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The Institutionalisation of Human Rights Reconceived:
The Human Rights State as a Sociological 'Ideal Type'

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Abstract

In the contemporary political world order that continues to be structured by the principle of national sovereignty, the fate of human rights ultimately depends on states as the main guarantors and transgressors of rights. The analysis of the conditions and processes of their effective institutionalisation therefore requires a focus on the state level without losing sight of human rights' universalistic potential. This article develops the ideal type of the human rights state as a sociological framework for the systematic qualitative study and assessment of human rights institutionalisation. To this end, it reconceptualises Benjamin Gregg's normative political theory of the human rights state as an analytical yardstick that refers to the necessary conditions for the effective implementation of human rights as locally valid, state-based norms of universalistic scope. Based on the extrapolation of their core traits and the synthesis of these into a unified, coherent concept, the ideal type of the human rights state provides guidance for the empirical study of factual processes of human rights institutionalisation within states both as an analytical grid and benchmark for their critical evaluation. By integrating the divergent perspectives on legal, political and wider societal dimensions of human rights institutionalisation, this article contributes to the multidisciplinary field of human rights research as well as to the developing field of human rights sociology.

Keywords: human rights; institutionalisation; human rights state; ideal type; sociology of human rights; cosmopolitanism; constitutionalisation

Introduction

As universalistic norms of moral justice[1] and acceptable governmental conduct,[2] human rights are largely created and protected by institutions.[3] If we want to understand how human rights can be realised in practice, we therefore have to study the conditions and processes of their effective institutionalisation. That is to say, we have to look at the ways in which organisations, procedures and practices are established or adapted so as to embed human rights norms in a particular social environment.[4]

In the absence of a world government, and given the lack of other effective mechanisms for their global enforcement, the institutionalisation of human rights ultimately depends on states.[5] On the one hand, only states have—at least in principle—the resources, enforcement bodies and the monopoly on the legitimate use of force to implement rights effectively.[6] In practice, the entitlement and enjoyment of human rights is therefore usually tied to one's belonging to a political community that guarantees the human rights of its members. On the other hand, it is precisely the definition of community membership in nationalist, ethnic, religious, or other exclusionary terms that creates many of the problems to which human rights respond, and which presents one of the greatest obstacles to their full realisation.[7] International human rights law potentially reinforces these exclusionary tendencies by allowing for derogations and limitations of human rights in the name of national interests, and by prioritising the rights of national citizens over those of non-citizens.[8]

In other words, the universal aspiration of human rights that everyone is entitled to simply by being human is in stark tension with the particularism of the contemporary political world order that continues to be structured by the principle of national state sovereignty.[9] This continuing tension requires the academic study of the institutionalisation of human rights to pay greater attention to the level of the state while moving beyond a focus on compliance with ambivalent international law that does not necessarily serve the aim of protecting human rights in the most effective way.[10] To put it in the words of the sociologist Lydia Morris, what is needed is an analytical framework 'which accepts both the expansive potential of universal human rights and the restrictive particularism of national closure, but steers a path between the two.'[11]

This article constructs such a framework. Based on Max Weber's notion of the 'ideal type' (*Idealtypus*),[12] this article develops the sociological ideal type of the human rights state as a tool for the systematic empirical analysis and assessment of institutionalisation processes of human rights on the state level. To that end, it reworks Benjamin Gregg's political theory of the human rights state from a prescriptive model of how human rights ought to be fully realised

into a non-prescriptive analytical grid that captures the legal, political, and wider societal dimensions of effective human rights institutionalisation. Based on the extrapolation of their core traits from human rights practice and the synthesis of these into a unified, coherent concept, the ideal type of the human rights state indicates the necessary structural conditions that are likely to contribute to the effective protection of human rights as socially constructed, locally valid state-based norms of potentially universalistic scope. By developing a comprehensive, non-prescriptive framework for the qualitative study and assessment of institutionalisation processes, this article seeks to contribute both to the multidisciplinary field of human rights research in general, and to the developing field of human rights sociology, in particular.

It begins by outlining the contributions and limitations of three of the most prominent conceptualisations of human rights institutionalisation: legalisation, socialisation into norm compliance, and cosmopolitanisation. After making the case for a perspective that is able to integrate the merits of these different approaches, the article takes Gregg's conception of the human rights state and reconstructs it as a vehicle for the design of a holistic framework for the empirical study of human rights institutionalisation. The third section explains the methodology behind Max Weber's 'mental construct'[13] of the ideal type before mapping out the ideal type of the human rights state on the basis of six essential features of contemporary human rights practice.

Finally, it is important to note that, in drawing on Gregg's notion of the human rights state, this article builds upon an understanding of the term as the normative ideal of a state in which human rights are fully realised,[14] rather than referring to the metaphor for a particular kind of social movement as proposed by Gregg in his more recent work.[15] Gregg's original formulation of the human rights state is a more promising starting point for developing a framework for the study of human rights institutionalisation because it puts primary emphasis on the structural conditions of their realisation. By combining elements from Gregg's original account with traits of his refined conceptualisation that are consistent with it, this article not only lays the foundation for a comprehensive analytical framework but also offers a specific interpretation of the concept of the human rights state.

Theories of human rights institutionalisation

How can we conceptualise the effective institutionalisation of human rights in a political world order that continues to be regulated by the idea of sovereign nation states? The multidisciplinary field of human rights scholarship has given three distinctive answers to this question:

legalisation, socialisation into norm compliance, and cosmopolitanisation. Each of these approaches typically correlates with a predominantly legal, political or sociological perspective. This does not mean that they are limited to the boundaries of any of these disciplines. Nor does it mean that lawyers, political scientists or sociologists interpret the realisation and effective institutionalisation of human rights necessarily and solely in legal terms, as norm compliance or in cosmopolitan terms. But this tripartite systematisation does indicate different emphases rooted in particular disciplinary traditions, as well as a general trend towards the diversification of the field and the emergence of more complex approaches. Yet, none of these approaches takes account to the same extent of the legal, political and wider societal dimensions, as well as of both the structural and discursive aspects, of human rights institutionalisation.

Legalisation

To the extent that human rights scholarship was, until the 1970s at least, largely dominated by lawyers, the institutionalisation of human rights was typically equated with their codification in national and international law.[16] They were conceived primarily as legal entitlements against states that rested on a political consensus on acceptable governmental conduct embodied by national and international human rights instruments.[17] The increasing prevalence of this interpretation was closely related to two connected developments during the second half of the twentieth century: the rise of the international human rights regime with the detente of the East-West conflict in the 1970s, on the one hand, and, on the other, the global spread of the domestic codification of human rights in the course of decolonisation and the demise of the Soviet Union.[18]

Today, formal reference to human rights norms can be found in many, if not most, constitutions, legislative bills of rights or bodies of common law around the world.[19] Indeed, as widely codified legal norms, human rights exist in social practice relatively independent from the recognition of philosophical assumptions about their normative foundation.[20] However, legal analyses were for a long time based on the misguided assumption that the codification and constitutionalisation of human rights would lead to positive effects automatically. They have therefore typically focussed on the legal technicalities, such as judicial interpretations and formal mechanisms for the ratification of international treaties, their incorporation into domestic law and protection by constitutions, specific legislation or common law principles.[21]

Yet, international human rights treaties do not come with mechanisms for their automatic enforcement.[22] Because state governments are only to a limited extent willing to

submit their interests to the rule of international law, the monitoring bodies of the UN lack any judicial powers and thus the authority to enforce the implementation or a specific interpretation of human rights norms against states.[23] But while this means that states continue to play a decisive role for the realisation of human rights in practice, both historical and contemporary analyses suggest that the positive effects of domestic constitutional rights guarantees alone are commonly exaggerated.[24] Many postcolonial governments refused to implement their constitutional human rights guarantees effectively, while others soon abolished their new constitutions entirely after gaining independence, and established some form of authoritarian rule.[25] Moreover, even in the legal history of liberal democracies such as Britain, the United States, Canada or India, the judicial recognition of individual civil and political rights depended not so much on formal constitutional rights guarantees alone but on the development of financial and legal support structures for potential claimants.[26]

Although legal scholars have recently started to broaden their analytical focus to include institutions such as ombudsman offices, national human rights commissions and legislatures,[27] it nevertheless tends to remain limited to the juridical dimension of human rights, leaving aside the political and societal conditions of their construction and protection. To be sure, their national and international legalisation arguably provides human rights advocates and victims of violations with a potentially vital resource in their struggles for justice and reparation.[28] The legal codification of human rights and the provision of legal remedies delivered by independent courts may be ultimately desirable for their realisation. But if their institutionalisation remains limited to the formal dimension of juridical safeguards alone, without providing effective protection of the norms behind these legal rights, then the mere legalisation of human rights may even inhibit their effective implementation.[29]

Socialisation into norm compliance

With the growing diversification of the field of human rights research since the 1980s, scholars from non-legal disciplines began to draw an increasingly complex picture of human rights institutionalisation. Under the impression of the rise and success of the international human rights movement during the 1970s and 1980s, more and more political scientists became interested in the underlying sociopolitical conditions and mechanisms for the successful institutionalisation of international human rights in states that had previously been involved in their abuse.[30] In contrast to the predominant legal understanding of compliance which refers to

the observance of laws, treaties and court rulings, these scholars began to analyse human rights changes as *political* processes and tended to interpret compliance in more comprehensive terms.

The authors of one of the most sophisticated and influential political conceptions of human rights institutionalisation—the spiral model of human rights change[31]—suggest understanding compliance as the result of a process of the socialisation of state actors into '*sustained behavior and domestic practices that conform to the international human rights norms*'.[32] Successful human rights change, these scholars argue, depends on human rights advocates mobilising both domestic and international opposition to pressurise reluctant governments into compliance. They thereby help diffuse international human rights norms across the globe and socialise non-compliant states into alternative types of behaviour that acknowledge and observe these norms. For an enduring and self-sustaining change, these human rights norms would have to become 'incorporated in the "standard operating procedures" of domestic institutions' on both the discursive and structural level.[33]

But while the proponents of the spiral model and other norms scholars take account of social actors beyond the juridical field, such as NGOs and activists, this often comes at the expense of a deeper view into the legal dimension of human rights institutionalisation. Indeed, political scientists regularly stress that an enduring human rights change presupposes the rule of law, an independent judiciary as well as the incorporation of international human rights norms into domestic law or the constitution.[34] Yet, they rarely discuss the constitutional status of national human rights laws and their effects on government, or whether the formally guaranteed rights are indeed accessible to all people within a jurisdiction, irrespective of their nationality or other status. They also scarcely take into account how particular rights are interpreted by the judiciary in their substance and scope, what powers judges have to enforce the particular interpretation of a right vis-à-vis other branches of government, and which remedies are provided to the victims of human rights abuse.

Moreover, proponents of the spiral model as well as other norms and compliance scholars often lose sight of the wider societal conditions of effective and enduring human rights institutionalisation. While they stress the role of movements and advocacy networks in that process, they do not sufficiently account for the fact that social movements and activists— whether nationally or transnationally organised—do not necessarily represent the majority of the people in their awareness and support of human rights.[35] As Risse et al. themselves acknowledge in a retrospective critical review, they did not imagine the possibility that, even in liberal rights-based democracies, human rights would not win out in public discourse.[36] Yet, the successful deployment of powerful counter-narratives to justify human rights curtailments

in states like the US and the UK since 2001 demonstrates that the enduring and self-sustaining institutionalisation of human rights requires the raising of a human rights consciousness within society more widely than initially envisaged by the spiral model.

To the extent that political scientists in general, and proponents of the spiral model in particular, conceptualise the effective institutionalisation of human rights as necessitating the national implementation of the norms of international treaties and covenants,[37] they also tend to neglect the various problems that come with the international human rights regime. Empirical studies call into question whether ratifying international human rights treaties leads to greater human rights compliance, with evidence including limited positive effects to adverse effects.[38] The tendency of Western states to justify military interventions with the need to protect international human rights, and the resistance of states to comply with the ever-growing number of treaties, have undermined their enforceability but also their legitimacy more generally.[39]

In part, these difficulties result from the fact that international human rights law is the contingent outcome of competing political interests of state governments. International human rights treaties and norms thus contain principles that do not serve the aim of protecting human rights in the most effective way but instead protect the sovereignty of states by allowing for governmental discretion, and for derogations and limitations of human rights in the name of national interests.[40] While international human rights law prohibits the discrimination of non-nationals, it also contains elements that tend to reinforce the prioritisation of the human rights of citizens over those of non-citizens, for instance, by limiting certain political rights to citizens and by recognising the right of only the members of national communities to freely determine their political status.[41]

All of this means that international human rights law carries with it the continuing risk of undermining the universalistic aspirations that many of its norms contain. Insofar as compliance scholars and spiral model proponents embrace international human rights law and equate human rights with the international regime, their vocabulary tends to reflect that risk by unnecessarily restricting the focus of attention to the behavior of states towards their citizens.[42]

An enduring institutionalisation of human rights on the ground that takes their universalistic potential seriously, however, seems to require more than 'some measure of political transformation' towards liberalisation and democratisation, as envisaged by the spiral model.[43] A corresponding analytical framework, on the other hand, requires greater categorical and normative distance to the international human rights regime in its present form, and must account for the wider societal implications of self-sustaining mechanisms for human rights

protection. Sociological conceptualisations and methodologies can help to address these requirements.

Cosmopolitanisation

Compared to other disciplines such as law, political science and philosophy, sociology was a latecomer in the engagement with human rights research. This is usually attributed to the intellectual heritage of the discipline[44] which emerged in opposition to the legal foundationalism of moral and political Enlightenment philosophy.[45] From the 1990s onwards, however, more and more sociologists began to set aside the traditional epistemological discomfort and to rediscover human rights as a subject that was in line with the discipline's long-standing interest in inequality issues and power relations.[46]

Accordingly, in their studies sociologists and social theorists tend to foreground the universalistic potential of human rights as norms of global justice. They conceptualise the institutionalisation of human rights not primarily in terms of compliance with norms of international politics, treaties and jurisprudence, but rather as an element of a socially constructed cosmopolitan condition.[47] Cosmopolitanism, in the words of Robert Fine, 'imagines a global order in which the idea of human rights is an operative principle of justice, with mechanisms of global governance established specifically for their protection.'[48] Based on a 'social solidarity across borders' and 'the activism of global civil society', cosmopolitanism 'envisages the reformation of political community at the national level [...] and new forms of political community at the transnational level.'[49]

Yet, sociologists sharply distinguish between what they reconstruct as the cosmopolitan ideal that goes back to Immanuel Kant's conception of a world citizenship, on the one hand, and, on the other, the concrete manifestations of cosmopolitanism in social practice.[50] Since human rights expanded under the conditions of the 'radically asymmetrical political-economic order' after the Cold War, sociologists are anxious not to treat the actually existing institutions and practices as the culmination of a normative cosmopolitan vision but as part of a contingent social process of cosmopolitanisation.[51] As part of this open, dynamic and contradictory process, human rights are always and necessarily embedded in power structures and, therefore, cannot simply be assumed to bring about greater equality and justice for citizens and non-citizens alike.[52]

In one of the most comprehensive sociological studies so far, Kate Nash thus critically probes to what extent the institutionalisation of human rights within states can realise their

universalistic potential as norms of global justice.[53] She does so by contrasting the cosmopolitan ideal of activists and philosophers that aims at the abolition of differences in the rights of citizens and non-citizens, with the actually existing cosmopolitanisation of law and citizenship. In her study, Nash compares the institutionalisation of human rights in the UK and the United States in the domains of law, government, activism and the public media. She deploys the ideal type of the cosmopolitan state in order to assess the extent in which both states have been transformed in their sovereignty and political legitimacy so as to allow for the full realisation of universal human rights.[54]

But while Nash goes beyond the rather abstract social theories of cosmopolitanism, she refrains from exploiting the full potential of her idea. As an external standard, her construction of a sociological ideal type reaches beyond legal and political compliance with international human rights law, and it has the potential to serve not only as a critical benchmark but also as a guideline for identifying categories and dimensions for empirical analysis. Unfortunately, Nash does not explain the methodology behind the construction of the ideal type, nor the way in which she applies it as a critical standard in her study. Because she does not derive analytical categories from it, Nash's ideal type of the cosmopolitan state remains purely abstract and, therefore, ill-suited as the basis for developing a more comprehensive framework for the study of human rights institutions.

Moreover, her analytical focus on cultural politics leads to an overemphasis of the discursive elements in struggles over the meanings of rights and the entitlement status of claimants. This comes at the expense of considering some of the most significant structural elements of human rights institutionalisation, especially in Britain, such as parliamentary committees, national human rights commissions, and specific provisions of human rights legislation as applied by the courts. Yet, these institutions represent important structural safeguards and mechanisms of human rights protection as well as dedicated arenas for the negotiation of the scope and meanings of human rights norms. As such, they serve both as institutional transmitters and as boundaries for the discursive construction of human rights in law, politics, and wider society.

What is needed, therefore, is a conceptualisation of human rights institutionalisation that is able to integrate the legal, political and wider societal dimensions of that process into one comprehensive analytical framework while allowing for a normative distance to concrete institutions from human rights practice. The remainder of this article is dedicated to the development of such a framework by reconceptualising Benjamin Gregg's political theory of the human rights state into a sociological ideal type.

The political theory of the human rights state

Introduced into the debate by the social and political theorist Benjamin Gregg,[55] the concept of the human rights state is based on an understanding of human rights as social constructions while taking their universalistic potential seriously. It offers a normative yet realistic and pragmatistic answer to the questions of what it would mean to realise universal human rights norms effectively in a world that is politically structured into nation states, and what would be the most promising avenue for their implementation. While Gregg develops the concept of the human rights state as a prescriptive model of how human rights ought to be realised in practice, it can serve also as a vehicle for the construction of a sociological, non-prescriptive ideal type because it is deeply rooted in sociological, anthropological and juridical insights from human rights practice.[56] As pointed out in the introduction, the following analysis draws on Gregg's original conception of the human rights state as a set of institutions, rather than his more recent proposal for a metaphorical human rights state consisting of a community of activists.

The roots of the human rights state

Gregg's political theory of the human rights state is a response to the fundamental tension at the heart of human rights both in theory and practice: on the one hand, humanity cannot guarantee human rights, because rights norms of whatever kind depend ultimately on the recognition and enforcement within local communities. In the present world, human rights can be effectively protected only through the institutional infrastructure of states.[57] On the other hand, the currently prevailing form of the modern nation state is rather inadequate for the full realisation of human rights. This is largely because nation states operate along an exclusionary logic insofar as they tend to construct their political community in 'normatively thick terms': they embrace the 'pre-political solidarity generators of blood, ethnicity, language, religion, or beliefs about a shared fate',[58] which all too often preclude non-nationals, immigrants, minorities and other particularly vulnerable groups of people from the equal recognition and protection of fundamental rights.[59] While Gregg acknowledges that liberal democratic states are much more likely than authoritarian regimes to recognise and protect human rights, he points out that they, too, struggle with human rights issues caused by the exclusionary logic underlying parts of these communities.[60] These issues range from slavery in India[61] to capital punishment,

institutional racism and discriminatory, overly intrusive anti-terrorism policies in Western democracies.[62]

As a possible solution of this dilemma, Gregg suggests to realise human rights by gradually transforming individual nation states into what he calls 'the human rights state'.[63] Unlike scholars who propose advancing human rights primarily through international institutions, through the creation of a global political community or through powerful states acting as 'stewards' for human rights,[64] Gregg makes a case for going into the reverse direction. His model is based on the establishment of locally defined and locally valid human rights as positive state-based law. This alternative approach, he argues, is more likely to be effective in the promotion of a free local embrace of human rights than international law and institutions like the United Nations or the International Criminal Court have been.[65]

Gregg's special emphasis of the local definition and recognition is rooted in his conceptualisation of human rights as socially constructed norms. That is to say, their validity does not depend on theories of natural law or god but, according to Gregg, on human beings defining, recognising and, to some extent at least, identifying with them.[66] To conceptualise human rights in that way means to recognise them in their quality as contingent claims to social justice that cannot exist as effective norms 'without the social and political context in which they are recognized and enforced.'[67] In that sense, human rights do not exist before politics, and they can only be effectively realised within a local political community.

While Gregg thereby acknowledges that human rights, like other socially constructed ideas of justice, do 'not start out as universals' but always 'as historically and culturally particular,'[68] it is precisely their social constructibility, he claims, that opens up the opportunity to create locally valid norms of universalistic scope. In other words, because they are social constructions, people can design and institutionalise norms that reach beyond the boundaries of a particular political community by including people outside of it. Gregg's concept of the human rights state is—according to the reading proposed here—the normative vision of the institutional stabilisation of that possibility. If grounded in inclusionary political practices, institutions and culture, he argues, human rights can be constructed on the level of the individual state in a way that 'all persons, those inside state boundaries as well as those outside,' would be 'legally equal with respect to state-based human rights.'[69] Accordingly, Gregg explains, a human rights state would 'inscribe the universal within the particular; it would include the excluded' by translating the rather moral status of 'human beings' of those outside of its sovereign territory into a territorialised legal status.[70]

Transforming the nation state

How would it do this? While the biological status of being human in itself does not necessarily entail any normative or legal implications, it can be transformed through political processes into an institutional fact that serves as the ground for a non-nationalistic kind of political solidarity. Drawing on John Searle's philosophy of the construction of social reality,[71] Gregg envisions the human rights state as a community that would collectively recognise the humanity of every person as a politically relevant status and attach to it the status function of human rights-bearer. It would thereby vest every human being with the authority or, in Searle's words, with 'deontic powers', to perform the function of a person that is entitled to the protection of her human rights. These powers would derive from the collective, more or less active acceptance of everyone's status as a human rights-bearing creature and from its institutionalisation in a corresponding system of social recognition.[72] Creating a field of recognition for that status requires, according to Gregg, the transformation of 'the normative grammar' of the nation state so as to turn human rights into an internal core feature of statehood.[73] Three domains of institutionalisation can be reconstructed from Gregg's theory that may also serve as guidelines for the development of an analytical framework.

First, human rights would have to become deeply enrooted in the state's political system and culture. This would imply that human rights become the highest instance, source and foundation, for the exercise of all legitimate political power and law-making. Moreover, in a polity seeking to preserve the state-based human rights of both its residents and persons outside of its territory and jurisdiction, the protection of human rights would be enshrined as a central aim in both the state's domestic and foreign policies.[74]

Second, human rights would have to be effectively entrenched in the legal system. This means, on the one hand, they would have to be established as positive—that is, coercively enforceable—state-based law, accessible to everyone within the state's jurisdiction. On the other hand, human rights would function as the ultimate legal restraint of judicial, legislative and political powers, setting the boundaries for the legitimate interpretation and application of laws and policies.[75]

Third, a human rights state would seek to facilitate the collective recognition of everyone's status as a human rights-bearer throughout society as a whole.[76] It would do so by means of 'institutionalized socialization,'[77] that is, by entrenching human rights in the community's social institutions to help socialise its members into a 'human rights consciousness.'[78] This consciousness implies being sensitive to issues of social justice and able

to frame them in the language of human rights. But it also means to mutually recognise each other's human rights entitlements and to be able to claim one's human rights vis-à-vis the authorities of the state.[79] In promoting the free local embrace and support of human rights beyond the professional elites of the political and legal systems, the human rights state aims for the development of an inclusionary, normatively thin kind of political solidarity, compared to a solidarity based on the normatively thick terms of ethnic or cultural nationalisms.[80]

The most important means for institutionalising human rights along these three dimensions and, in that sense, the fundament of any human rights state for Gregg, is their domestic constitutionalisation. By this he means to enshrine them in the state's constitutive rules of government as 'legally enforceable constitutional limits to the exercise of lawmaking and regulatory powers.'[81] Human rights would bind the political, juridical and legislative powers as the highest domestic instance of legitimate government. In so doing, they would not only replace nationalism as the main source and center of contemporary politics and law, but also limit state sovereignty to the extent necessary for their effective realisation.[82] At the same time, constitutionalising human rights combines 'the moral and the legal' thereby serving as the reference point for developing a human rights patriotism, that is, the emotional attachment to constitutionalised human rights as norms of universalistic scope.[83] Generating such a form of inclusionary and inherently transnational human rights solidarity would need to be reinforced through the legal order as well as public education.[84]

International human rights norms and institutions, however, are considered by Gregg to play a highly ambivalent role. While they may in some cases be able to reinforce the local recognition and institutionalisation of human rights, they can also be counterproductive. First, the extensive lists of rights norms proposed by international human rights treaties presuppose the universality of a liberal, highly individualised societal structure and certain political, economic, cultural institutions whose existence should not necessarily be taken for granted or automatically considered to be desirable (e.g. market, marriage). Less extensive, but freely embraced and locally specific lists of human rights may have better chances of effective realisation in a particular community.[85]

Second, international human rights instruments presuppose and reinforce the existence of nation states and of the exclusionary logic of nationalism. They intertwine nationhood with statehood by proposing a human right to nationality, and they provide for qualifications and derogations of many human rights in the name of national interests so as to render them practically ineffective. Finally, international human rights law may be counter-productive for the effective local implementation of human rights norms insofar as its treaties and institutions

may be perceived as the expression of a particular kind of imperialism, as something forced upon a community. This perception may be reinforced by governments referring to international human rights law in order to justify military interventions that have, as a matter of fact, rather different objectives.

Therefore, the 'surest route to individual human rights' for Gregg is through their local, collective recognition and through their protection by the structures of the modern sovereign state, yet now reconfigured as the human rights state: 'local political culture, if charged with protecting the human rights it embraces, is more likely than any nonlocal culture to be vigilant in protecting them.'[86]

Limitations of the human rights state theory

Nonetheless, Gregg is aware of the limitations of his normative vision, and of the hurdles for its realisation in political practice. First, he acknowledges that the human rights norms generated and protected by a human rights state are only *potentially* universally valid. Unlike the often ineffective international law treaties postulating the universal validity of human rights that are supposed to have always already existed, the human rights state recognises and protects human rights effectively yet only within the limits of its sovereign territory and jurisdiction. But these norms can become universally valid beyond the state-level if more and more communities came to embrace and institutionalise them in their domestic political and legal systems.[87]

Second, a community of human rights states would not result in the establishment of a global cosmopolitan polity or in a world public legal order based on a universally agreed set of human rights.[88] As human rights in Gregg's model could be whatever a particular community constructed as human rights, different states might create different schemes of human rights, or interpret the same rights differently.[89] However, given the intellectual and political history of the human rights idea, Gregg suggests that there would probably be a considerable overlap between the specific human rights conceptions and contents recognised by different states.[90]

Third, and perhaps most importantly, a human rights state cannot circumvent the fact 'that agreement on how best to understand, and how to resolve, issues of great social import is often only partial at best.'[91] It cannot resolve all the numerous, often-intractable problems of modern political community, and it cannot bring about conflict-free political communities or untroubled trans-state relations.[92] Precisely because human rights (and, consequently, the human rights state) are the products of human thought and action, they will always remain the

subject of debate and conflict between different stakeholders, lobby groups, and political parties, even where (or because) they are deeply entrenched in the constitution and social consciousness.

On the other side, there are inherent limits to the form of the state as such that cannot be entirely overcome through its transformation into a human rights state. Some interests of state actors in domestic and foreign policies always differ from those of its citizens and from the aim of the equal recognition and protection of everyone's human rights. These may reflect the self-interests of political, judicial or administrative elites, or they may result from the influence of pressure groups representing divergent particularistic interests. Furthermore, there is an inherent and insuperable tension arising from the fact that a state 'would quickly cease to be a state' if it had no borders at all, and if it would not grant at least some privileges to, and place some corresponding duties on, its citizens compared to non-citizens.[93] In other words, even in a human rights state there would be a structural necessity to sometimes prioritise the interests of its citizens over those of non-citizens, and this structural tension would likely be a constant source of political conflict. Gregg thus argues for the importance of enshrining the principle of the indiscriminate granting of state-based human rights to citizens and non-citizens, to residents and people outside of its sovereign territory, in the fundamental rules of government of a polity as well as in the community's political self-conception. For the human rights state, in that sense, 'has no foundation other than itself'.[94]

Reconstructing the human rights state as a sociological ideal type

Despite its limitations, Benjamin Gregg's notion of the human rights state lends itself as a vehicle for the construction of a sociological ideal type precisely because it does not ground human rights in an otherworldly imagination. It is distilled from empirical insights into the structural conditions of human rights institutionalisation. It is the synthesised product of insights from human rights practice; its achievements as well as its shortcomings and failures. Instead of assuming their universal validity, it is rooted in an understanding of human rights as socially constructed norms that emphasises their historicity and social particularity. Yet, Gregg is primarily interested in the normative conceptualisation of the best possible way to realise human rights effectively. Express affirmation and normative commitment to a particular form or institution of human rights, however, would defeat the purpose of constructing an analytical framework that seeks to grasp the various ways in which human rights are institutionalised on the ground, and to critically assess their potential to realise human rights effectively.[95] The

reconceptualisation of Gregg's notion of the human rights state as a sociological ideal type therefore requires, as a first step, to read the concept not as a normative vision of how human rights ought to be institutionalised but as an analytical construct in Weber's sense.

What is an ideal type?

Max Weber coined the term 'ideal type' at the beginning of the twentieth century to characterise the conceptualisation of typifications in the historical and social sciences, compared to the typifications in natural sciences.[96] Weber borrowed the term from Georg Jellinek[97] and adapted it in order to reconstruct and explain the reasons and ends behind the patterned meaningful action of individuals by way of idealising abstraction.[98] In an attempt to synthesise the most promising elements of the opposing methodological camps of positivism and subjectivism, Weber's ideal type was meant to provide a tool for the structural analysis of social institutions on the basis of regularities in the subjective meaning of social actors.[99]

The ideal type has its point of departure in Weber's conceptualisation of social science as an '*empirical science* of concrete *reality* (*Wirklichkeitswissenschaft*)'.[100] In setting out how 'concrete *reality*' is apprehended and analysed, Weber explains that we filter the 'infinite multiplicity' of events characterising the social experience of reality according to the significance that individual phenomena have for us.[101] This significance results from the cultural values and the meaning that social actors—including social scientists—bestow on specific actions and events.[102] Social science, according to Weber, is therefore necessarily rooted in the subjective meaning created by social actors as well as in the presuppositions, the values and interests, of the researcher.[103]

For Weber, all social-scientific analysis begins with a selection process in two stages.[104] First, through the bestowal of meaning, social actors create 'a broad category of facts which are appropriate objects of social-scientific analysis'.[105] In a second step, researchers choose a particular topic for investigation, a segment of those facts, according to their own theoretical interests and values. The result is a specific collection of facts which represent an abstraction from concrete reality as experienced by individual social actors.[106]

> An ideal type is formed by the one-sided *accentuation* of one or more points of view and by the synthesis of a great many diffuse, discrete, more or less present and occasionally absent *concrete individual* phenomena, which are arranged according to those one-sidedly emphasized viewpoints into a unified *analytical* construct

(*Gedankenbild*). In its conceptual purity, this mental construct (*Gedankenbild*) cannot be found empirically anywhere in reality. It is a *utopia*.[107]

While Weber speaks of 'a *utopia*', it is important to note, however, that he carefully delineates his conceptualisation of a sociological ideal type from normative models that are intended to prescribe a particular vision of reality based on ethical imperatives.[108] Instead of referring to what ought to exist, the ideal type is to be understood as an analytical construct 'which is "ideal" in the strictly logical sense of the term.'[109] By this Weber means that its purpose is to construct 'relationships which our imagination accepts as plausibly motivated and hence as "objectively possible" and which appear as *adequate* from the nomological standpoint.'[110] 'Ideal', in this sense, refers to an abstraction from empirical reality that consciously exaggerates or extrapolates the essential features—the idea—of particular phenomena and rigorously synthesises these characteristics into a unified and logical concept.[111]

While the ideal type is unsuitable 'as a schema under which a real situation or action is to be subsumed as one *instance*', it can serve as a 'purely ideal *limiting* concept with which the real situation or action is *compared* and surveyed for the explication of certain of its significant components.'[112] The relevance of the ideal type lies in its comparative function, in its potential to serve as a tool for the systematisation and assessment of particular cases according to their approximation to, or deviation from, a theoretically constructed type.[113] The construction of ideal types is thus not an end in itself but has significance only as a methodological means.[114]

With regard to the empirical study of the institutionalisation of norms of moral justice such as human rights, Weber's conceptualisation of the ideal type is a particularly promising tool, for at least three reasons. First, by providing conceptual guidance for the investigation of empirical processes and structural conditions of the institutionalisation of human rights, an ideal type can serve as an analytical grid that captures a wider range of aspects than approaches oriented towards compliance with international legal norms. Second, because the ideal type represents a theoretical, systematic abstraction from factual institutions, it allows for a certain normative distance from the norms under scrutiny, as well as from particular forms of their institutionalisation. Finally, it nevertheless allows for the assessment of concrete processes and institutions, but according to criteria of the probable realisation that are extrapolated from different core traits of those norms themselves.

The sociological ideal type of the human rights state

Understood as an ideal type, the human rights state refers to the conditions for the effective institutionalisation of human rights, based on the extrapolation of their core traits and the synthesis of these into a unified, coherent concept. That is to say, on the one hand, the ideal type of the human rights state is based on factual elements of human rights practice. On the other hand, it is—to put it in Weber's terms—the product of the 'one-sided accentuation' of some of these elements according to their internal logic while omitting other elements that undermine that logic and, therefore, their effective institutionalisation.

More specifically, the ideal type of the human rights state is based on the extrapolation of six essential characteristics of human rights practice as identified by Gregg.

First, human rights are *social constructions* and, therefore, 'the products of social and political creation and manipulation'.[115] As norms of justice 'produced through social processes of framing and construction'[116], they are historical and cultural particulars whose scope and validity depend on their local interpretation and recognition by social actors.[117] If human rights are to become effectively institutionalised, they have to be deeply enrooted in the identity and belief system of local political communities, and woven into their underlying structural conditions.[118]

Second, despite various scholars emphasising the power of local or transnational social movements to create human rights norms themselves[119], human rights remain a *state centric concept*. Their origins lie in historic declarations of natural rights that aimed at curtailing the power of rulers and opening up political and legislative processes to classes who were previously excluded from government.[120] With the foundation of the modern national state in nineteenth century-Europe, the constitutionalisation of 'natural rights of man' served as a source of legitimacy for the exercise of political power.[121] Even when deployed by the abolitionist movement or women's rights activists in North America and Western Europe, their universal rights claims were all ultimately directed at the recognition by governments and authorities within particular nation states.[122] Today, the efficacy of human rights norms as inscribed into international law still depends on the recognition and implementation by national legislatures, judiciaries and executive authorities. Moreover, it is only in the name and with the resources of states that international human rights law can be institutionalised, and only states are subject to it.[123]

Third, while in historical perspective the institutions of modern nation states have been among the most effective enforcers and enablers of human rights for members of their political communities,[124] they also represent a fundamental obstacle to the realisation of human rights as universalistic norms of social justice. This is because they tend to be grounded in the

imagination of political community in normatively thick, exclusionary terms.[125] If nationalism, ethnicity, religion or essentialist conceptions of culture serve as the primary sources of political legitimacy and solidarity, they often lead to the preclusion of non-nationals, immigrants, minorities and vulnerable groups of people from the equal recognition and protection of human rights.[126] Insofar as international human rights law reinforces the prioritisation of national citizens' human rights over those of non-nationals, it too inhibits the closure of the 'citizenship gap'[127] in the provision of human rights protection. What is required hence for the effective institutionalisation of human rights as universalistic norms is the *transformation of the modern nation state* as the prevailing form and structural principle of political world order.[128] The 'normative grammar' of nation states would need to be rewritten in a way that creates a field of recognition of everyone, citizens and non-citizens alike, as bearers of locally valid, state-based human rights.[129] To that end, human rights would have to become constitutionalised domestically in order to render them an internal core feature of statehood that binds all political, juridical and legislative powers and serves as a reference point for the socialisation of social actors into a 'human rights consciousness'.[130] Yet, as the formal constitutionalisation has historically proven to be far from sufficient for their realisation,[131] human rights would also need to become firmly rooted in the following, more specific ways.

Fourth, the effective institutionalisation of human rights necessitates their embedding in the *political system and culture* as the most fundamental principle of legitimate government and law-making. While a functioning parliamentary democracy with an effective opposition and media appears to be conducive to this aim, it may require additional mechanisms and safeguards, such as parliamentary committees and legal obligations placed on government officials, to ensure that human rights routinely take a central stage in the making of domestic and foreign policies.

Fifth, taking human rights seriously in their quality as legal norms means institutionalising them as *positive, state-based law*. This implies the existence of an independent judiciary with sufficient power to hold the government to account, the rule of law, an efficient enforcement machinery, but also the provision of an adequate support structure in order to make those rights accessible to everyone, e.g. through legal aid and advice centers.

Finally, as the validity of human rights norms depends on their local recognition and embrace by social actors, they have to become entrenched in the community's social institutions beyond the legal and political system. Facilitating the development of a 'human rights consciousness'[132] *throughout wider society* as the foundation of an inclusionary kind of political solidarity would involve public awareness campaigns and the training of key authorities, such

as the police, correctional staff, civil servants, as well as service providers, e.g. in the housing, medical and care sectors. Most importantly, however, it would require sustainable and systematic efforts to integrate human rights education into the curricula of schools and higher education.

These extrapolated conditions and features of the ideal type of the human rights state are not to be misunderstood as a guarantee nor as a causal model for the local realisation of universal human rights norms. Rather, it suggests a certain degree of probability insofar as these features represent necessary but not sufficient conditions for their full realisation. If these conditions are met, and human rights are institutionalised in the political, legal and wider societal domains as sketched out above, it is more likely that the human rights of the people who are subject to that state's jurisdiction are recognised and effectively protected than in a state that does not implement them in this way.

Furthermore, the suggested adaptation of the human rights state is an abstract conceptual ideal that does not correspond to a factual state. And even if all of the features of the ideal human rights state were in fact met by an existing state, it would only represent a contingent stage in the historical development of the idea of human rights and their effective institutionalisation, rather than the realisation of a natural or universal ideal of a just order. It is also important to bear in mind that the local realisation of human rights would most likely remain subject to political conflict and, as such, potentially reversible. Depending on the nature and scope of locally defined human rights norms, their effective institutionalisation may also leave certain grave social inequalities and sources of injustice untouched.

In any case, the ideal type of the human rights state is not a prescriptive utopia for a conflict-free and equalised political community. Rather, it is an analytical device indicating the structural conditions that are likely to enable the realisation of human rights as socially constructed, locally valid norms of potentially universalistic scope. In so doing, it serves as a yardstick for the analysis and assessment of actual processes of human rights institutionalisation that goes beyond thin or thick conceptions of compliance with international human rights law. An analysis guided by the ideal type of the human rights state would investigate,

(1) whether and how comprehensively human rights have been institutionalised in the political, legal and wider societal spheres of a political community.

(2) It would have to study how these human rights safeguards are being applied in practice; that is, whether they are truly accessible, how their potential powers and competences translate into practical effect, and whether human rights are indeed being defined in universalistic terms.

(3) Both the theoretical and practical dimensions of human rights institutionalisation would have to be assessed as to what extent they contribute to the effective provision of protection of human rights as universalistic and locally valid, state-based norms of social justice—in other words: whether they hold the potential to transform a nation state into a human rights state.

Conclusion

This article started from the widely supported insight that the systematic analysis and assessment of the institutionalisation of human rights requires a conceptualisation that takes into account the continuing importance of particularistic state structures but, at the same time, does justice to the universal potential of human rights norms. It was argued that the existing literature leaves considerable scope for the development of such a conceptualisation and a corresponding framework for the qualitative empirical study of the institutionalisation of human rights within states. This article then developed that framework by reworking Gregg's political theory of the human rights state from a prescriptive model into a Weberian ideal type. Using Gregg's theory as a vehicle, it extrapolated the nature of human rights norms as social constructs, their state-centrism, the ineptitude of modern nation states for the full realisation of human rights, and the need for their comprehensive implementation in the political system, their legalisation and their embeddedness in wider society as core conditions of effective institutionalisation. The ideal type of the human rights state is the synthesis of these insights into a unified theoretical concept that refers to a hypothetical state which would meet the necessary (but not sufficient) conditions for making possible the full realisation of human rights as state-based, locally valid norms of universalistic scope.

Yet, it is important to point out, once again, the boundaries of this framework. Understood as a sociological ideal type, the human rights state represents neither a causal model nor a normative roadmap to the local realisation of universal human rights norms. Its principal purpose is to serve as a tool for analysing and assessing factual institutionalisation processes by comparing them to an abstract, external yardstick that has been constructed according to the inner logic of core aspects of human rights practice. Because it is based on a particular interpretation and the hypothetical extrapolation of certain aspects of human rights practice, the human rights state has no analogy in social practice. Moreover, it says relatively little about the lists of rights that a state has formally committed to institutionalise and, accordingly, little about the realms of conflict that remain untouched by them. In any case, human rights will never be,

and were never meant to be, a panacea for social and political conflict, and will therefore likely remain themselves the subject of political controversy. Finally, within the conceptual boundaries of the ideal type of the human rights state, the universality of human rights refers primarily to their local validity as state-based rights equally granted to all human beings within the jurisdiction of a particular state and subject to its domestic and foreign policies. In an abstract and speculative sense, they could become universally valid beyond the individual state-level only in the form of a historically contingent, politically achieved overlapping agreement between different human rights states.

Despite these limitations, this article nevertheless hopes to contribute to multidisciplinary human rights research by integrating different approaches in the field into one comprehensive framework that is able to capture the legal, political and wider societal dimensions of human rights institutionalisation. As a non-prescriptive tool for the qualitative empirical study and assessment of institutionalisation processes, the ideal type of the human rights state is firmly rooted in sociological methodology that suspends the question of the normative justification of human rights. It thereby offers an alternative to the largely quantitative body of research that is based on conceptions of effective human rights institutionalisation as compliance with international human rights law norms.

Notes

[1] Kate Nash, *The Political Sociology of Human Rights* (Cambridge: Cambridge University Press, 2015), 5.
[2] James W. Nickel, *Making Sense of Human Rights* (Malden: Blackwell, 2007), 7–9.
[3] Mikael Rask Madsen and Gert Verschraegen, 'Making Human Rights Intelligible: An Introduction to a Sociology of Human Rights', in *Making Human Rights Intelligible: Towards a Sociology of Human Rights*, ed. Mikael Rask Madsen and Gert Verschraegen (Oxford: Hart Publishing, 2013), 9.
[4] This conception of institutionalisation draws on definitions of institution by: Jonathan Turner, *The Institutional Order* (New York: Longman, 1997), 6; Paul James and Ronen Palan 'Globalizing Economic Regimes and Institutions: A Critical Introduction', in *Globalization and Economy, Vol. 3: Globalizing Economic Regimes and Institutions*, ed. Paul James and Ronen Palan (London: SAGE, 2006), xiv.
[5] Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca, NY: Cornell University Press, 2013), 95. Even the European human rights regime, which is commonly regarded as the most effective international

human rights system, cannot enforce a judicial decision of the European Court of Human Rights against a member state but has to rely on that state government's willingness to comply with the ruling and to implement it effectively.

[6] Donnelly, *Universal Human Rights in Theory and Practice*, 32–34; but on the problem of limited statehood for the implementation of human rights on the ground, see: Tanja A. Börzel and Thomas Risse, 'Human Rights in Areas of Limited Statehood: The New Agenda', in *The Persistent Power of Human Rights: From Commitment to Compliance*, ed. Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (Cambridge: Cambridge University Press, 2013), 63–84.

[7] Benjamin Gregg, *Human Rights as Social Construction* (New York: Cambridge University Press, 2012), 219, 223.

[8] Nash, *The Political Sociology of Human Rights*, 163. While international human rights law obliges states to observe and protect the rights of their own nationals and of non-nationals subject to their jurisdiction, some important rights (e.g. of political participation) are limited to citizens only, and there is no international obligation for states towards non-citizens outside of their legal control. Moreover, the prioritisation of citizens over non-citizens is built into international human rights law insofar as it recognises the right of members of a national community to political self-determination, which includes the freedom to determine their political status.

[9] Stefan-Ludwig Hoffmann, 'Introduction: Genealogies of Human Rights', in *Human Rights in the Twentieth Century*, ed. Stefan-Ludwig Hoffmann (Cambridge: Cambridge University Press, 2011), 14. The nation state may be a social and political myth, as Sylvia Walby points out, but it continues to be extremely persistent and efficacious as a regulative concept. Sylvia Walby, 'The Myth of the Nation-State: Theorizing Society and Polities in a Global Era', *Sociology* 37, no. 3 (2003): 529–546.

[10] Saladin Meckled-Garcia and Basak Cali, 'Lost In Translation: The Human Rights Ideal and International Human Rights Law', in *The Legalization of Human Rights: Multidisciplinary Perspectives on Human Rights and Human Rights Law*, ed. Saladin Meckled-Garcia and Basak Cali (London: Routledge, 2006), 11–31.

[11] Lydia Morris, *Human Rights and Social Theory* (Basingstoke: Palgrave Macmillan, 2013), 97.

[12] Max Weber, *The Methodology of the Social Sciences*, translated and edited by Edward Shils and Henry Finch (New York: Free Press, 1968), 90.

[13] Ibid.

[14] Gregg, *Human Rights as Social Construction*.

[15] Benjamin Gregg, *The Human Rights State: Justice Within and Beyond Sovereign Nations* (Philadelphia: University of Pennsylvania Press, 2016).

[16] Michael Freeman, *Human Rights: An Interdisciplinary Approach* (Cambridge: Polity Press, 2011), 8; Saladin Meckled-Garcia and Basak Cali, 'Introduction: Human Rights Legalized—Defining, Interpreting, and Implementing an Ideal', in *The Legalization of Human Rights* (note 10), 3.

[17] Marie-Bénédicte Dembour, 'What Are Human Rights? Four Schools of Thought', *Human Rights Quarterly* 32, no. 1 (2010): 19; James W. Nickel, *Making Sense of Human Rights*, 7–9.

[18] Christian Tomuschat, *Human Rights: Between Idealism and Realism* (Oxford: Oxford University Press, 2003); Eric Posner, *The Twilight of Human Rights Law* (Oxford: Oxford University Press, 2014).

[19] Donnelly, *Universal Human Rights in Theory and Practice*, 11. See, for instance: Christof Heyns and Waruguru Kaguongo, 'Constitutional Human Rights Law in Africa', *South African Journal on Human Rights* 22, no. 4 (2006): 673–717.

[20] Nickel, *Making Sense of Human Rights*, 7.

[21] Tomuschat, *Human Rights: Between Idealism and Realism*; Brian Lepard, 'International Law and Human Rights', in *Handbook of Human Rights*, ed. Thomas Cushman (Abingdon: Routledge, 2012), 583–597; Andrew Byrnes and Catherine Renshaw, 'Within the State', in *International Human Rights Law*, ed. Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran (Oxford: Oxford University Press, 2014), 459.

[22] Donnelly, *Universal Human Rights in Theory and Practice*, 95.

[23] Posner, *The Twilight of Human Rights Law*, 40–47. See also Lepard, 'International Law and Human Rights', 591–592.

[24] Freeman, *Human Rights*, 91–92; Hoffmann, 'Introduction', 6–7; Charles Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (Chicago: University of Chicago Press, 1998), 13–14.

[25] David Hoffman and John Rowe, *Human Rights in the UK: An Introduction to the Human Rights Act 1998* (Harlow: Longman Pearson Education, 2010), 33. On the relationship between human rights and anti-colonial independence movements, see Jan Eckel, *Die Ambivalenz des Guten: Menschenrechte in der internationalen Politik seit den 1940ern* (Göttingen: Vandenhoeck and Ruprecht, 2014), 269–276.

[26] Epp, *The Rights Revolution*.

[27] Kamal Hossain, Leonard Besselink, Haile Selassie Gebre Selassi, and Edmond Völker, eds, *Human Rights Commissions and Ombudsman Offices: National Experiences Throughout the World* (The Hague: Kluwer Law International, 2000); Ryan Goodman and Thomas Pegram, eds, *Human Rights, State Compliance, and Social Change: Assessing National Human Rights Institutions* (Cambridge: Cambridge University Press, 2012); Murray

Hunt, Hayley Hooper and Paul Yowell, eds, *Parliaments and Human Rights: Redressing the Democratic Deficit* (Oxford: Hart Publishing, 2015).

[28] Jack Donnelly, 'The Virtues of Legalization', in *The Legalization of Human Rights* (note 10), 78.

[29] On the generic limits of a legalistic perspective on human rights, see: Freeman, *Human Rights*, 90–98, and Donnelly, *Universal Human Rights in Theory and Practice*, 36–39.

[30] On the dominance of realist and positivist perspectives in political science and international relations as reasons for the relatively late discovery of human rights by political scientists, see Freeman, *Human Rights*, 99. On the rise of the international human rights movement and of transnational human rights organisations, see Jan Eckel and Samuel Moyn, eds, *The Breakthrough: Human Rights in the 1970s* (Philadelphia, University of Pennsylvania Press, 2014).

[31] Thomas Risse, Stephen C. Ropp and Kathryn Sikkink, eds, *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999); Thomas Risse, Stephen C. Ropp and Kathryn Sikkink, eds, *The Persistent Power of Human Rights.*

[32] Thomas Risse and Stephen C. Ropp, 'Introduction and Overview', in *The Persistent Power of Human Rights* (note 30), 10, original emphasis.

[33] Thomas Risse and Kathryn Sikkink, 'The Socialization of International Human Rights Norms into Domestic Practices: Introduction', in *The Power of Human Rights* (note 30), 17.

[34] Thomas Risse and Stephen C. Ropp, 'International Human Rights Norms and Domestic Change: Conclusions', in *The Power of Human Rights* (note 30), 249, 277.

[35] Brysk acknowledges that, during the human rights change in Argentina, polls indicated public support for democracy but low agreement with human rights as such, yet without drawing conclusions for her analysis; see Alison Brysk, *The Politics of Human Rights in Argentina: Protest, Change, and Democratization* (Stanford: Stanford University Press, 1994), 130–131.

[36] Risse and Ropp, 'Introduction and Overview', 15; see also Anja Jetschke and Andrea Liese, 'The Power of Human Rights a Decade After: From Euphoria to Contestation?', in *The Persistent Power of Human Rights* (note 30), 35.

[37] See Alison Brysk, *Global Good Samaritans: Human Rights as Foreign Policy* (Oxford: Oxford University Press, 2009), 234; Risse and Ropp, 'International Human Rights Norms and Domestic Change: Conclusions', 234; Thomas Risse and Kathryn Sikkink, 'Conclusions', in *The Persistent Power of Human Rights* (note 30), 277.

[38] Oona Hathaway, 'Do Human Rights Treaties Make a Difference?', *Yale Law Journal* 111, no. 8 (2002): 1935–2042; Emilie Hafner-Burton and Kiyoteru Tsutsui, 'Justice Lost! The Failure of International Human Rights Law to Matter Where Needed Most', *Journal of Peace Research* 44, no. 4 (2007): 407–425; Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge, MA: Cambridge University Press, 2009); Posner, *The Twilight of Human Rights Law.*

[39] Emilie Hafner-Burton, *Making Human Rights Reality* (Princeton: Princeton University Press, 2013); Jürgen Habermas, 'The Concept of Human Dignity and the Realistic Utopia of Human Rights', *Metaphilosophy*, Vol. 41, No. 4 (2010): 464–480; Makau Mutua, *Human Rights: A Political and Cultural Critique* (Philadelphia: University of Pennsylvania Press, 2002).

[40] Meckled-Garcia and Cali, 'Lost In Translation'.

[41] Donnelly, *Universal Human Rights in Theory and Practice*, 33; Nash, *The Political Sociology of Human Rights*, 163.

[42] See, for instance, Risse and Sikkink, 'The Socialization of International Human Rights Norms into Domestic Practices: Introduction'; Brysk, *The Politics of Human Rights in Argentina*; Simmons, *Mobilizing for Human Rights*.

[43] Risse and Sikkink, 'The Socialization of International Human Rights Norms into Domestic Practices: Introduction', 3–4.

[44] Bryan S. Turner, 'Outline of a Theory of Human Rights', *Sociology* 27, no. 3 (1993): 175–176; Margaret Somers and Christopher Roberts, 'Toward a New Sociology of Rights: A Genealogy of "Buried Bodies" of Citizenship and Human Rights', *Annual Review of Law and Social Sciences* 4, no. 1 (2008): 388.

[45] Christopher Thornhill, 'Sociological Enlightenments and the Sociology of Political Philosophy', *Revue Internationale de Philosophie* 66, no. 1 (2012): 55–83.

[46] Patricia Hynes, Michele Lamb, Damien Short and Matthew Waites, 'Sociology and Human Rights: Confrontations, Evasions and New Engagements', *International Journal of Human Rights* 14, no. 6 (2012): 6; Mark Frezzo, *The Sociology of Human Rights: An Introduction* (Cambridge: Polity Press, 2015), xiii, 36–37.

[47] Robert Fine, *Cosmopolitanism* (Abingdon: Routledge, 2007); Gerard Delanty, *The Cosmopolitan Imagination: The Renewal of Critical Social Theory* (Cambridge: Cambridge University Press, 2009); Ulrich Beck and Natan Sznaider, 'Unpacking Cosmopolitanism for the Social Sciences: A Research Agenda', *The British Journal of Sociology* 57, no. 1 (2006): 12–13.

[48] Robert Fine, 'Cosmopolitanism and Human Rights: Radicalism in a Global Age', *Metaphilosophy* 40, no. 1 (2009): 8.

[49] Ibid.

[50] Ulrich Beck and Natan Sznaider, 'Unpacking Cosmopolitanism for the Social Sciences', 9; Lydia Morris, 'Cosmopolitanism—Beyond the "Beautiful Idea"', *Irish Journal of Sociology* 20, no. 2 (2012): 51; Kate Nash, 'Between Citizenship and Human Rights', *Sociology* 46, no. 6 (2009): 1067–1083.

[51] Fine, 'Cosmopolitanism and Human Rights', 19.

[52] Damien Short, 'Sociological and Anthropological Approaches', in *Human Rights: Politics and Practice*, ed. Michael Goodhart (Oxford: Oxford University Press, 2009), 93; Neil Stammers, *Human Rights and Social Movements* (London: Pluto Press, 2009), 104.

[53] Kate Nash, *The Cultural Politics of Human Rights: Comparing the US and UK* (Cambridge: Cambridge University Press, 2009).

[54] Nash, *The Cultural Politics of Human Rights*, 13.

[55] Gregg, *Human Rights as Social Construction*.

[56] Ibid., 4, 135–156.

[57] Ibid., 216, 219.

[58] Ibid., 217.

[59] Ibid., 214.

[60] Benjamin Gregg, *The Human Rights State: A User's Guide* (Unpublished manuscript of the keynote delivered at the University of Glasgow to the conference of the Postgraduate Cluster of the Glasgow Human Rights Network, 20 May 2015), 4.

[61] Posner, *The Twilight of Human Rights Law*, 4.

[62] Gregg, *The Human Rights State: A User's Guide*, 4.

[63] Gregg, *Human Rights as Social Construction*, 212.

[64] Brysk, *Global Good Samaritans*; Gershon Shafir, 'Citizenship and Human Rights in an Era of Globalization', in *People Out of Place: Globalization, Human Rights, and the Citizenship Gap*, ed. Alison Brysk and Gershon Shafir (New York: Routledge, 2004), 11–25; Hafner-Burton, *Making Human Rights Reality*.

[65] Gregg, *Human Rights as Social Construction*, 222.

[66] Ibid., 213.

[67] Ibid., 216.

[68] Gregg, *The Human Rights State,* 2.

[69] Gregg, *Human Rights as Social Construction*, 225.

[70] Ibid., 224.

[71] John Searle, *The Construction of Social Reality* (New York: Free Press, 1995); John Searle, *Making the Social World: The Structure of Human Civilization* (Oxford: Oxford University Press, 2010).

[72] Gregg, *Human Rights as Social Construction*, 225–226.

[73] Gregg, *The Human Rights State*, 212.

[74] Ibid., 213.

[75] Ibid.

[76] Gregg, *Human Rights as Social Construction*, 226.

[77] Gregg, *The Human Rights State*, 6.

[78] Ibid., 84.

[79] Ibid., 6–7, 84–87.

[80] Gregg, *Human Rights as Social Construction*, 225, 229.

[81] Gregg, *The Human Rights State*, 214.

[82] Ibid., 213–214.

[83] Ibid., 167–169.

[84] Ibid., 6.

[85] Gregg, *Human Rights as Social Construction*, 217.

[86] Ibid., 213.

[87] Ibid., 227–228.

[88] Gregg, *The Human Rights State*, 214.

[89] Gregg, *Human Rights as Social Construction*, 227.

[90] Ibid., 213.

[91] Ibid., 228.

[92] Gregg, *The Human Rights State*, 15–16.

[93] Gregg, *Human Rights as Social Construction*, 220.

[94] Ibid., 232.

[95] Kate Nash, 'Towards a Political Sociology of Human Rights', in *The Wiley-Blackwell Companion to Political Sociology*, ed. Edwin Amenta, Kate Nash and Alan Scott (Malden: Blackwell, 2012), 445.

[96] Oswald Schwemmer, 'Idealtypus', in *Enzyklopädie Philosophie und Wissenschaftstheorie, Vol. 2*, ed. Jürgen Mittelstraß (Stuttgart: J.B. Metzler, 1995), 175.

[97] Uta Gerhardt, *Idealtypus. Zur methodologischen Begründung der modernen Soziologie* (Frankfurt am Main: Suhrkamp, 2001), 248.

[98] Stephen Kalberg, *The Social Thought of Max Weber* (Los Angeles: SAGE, 2017), 43.

[99] Susan Hekman, *Weber, the Ideal Type, and Contemporary Social Theory* (Notre Dame: University of Notre Dame Press, 1983), 15.

[100] Weber, *The Methodology of the Social Sciences*, 72.

[101] Ibid., 78.

[102] Ibid.

[103] Hekman, *Weber, the Ideal Type, and Contemporary Social Theory*, 28–29.

[104] Ibid., 30.

[105] Ibid.

[106] Ibid.

[107] Weber, *The Methodology of the Social Sciences*, 90, all original emphases.

[108] Ibid., 91–92.

[109] Ibid., 92.

[110] Ibid.

[111] Kalberg, *The Social Thought of Max Weber*, 43.

[112] Weber, *The Methodology of the Social Sciences*, 93.

[113] Kalberg, *The Social Thought of Max Weber*, 44.

[114] Weber, *The Methodology of the Social Sciences*, 92.

[115] Short, 'Sociological and Anthropological Approaches', 93.

[116] Ibid., 96.

[117] Gregg, *Human Rights as Social Construction*, 213; Nash, *The Political Sociology of Human Rights*, 171.

[118] Gregg, *Human Rights as Social Construction*, 216; Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law Into Local Justice* (Chicago: University of Chicago Press, 2006).

[119] See the critical discussion in: Kate Nash, 'Human Rights, Movements and Law: On Not Researching Legitimacy', *Sociology* 46, no. 5 (2012): 797–812.

[120] Malcolm Waters, 'Globalisation and the Social Construction of Human Rights', *The Australian and New Zealand Journal of Sociology* 31, no. 2 (1995): 29–35.

[121] Jürgen Habermas, 'Zur Legitimation durch Menschenrechte', in *Die postnationale Konstellation: Politische Essays*, ed. Jürgen Habermas (Frankfurt am Main: Suhrkamp, 1998), 115, 131.

[122] Posner, *The Twilight of Human Rights Law*, 13; Hans Joas, *The Sacredness of the Person: A New Genealogy of Human Rights* (Washington, DC: Georgetown University Press, 2013), 85–96.

[123] Nash, *The Political Sociology of Human Rights*, 42.

[124] Shafir, 'Citizenship and Human Rights in an Era of Globalization'.

[125] Gregg, *Human Rights as Social Construction*, 217.

[126] Ibid., 214, 223; Risse and Ropp, 'International Human Rights Norms and Domestic Change: Conclusions', 261.

[127] Alison Brysk and Gershon Shafir, 'Introduction: Globalization and the Citizenship Gap', in *People Out of Place* (note 63), 3–9.

[128] Nash, *The Political Sociology of Human Rights*, 17, 42.

[129] Gregg, *The Human Rights State*, 212.

[130] Ibid., 84, 213–214.

[131] Freeman, *Human Rights*, 91–92; Epp, *The Rights Revolution*, 13–14.

[132] Gregg, *The Human Rights State*, 84.