

ORDER AND DISORDER IN POST-STATE POLYARCHY: THE ROLE OF CORPORATE SOCIAL AND ENVIRONMENTAL RESPONSIBILITY

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ABSTRACT

Globalization has revealed a new normative and decision-making dynamic, made up of various orders, systems and subsystems with claims of validity or mere effectiveness. Decision-making and political power is now shared among States, international organizations, public and parastatal entities, and transnational corporations. The challenge is to reconcile issues that overlap the borders of States, providing dialogue and the construction of plural spaces that favor the common good, respect for human and environmental rights. It is proposed that the state of anomie or relative ineffectiveness of the normativity of promoting these rights gives way to a cooperative public-private action regime and effective accountability of those who violate them. Corporate social responsibility, understood in the domain of the horizontality of human rights, can be an important step, associated with the recognition of plural and, at times, competing forums for imposing sanctions. In the end, the disorder of a delegitimized polyarchy

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of irresponsibility can be succeeded by the decentralized coordination of subsystems of dialogic normativity guided by a governance committed to human rights and environmental justice. The hypothetical-deductive methodology was used on descriptive and analytical starting points, based on a wide bibliographic review.

Keywords: post-state polyarchy; democracy; human rights; global governance; corporate responsibility.

ORDEM E DESORDEM NA POLIARQUIA PÓS-ESTATAL: O PAPEL DA RESPONSABILIDADE SOCIOAMBIENTAL DAS EMPRESAS

RESUMO

A globalização revelou uma nova dinâmica normativa e decisória, composta por vários ordenamentos, sistemas e subsistemas com pretensões de validade ou de mera eficácia. O poder decisório e político passou a ser compartilhado entre Estados, organizações internacionais, entes estatais e paraestatais e empresas transnacionais. O desafio está em conciliar questões que se sobrepõem às fronteiras dos Estados, proporcionando o diálogo e a construção de espaços plurais, dialógicos e que privilegiem o bem comum, o respeito aos direitos humanos e ambientais. Propõe-se que o estado de anomia ou de relativa ineficácia da normatividade de promoção desses direitos dê lugar a um regime de atuação público-privada cooperativa e de efetiva responsabilização de quem contra eles atente. A responsabilidade social corporativa, compreendida no domínio da horizontalidade dos direitos humanos, pode ser um passo importante, associado ao reconhecimento de fóruns plurais e, por vezes, concorrentes de imposição de sanções. Ao fim, a desordem de uma deslegitimada poliarquia da irresponsabilidade pode ser sucedida pela coordenação descentrada de subsistemas de normatividade dialógica orientada por uma governança comprometida com os direitos humanos e a justiça ambiental. Utilizou-se a metodologia hipotético-dedutiva sobre pontos de partidas descritivos e analíticos, fundados numa ampla revisão bibliográfica.

Palavras-chave: poliarquia pós-estatal; democracia; direitos humanos; governança global; responsabilidade corporativa.

INTRODUCTION

Globalization has evidenced a new normative and decision-making dynamic, made up of various orders, systems and subsystems. Decision-making and political power is now shared among States, international organizations, public and parastatal entities, and transnational corporations. The challenge of this factuality and plurinormativity lies in articulating its validity postulations and normative guidelines, to develop theoretical models and stimulate actions (actions based on models and models based on actions) oriented towards the dialogue between the multiplicity of sources, creating a system or entangled structure that, at the same time, is plural, legitimate and favors the common good.

Concepts such as hierarchy, network, public participation, representation, deliberation, power, legitimacy, responsibility, transparency, learning, innovation, risk and *soft* and *hard* governance tools began to compose studies on new shared management models that have caused disruption in traditional models of government.

The post-Wesphalia system was centered on the figure of the Nation-State that internally established rules that facilitated the development of the market and corporations, while externally it expanded geopolitical and economic spaces to dominant positions and privileges for companies created in its territory. Important changes after the 1970s allowed these companies to take on an ever greater role and, paradoxically, become less and less dependent on the States in which they were born. The existence of command units in more than one State, as well as operational and financial management centers, almost always involving tax havens, gradually gave them the role of political actor, rivaling the States themselves, both internally and internationally.

Such transformation is the object of this study. Research was developed adopting as a problem theme: the (in)compatibility of cosmopolitan governance models and democratic standards of government in which public and private centers of power operate, seeking to identify the possibility of restoration, even if partial, through instruments of corporate social and environmental responsibility.

The hypothetical-deductive methodology was used on descriptive and analytical starting points, based on a wide bibliographic review. In addition to the introduction and final considerations, this article is organized into seven topics. In the first, the polyarchic organization that moves from

government to governance is discussed. In the next item, an outline is made on the theories of polyarchic governance and the politics' privatization projects.

In the third topic, the approach will fall on European polyarchic governance and the techno-bureaucratic project of politics. The fourth deals with global polyarchic governance as a problematic idea of a dubious institutionality of corporate responsibility. The fifth proposes a response to corporate responsibility in post-state polyarchy. In the sixth, the focus is on the social and environmental responsibility of companies, and in the last, the restoration of the post-state polyarchy against corporate responsibility.

1 THE POLYARCHIC (DIS)ORDER⁴: BETWEEN GOVERNMENT AND GOVERNANCE

In the globalized world, there are several centers of ordering and power (state norms, infra-state norms, regional norms, international norms, corporate norms). The question that is being discussed nowadays is how to articulate these different systems and subsystems in the search to establish order in the dispersion (TEUBNER, 2009; 2012).

Concepts such as global governance, multilevel governance, cross-border governance and global governance emerged as a way of trying a normative integration, to create an order or system that is minimally capable of establishing policies to coordinate actions and resolve disputes (FINKELSTEIN, 1995; BULL *et al.*, 2004; SINCLAIR, 2013; TORTOLA, 2017).

Governance, in this environment, is usually employed to refer to all the processes that are expressed through norms, policies, programs, measures and actions to encourage and monitor the conduct of private, public or semi-public agents, so to solve a specific problem or to promote the common good. The word "government", on the other hand, has been used to identify a political actor who acts in the coordination of planning, integration and control actions of a determined political collectivity (ZÜRN 2010).

The need to address issues that go beyond the boundaries of nation-states and the emergence of public and private power centers outside these borders have driven the development of theoretical models and *ad-hoc*

⁴ The word "polyarchy" is borrowed from Dahl (1971), indicating both the plurality of normatively and factually existing power centers, and to denounce the oligarchy of competition between political and private agents internally and externally. Polyarchy, however, can be added to Petit's (1999) theory of contestation and even to Mouffe's (1999) agonism. This dialogue of model and normativity of existential factuality is proposed throughout the article.

arrangements of international governance (BULL *et al.*, 2004). Issues of common interest are regulated not by a central authority or instance reproducing a world State, with a legitimate monopoly on the use of force, but through international, bi- or multilateral agreements, state and non-state activities, dialogues and pressures, normativity and expressions of will, whose effects extend beyond the limits of States (BECKERS, 2015).

The governance mosaic brings together some level of institutionality with national orders and regional and global systems for the protection of human rights and for the resolution of interstate conflicts, under classic parameters of security and sovereignty, in the style of the Organization of American States, the European Union and the United Nations, but also from the perspective of solving tensions of a commercial nature, such as the World Trade Organization (WTO) (ZURN, 2010).

This mosaic of institutionalities, which already carries serious problems of articulation, becomes even more complex with the transversality of action and interests of private agents, especially large transnational corporations, which establish an autonomous regulatory regime. In part, this regime operates towards institutional orders, often creating competition among them, according to corporate strategic interests; in part, they act according to their own code and standard, to some extent immune to the regulatory power of national and transnational bodies (BULL *et al.*, 2004).

The result of this factuality is a disorder of normative orientations of concrete interests superimposed on regulatory orders oriented to the common good or, from another point of view, a decentralization of decisions and controls from classical instances to a system of non-hierarchical normative networks.

The great challenge of governance is how to counteract this decentralization and guide actions through dialogue between institutions and private agents, opening spaces for public participation, so that deliberations are democratic and oriented towards the common good (KLINKE, 2009).

2 OUTLINE ON POLYARCHIC GOVERNANCE THEORIES: POLITICS PRIVATIZATION PROJECTS

Theories on governance developed somewhat independently in the social sciences as a way of giving new contours to government strategies in the face of the challenges of a governability no longer of politics, understood as the relations between parliamentary majority and minorities,

but of control of normative systems, both public and private, as well as across borders. They comprise a vast field of knowledge with different perspectives and objectives, being an important resource for understanding the transformations of national governments in increasingly complex, dynamic and fragmented societies, as well as new articulations of management of shared powers, above and below, in global scope. Governments became subjects (or objects) of a global governance (BACHE *et al.*, 2016).

Some theories about global governance have developed from the doctrines and heuristics of effective private management. The GRC triad (governance, risk and *compliance*), for example, is a thesis of integration between governance, risk management and the integrity of organizations, especially private ones, with the objective of managing uncertainties and promoting the integrity and compliance of business actions, taking as a parameter the legislation of the State in which they operate and good international practices (TARANTINO, 2008; MOELLER, 2011; ROEBUCK, 2013). Greater emphasis should be placed on the environmental, labor, anti-corruption policy, and respect for human rights domains (WEISSBRODT, 2014; BAUER; UMLAS, 2015; HESS, 2017).

The theory of collective action of organization developed by Mancur Olson explains the behavior of rational individuals who associate in search of a collective benefit, which is converted into individual advantages. The effort to achieve these goals can be made by all members of the group or by just a few, but the advantage gained is extendable to all. According to their assumptions, the rational individual chooses whether or not to act in pursuit of the collective benefit and, even if he chooses inertia, he will participate in the results by integrating the group (OLSON, 1999).

These theories should be considered in order to understand the poly(an) archic phenomenon that is expressed at a global level and affects States, guiding the coordination actions of its multiple actors. The rationalist reading and belief and its proximity to the ideals of economic liberalism, especially in Olson, call into question its effectiveness as an element in the construction of a fair society and in the maintenance of cooperation and solidarity. GRC, in turn, does not offer safe paths between its extrapolation from corporate domains to the state and global level, where the plexus of interests and values is much more complex.

Democratic theories, on the other hand, address issues such as freedom, justice and equality, unlike organizational theories that encompass issues such as power and authority, leadership and motivation, and group

dynamics in action (KLINKE, 2009). The idea that identity, albeit counterfactual, between author and recipient of norms tends to mobilize efforts to resolve conflicts of interest, stabilizing behavioral expectations and cooperation ties. The question is whether economic agents are willing, as in Olson's theory, to act according to a finalistic rationality and not immediate and instrumental rationality (HABERMAS, 2012, p. 422, 475).

3 EUROPEAN POLYARCHIC GOVERNANCE: THE TECHNO-BUREAUCRATIC POLITICAL PROJECT

Over the past seventy years, authority, understood as competent to make binding and legitimate decisions, has been dispersed from the central state upwards and downwards, giving rise to a governance of multiple levels or, simply, multilevel governance. The process took place on two sides, with authority shifted to both subnational jurisdictions and international organizations (HOOGHE; MARKS, 2015).

Europe is an example of multilevel governance, with an orientation moderately based on the classic ideals of public institutions, the search for economic efficiency and the protection of rights. The European Union encompasses States and their regions in a continental system of economic exchange, individual mobility, dispute and conflict resolution, and external representation (HOOGHE *et al.*, 2020).

Since the 1960s, new levels of subnational government have been created in twenty-two European countries, and self-determination has been extended to several regions with distinct communities, including the Azores, the Basque Country, Catalonia, Corsica, Flanders, Scotland, South Tyrol, and Wales (HOOGHE *et al.*, 2020).

Studies on new shared management models, which have been responsible for the disruption of traditional government models, addressed concepts such as: hierarchy, network, public participation, representation, deliberation, power, legitimacy, responsibility, transparency, learning, innovation, risk and *soft* and *hard* governance tools.

The sovereignty of national States is challenged by the integration and decentralization of power. The enlargement and deepening of the European Union and the decentralization to subnational governments transferred the authority of national governments to a supranational organization. The new structure of the European government ends up reflecting a tension between the functional pressures and the identity of each nation. The tension of

multilevel governance is most visible where it does not deny national sovereignty but reduces its decision-making power.

The trend towards cooperative political forms with incentives for inclusion and pluralism can generate negative consequences for democracy such as the lack of visibility, the breakdown of representative institutions, the composition of shapeless multilevel networks and the indetermination of limits and mechanisms of responsibility. Despite the breadth of the trend towards multilevel governance, the diversity between national and local policies contributes to a difficult convergence of cooperation between government levels (PAPADOPOULOS, 2014).

In the formulation of supranational or regionalized policies, processes are analyzed only in terms of their efficiency, neglecting the impact on the quality of democracy. Multilevel governance brings new forms of accountability, but weakens democracy due to the low visibility of networks, their selective composition and the prevalence of private forms of accountability over public ones (PAPADOPOULOS, 2007).

The adoption of measures on a transnational scale ends up favoring the interests of majority groups over local interests, which are abandoned. Supranationality did not build instruments to prevent economic capture of deliberative and execution processes, expanding the problems that already existed nationwide (SCHAKEL *et al.*, 2015).

4 WORLDWIDE POLYARCHIC GOVERNANCE: A PROBLEMATIC IDEA OF A DOUBTFUL INSTITUTIONALITY

The European model demonstrates that global governance processes, even if they claim to be participatory and inclusive, may not be able to encompass and address all the issues on the horizon. Not now. The diversity of power, wealth and worldview among States is notorious. Cultural differences or divergences are also significant, including with regard to human rights and environmental protection.

Democracy also ends up being affected, as it is difficult to mobilize the plurality of citizens in the different spaces of existence in search of solutions that meet their needs. The differences in emphases and opportunities undermine the assumptions of identity between the author and recipient of the norms. The most privileged social and economic groups are at an advantage in the competition for differential policy decisions and treatment

priorities. An internal scenario that is also projected – and with even greater emphasis – on the international level between individuals, nationalities and States. Compensatory policy models, which are almost completely attached to the States, have proved to be insufficient to counterbalance the inequalities generated by the *modus vivendi*.

Stakeholders, holders of most of the resources and coercive power, direct public policies to their best advantage. Inequality is an element that, in the classic notion of government and State, compromises the possibilities of satisfying the postulates of democracy and rights (BULL *et al.*, 2004; PAPADOPOULOS, 2014).

With the multiplication of forms of networked governance in the different phases of the political process, votes come to count less, while resources decide more. Other governance trends as shown in the *ad-hoc* mosaic, such as judicialization and delegation to independent organizations, further weaken the value of voting, changing the context to an unrepresentative and undemocratic accountability of institutions (PAPADOPOULOS, 2014).

The lack of rapprochement between international decision-making levels and affected citizens, as well as the lack of a headquarters to concentrate and coordinate political decisions, cause a deficit in global governance, namely, compliance problems, legitimacy problems and unrestricted sectoral externalities. Some, related to compliance with the expected rules or standards of honest business conduct. Others refer to decision-making that do not rely on traditional mechanisms for the participation of individuals and society. The latter, to generate negative effects on ecosystem spaces of production and reproduction without controls or instruments of responsibility.

The counterpoint that brings aspects of reflection about the effectiveness of governance lies in the need to grant it autonomy and to be above the decision-making power of nation-states. International relations must be marked by consensus and strict compliance with what has been agreed. The global level must be part of a system that is characterized by the interaction of different levels of governance and that differentiates itself either functionally or in a stratified way from state governments (ZÜRN, 2010).

By keeping room for maneuver at lower levels of governance, there is always the possibility of comparing the success of different policies and finding new ways to implement core principles. The global governance system does not follow a rigid system. It is the result of a process of

permanent adaptation between the different, seeking, at the same time, the strengthening of central and local institutions. Given the advantages, international governance agreements can be an alternative in contemporary management.

Despite evolving as an accepted concept among countries, pluri- or multilevel governance lacks effectiveness due to the complex networks of relations between States and the problem of legitimacy of organizations. The analysis of governance requires adjustments in view of the overlap, interconnection and lack of definition of existing norms and the interests of the parties. The lack of a coercive and sanctioning means for non-compliance with international determinations causes volatility and insecurity in the environment, which makes governance fragile in many aspects.

Another sensitive point in the discussion of global governance is the absence of clear predictions about its articulations with the great centers of power that are transnational corporations, especially their degree of commitment to accountability for violations of human and environmental rights. The disparity between the legal systems of the countries and the absence of an international consensus on the means of sanction and commitment lead acts of attack on humanity to go unpunished.

5 CORPORATE RESPONSIBILITY IN POST-STATE POLYARCHY: A RESPONSE

If the global polyarchy has private power centers capable of affecting the classic mechanisms of national governments and imprecise supranational governance instruments, the concern should turn to understanding this phenomenon and creating strategies that can establish counterpoints to the dissipative forces of promotion of democracy and human and environmental rights.

There are several studies that point to a change from within corporations. An axiological virus that promotes mutations in the self-centered genetics of economic interests and the logic of profit.

The concept of corporate social responsibility (CSR) is one of these theses. It starts from the idea that values and ethics should make up the corporate culture, guiding the conduct of corporations and serving as a foundation for the realization of their social function. Companies should not limit themselves to generating returns for their owners, but to promote the satisfaction of their employees, partners and society, as well as respect

for the environment (MATTEN; MOON, 2004; BAUER; UMLAS, 2015; HESS, 2017).

This corporate responsibility encompasses the integration of environmental, social and governance aspects, currently diffused under the acronym ESG, for *Environmental, Social and Governance*. The competitive challenges generated by globalization and by a public sphere attentive to uncommitted behavior with social demands for respect for democracy, human and environmental rights, amplified by the history of massive violations perpetrated especially in developing countries, created the need for an adjustment of codes of corporate ethics.

The guiding principles of CSR are transparency, accountability, ethical behavior in its relations with private and public agents, observance and reinforcement of the rule of law, and compliance with internal and international standards for the protection of the environment and human rights (VALLAEYS, 2020). In fact, the normative parameters are placed as the minimum normativity to be effectively respected, which requires the adoption of even more protective norms. Standards and practices oriented towards responsible and sustainable development (GERMANO *et al.*, 2020).

Each corporation must have its own strategic vision, socio-economic mission, culture and code of ethics. These aspects apply in the relationship with its various actors (*stakeholders*, in administrative jargon), including customers, shareholders, employees, government, and members of society (GERMANO *et al.*, 2020).

The set of ethical values and practices makes companies adapt to an increasingly competitive, demanding market that covers all sectors. No company is exempt from this requirement, and must face the direct and indirect risks inherent to its main activity. The focus of the business involves the promotion of actions to support sustainable development, job and income generation, social inclusion, in addition to environmentally appropriate crafts and technologies (MATTEN; MOON, 2004; BAUER; UMLAS, 2015).

Companies are free to choose and implement their own social and environmental responsibility policy, observing the general guidelines defined by international parameters, such as the United Nations Global Compact, and, above all, the principles of proportionality and relevance. The principle of proportionality indicates that the policy must be compatible with the nature of the institution and the complexity of its activities, services

and products. In this analysis, the degree of exposure to socio-environmental risk of actions and operations represents compliance with the principle of relevance (CAI *et al.*, 2006; EVANGELINOS; NIKOLAOU, 2011).

The scope of corporate social responsibility presupposes identifying relevant issues and establishing priorities, electing organizational governance, human rights, the environment, legal operating practices, consumer issues, as well as community involvement and development (VALLAEYS, 2020).

It is not up to companies to decide whether or not to meet the wishes of *stakeholders*, but rather how to fulfill their duties to them. The proactivity of all actors is the guarantee of the enterprise's success and the company's perpetuation in the market. But that is not all. The performance of companies must be guided by the highest standard of governance, and in the case of practices that violate human and environmental rights, the response must be effective.

The interdependence between business profitability strategies and business practices associated with corporate social responsibility is increasingly highlighted as a way of survival and corporate sustainability and as a means of solving the asymmetries of power and coordination present in the constellation of post-state or global (GERMANO *et al.*, 2020).

The benefits of social responsibility for organizations are reflected in the encouragement of decision-making processes based on a better understanding of society's expectations and opportunities linked to better management and control of legal and organizational risks. Improving reputation, promoting greater public trust, generating innovation and competitiveness, supporting the operation, including access to financing and preferred partner status are other advantages of CSR (VALLAEYS, 2020).

The advancement of relationships with *stakeholders*, increased loyalty, involvement, participation, health, safety and ethics of employees are the positive impacts on the organization's ability to recruit, motivate and retain its employees. The savings resulting from increased productivity and efficiency in the use of resources, reduction in energy and water consumption, reduction of waste and by-product recovery, reflect the greater reliability and fairness of transactions through responsible involvement, fair competition and corruption reduction (VALLAEYS, 2020).

CSR would be a way to prevent new violations of human and environmental rights from being practiced by companies, as well as to expand the accountability instruments of those who escape the legal frameworks and

parameters imposed by the global *jus commune* of required and expected corporate behavior (OLSEN; PAMPLONA, 2019).

6 THE SOCIAL AND ENVIRONMENTAL RESPONSIBILITY OF COMPANIES: ANOMIC OR OUT OF PLACE POST-STATE POLYARCHY

To what extent the strategy of changing the corporate culture from within will effectively result in a greater commitment to equality, rights and democracy remains to be seen. There are more reasons for skepticism than for investment in the project.

The capitalist system is based on private property, class division and the constant search for growth and capital accumulation. The logic of capital colonized social relations and practically all spheres of life (DAR-DOT; LAVAL, 2016, p. 7). The change in corporate culture would require, in a more profound way, a radical transformation of the production and consumption system linked to changes in cultural and social values (MAS-SUGA *et al.*, 2019).

In practice, transnational companies continue to choose developing countries, with fragile economies and institutions, to develop their activities that cause greater impacts to the environment and human rights (PEREIRA, 2020). The increase in revenues and the reduction of costs, even considering the expenses with the co-option of local governments, mobilize corporate strategies. Capitalism would have the logic of profit, not the code of ethics or justice.

The adoption of management models and clichés such as “ethical capitalism”, “ESG” or “CSR” would be mere clothing of a clean speech to hide dirty practices, renewing the maxims of ideological colonialism and economic and political imperialism (ZAMORA CABOT, 2020). The phenomenon has been called *greenwashing*, a stratagem of selling green and delivering garbage, in an ecological washing of socially and environmentally harmful practices (RAMUS; MONTIEL, 2005; DELMAS; BURGANO, 2011).

TNCs, as they have several legal domiciles and representatives in different States, would adopt the doctrine of CSR as a marketing action, but would continue, in practice, to exempt themselves from the responsibilities of repairing damages due to the absence of legal, internal or international rules, that effectively reached them. Or they do it at their own discretion.

At the international level, what exists are corporate regulations or codes of conduct with a *soft law* nature, without any sanction in case of non-compliance or non-adherence. Conventional norms, on the other hand, do not bind companies, but only signatory States.

The performance of these companies internationally has reproduced the strength of the pressures and *lobbies* they exert on national governments (OLSEN, PAMPLONA, 2019). Several attempts to approve conventions on corporate responsibility have failed (WEISSBRODT, 2014). In fact, there is a corporate law or corporate rights that are intertwined with standards of voluntary adherence, as in the case of the UN Global Compact or the ISO system, in addition to regional, international and domestic systems of civil and criminal standards that instead of mutually reinforcing, compete for ineffectiveness (ZUBIZARRETA, 2009). The picture lies between anomie and normative irrelevance (FERNÁNDEZ SÁNCHEZ, 2018).

7 THE SOCIAL AND ENVIRONMENTAL RESPONSIBILITY OF COMPANIES: POST-STATE POLYARCHY RESTORED. A PROPOSITION

Some alternatives have been placed on the scene to face this anomie or normative irrelevance. The creation of a counter-hegemonic network of a global citizenship to control corporate action and demand institutional and corporate spaces for participation is, in the political dimension, the one that seems most promising to face the decentralization of the *bonum commune* as the objective of domestic and international communities (BANERJEE, 2010).

In the legal sphere, in addition to encouraging (or mandating) the adoption of corporate social responsibility, a system of accountability is imposed based on the normative canons defined by corporate policy at levels higher than those present in the national systems in which they operate (GIULIANI, 2016). Links to the ISO system, for example, would be used as an element to reinforce corporate accountability at the internal level. *Soft laws* would become *hard laws*, for purposes of accountability for human rights violations, humanitarian or environmental damage (BECKERS, 2015, p. 184-185, 391).

The accountability forum could undergo a redefinition of jurisdiction and competence. There are four possible orientations: (a) the States where

the companies are located (*Host State*), (b) the States of origin of the companies (*Home State*), (c) the States affected by the damages (*Damaging State*) and (d) the *universal jurisdiction* (OLSEN; PAMPLONA, 2019).

The definition of jurisdictions can be concurrent or subsidiary. The first case can bring problems due to the possibility of multiple simultaneous initiatives in different States generating crises of conflict of jurisdiction or competence, resulting in delay or, in the end, irresponsibility (PÉREZ, 2020). It is pertinent to pay attention to the jurisdiction capable of promoting effective socio-environmental protection (SAMPAIO; REZENDE, 2020).

In the case of successive definitions, the State in which the damage occurred would be, as a matter of priority, the one in which liability would be judged, provided that it was effective in a substantive sense, of full, formal reparation, with broad access to the affected groups; and temporal, with resolution within a reasonable time, so that there would not be a second damage, now caused by the delay in the reparatory response.

If there is a deficit in the response, the jurisdiction would be shifted to the head office of the company, the one that caused the damage, or its parent company (JAFARIAN, 2019). A more advanced thesis proposes the adoption of a business group jurisdiction, choosing the State in which the material and procedural legislation enables a more effective State response from the perspective of victims and full reparation. There is no lack of proposals for a kind of universal jurisdiction against massive violations of human and environmental rights, although the issue of enforceability cannot be forgotten.

The supranational bodies could also be brought into this process far beyond the typical sanction by persuasion they currently adopt. In the criminal sphere, the situation would fit in with the Rome Statute, for the activation of the International Criminal Court. At the civil level, it resents the application of the doctrine of horizontal effectiveness of human rights, to the point that companies violating human and environmental rights are taken to international and regional courts. It is understood that the approval of protocols or specific conventions on the subject would not be necessary, it being sufficient that the jurisprudence of these Courts be guided in this regard, as was done in the context of constitutional jurisdictions, starting with Germany (PETERS, 2012; HEASMAN, 2018).

FINAL CONSIDERATIONS

The need to address issues that go beyond the borders of nation-states has driven the emergence of international governance models, but which are still lacking in effectiveness. This means that, even if global and multilevel governance processes are participatory and inclusive, they are not capable of covering and resolving all the issues raised in a framework of competing interests, expectations and validity claims. The diversity among States is exponential and there are relevant cultural and socioeconomic divergences on human and environmental rights.

Despite evolving as a practice even more than a concept, multilevel governance lacks effectiveness due to the complex networks of relationships between States, supranational organizations, transnational corporations and civil society. The analysis of modern governance requires adjustments in the face of the overlap, interconnection and lack of definition of existing norms and the interests of the actors involved and the invisibilities that project themselves from within the States to spaces of relative anomie or low protection effectiveness. The lack of a coercive and sanctioning means for non-compliance with transnational guidelines and decisions causes volatility and insecurity to appear in the environment, which makes governance fragile in many aspects.

Another sensitive point of global governance is the accountability of transnational companies for violations of human and environmental rights. The disparity between the legal systems of the countries and the absence of an international consensus on the means of sanction, commitment and commitment means that acts of attack on humanity go unpunished.

Corporate social responsibility (CSR) or corporate (CSR) and its treatment at the domestic and international level demonstrates the commitment to finding viable solutions for regulatory and decision-making dispersion, in addition to binding, albeit in an incipient way, transnational companies to respect and promotion of human and environmental rights. Social commitment and legal responsibility must be guided by ethical biases that promote sustainable development and respect for human and environmental rights.

The actions of States and supra and international corporations cannot be limited to domestic law, but must be part of a cross-border regime that sponsors a system of sharing burdens and benefits more equitably between peoples, respect for international treaties and enshrined rights globally.

Cooperative mechanisms for the prevention and repression of predatory economic exploitation, corruption, impunity and disrespect for the environment and human rights must be strengthened.

The supranational nature of public and private conduct, as well as of deliberative and normative processes, cannot constitute obstacles to widespread irresponsibility and the neglect of human and environmental rights. States violate, at the very least, their internal fundamental protection duties when they evade proactive and cooperative actions to prevent or repress these negligences, in the name of their geopolitical or economic interests.

While a reasonably articulated normative framework that manages to articulate the plurality of actors and interests is not forthcoming, a regime of external accountability of States that violate their commitments to peace, human and environmental rights must be organized. Thus, the horizontal effectiveness of human rights must also be reinforced, in order to impose sanctions on corporations that also fail to comply with those commitments.

Ideally, the accountability forum should be international or supranational. In a subsidiary, concurrent or complementary way, depending on the case, it could be recognized the internal jurisdiction of the States where transnational companies are installed or originate, those affected by the damages suffered or even universal jurisdiction in matters of serious violations of human and environmental rights.

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Article received on: 06/22/2021.

Article accepted on: 08/31/2021.

How to cite this article (ABNT):

SAMPAIO, J. A. L.; PINTO, J. B. M; FABEL, L. M. T. Order and disorder in post-state polyarchy: the role of corporate social and environmental responsibility. *Veredas do Direito*, Belo Horizonte, v. 18, n. 41, p. 223-245, may/aug. 2021. Available from: <http://www.domhelder.edu.br/revista/index.php/veredas/article/view/2185>. Access on: Month. day, year.