

**“Towards an International Implementation of
Public Policies in Human Rights”**

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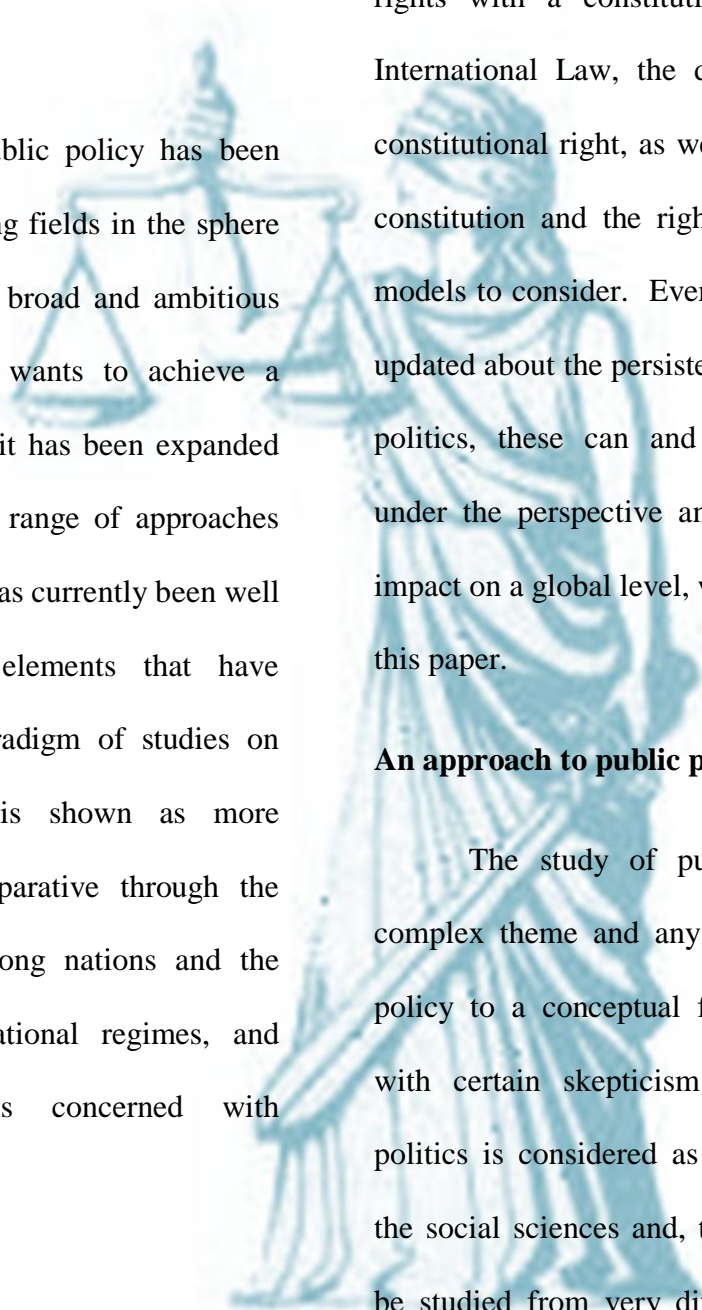
Abstract:

The research on public policy has been one of the fastest developing fields in the sphere of social sciences. It is a broad and ambitious research for anyone who wants to achieve a thorough synthesis though it has been expanded so as to include an ample range of approaches and of academic fields. It has currently been well established through the elements that have characterized it as the paradigm of studies on policies. Likewise, it is shown as more internationalized and comparative through the circulation of policies among nations and the importance of the international regimes, and international organizations concerned with national policies.

The need for an international implementation of a public policy on human rights with a constitutionalist element within International Law, the denationalization of the constitutional right, as well as the priority of the constitution and the rights are three innovative models to consider. Even if it is necessary to be updated about the persistence of styles in national politics, these can and should be considered under the perspective and the analysis of their impact on a global level, which is the objective of this paper.

An approach to public policies.

The study of public policy is a very complex theme and any attempt to reduce this policy to a conceptual frame may be assessed with certain skepticism. On the one hand, politics is considered as an area located within the social sciences and, therefore, susceptible to be studied from very different angles. On the



“Towards an International Implementation of Public Policies in Human Rights”

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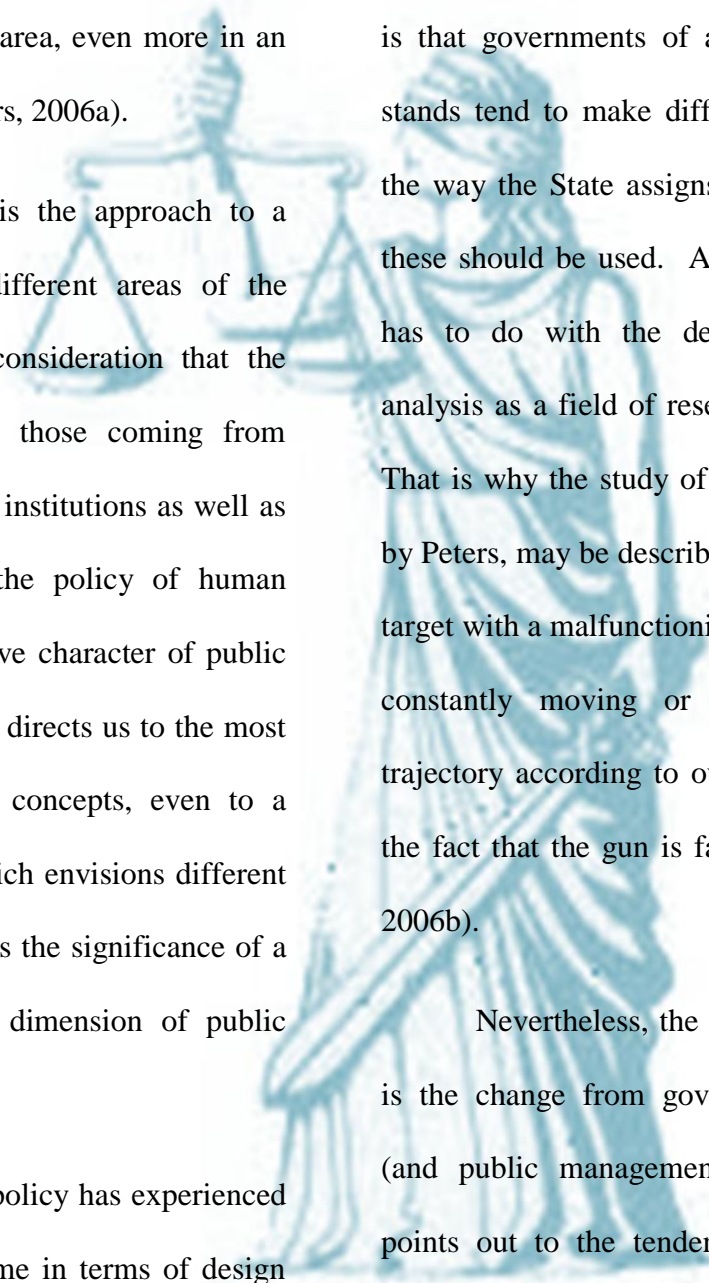
other hand, this complexity demands an ample range of theoretical and analytical perspectives in order to acquire an understanding of what is happening in any political area, even more in an international context. (Peters, 2006a).

The starting-point is the approach to a public policy from the different areas of the government, taking into consideration that the elements for analysis are those coming from international policy and its institutions as well as only one public policy: the policy of human rights. But then, the elusive character of public policy as object and theory directs us to the most varied and heterogeneous concepts, even to a field of social sciences which envisions different approaches. Thus, here lies the significance of a substantial and analytical dimension of public policy.

Essentially, public policy has experienced radical changes through time in terms of design

and of selection of tools, including the fact that the roles of the State and of society have been broadened. The constant reality in public policy is that governments of all kinds of ideological stands tend to make different choices regarding the way the State assigns its resources and how these should be used. Another important aspect has to do with the development of political analysis as a field of research in social sciences. That is why the study of public policy, as stated by Peters, may be described as a shot to a moving target with a malfunctioning gun where the aim is constantly moving or does not change its trajectory according to our expectations, besides the fact that the gun is far from precise. (Peters, 2006b).

Nevertheless, the most important advance is the change from government to governance (and public management) whose development points out to the tendency of many European



“Towards an International Implementation of Public Policies in Human Rights”

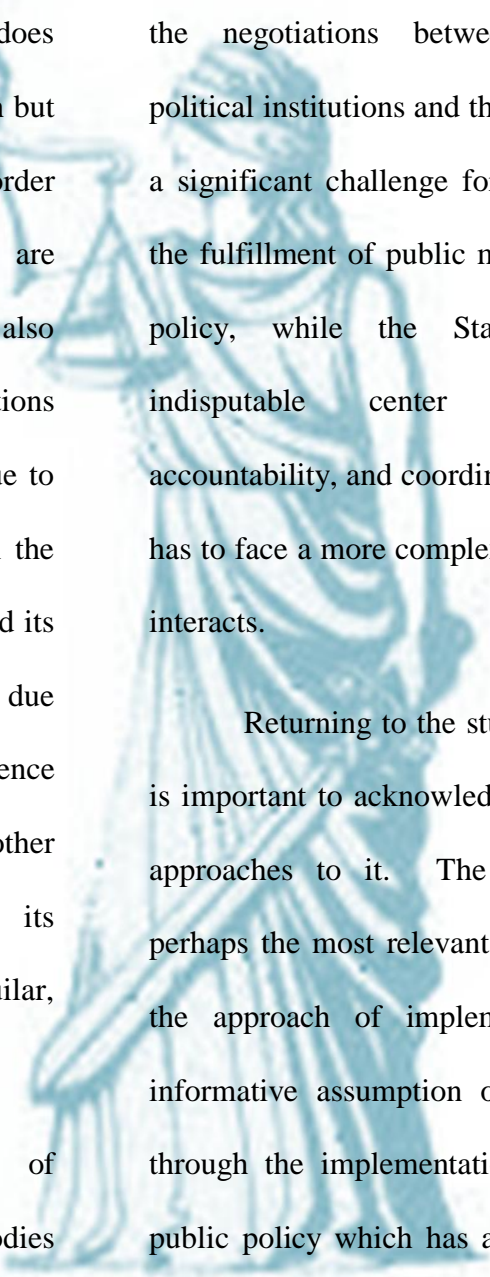
Luis Eduardo Zavala DeAlba, Ph.D.
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states towards the end of producing and delivering public services according to the market and to civil society. The fundamental thesis is that the state, in this model of governance, does not have to produce all these services as such but to coordinate public and private actions in order to ensure that programs and services are delivered. Other authors consider that it also emerges because it registers the transformations that the course of society is experiencing due to the increasing internal differentiation within the spheres of action of contemporary society and its greater independence from politics, as well as due to the economic and informative interdependence which a national society builds along with other external societies to be ready to solve its problems and realize its inspirations. (Aguilar, 2007). We will return to this aspect later on.

The significance of this model of governance, in this analysis, is that it embodies

an argument very different from the traditional model of government. It is a perspective of public policy which seeks to extend the result of the negotiations between the international political institutions and the social actors. This is a significant challenge for governments and for the fulfillment of public management and public policy, while the State remains as the indisputable center of representation, accountability, and coordination which constantly has to face a more complex environment where it interacts.

Returning to the study of public policy, it is important to acknowledge that there are many approaches to it. The traditional approach, perhaps the most relevant and general, has been the approach of implementation. This last informative assumption of reality is explained through the implementation of an international public policy which has as its starting-point the



“Towards an International Implementation of Public Policies in Human Rights”

Luis Eduardo Zavala DeAlba, Ph.D.
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two vectors of reality: the analysis of the phenomenon of the implementation of public policy as a sub-academic field of Political Sciences and Public Management in which legality is achieved through a conceptual frame, and the global constitutional interpretation of this margin of legislative appreciation through phenomena pertaining to a Constitutionalism in International Law, as well as a Denationalization of Constitutional Law.

Concerning this research, public policy will be understood as involving those decisions and subsequent governmental actions on an international level, manifested in the solution of a social problem whose enforcement will favor the crucial function of every entity to deal with the problems of the international community. That is the reason for the inclusion of the citizens' participation and co-responsibility in a global village. Nevertheless, it is important to indicate

that public policy is not any governmental policy since these policies not always respond to a social demand and may be complying with mere governmental ends.

The implementation of public policies.

In general, the noteworthy factor in the definition of a public policy is the intentional character those policies ought to have and the form or manner in which they are expected to be related to the social problems. Thus, it is fundamental to contextualize that implementation is linked to specific policies as a particular response to specific problems in an international global society. Now, that which can be called public policy and can be implemented is the process of what happened in the early stages of the political process since what has been implemented in this stage is what is substantial.

Mazmanian and Sabatier formulated one of the most influential decisions about

“Towards an International Implementation of Public Policies in Human Rights”

Luis Eduardo Zavala DeAlba, Ph.D.
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implementation when they stated that implementation is to carry out a basic political decision, usually part of a bylaw but that can also be an executive order or a Court decision. Ideally, such decision identifies the problem or problems to be addressed to, defining the objectives to be reached, and the various ways in which the implementation process is organized. Normally, the process goes through a series of stages of the basic bylaw through the political decisions (outputs) of the implementing agencies, the demand of those groups it is directed to, the expected or unexpected impact of both in this analysis of outcome, the impact perceived by the agencies which are able to decide, and finally, the important review or reviews of the basic bylaw. (Mazmanian, *et. al.*, 1981).

Three generations have developed the study of the implementation of public policies: the first one focused itself on the realization of

such policies through one sole authority; the second one concentrates itself within an analytical and conceptual frame, and the third one examines those policies within a model of communication, highlighting the effects of acceptance or rejection in governmental levels.

Public policy should be evaluated based on its implementation from the points of view of Political Science and Public Management. Governance emerges from these sciences along with its conceptualization with the objective of incorporating a greater and complete understanding of the many levels of action –local, state, and federal- within the states, and the types of variables that can be expected to be carried out. Governance bears consequences according to the manner in which the object of research on implementation is defined.

On the other hand, the generation and implementation of indicators related to public

“Towards an International Implementation of Public Policies in Human Rights”

Luis Eduardo Zavala DeAlba, Ph.D.
Professor at Yale University

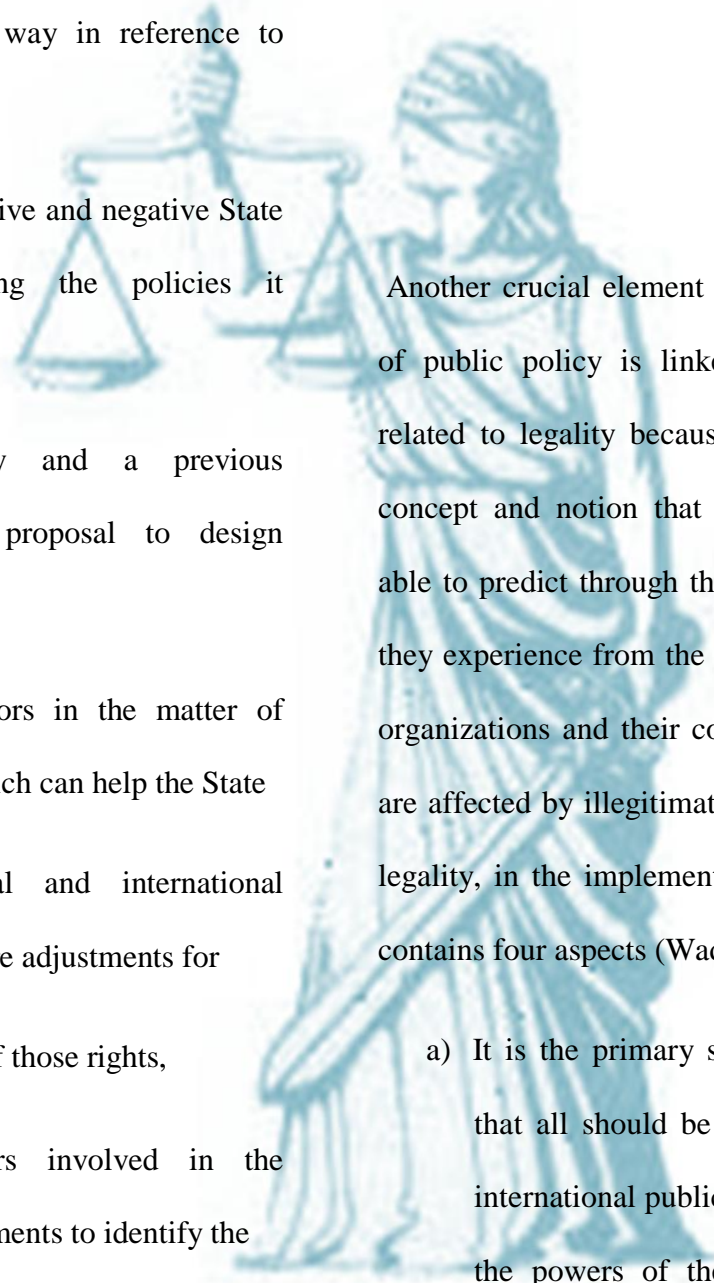
policy are necessary since they allow for an adequate evaluation and, therefore, for the projection of corrective measures on those policies in a progressive way in reference to human rights because they:

- identify the positive and negative State actions regarding the policies it applies,
 - imply a study and a previous methodological proposal to design public policies,
 - establish indicators in the matter of human rights which can help the State
- Identify national and international policies which require adjustments for the observance of those rights,
- allow the actors involved in the generation of agreements to identify the

Areas of importance and apply the necessary actions.

Another crucial element for the implementation of public policy is linked to all those issues related to legality because legality includes the concept and notion that the citizens should be able to predict through the impact of the actions they experience from the international legislative organizations and their compensation when they are affected by illegitimate actions. That is why legality, in the implementation of public policy, contains four aspects (Wade, 1982):

- a) It is the primary sense of the significant that all should be done according to the international public law which, applied by the powers of the governments, means



“Towards an International Implementation of Public Policies in Human Rights”

Luis Eduardo Zavala DeAlba, Ph.D.
Professor at Yale University

that each action affecting the rights, duties or freedom of any person needs to be strictly observed.

- b) In a secondary sense, it means that all governments must act within an internationally recognized legal frame and follow principles which limit all discretionary power.
- c) The fact that all disputes concerning the law should be solved by an independent international judicial power.
- d) The law should be impartial between the government and the citizens.

basis for legality is to adjust accepted rules in its procedures, not only on a voluntary or a discretionary way on the part of the States.

Now, every implementation of public policy –besides conforming governance- is consistent with a system of rules intentionally set up and based in the Weberian concept of rationality.¹ This concept, though controversial, purports to point out that while a set of rules may be defined in different ways and, eventually, developed and renegotiated through a process originated from the bases or the consensus of the states, the international bureaucratic model, where the organizational structure of

These characteristics of legality are the ones which set the posture for the implementation of public policy. Within itself, legality contains the purpose and the connection of the bylaws which give it authority on an international level, i.e., the

¹ In the Weberian concept of “*rational legal order*” there are two important notions which should be distinguished: one is the idea of the observance of a set of rules previously identified independently from the structure of provenance, and the other is the importance of its legitimacy and the way these rules are conceived, even if they do not invoke the idea of democracy. For Weber, the idea of rationality is closely linked to the idea of bureaucracy. Weber, M. 1947, *The Theory of Social and Economic Organization*. Free Press.

“Towards an International Implementation of Public Policies in Human Rights”

Luis Eduardo Zavala DeAlba, Ph.D.
Professor at Yale University

implementation lies, is essentially hierarchic and, many times, of a voluntary nature, which is why it is important to acknowledge that one of the roots of the process of implementation derives from this concept. Nevertheless, for the understanding of this assumption it is important to deeply consider, as a first model, the idea of a constitutionalism with international dimension and characteristics.

The models of implementation within International Law.

International Law is supported by a cosmopolitan *ethos* and technical specialization. In recent years it has been differentiated within functional regimes as international trade laws, environmental laws or the very international law of human rights with the intention of dealing with or trying to efficiently solve global problems, and somehow empowering new interests and forms of expertise.

This last regime, though, has been established in the manner of constitutionalism, and if we start from the fact that nations are imaginary entities as these regimes are, in a way that limits public international law to mechanisms that foster functional objectives, this makes it vulnerable to criticisms emerged against it being an instrument of state policy in such a way that neither regimes nor states may have public policies or be able to be applied by themselves through an extra constitutional mechanism. The foremost issue would be to articulate these regimes and the international law of human rights within a universal critical policy. (Koskenniemi, 2007, pp. 1-30).

The point of departure corresponds to the effort for consolidating a global legal community which limits and directs political power for the sake of reaching common values as well as the common welfare. This presupposes the re-

“Towards an International Implementation of Public Policies in Human Rights”

Luis Eduardo Zavala DeAlba, Ph.D.
Professor at Yale University

configuration of an international right frequently summarized as constitutionalism (Von Bogdandy, 2006, pp.223-242). Some rules of the public international law fulfill a constitutional function regarding local and international spheres. This function is that one of protecting peace, safety, and justice in relation to the States and the human rights, as well as the legality within the States for the benefit of human beings who is, primarily, the recipients of international law.

The core of this constitutional argument is that the essential principles of international law conduct and limit all forms of political power. Thus, the international law of human rights profoundly affects the structure of law in general, due to the fact that the international community is progressively moving from a system centered in the states to a system of values, oriented to the

individuals, which has left deep imprints in its objective and meaning.

The States continue being the most important actors in the international arena embodying, besides, an instrumental role whose inherent function is to serve the interests of the citizens, as explicitly stated in human rights.

This instrumental conception certainly does not correspond to the understanding sustained by many academicians in political science, law, and the media, but it represents an evolution for legal and academic documents. The fundamental rights, codified in a municipal constitution, form the bases for public municipal power. These, on the other hand, are based upon universal values which currently are consigned in the international law of human rights. (Tomuschat, 1999, pp.25-57).²

² The author acknowledges that the norms of international law are generally vague and susceptible to be disputed. At

“Towards an International Implementation of Public Policies in Human Rights”

Luis Eduardo Zavala DeAlba, Ph.D.
Professor at Yale University

If a convincing way of global governance needs of international legislative, judicial, and executive institutions, the emerging question is if this governance requires of the creation of a global federation where the State accepts to exist in a symbiotic relation with the institutions of an international community on a regional and universal levels, producing an international community as a community of values devoted to the observance of international commitments *erga omnes* and of *ius cogens*; also, to recognize Non-Governmental Organizations as embryos of an international community since they are the outcome of social freedom.

Thus, the teleology of contemporary international law may be observed in a wide

the same time, the author does not ignore the presence of sovereign states and the lack of firmness of global international organizations, defends a positivist discourse of international law and assumes that it may function similarly in municipal law, which rests, above all, on a moral imperative.

spectrum of universalist thought on international relations, the possibility of an order beyond the states in the form of public order and institutions which reach beyond the common welfare, what Jürgen Habermas points out as the essential assumption that international law has a constitutional role in the practice of any public authority.

Habermas ponders upon this view of international law, as well as of those of international relations to be competing with three other approaches: the first one, a traditional approach which considers the plurality of the diverse states as the last horizon of international law; the second one, that approach which advocates for an international order based upon liberal values but submitted to American hegemony instead of to international law and common international institutions; and a third one, which seeks to diminish public power,

“Towards an International Implementation of Public Policies in Human Rights”

Luis Eduardo Zavala DeAlba, Ph.D.
Professor at Yale University

undermining the promises of any constitutional order.

The true powers of international institutions should be confined to those fields which require scarce democratic legitimacy, which is the case of the enforcement of peace as well as the basic requirements of human rights. Habermas defends two types of global regimes: one, centered on the United Nations Security Council which can be formed as a supranational institution with real powers to enforce peace as a basic requirement of human rights, and the other would be a transnational one, instead of supranational, dealing with legislative issues (2004, pp.113-187).³

A constitutionalized international order is not, at first glance, a utopia. Through many

empiric observations it can be assessed that the international sphere cannot be thought of as a state of nature in the Hobbesian sense since at least some of the main actors are constitutional democracies whose constitutional tendencies lead their actions on an international level (Ramsey, 2007). And, lastly, as a legal project, international constitutionalism could be too ambitious and could lead to a normative overextension, even based on the idea for the development of international law through the empowerment of those unable to exercise their right to vote mostly off international institutions. (Koskeniemi, 2004, pp. 253-254).

Another model to follow is related to the denationalization of constitutional law, whose arguments are based on the understanding of the international law of human rights and international allocation as a practice of justification. From this perspective, the

³ Habermas is aware of the limitations of democratic legitimacy resources over those of global institutions which can be trusted. But that legitimacy can only derive from democratic states.

“Towards an International Implementation of Public Policies in Human Rights”

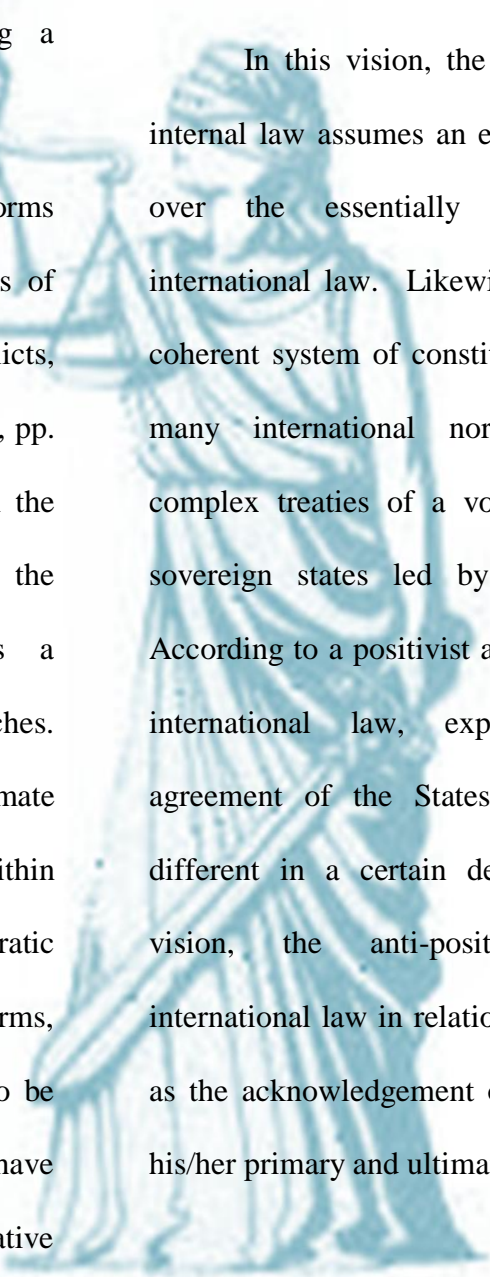
Luis Eduardo Zavala DeAlba, Ph.D.
Professor at Yale University

relationship between constitutional right and international allocation is conceived beyond the mere context of the dichotomy monism-dualism and it should be considered as having a persuasive function.

The international and constitutional norms should be understood as competitive values of legality and not as sources of legal conflicts, rivals of each other (De Burca, *et. al.*, 2006a, pp. 243-262). A reason for the justification in the theory of international law within the constitutional domestic context requires a previous examination of the various approaches. From the dualist perspective, the ultimate legitimate source of coercive legal norms within a legal democratic order is the democratic process itself. Therefore, the international norms, including those of human rights, are able to be enforced in domestic law only when they have been incorporated by the internal legislative

organs: these would open the limiting doors, thus usurping political and legal prerogatives on a domestic level.

In this vision, the field of constitutional internal law assumes an epistemological priority over the essentially immature field of international law. Likewise, it is assumed as a coherent system of constitutional contents while many international norms emerge through complex treaties of a voluntary nature among sovereign states led by contractual regimes. According to a positivist and contractual view of international law, expressed through the agreement of the States, this vision is only different in a certain degree. The opposing vision, the anti-positivist one, defines international law in relation to rights and justice, as the acknowledgement of the human being in his/her primary and ultimate unit.



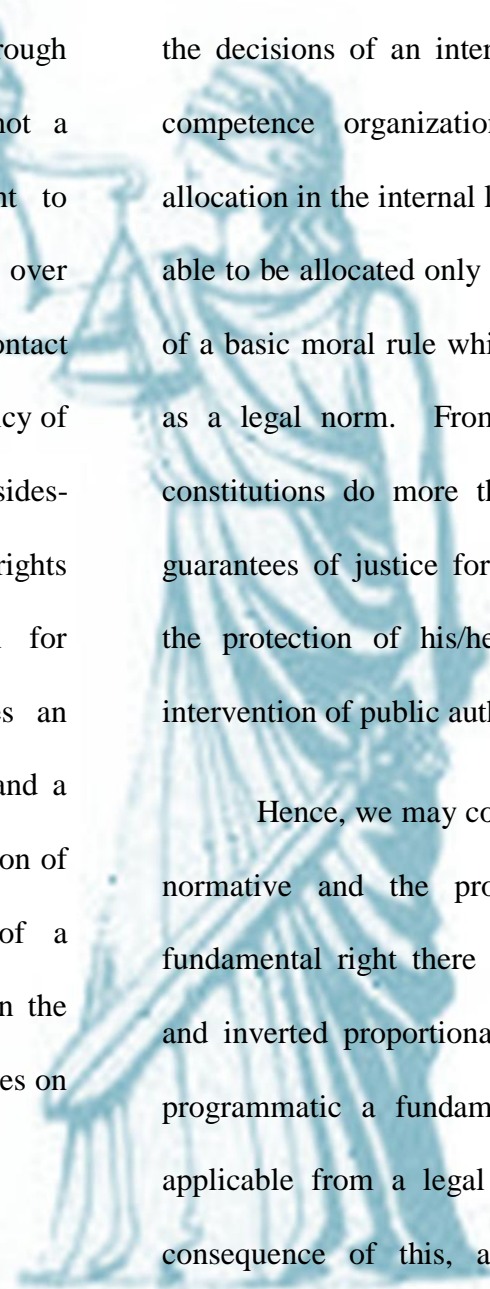
“Towards an International Implementation of Public Policies in Human Rights”

Luis Eduardo Zavala DeAlba, Ph.D.
Professor at Yale University

Given these views, the question emerges as to how to make possible the prescription of the norms of the international law of human rights if they are characteristically created through voluntary commitments when there is not a sovereign power with the ultimate right to enforce them, if they are legally binding over state and non-state actors even when in contact with individuals who are not part of the policy of the actors themselves, expressing –besides- accepted inter-cultural standards on human rights leaving enough margin of appreciation for cultural variations. This genesis creates an unavoidable paradox in international law and a tension in what refers to allocation: the notion of a persuasive authority and the idea of a constitutional order in the social sphere, on the one hand, and the deferential will of the states on the other hand.

Therefore, the very justification of dualism, save for the position of the constitutional order, is completely supported by the decisions of an international court and/or a competence organization which ensures the allocation in the internal legal order, and which is able to be allocated only in its own interpretation of a basic moral rule which has been established as a legal norm. From this derives that the constitutions do more than only provide legal guarantees of justice for the individual through the protection of his/her liberties against the intervention of public authorities.

Hence, we may conclude that between the normative and the programmatic role of a fundamental right there is a relation of tension and inverted proportionality, i.e., that the more programmatic a fundamental right is the less applicable from a legal point of view. As a consequence of this, a fundamental right is



“Towards an International Implementation of Public Policies in Human Rights”

Luis Eduardo Zavala DeAlba, Ph.D.
Professor at Yale University

available for its critical use as well as mutually acceptable and, at least, partially triable as a principle of justice.

Lastly, an example of the relation between a human right and a constitutional right may be understood as one of mutual support and multiple justifications, as is the case of allocation in terms of margin of appreciation in the European Court of Human Rights, where the intersection of international law and constitutional law means less in the established conventional terms, in terms of legal sources than in terms of rules' contextualization competing for legal values. In conclusion, if the categories of public international law and constitutional law would collapse to a point in which they were impossible to be distinguished, the transformative and re-contextualizing critical dimension of international law would be threatened or would disappear.

The future of international law is domestic, not as internal law but as internal domestic policy in the sense of creating two levels of proposals in which each level remains in its own sphere in spite of the complexity which the relation between the two of them may show. This view tries to introduce a legal political distinction within the legal interface of international political law and the legal international sphere committed to the internal political sphere, being the relationship between the international law and the constitutional law one of support and justification in the multiple stages of justification. The future of international law is not only internal but also normative and social.

The denationalization of constitutionalism is a coherent and worthwhile option, a realistic utopia if there were a political will to implement it. (De Burca, *et.al.*, pp.243-262).

“Towards an International Implementation of Public Policies in Human Rights”

Luis Eduardo Zavala DeAlba, Ph.D.
Professor at Yale University

The third model of implementation of international public policy in human rights is the one which places as such the constitution and the rights in public policy. The objective is to relate the three fields in a joint manner with the purpose of giving the constitution and the rights a significant importance in politics. The aim is to frame a discussion in the sense that, by themselves, the constitutions set the political discussion of rights. The rights have to be on the forefront in this analysis since the democratic systems of public policy generate many of their arguments when dealing with the policy of rights or, even more, with the impact that the demands concerning rights make on public policy.

Citizens' rights.

In the first place, the point of departure deals with the fundamental value of the citizens' rights in the public democratic policy. As a political theory, democracy stands for the values

of equality but the democratic regimes vary in the path chosen to apply these values in political life.

It is common to find in all democracies the formal commitment of equality regarding the citizens' rights but, in their practice, democracies vary in the range of rights they associate to the citizens (Halpin, 1997). In this sense, all citizens share rights –as possible- in an equal way, each citizen has rights to a policy of equal consideration regardless economic inequalities (Phillips, 2004, pp. 1-19). The rights of the citizens not only define who participates in the political process but also make clear how the citizens participate depending on the specified range of rights (e.g. the right to vote and to every other form of political participation).

In the second place, it is important to point out how constitutions organize the controversies having to do with rights. The fundamental rights, as the rights of the citizens,

“Towards an International Implementation of Public Policies in Human Rights”

Luis Eduardo Zavala DeAlba, Ph.D.
Professor at Yale University

may be registered as essential norms in the constitution in which they are protected against the temptation of the government to manipulate them or limit their scope. But other rights are originated in bylaws or special laws which may be modified by a subsequent legislature: for example, laws on social security which can define rights or laws on public health which can define rights to quality services.

Constitutions can protect the right of legislatures to pass bills but cannot protect from other legislatures modifying or altering them. Moreover, another type of rights derives from the executive's discretionary recognition, unless the legislature states otherwise, of its own terms and conditions regarding the access to governmental programs. It is a fact that the rights extended by a government may be retracted by subsequent administrations. A last type of rights is that one coming from traditional sources, as is the case of

common law. What is important is that the constitutions affect the rights originated in the different branches of the government and the rights of those who have a claim to these rights: the citizens.

In the third place, precisely in that one of public policy, there are the issues related to the ethical aspects about the rights and responsibilities of public policy analysts, particularly those debates concerning the equality of rights as the discretionary democratic norms of the administration in the political process. With the improvement in the abilities of the government to promote the rights of the citizen as beneficiary of governmental programs, the democratic rights are best protected through political institutions, much more than from the administrative ones.

But then, the constitutions establish fundamental rights for the political process as the

“Towards an International Implementation of Public Policies in Human Rights”

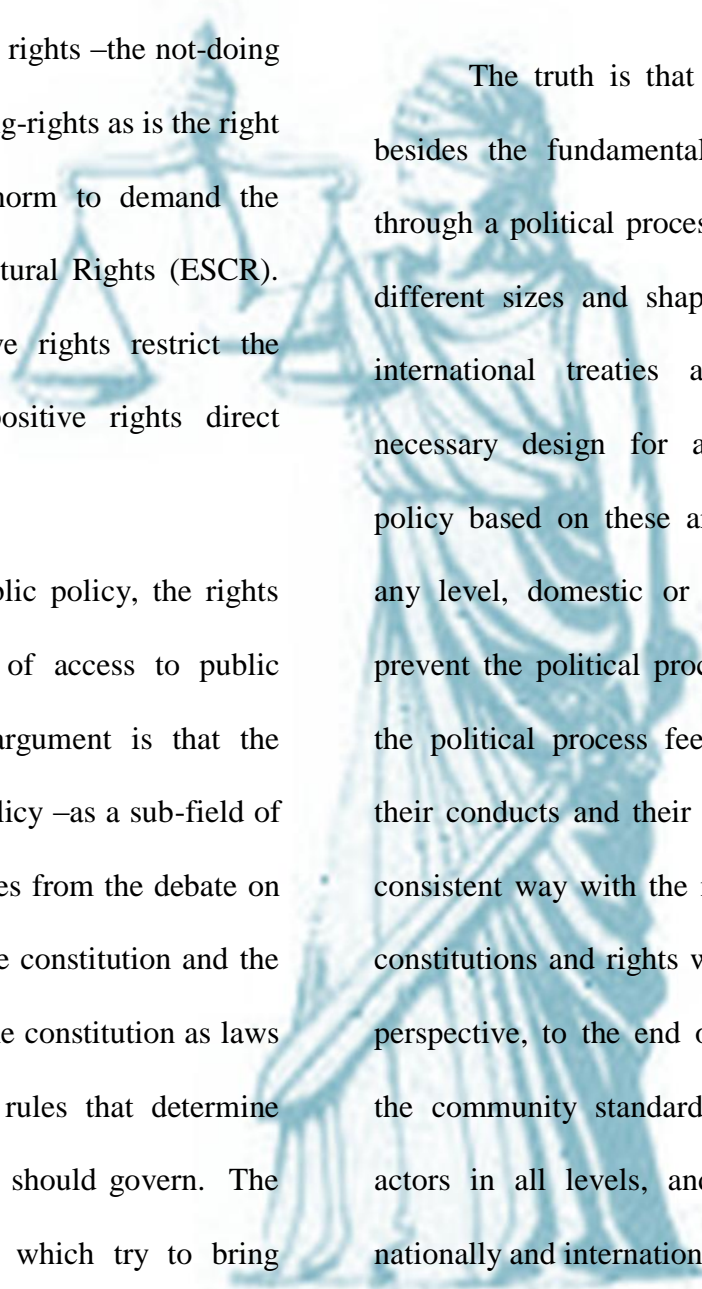
Luis Eduardo Zavala DeAlba, Ph.D.
Professor at Yale University

rules of the game. The rights are a guarantee of fairness: the holders of these rights have expectations that the government recognizes and honors them in the negative rights –the not-doing rights- as well as in the doing-rights as is the right to benefit regarding the norm to demand the Economic, Social, and Cultural Rights (ESCR). In this sense, the negative rights restrict the governments while the positive rights direct them.

In the world of public policy, the rights can refer to those rights of access to public services. The essential argument is that the academic field of public policy –as a sub-field of public management- emerges from the debate on the relationship between the constitution and the rights, i.e., to think about the constitution as laws on rights which establish rules that determine who governs and how they should govern. The constitutions are the ones which try to bring

stability to the political organizations, and, therefore, are designated to resist the pressure for change emanating from those in power.

The truth is that other additional rights, besides the fundamental ones, are established through a political process. Rights also come in different sizes and shapes so those who draft international treaties also support a much necessary design for an international public policy based on these arguments. Besides, on any level, domestic or international, they can prevent the political process when the actors of the political process feel compelled to modify their conducts and their political ambitions in a consistent way with the norms associated to the constitutions and rights which are used in a new perspective, to the end of reflecting changes in the community standards through the political actors in all levels, and government systems, nationally and internationally.



“Towards an International Implementation of Public Policies in Human Rights”

Luis Eduardo Zavala DeAlba, Ph.D.
Professor at Yale University

On the other hand, the two constitutional orientations contrasting policies with rights look for a government which promotes rights through prevention or assurance of social services while others seek them through legality. Most of the governments embrace the option of the assurance of social services. However, those rights affected by public policies have become relevant on an international level: first, through an emphasis on a dialogue that settles which controversies on rights depend on their solution through a public discussion instead of on a simple action determined by the governments or the courts. The effectiveness of most public policies has increased when it has found a decided support in the community and on the part, specially, of the elected governments when they practice a leadership which builds a following through political initiatives. Democratic governments rest upon the consent of the governed and one of the

most important rights of democratic citizens is that one of the knowledgeable consent.

Secondly, those rights affect public policies through the debate which enlivens again the old constitutional order on the separation of powers in which the executive and the courts are not the sole constitutional actors, but also the legislatures and, substantially, the persons, the citizens whose consent legitimizes the democratic government. The third dialogue allows for the emergence of questions on which institution is the most apt for participation in the public debate on controversial rights and to relate political priorities.

One last issue deserves attention in this model: the reconstruction of rights through the question of the rights' agenda shaped by civil servants (officials), not by government's agencies, as a direct answer to the demand of rights drafted by political activists: what is

“Towards an International Implementation of Public Policies in Human Rights”

Luis Eduardo Zavala DeAlba, Ph.D.
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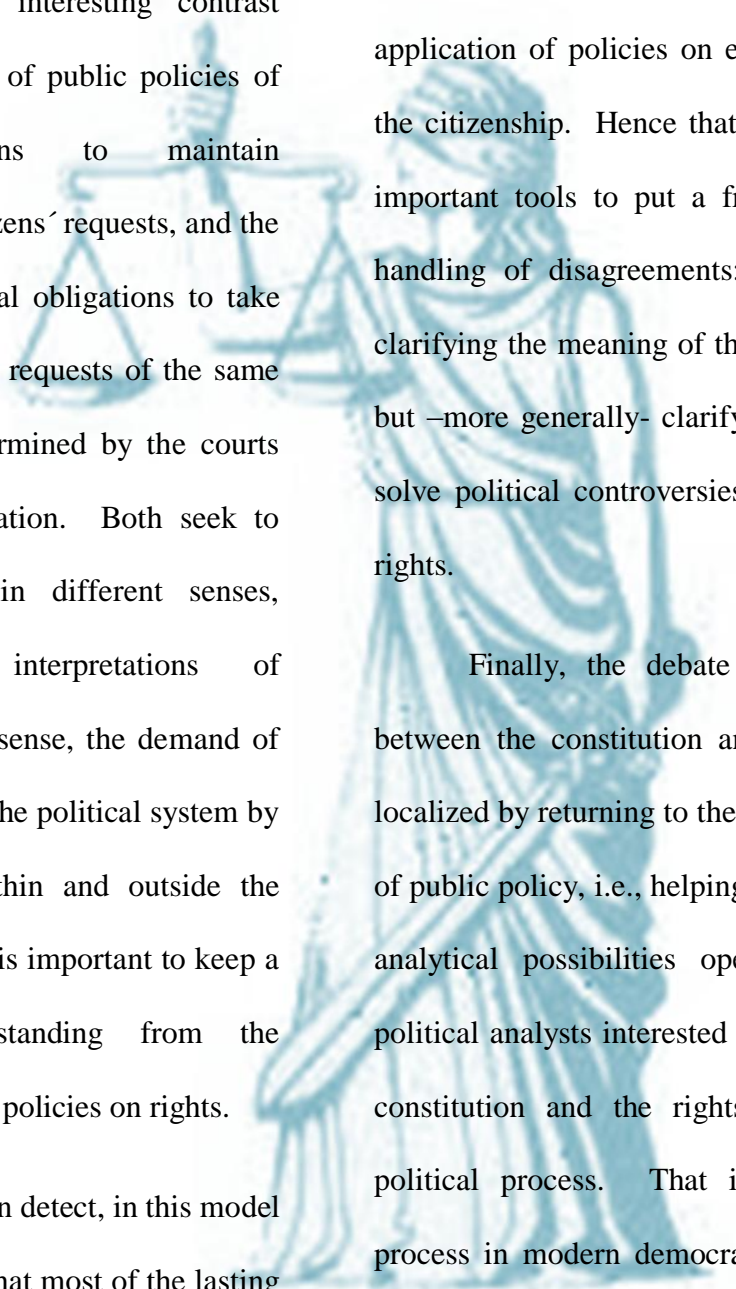
known as a model for receptive approach to rights. (Uhr, 2006, pp. 169-185).

There is here an interesting contrast between an original model of public policies of administrative obligations to maintain operationally active the citizens' requests, and the last models of governmental obligations to take notes of the changes in the requests of the same citizens as have been determined by the courts and other organs of allocation. Both seek to develop citizenship but in different senses, reflecting contrasting interpretations of democratic rights. In this sense, the demand of rights imply the capture of the political system by the lawyers of rights, within and outside the government, so for some it is important to keep a distance of the understanding from the governments and the public policies on rights.

Summarizing, we can detect, in this model of constitutions and rights that most of the lasting

and prominent political controversies in democratic systems emerge because of the disagreement on the most fundamental right of all application of policies on equality: the rights of the citizenship. Hence that the constitutions are important tools to put a frame to the political handling of disagreements: in some moments, clarifying the meaning of the fundamental rights, but –more generally- clarifying the procedure to solve political controversies, including those on rights.

Finally, the debate on the relationship between the constitution and the rights can be localized by returning to the origin of the analysis of public policy, i.e., helping to trace the range of analytical possibilities open to contemporary political analysts interested in the position of the constitution and the rights in the democratic political process. That is why the political process in modern democratic regimes involves



“Towards an International Implementation of Public Policies in Human Rights”

Luis Eduardo Zavala DeAlba, Ph.D.
Professor at Yale University

the political struggle over the rights of the citizens.

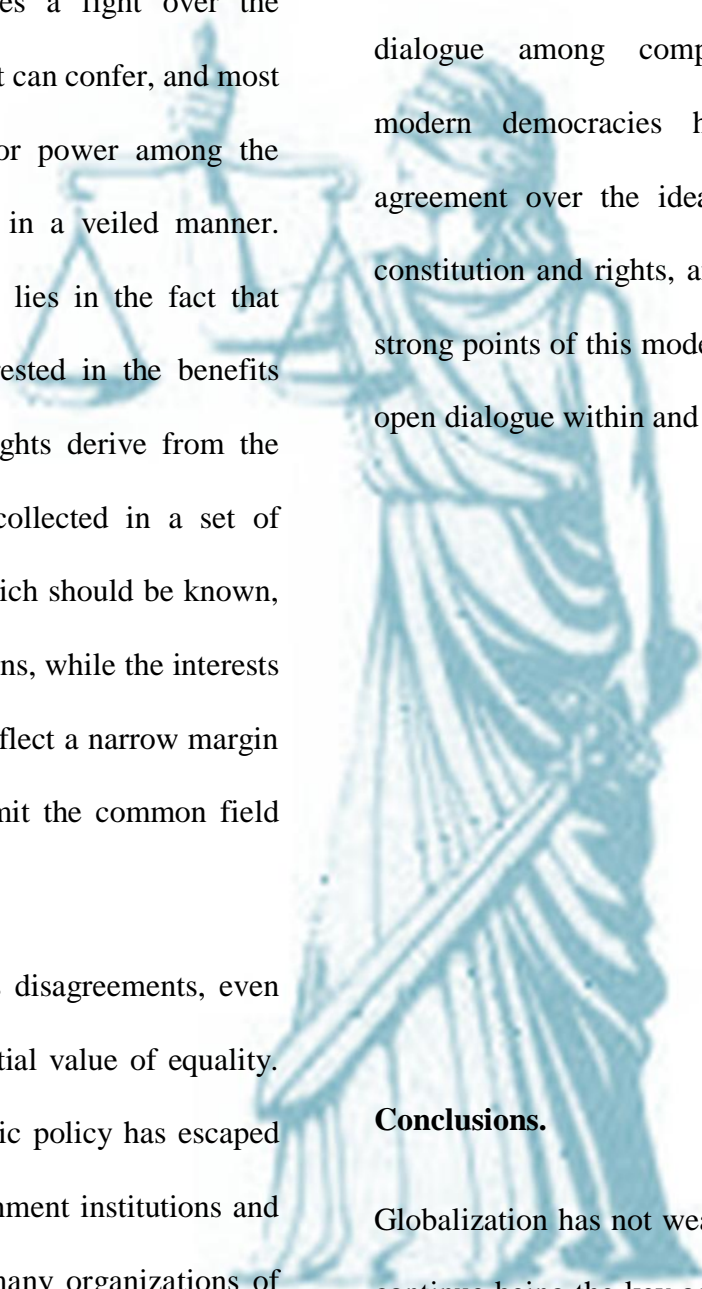
Every policy implies a fight over the benefits that the government can confer, and most often, this is a struggle for power among the elites competing for them in a veiled manner. The secret of this struggle lies in the fact that these elites are more interested in the benefits than in the rights. The rights derive from the norms of the citizenship collected in a set of constitutional principles which should be known, at least ideally, by the citizens, while the interests are inevitably partial and reflect a narrow margin of considerations which limit the common field of the citizenship.

Democracy includes disagreements, even dissensions about the essential value of equality. The academic field of public policy has escaped from its captivity by government institutions and has spread itself through many organizations of

the international civil society, some with a social justice agenda, and others with a liberal sense. It is best to keep rights alive through the public dialogue among competing interests since modern democracies have not reached an agreement over the ideal relationship between constitution and rights, and precisely, one of the strong points of this model of public policy is the open dialogue within and outside governments.

Conclusions.

Globalization has not weakened the States which continue being the key actors in the international



“Towards an International Implementation of Public Policies in Human Rights”

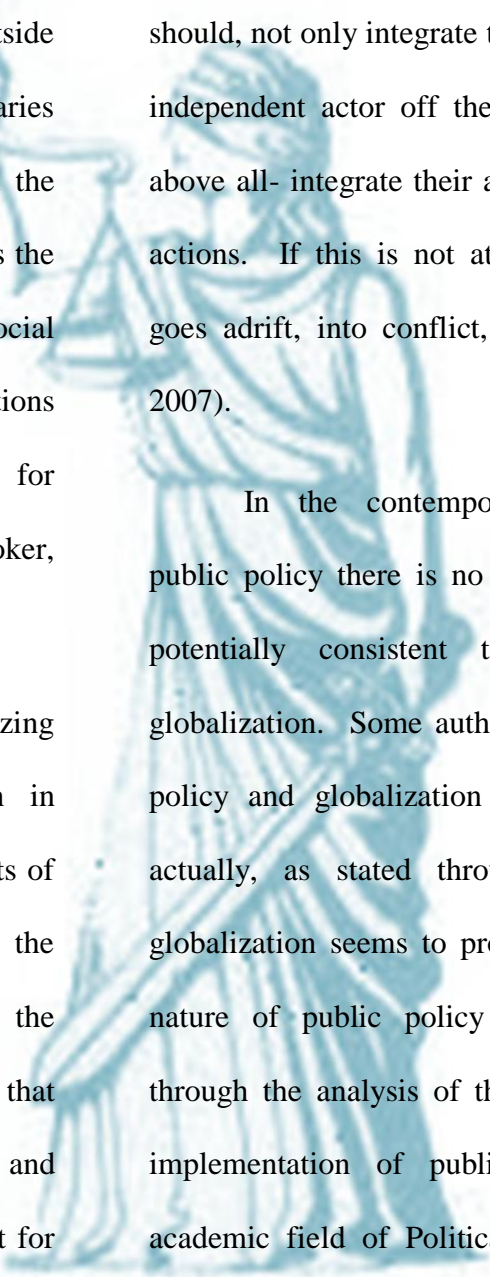
Luis Eduardo Zavala DeAlba, Ph.D.
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and domestic political arenas, but it has changed their roles. The concept of government/governance implies a set of institutions and actors that are within and outside the government; it registers that the boundaries and responsibilities between the public and the private are currently permeable; it recognizes the interdependence, the existence of social networks; it knows that many desired situations can be materialized without the need for governmental authority and command. (Stoker, 1998, pp. 17-28).

The point of departure lies in recognizing the insufficiency of governmental action in directing its society, and decidedly, it consists of admitting that the government needs the resources and actions of actors outside the administration as well as acknowledging that these actors are capable of self-government and have the ability to solve problems of interest for

the international global society. Considered as such, the regulation, planning, public policy, assurance of governmental public services should, not only integrate the point of view of the independent actor off the administration, but – above all- integrate their abilities, resources, and actions. If this is not attained, society simply goes adrift, into conflict, or decays. (Aguilar, 2007).

In the contemporary literature about public policy there is no topic more refuted or potentially consistent than the impact of globalization. Some authors even regard public policy and globalization as antagonists when, actually, as stated throughout this research, globalization seems to propose and impulse the nature of public policy at an internal level through the analysis of the phenomenon of the implementation of public policy as a sub-academic field of Political Science and Public



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Management in which legality is achieved through a conceptual frame. Also, by the global constitutional interpretation of this margin of legislative perception through the phenomena of a Constitutionalism in International Law, the Denationalization of Constitutional Law as well as the law which places the constitution and the rights in public policy as such, i.e., at every level, national or international, and that may prevent the political process when the actors in the process feel themselves compelled to modify their conduct and their political ambitions in a consistent way with the norms associated to the constitutions and the rights. Constitutions and rights are considered under a new perspective with the objective of reflecting the changes in the community standards through the political actors, through all levels and systems of government, national and internationally.

Under this paradigm, the restrictions of globalization are what the political actors do with it, but it reinforces the need for an effective and democratic public policy on a transnational level of human rights. Stating the fact that domestic public policy is a victim of globalization is limited if it is not taken into consideration the opportunities and the need for a public policy on a transnational level generated by globalization. Globalization requires of a certain amount of subordination to internal policy through the incorporation of the international law of human rights with the intention of dealing with or trying solving global problems internally in an efficient way, and in a certain way empowering new interests and forms of expertise.

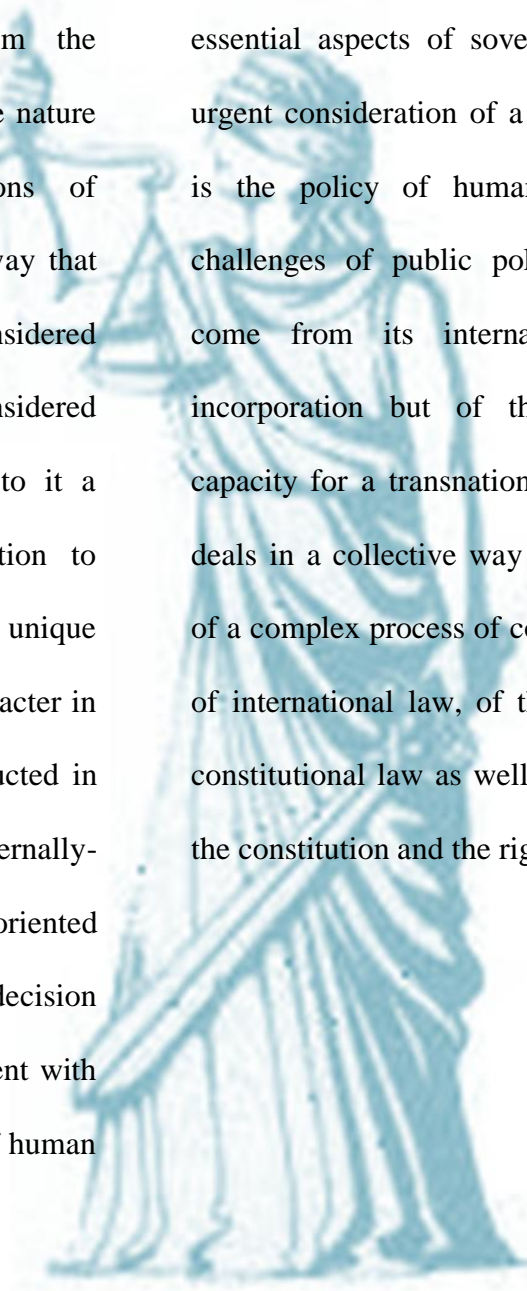
Lastly, for an adequate implementation of the international policy of human rights, it is necessary to overcome four proper dichotomies: from the national to the global levels, that is,

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alluding to the level in which the center of gravity of the world system may appear to be in the primary character of cultures, the economy, the politics within the system; from the international to the global, alluding to the nature of supranational process of decisions of allocations in human rights, in such a way that they can be extended to what could be considered in a transnational manner before being considered in a merely international way, giving to it a transversal character; from regionalization to globalization, referring to the precise and unique geographical object as well as to the character in any process of integration, as it is instructed in continental systems; from closed and internally-oriented protectionism to externally-oriented globalization, alluding to the process of decision making and to the set of policies consistent with the orientation of judicial globalization of human rights.

In an era of complex interdependence or globalization, the degree of autonomy of an internal public policy may hide itself in those essential aspects of sovereignty but not in the urgent consideration of a transnational policy as is the policy of human rights. The great challenges of public policy nowadays do not come from its internalization or domestic incorporation but of the development of a capacity for a transnational public policy which deals in a collective way with the consequences of a complex process of constitutional integration of international law, of the denationalization of constitutional law as well as the preeminence of the constitution and the rights over interests.

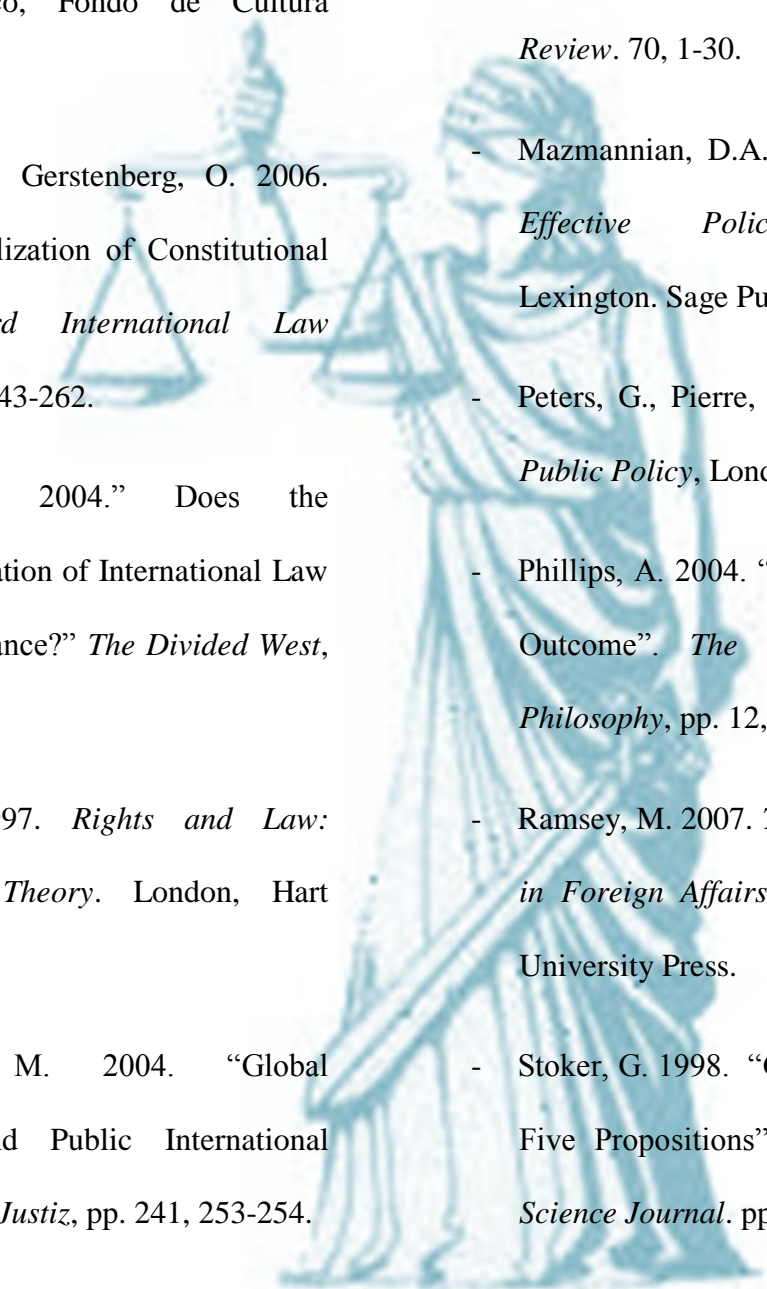


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“Towards an International Implementation of Public Policies in Human Rights”

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