



**Derechos humanos, migración y conflicto:
hacia una justicia global descolonizada**

(Human Rights, Migration, and Conflict:
Toward a Decolonized Global Justice)

Ariadna Estévez

CISAN, UNAM

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Ariadna Estévez has become a reference point on the issue of the relationship between human rights and the social sciences. Her most recent book is based on original research that is both empirical, particularly about

the circumstances of migrants in North America and the European Union, and normative, with a proposal for post-citizenship and the universal recognition of migrants' human rights.

In the first chapter, she deals with the relationship between transnational migration and globalization, citing human rights as the mechanism that could harmonize the two. If the free passage of goods and investment is not accompanied by borders open to migrants, it would be indispensable to at least guarantee that the migrants are treated as persons with rights, a supposed conquest of the twentieth century post-war period.

The second chapter describes the so-called "securitization" of borders and cooperation for development. The former is a neologism created based on the word "security," of increasingly frequent use in the social sciences, alluding to the incorporation of police, migratory, and humanitarian policies, into the sphere of the military and national security, particularly after the September 11, 2001 attacks. As an effect of that securitization in Europe and North America, we can see the establishment of detention centers operating with quality standards lower than those of ordinary jails, where migrants cannot receive visitors and entire families are locked in for long periods, thus violating several international human rights conventions. These centers are the most visible face of the increasingly harsh immigration system, which rapidly abandons policies of humanitarian asylum.

What Hannah Arendt denounced in the context of the war before the Universal Declaration of Human Rights was written is evoked by Estévez as a problem that reappears and worsens: at the beginning of the twentieth century, as Arendt said, it was often better to be accused of breaking the law than to be a refugee. For that reason, migrants from Eastern Europe to the West were forced to commit a minor crime so that the authorities would bring them into the system, thereby recognizing them as persons. Similarly, Estévez offers testimonies of the fact that today it is often better to be undocumented than an asylum seeker in the United States since, on average, in the former case, you are detained 64 days, while in the latter, up to 10 months, the time that an asylum seeker can be held in regular jails, where their cellmates can be violent offenders.

The third chapter illustrates with concrete examples how the management of human flows is often guided by discrimination. One of the great merits of this first part of the book is to disseminate the recent tragedy of Mexican and

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Central American migrants. The author is not writing only of the violations denounced in previous years by other researchers (labor exploitation, family separation, murders by the Border Patrol, etc.), but of a new repertory of injustices, in particular limitations on the right to asylum. She analyzes Mexico's drug war, which broke out in late 2006, from the point of view of U.S. asylum policy and its discriminatory treatment of Mexicans. In 2007 alone, only a year after "Felipe Calderón's war" began, Mexicans' asylum requests in the U.S. increased 41 percent. But the approval rate did not increase the same amount.

The fourth chapter adopts the analytical frameworks of Coutin and Honneth as categories of analysis of the situation. The former contributes the notion of the "space of nonexistence," which is generated by the securitization of borders, the establishment of detention centers, the criminalization of undocumented migration, and the discrimination against certain ethnic minorities to which migrants belong (Mexicans and Central Americans in the United States; "moros" [people from Northern Africa] in Spain; Pakistanis in England, etc.). Honneth, for his part, mentions three forms of intersubjective recognition: love, the law, and honor, which, as Estévez points out, when absent, correspond to rape, dispossession, and dishonor.

She closes her argument affirming that one consequence of migrants being deprived of their human rights is the worsening of conflicts. In this vein, the author continues a tradition that goes back to Foucault in his famous *Discipline and Punish*, since both books agree that state barbarism produces social violence. Today we could add a third example, of course, though not in the sphere of migration, which would be to say that not respecting human rights expands and sharpens national and international conflicts: the strengthening of extremist Islamist organizations in the Middle East, now organized as armies and calling themselves a state, as a direct result of the U.S. invasion of Iraq, whose argument, paradoxically, was that it was there to fight Al Qaeda.

The normative part of the book begins with Chapters 5 and 6, a brilliant theoretical analysis of the limits of tradi-

tional citizenship. In Chapter 5, instead of defending an improbable fight for universal citizenship, she puts forward the desirability of demanding the recognition of migrants' universal human rights in the framework of decolonized global justice. In particular, she points to the rights of transnational freedom of movement and mobility, with the freedom to leave one country or enter another, the only way to deal with the growing conflicts in today's world.

POST-CITIZENSHIP

Estévez asks herself what the best way of recognizing migrants' human rights is. She presents two options: a cosmopolitan citizenship that incorporates universal human rights or the application of universal human rights beyond those of national citizenships. She chooses the second option, since the first gives rise to the dichotomy between citizenship and non-citizenship, and, by definition, generates exclusion. When citizenship is defined, the foreigner, the stranger, the undocumented migrant, the temporary worker, or the person in transit are simultaneously defined. This happens whether we understand citizenship as the access to rights within a liberal-democratic welfare state (Marshall's theory), conceived as the duty to participate in political life (republicanism), or we see it as the recognition of cultural and/or social difference (multiculturalism).

In all these cases, citizenship supposes the membership of some and the exclusion of others. In addition, that membership is associated with a nominal citizenship, symbolized by the possession of a passport (for reasons of birth, residence, or family ties, which are criteria different from the basic needs that are the basis of human rights). Migratory documents are not usually given out based on the substantial criteria linked to social, political, and civil human rights, except in countries that practice a real humanitarian asylum policy. But Estévez shows that the latter is falling into disuse in order to comply with securitization. That is why the author supports the idea of post-citizenship: the reinterpretation of the Universal Declaration of Human Rights to formulate a right to mobility that would include the rights to immigrate and emigrate.

To enter into a post-citizenship era, she suggests innovative measures, in addition to the flexibility of citizenship due to globalization (the freedom to invest in one country, reside in another, and study in yet another) and those stemming

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from the externalization of citizenship (double nationality, voting abroad). Among the more innovative measures are the participation of the international workers movement in issuing visas: the workers confederations of a country would come to agreements with those of another to ensure that immigration documents are given to workers and that multinational companies respect the labor rights of migrant workers.

HUMAN RIGHTS AS AN INSURGENT PRACTICE AND A SOCIAL CONSTRUCTION

The author uses the definition of the human right to development as that which, inalienable, ensures every person and all peoples to be able to participate, contribute, and enjoy an economic, social, cultural, and political situation in which all human rights and the fundamental freedoms can be fully exercised. Is it possible to achieve this, the readers ask, given that the models of alternative societies have historically put the emphasis on alternative human rights and on competition? The Soviet experiment favored material equality; economic liberalism, individual freedom; the Chinese Communist regime, material prosperity. But, according to the author, we must recognize that after the Cold War, a human rights approach faces the challenge of attempting to harmonize all the normative expectations of societies instead of sacrificing some to maximize others. Given this challenge, she explores an unorthodox, radical definition of human rights. In her opinion, these rights would emanate from an insurgent practice and would be socially constructed.

The author agrees with Baxi that human rights are a scenario of transformative practical policy that, through social struggles and movements, disorients, destabilizes, and even helps destroy unjust concentrations of power. With regard to the affirmation that social rights are socially constructed, Estévez appeals to French post-structuralist philosophy, for which discourses have the effects of truth. This is how she eludes the pessimism that comes of believing that there is

an objective clash of certain human rights with others and, therefore, is able to adopt an ambitious definition of the human right to development.

THE BOOK'S OTHER CONTRIBUTIONS

There is an obvious reason for liberalism and the orthodox human rights discourse being insufficient and which also makes Estévez's book inspiring: unequal access to justice. Class differences and racism are reflected at the moment of guaranteeing human rights. It is no coincidence that businesspeople, highly skilled migrants, and Northern European tourists receive the protection from states that Mexican and Central American peasants in the United States or sub-Saharan African migrants in Europe do not. In the face of this inequality, subordinated sectors must organize in social movements, exercise insurgent practices that challenge the *status quo*, and construct their own rights.

For liberalism, respecting fundamental freedoms is a political program in itself. By contrast, Estévez demonstrates that it is necessary to add the consolidation of a combative global civil society. Going beyond denouncing the humanitarian tragedy suffered by migrants (not only the undocumented, but also the politically persecuted and victims of drug-trafficking-related violence), she makes a theoretical proposal that will have to be carefully analyzed and developed from now on. Understanding human rights as an insurgent practice and a social construction demands that we study, precisely, the insurrections that have constructed rights historically. If the 1960s Afro-American civil rights movement beat racism—at least institutional racism—in the United States, will the mobilization of undocumented migrants be

able to achieve in the twenty-first century the migratory reform in North America that Barack Obama and U.S. congresspersons cannot?

After years of waiting and frustrations, civic mobilization seems to be the only way still open. At the same time, when xenophobic groups are growing in the United State, it is important to avoid contributing to the stigmatization of migrants and Mexicans with erroneous tactics. What does a constructive insurgent practice consist of? In other words, what road should the immigrant movement take? What are the new human rights that it must demand, and how can we build the basis for their legitimacy?

The era of constitutionalism, which since the late eighteenth century has stipulated that governmental authority must be limited by human rights, was followed in the twentieth century by the proliferation of non-jurisdictional institutions specialized in monitoring the respect for those rights (commissions and popular defense offices, international bodies, etc.). This in turn, has created the need for specialized education, different from that given to judges; this has meant that human rights are now a fundamental issue in the social sciences. Estévez stands out among academics as someone who, without being a jurist—and for that reason without repeating the clichés and the idealization of the so-called “world of how-things-should-be”—makes the social sciences her starting point for the study of human rights. What is more, this book keeps its distance from the liberal discourse that permeates most of the contemporary “neo-constitutionalist” and “guarantor” works, making it refreshing reading. ■■

Bernardo Bolaños Guerra

Autonomous Metropolitan University

