

5. Back to the future? The return of sovereignty and the principle of non-intervention in the internal affairs of the states in Latin America's "radical constitutionalism"

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I. INTRODUCTION

One of the most innovative features of Latin America's constitutional law in the past three decades has been its embrace – at least at the discursive level – of International Human Rights Law, a trend that coincided with the processes of democratic transition and consolidation that took place in most countries of the region, and which has translated into the unprecedented role played by Inter-American Human Rights Law in domestic constitutional law.

That said, in recent years the relationship between the Inter-American Human Rights System and national constitutional law has been under stress in the set of countries that have adopted what in a previous work I call 'Latin America's radical constitutionalism'.¹

After summarizing the main features of "radical constitutionalism", in this chapter I analyze an important element of the latter which has been ignored by the literature, that is, the recovery by such regimes of the so-called principles of "*self determination of the peoples*" and "*non-interference with the internal affairs of sovereign states*".

In spite of having been introduced to International Law by Latin American jurists, these two principles had been largely forgotten in recent decades, due to the impact of the international human rights movement in the region. The new life brought to the principles of "self-determination"

¹ Javier Couso, Alexandra Huneus and Rachel Sieder (eds) (2010), *Legal Cultures and Political Activism in Latin America* (Cambridge: Cambridge University Press).

and “non-interference” has – in turn – created significant tensions between Latin America’s radical constitutional states and International Human Rights Law, including the Inter-American Human Rights System.

Given this context, I suggest that Venezuela’s denunciation of the American Convention on Human Rights (2012) should not be seen as a whimsical act, but instead as a measure coherent with the main features of radical constitutionalism. If this is correct, one should expect that in the future other “Bolivarian” states (such as Ecuador or Bolivia) could follow Venezuela’s path.

Finally, I argue that the illiberal turn taken by the United States’ constitutional law since 11 September 2001,² expressed in the toleration of the systematic violations of human rights perpetrated by the government (such as the denial of habeas corpus to the prisoners at Guantanamo Bay, the practice of torture, and the “target killings” of citizens without judicial oversight) has been used by the radical democracies of Latin America as an excuse to attack the Inter-American Human Rights System.³

II. THE END OF THE HEGEMONY OF LIBERAL CONSTITUTIONALISM IN LATIN AMERICA

Halfway through the 1990s, the panorama of constitutionalism in Latin America was relatively simple, at least from a theoretical point of view. With the inauguration (or recovery) of democracy, and the consolidation of human rights discourse, liberal constitutionalism appeared to be “*the only game in town*”. In fact, both the right and the left in Latin America seemed to agree that democracy and constitutional rule of law were inseparable.⁴ This regional consensus on liberal constitutionalism was part of a global one around what Alec Stone Sweet has called “*higher-law constitutionalism*”.⁵

² Jeremy Waldron (2010), *Torture, Terror, and Trade-Offs: Philosophy for the White House* (Oxford: Oxford University Press).

³ David Cole, “Must counterterrorism cancel democracy?”, in *The New York Review of Books*. Accessed 28 December 2015 at <http://www.nybooks.com/articles/2015/01/08/must-counterterrorism-cancel-democracy/>.

⁴ See Pilar Domingo (2012), “El estado de derecho, la reforma judicial y la justicia de transición en América Latina”, in Vesselin Popovski and Monica Serrano, *Justicia transicional y consolidación democrática: la comparación de la eficacia de los mecanismos de rendición de cuentas en Europa del Este y América Latina* (Tokyo: United Nations University).

⁵ According to Stone Sweet, this approach to constitutional law assumes the notion of constitutional supremacy and of justiciable rights. See Alec Stone Sweet

Another phenomenon that aroused a great deal of consensus in Latin America was the relevance of International Human Rights Law in the domestic sphere, including the notion that national sovereignty should defer to the decisions of international tribunals created by human rights treaties.⁶

The combination of the two trends just noted generated a remarkable convergence in that part of the Latin American constitutions that recognize fundamental rights (as opposed to what Roberto Gargarella calls the “engine room of the Constitution”, where no such convergence exists).⁷

An example of the influence achieved by International Human Rights Law in Latin American constitutionalism is the fact that – in many states of the region – high courts closely follow the decisions of international human rights courts, especially those of the Inter-American Court of Human Rights.⁸

All the above has led to significant changes in the legal culture of jurists, judges, and even ordinary people,⁹ a process which has weakened the separation between the different “legal traditions” of the continent,¹⁰ particularly in the field of public law. This explains the fact that in many Latin American countries “rights talk” is as prevalent as it is in the United States.¹¹

(2000), *Governing with Judges: Constitutional Politics in Europe* (Oxford: Oxford University Press), p. 7.

⁶ See Daphne Barak-Erez (2004), “The international law of human rights and constitutional law: A case study of an expanding dialogue”, *International Journal of Constitutional Law*, 2 (4), 611–32, and Jean Cohen (2012), *Globalization and Sovereignty: Rethinking Legality, Legitimacy and Constitutionalism* (Cambridge: Cambridge University Press).

⁷ See Roberto Gargarella (2014), *La sala de máquinas de la Constitución: dos siglos de constitucionalismo en América Latina (1810–2010)* (Buenos Aires: Katz).

⁸ See Humberto Nogueira Alcalá (2012), “El uso del derecho convencional internacional de los derechos humanos en la jurisprudencia del Tribunal Constitucional chileno en el periodo 2006–2010”, *Revista Chilena de Derecho*, 39 (1), 149–97.

⁹ See Diego López Medina (2004), *Teoría impura del derecho: la transformación de la cultura jurídica latinoamericana* (Bogotá: Legis-Universidad de los Andes and Universidad Nacional de Colombia); Javier Couso (2014), “Las democracias radicales y el ‘nuevo constitucionalismo latinoamericano’”, *Seminario en Latinoamérica de Teoría Constitucional y Política*, Yale Law School; and Huneus and Sieder (2010).

¹⁰ See John Henry Merryman (2007), *The Civil Law Tradition: An Introduction to the Legal Systems of Europe and Latin America*, 3rd edn (Redwood City, CA: Stanford University Press).

¹¹ See Catalina Smulovitz (2010), “Judicialization in Argentina: Legal culture or opportunities and support structures?”, in Couso, Huneus and Sieder (n 1), at 234–53.

III. THE CHALLENGE OF “RADICAL CONSTITUTIONALISM”

Even though the legitimacy of liberal constitutionalism, judicial review and the role of International Human Rights Law in domestic constitutional law remains strong in most of Latin America, the consensus on liberal constitutionalism has lost momentum since the introduction of radical constitutionalism in Venezuela, Ecuador, Bolivia and Nicaragua.¹²

This approach to constitutional law seeks to unify state power, in order to confront multinational corporations and other forms of private power which radical constitutionalism blames for the persistency of socio-economic inequality in the region. According to this perspective, the influence of transnational capital in Latin America is so strong that only a united front of the executive, legislative and judicial branches can effectively challenge the former.

From a structural point of view, the new constitutions of the so-called “Bolivarian Republics” include the following features: (a) the weakening of the principle of separation of powers; (b) the strengthening of the power of the executive branch; and, (c) the elimination of bicameralism and its replacement by a single legislative body, which has facilitated the control of the executive and legislative branches by the same party.

In addition to the above-mentioned features, in recent years Bolivarian constitutionalism has introduced the indefinite re-election of the President of the Republic, with the explicit goal of ensuring the continuity of the “revolutionary process”. Thus, for example, in March 2014 the President of Ecuador, Rafael Correa, defended the indefinite re-election of the head of the executive branch on the grounds that “*I have a responsibility to ensure that this process is irreversible*”.¹³ A few months later, in May 2014, Correa insisted on this point, asserting that “*we must continue to adjust our institutions to reality, and not give way to the return of the elites*”.¹⁴

¹² Roberto Viciano and Rubén Martínez Dalmau (2010), “Aspectos generales del nuevo constitucionalismo latinoamericano”, in *El nuevo constitucionalismo en América Latina* (Quito: Corte Constitucional del Ecuador).

¹³ The full quote is: “*Personally, I think it my duty to review the decision of banning reelection, because I have a responsibility to ensure that this process is irreversible.*” The media outlet that reported these statements quoted Correa as saying that “*the country should start a serious debate on the prohibition established by the Constitution of the Republic of the indefinite reelection of elected dignitaries*”. *El Universo* (2014), “Rafael Correa medita una posible reelección presidencial”. Accessed 9 September 2017 at <http://www.eluniverso.com/noticias/2014/03/02/nota/2266336/rafael-medita-possible-reeleccion-presidencial>.

¹⁴ *El Universo* (2014), “Rafael Correa apoya enmienda de la Constitución para la

The emphasis on making sure that the processes of radical change underway are “irreversible” is, in my view, the key to understanding the nature of Latin America’s radical constitutionalism. Indeed, the introduction of the indefinite re-election of the President to guarantee the continuity of the revolutionary process suggests that, instead of providing an institutional framework aimed at allowing different ideological sectors to compete for the control of government, radical constitutionalism seeks to perpetuate the control of the latter by a specific political sector. In this conception, the Constitution is not conceived as a limit on the power of the state, but as a means of strengthening a specific ideological project, in a manner analogous to how the dictatorship of Augusto Pinochet used the Chilean Constitution of 1980 to try to perpetuate a – very different – political, social and economic model.

Even though the use of the Constitution to make a revolutionary process irreversible suggests a deeply flawed way to understand the role of constitutional law, such a position has an internal logic. For those who truly believe that the processes currently underway in Venezuela, Ecuador, Bolivia and Nicaragua represent an unprecedented emancipatory experience, the notion of allowing “counter-revolutionary” parties to gain access to the Executive branch is simply absurd.

IV. RADICAL CONSTITUTIONALISM AND THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

While the characteristics of Latin America’s radical constitutionalism outlined in the previous sections are relatively well known to observers of constitutionalism in the region, the tension between the former and International Human Rights Law has received almost no scholarly attention.

Of course, most analysts of Latin American constitutional politics know about the decision of Venezuela to denounce the American Convention on Human Rights (in September of 2012) but, what is less known, is that that action was not a whimsical one, but instead one that was aligned with the particular way in which radical constitutionalism conceptualizes its relationship with International Human Rights Law.

This is apparent in the official memorandum through which Venezuela notified the denunciation of the American Convention on Human Rights.

reelección indefinida”. Accessed 9 September 2017 at <http://www.eluniverso.com/noticias/2014/05/24/nota/3005426/rafael-correa-apoya-iniciativa-legislativa-reeleccion>.

The document, signed by the then Minister of Foreign Affairs of Venezuela, Nicolás Maduro, includes this significant passage:

(. . .) In recent years, the practice of the organs governed by the Pact of San José, both the Inter-American Commission and the Inter-American Court of Human Rights have moved away from the sacred principles that they are called to protect, instead becoming a political weapon aimed at undermining the stability of certain governments, especially that of our country, adopting a line of action openly interfering with the internal affairs of our government, thus violating and ignoring basic and essential principles widely recognized in International Law, such as the principle of respect for state sovereignty and the principle of self-determination of peoples (. . .).¹⁵

Notice how the main reason given by Venezuela to denounce the American Convention on Human Rights was the alleged violation by the organs of the Inter-American Human Rights System of three principles of International Law that – until a few decades ago – were extremely important to the Latin American states, but that had been forgotten in recent times: the respect for state sovereignty, the self-determination of sovereign peoples, and the non-interference with the internal affairs of states.¹⁶

Furthermore, Venezuela's official memorandum exhibits a strong rejection of the notion of the subordination of domestic constitutional law to International Human Rights Law:

The (Inter-American Human Rights System) can not seek to exclude, ignore, or replace the constitutional order of the Party-States, as the international protection that derives from it is adjunct or complementary to that provided by the domestic law of the American States. However, repeated decisions by the Inter-American Commission and the Court have violated the clauses and principles of the Constitution of the Bolivarian Republic of Venezuela, as stated by the Constitutional Chamber of the Supreme Court of our State (. . .).¹⁷

The reader will note the distance that this passage exhibits from the way most Latin American constitutional scholars currently understand the relationship between domestic constitutional law and International

¹⁵ Bolivarian Republic of Venezuela, Ministry of Popular Power for Foreign Relations (2012), "Carta de denuncia a la Convención Americana sobre Derechos Humanos por parte de Venezuela ante la OEA". Accessed 9 September 2017 at <http://es.scribd.com/doc/105813775/Carta-de-denuncia-a-la-Convencion-Americana-sobre-Derechos-Humanos-por-parte-de-Venezuela-ante-la-OEA>.

¹⁶ "The Bolivarian Republic of Venezuela will continue to promote respect for the most sacred principles of International Law, such as independence, non-interference in internal affairs, sovereignty and the self-determination of peoples (. . .)". *Ibid.*, at 9.

¹⁷ *Ibid.*, at 2–3.

Human Rights Law. Indeed, at a time when most of the constitutionalists of the region adhere to the notion that there is a “*block of constitutionality*”¹⁸ composed of a combination of national constitutional law and International Human Rights Law, Bolivarian constitutionalism asserts the pre-eminence of national constitutional law.

Given the importance of the principle of non-interference in the internal affairs of states in Venezuela’s decision to abandon the Inter-American Human Rights System, in the next section I discuss the crucial role that the former had during much of the twentieth century in Latin America.

V. THE ORIGIN AND USES OF THE PRINCIPLE OF NON-INTERFERENCE IN THE INTERNAL AFFAIRS OF SOVEREIGN STATES

In the last section, we saw how Venezuela invoked the principles of respect for national sovereignty, of the self-determination of peoples, and of the non-interference with the internal affairs of states to justify its denunciation of the American Convention on Human Rights. Venezuela’s emphasis on these traditional principles of International Law had a very specific purpose: to blame the United States for its abandonment of the Inter-American System.

This accusation, which had already been hinted by Hugo Chavez in 2010,¹⁹ was explicitly affirmed by the then President Nicolás Maduro, once Venezuela materialized its denunciation of the American Human Rights Convention (in September 2013). According to press reports:

The President of Venezuela, Nicolás Maduro, affirmed that the Inter-American Human Rights System was “captured” by the United States as a way [to] justify the withdrawal of his country (from the Inter-American Human Rights

¹⁸ Rodrigo Uprimny (2001), “El bloque de constitucionalidad en Colombia: un análisis jurisprudencial y un ensayo de sistematización doctrinal”, in Daniel O’Donnell, Inés Margarita Uprimny and Alejandro Villa (eds), *Compilación de jurisprudencia y doctrina nacional e internacional* (Bogotá: Oficina del Alto Comisionado de Naciones Unidas para los Derechos Humanos).

¹⁹ Hugo Chavez said on that occasion of the Inter-American Human Rights System the following: “*It’s a mafia (. . .) Institutions like this nefarious Inter-American Commission on Human Rights do not defend human rights. It is a politicized body, used by the Empire to attack governments like Venezuela’s.*” See *El País* (2012), “Venezuela abandona el sistema de derechos humanos interamericano”. Accessed 9 September at http://internacional.elpais.com/internacional/2013/09/10/actualidad/1378780644_769381.html.

System). “Time has run out for the Inter-American Commission of Human Rights Committee (. . .); is captured by the interests of the State Department of the United States” Maduro said. He said the Inter-American System of Human Rights, including the Commission and the Court, “drifted into an instrument of persecution against the progressive governments that started” with the arrival of Hugo Chavez to power in Venezuela, in 1999.²⁰

The link established by Venezuela between, on the one hand, the importance of national sovereignty and the principle of non-interference in the internal affairs of states and, on the other, the hostile action against his government supposedly perpetrated by the United States, appealed to a long history of disagreements between various Latin American states and their northern neighbor, a history which was in fact very present in the origins of the consecration of the principle of non-interference in the internal affairs of states. Indeed, even though this principle was eventually enshrined in the UN Charter (1945),²¹ it had been promoted and adopted earlier by the Latin American states, in order to contain what was considered to be the “imperial” tendencies of the United States.

The notion that the introduction of the principle of non-intervention with the internal affairs of sovereign states was in fact a Latin American response to a long “tradition” of both peaceful and violent interventions by the United States in the region appeared first in a text published in 1962 by Alejandro Alvarez, one of the most influential International Law scholars of the first half of the twentieth century. According to this Chilean jurist:

In classical International Law, a state, especially a great power, can intervene, in certain cases, in the affairs of another state not only by peaceful means, but even by violent means. (. . .) The Latin American states, from their independence, have formally outlawed and condemned this kind of intervention in the Pan American Conferences, which proclaimed the principle of non-intervention, in order to condemn the policy pursued by the United States on its continent’s neighbors.²²

²⁰ “Today the withdrawal from the American Convention on Human Rights takes shape. Venezuela accuses the Commission of being an appendix of the United States.” *La Nación* (2013), “Venezuela acusa a la CIDH de ser apéndice de Estados Unidos”. Accessed 9 September at http://www.nacion.com/mundo/latinoamerica/Venezuela-CIDH-apendice-EE-UU_0_1365263467.html.

²¹ Article 2, para 7, states: “Nothing in the present Charter shall authorize the United Nations to intervene in matters within the domestic jurisdiction of any state.” Quoted by Carpizo (2003), at 251.

²² Alejandro Álvarez (1962), *El nuevo derecho internacional en sus relaciones con la vida real de los pueblos* (Santiago: Editorial Jurídica de Chile).

Notice how Alvarez, a liberal jurist, explicitly links the interest expressed by the Latin American states to introduce the principle of non-intervention with the internal affairs of other states as a way to end the traditional United States' policy of intervention in its southern neighbors.

In another passage of the work under review, Alvarez recalled how (at the Seventh Pan American Conference), the United States finally acquiesced to support international condemnation of intervention in the affairs of other states. In his words:

The head of the delegation of the United States stated that there had been a radical change in the policy of the new administration of his country, President Roosevelt; they pointed to the latter's message, in which he opposed any attempt of hegemony (by his country) and supported instead the policy of the "good neighbor". This statement, welcomed with joy by the Latin American states, has reinforced the sense of continental solidarity, until then hindered by the political hegemony of the United States (. . .).²³

The principle of non-intervention with the internal affairs of states would be eventually "rescued" from oblivion forty years after Álvarez's defense of it by another prominent Latin American jurist, the Mexican Jorge Carpizo who, reacting to the unwarranted military intervention perpetrated by the United States in Iraq (in 2003) "resuscitated" the principle of non-interference with the internal affairs of sovereign states, noting in passing that the latter had been a key contribution to International Law by Latin America.²⁴ In his words:

The intervention is a non-consensual interference of one or more States in the domestic or external affairs of others, violating the sovereignty and independence of the state affected. The procedure can be performed by using force or through non-violent means; it can be carried out directly or indirectly (through a third country), openly or clandestinely, through espionage services, within the territory of the state or by trying to interfere with the help of its diplomats. The intervening state is more powerful than the one suffering interference, which it is unable, in turn, to meddle in the affairs of the aggressor (. . .). It is then clear that intervention is a symptom of the inequality of the international order, and constitutes an illegitimate act of force, . . .²⁵

After this conceptual and critical analysis of the intervention of strong states on weak states, and after the emphasis he makes of intervention

²³ Ibid., at 252.

²⁴ Carpizo recalls with satisfaction: "*This principle is a Latin American contribution to International Law. These ideas were incorporated in various articles of the UN Charter.*" Ibid., at 253.

²⁵ Ibid., at 250.

in the internal affairs of the states as a “symptom” of the inequality of the international order, Carpizo adopts a more direct tone, affirming that the region where he comes from (Latin America) has always been a strong advocate of the principle of non-intervention in internal affairs *precisely because it has been the victim of a history of interventions*. In his words:

Latin America, especially Mexico, the Caribbean and Central America, who have suffered military invasions and all kinds of other forms of interventions, developed the principle of non-intervention and then worked to obtain the legal recognition of the concept in (international) treaties.²⁶

That said, Carpizo recounts how the United States initially refused to accept the legal recognition of the principle of non-interference in the internal affairs of sovereign states. According to him, the United States blocked the legal adoption of this principle at the Havana Conference of 1928, but eventually it was forced to accept it five years later (in the Montevideo Conference of 1933), due to the explosive situation prompted by the emergence of the Nazi and Fascist regimes in Europe, which made it imperative for the U.S. to cement a close unity with the Latin American states.

The new position adopted by the United States was later ratified and deepened at the Ninth Inter-American Conference of Bogotá, in 1948 (which created the Organization of the American States). At this international meeting, a treaty was introduced which included the following norm: “No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other.”

Later in the piece we are analyzing, Carpizo enthusiastically defends the virtues of sovereignty, self-determination and non-interference in the internal affairs of other states, even in the era of globalization, stating that, in his opinion:

Sovereignty is and remains an essential feature of national and International Law, both at the service of human beings, their dignity and their fundamental rights, and peace among nations (. . .) From the notion of sovereignty (. . .) and the fact that all states have equal rights, derives the concept of self-determination (. . .) The anti-colonial self-determination is primarily a legal and political instrument, which makes direct reference to the right of independence of peoples previously living under a colonial state.²⁷

²⁶ Ibid., at 252.

²⁷ Ibid., at 256.

At this point, it is useful to remember that neither Alejandro Álvarez nor Jorge Carpizo were radical jurists, but, on the contrary, convinced liberals. It is also important to note that, although Álvarez wrote up until the mid-twentieth century, while Carpizo did so until the twenty-first century, both based their defense of the principles of self-determination and non-interference in internal affairs of states in light of the experience of intervention by the United States which many Latin American countries had suffered in the past.

At any rate, precisely because of the strong commitment to the values of the rule of law and liberal constitutionalism, both Álvarez and Carpizo acknowledged that their appreciation of the principle of non-intervention in the internal affairs of the states must be balanced with the principle of respect for the human rights of individuals. In the words of Carpizo:

. . . A government cannot invoke the idea of sovereignty to massacre its people (. . .) International Law cannot be complicit with massive human rights violations committed by the state; but to use humanitarian intervention as an excuse to interference (represents) a flagrant violation of International Law. You cannot attack the commission of a crime by committing another crimes. You cannot allow humanitarian assistance to result in the imposition of your power to other countries. It is not legally possible to let (humanitarian concerns) to become a new form of imperialism (. . .) It is not possible that humanitarian assistance destroy the principles of self-determination and non-intervention. It is not permissible for a few countries to decide, by themselves, that it is time to support a state and, under this pretext, invade it . . .²⁸

VI. THE USE OF THE PRINCIPLE OF NON-INTERVENTION BY LATIN AMERICA'S RADICAL CONSTITUTIONALISM IN ITS ATTACK ON THE LEGITIMACY OF THE INTER-AMERICAN HUMAN RIGHTS SYSTEM

The brief summary of the origins of the principles of self-determination of the peoples and of non-intervention in the internal affairs of states provided above reveals that they represent something of a Latin American "tradition". After going into oblivion for some decades (during the period of transition to democracy, between 1980 to 2010) they were rediscovered by the Bolivarian states in order to attack what they perceived as an abuse of the Inter-American Human Rights System by the United States (in order to destabilize their revolutionary projects).

²⁸ *Ibid.*, at 14.

The problem with this move is that – in doing so – the Bolivarian leaders violated one of the pillars of contemporary constitutionalism: the notion that the principle of non-intervention in the internal affairs of sovereign states cannot be invoked in cases of gross human rights violations.

The recovery of the principle of non-intervention with the internal affairs of states we have described in this chapter can thus be explained both by the emphasis on popular sovereignty which characterizes the Bolivarian states and by the fact that the principle was originally introduced to oppose the history of illegitimate interventions perpetrated by the United States in various Latin American countries.

Additionally, there are two other elements that in my view have contributed to expose the Inter-American Human Rights System to the – no doubt, exaggerated – accusation that it has been used by the United States to attack the radical Latin American states, due to the former's ideological hostility to them.

The first element is the peculiar fact that precisely one of the few countries in the American continents which has yet to grant jurisdiction to the Inter-American Court of Human Rights (the United States) has nonetheless been allowed to appoint judges in the very body it does not recognize as having jurisdiction over it.²⁹ The second element is that the city where a key entity of the Inter-American Human Rights System sits (the Commission), is Washington, DC.

Looked at from a comparative perspective and, in fact, from a purely logical point of view, it is incomprehensible that a country that has consistently refused to give jurisdiction to the Inter-American Human Rights Court can, however, appoint judges and commissioners to the organs of the System, while also serving as the headquarters of one of the key actors.

While these last elements are problematic only from a symbolic point of view, it is undeniable that they have a neocolonial air, thus giving plausibility in the eyes of large segments of the Latin American region to the accusation raised by the Bolivarian leaders that the Inter-American Human Rights System has an ideological bias against the Bolivarian republics.

Given the above, it would be healthy for the Inter-American System of Human Rights that, until the United States finally grants jurisdiction to the Inter-American Human Rights Court, they stop nominating judges or commissioners to the System. Also, the latter would gain in legitimacy if it relocated the headquarters of the Inter-American Human Rights

²⁹ Such was the case of Thomas Buergenthal, who was President of the Inter-American Court of Human Rights in the period 1985–1987.

Commission to San José (Costa Rica) or to the capital of any of the countries of the region who are fully committed to the System from a legal standpoint.

VII. CONCLUSION

Any discussion of Latin American constitutionalism has to bear in mind that – due to the difficulties that most liberal democracies of the region continue to experience in trying to reduce gross socio-economic inequalities – liberal constitutional democracy is permanently threatened in its legitimacy. In fact, the consensus that prevailed in the 1990s on the “inevitability” of liberal constitutionalism was eventually challenged by the emergence of radical-democratic experiments which, in turn, have been accompanied by a constitutional discourse that directly conflicts with some key elements of liberal constitutionalism (such as the separation of powers, or the prohibition of indefinite re-election in presidential regimes).

In this chapter, I have analyzed a – still unexplored – feature of Latin America’s radical constitutionalism, namely its recovery of the so-called “*principle of non-interference with the internal affairs of sovereign states*”, a concept introduced into international law by the Latin American states in the first decades of the twentieth century, in an attempt to stop what – even liberal – jurists of the region considered to be the “imperial” tendencies of the United States.

The principle of non-interference with the internal affairs of sovereign states has been used in recent years by the Bolivarian Republics to attack what they perceive as a “neocolonial” use of the Inter-American Human Rights System by the United States, a country which, despite not having granted jurisdiction to the Inter-American Human Rights Court is, however, an important actor in the System, not just because the headquarters of the Inter-American Human Rights Commission are in Washington, DC, but because it has consistently managed to place judges and commissioners in the System.

These last facts, coupled with the illiberal turn that constitutionalism has taken in United States since 11 September 2001 (which is expressed in the constitutional indifference toward gross human rights violations, such as the lack of due process in Guantanamo Bay, the practice of torture, and the “target killings”), have offered Latin America’s radical democracies the perfect excuse to gradually walk away from the Inter-American Human Rights System.

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