond the scope of this paper. The concept of deliberative democracy is directly related to the state- civil society relationship and the legal aspects of it, which also represents Habermas's take on public space, civil society and law. According to Scheuerman, "Habermas develops what he describes as a "two-track" model of representative democracy, in which an 'organized public' (consisting of legislative bodies and other formal political institutions) functions alongside an 'unorganized public', a broader civil society in which citizens rely on a panoply of devices (including political associations and the mass media) to take part in freewheeling political debate and exchange" (Scheuerman 2008: 90). This two track model, in which the organized and the unorganized bodies of the public confront each other in public space, needs a complementary framework for a smooth functioning democratic system. Habermas underlines the importance of rule of law for the sustenance of representative democracy. "Crucial to *Between Facts and Norms* is the simple idea that law lies at the very intersection between communicative and administrative power; one of the most important implications of this insight is that the fate of representative democracy and the rule of law are intimately linked" (Scheuerman 2008: 91).

How should one benefit from these alternative perspectives in analyzing the role of law in the contemporary political economic context? Globalization brought about a number of challenges to liberal democratic systems. This released a lively discussion on alternative ways to improve the functioning of democratic mechanisms. The idea of radical democracy initially introduced by Laclau and Mouffe generated several alternative democratic practices (Laclau and Mouffe 1985). However, beyond the theoretical developments and practical challenges in democracy, the triangular relationship between the state, civil society and law remains intact. The centrality of the rule of law is in fact further reinforced against the global challenges.

6. CONCLUSION

This paper set out to evaluate the impact of globalization on the legal framework that regulates the state-civil society relationship. Along this pursuit, the article makes a brief introduction to the concept of civil society as a non-state entity and presents the legal backdrop of the state-civil society relationship. Next, civil society structures in totalitarian, liberal and welfare state systems are evaluated as the historical precedent of globalization. Finally, global transformations in social, political and economic spheres are scrutinized in terms of their impact on the nation-state and the legal system it represents.

A number of conclusions are worth reiterating. First and foremost, the distinct relationship of state and civil society can be sustained only with the maturing of a legal system. The comparative analysis of totalitarian, liberal and welfare state systems underlines the centrality of an autonomous legal system in establishing a balance of power and a division of public sphere between the state and civil society. Finally, political, institutional and legal transformations generated by globalization not only changed the nation-state context but also the international one, especially with new social movements that create a network for global civil society. Most importantly the increasing interrelatedness of the national and global contexts calls for a new distribution of authority between the institutions of the nation-state and the global system, hence a reassessment of the autonomy of national legal systems.

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