

Human Rights as Metaphor for Political Community beyond the Nation State

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Abstract

One generally enjoys rights, if at all, then only as a member of a particular political community. The nation state's territorial sovereignty precludes the possibility of human rights. I propose a 'human rights state' whose members seek the corresponding nation state's embrace of human rights. It functions as a metaphor with 'deontic power', with each member carrying these deontic powers in a 'human rights backpack'. Metaphorical thinking is more plausible than theology or metaphysics on the approach I adopt: social construction. Accordingly, all norms are human inventions and at best emerge through ongoing self-reflective politics: rejected or embraced on the basis of critical examination and justification. Creating justice begins with an act of imagination, envisioning better alternatives, and resisting taking for granted many aspects of the communities we are born into. Metaphorical thinking facilitates creating justice in this sense: limiting the sovereignty of the nation state to the extent necessary to allow for human rights.

Keywords

human rights, human rights state, international relations, metaphorical thinking, nation state, political sociology, social theory, territorial sovereignty

Introduction

In most cases, someone without membership in a nation state has no rights. To be sure, a burgeoning body of international human rights law would offer protection for stateless persons. So would some national, and especially international, courts, such as the European Court of Human Rights. The problem of the stateless, then, is not that remedies do not exist. The problem is that such remedies tend to be weak and scarcely accessible. And often they are undermined by nation states.

Consider, for example, the United Nations and its Charter. Together they establish a system of international human rights law. They do not do so by analogy to domestic laws within a system of bureaucracies, police, and judiciaries that guarantee laws, enforce them, and punish

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infractions. The United Nations' preamble states that members 'reaffirm faith in fundamental human rights, in the equal rights of men and women'. But that statement hardly reflects reality; many members systematically discriminate against women, for example.¹ Or consider Article 56 of the United Nations Charter. It declares that 'All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55', which in turn states that the UN shall promote 'universal respect for, and observance of, human rights'. Because many members do not observe human rights and hardly promote them locally, let alone universally, local guarantees and promotion rest, as always, with the nation state.² Further, state sovereignty inherently undermines claims to cosmopolitan rights. One might argue that all members of the UN are legally obliged to observe Charter provisions. Yet more than a few members violate human rights constantly and severely, and a state's status as a signatory to these conventions predicts nothing about its actual behavior.³ States that observe human rights have their reasons; for some, international treaties are not among them. Finally, consider the compliance-undermining fact that the Charter's references to human rights are general and vague; that the Charter specifies no specific legal rights; that it mandates no enforcement procedures.

I propose an alternative approach to the nation state and the problems it poses for advancing cosmopolitan human rights. (1) I locate the problem with the nation state in the 'logic of exclusion' of territorial sovereignty. (2) I propose a metaphorical 'human rights state' that operates in terms of a cosmopolitan logic of inclusion. (3) A human rights state attempts to facilitate the eventual embrace of human rights by the corresponding nation state, indeed as an element internal to the constitution. (4) I then detail the nature of membership in the human rights state and the nature of members' participation. (5) The practical effectiveness of this proposal depends on the human rights state as a metaphor, one with deontic power, and (6) with deontic powers carried in each member's 'human rights backpack'. (7) I offer two examples of human rights already available in some ways analogous to my proposal. (8) I then sketch a vision of international relations among human rights states and (9) conclude with some remarks about human rights states in different regions of the world.⁴

Nation State: Logic of Exclusion

The claims of the United Nations' 1948 *Universal Declaration of Human Rights* are idealistic because inclusive, indeed maximally so, in the claim that *all* humans have certain rights. Most humans today are citizens of nation states. And the nation state excludes, indeed almost maximally: any given community excludes most of the world's people from membership. Sovereign power allows any nation state to reject human rights. And thus the Declaration's idealism has always contrasted with national behavior that ignores, rejects, or (in foreign affairs) instrumentalizes the notion of human rights – or, at best, recognizes some human rights, recognizes them to a very limited extent, and makes its recognition contingent on the domestic politics of the day.

The cosmopolitan conception of 1948 is hardly the first cosmopolitan vision. Sixteen decades earlier, the *Déclaration des droits de l'homme et du citoyen* of 1789 sought to make all members of the *état civil* legally equal to each other. As a declaration of the French national state, it displays the *exclusionary logic* of any nation state, whereby the state inhabits a more or less homogenous legal space and in many cases exercises potentially unlimited legal authority within it. Thus many inhabitants of France were not members of the *état civil* and had no means of becoming members – unless the state made them members. The nation state's exclusionary logic also entails that no citizen enjoys human rights if the nation state in which he or she resides declines to offer them. Short of armed military intervention (in the name of humanitarianism), human rights cannot be

imposed. (And interventions cannot impose human rights permanently and, in much historical experience, are more likely to make a bad domestic situation even worse.)

The visionary documents of 1789 and 1948 cannot escape the gravitational pull of this logic of exclusion. It undermines the human rights project, which operates with a *logic of inclusion*: inclusion regardless of a person's citizenship status, and despite his or her territorial location, and notwithstanding a world organized into nation states. Yet human rights are often pictured as rights that should somehow obtain regardless of the bearer's geographic location – when in fact one is more likely to enjoy human rights in, say, Costa Rica or Japan than in Sudan, Indonesia, or Belarus.⁵ They are commonly imagined as rights valid quite regardless of the individual's citizenship status at that location – when in India, for example, Dalits are less likely to enjoy human rights than high-caste citizens, and even in Norway some non-citizens are much more vulnerable than any given citizen. Generally conceived as universally inclusive, as possessed by all persons as such, everywhere, human rights are incompatible with a world of nation states each of which is exclusive along multiple dimensions: each excludes most non-members from fundamental domestic rights, for example, and many exclude many members as well. Human rights are also incompatible with any democratic community that (in keeping with democratic logic) rejects any binding norms not legislated by its democratically elected representatives of the citizens.

Human Rights State: Logic of Inclusion

With regard to human rights, I devise a means toward defeating the nation state's logic of exclusion. I propose a logic of universal inclusion even in our world of nation states, a world of state sovereignty, a world in which rights of any kind are circumscribed by territorial boundaries.⁶ I propose a metaphorical *human rights state*. While distinct from the legal community of the nation state, it is an actual community composed of a network of self-selected actors. Each human rights state operates within or alongside a corresponding nation state, yet *independent* of that nation state in that, unlike a nation state, a human rights state recognizes the self-authored human rights of its members. A human rights state challenges a nation state to embrace human rights as integral to itself and to its constitution. A human rights state challenges a nation state to absorb the corresponding human rights state into itself, in this way reducing the reach of national sovereignty to the extent necessary to practice border-crossing human rights.

The human rights state is not metaphorical in all respects. It is not metaphorical with respect to networks of actors and their behavior. Rather, it is a metaphor for the vision to which it aspires, a vision in which the corresponding nation state embraces human rights as an element integral to itself, and modifies national sovereignty to make human rights possible. In political theory, the device of metaphor can dislodge a concept – the nation state – from its particular historically constructed encasement: the political geography of territorial sovereignty. It can extricate the state from its national institutional encasement, toward overcoming the problems that sovereignty poses for human rights. It can shift the state from one institutional domain – sovereign territory – to another: a 'shadow state' that 'shadows' a particular nation state toward advocating its adoption of human rights. It helps us envision what has never existed, and what in some respects is counter-intuitive, namely a human rights state that unbundles the concept that currently holds 'together complex interdependencies between rights and obligations, power and the law, wealth and poverty, allegiance and exit': the 'traditional territoriality of the national' (Sassen, 2008: 17). It challenges the 'basic organizational and normative architectures' through which we citizens of nation-states have always operated, thereby 'destabiliz[ing] existing meanings and systems' (Sassen, 2008: 17). And it recasts the nature of state sovereignty. For the role of sovereignty in the nation state is complex and sometimes troubled; political sovereignty contains tensions within itself. There is tension,

for example, between citizenship and sovereignty whenever sovereign governance butts up against a possible right of the governed to resist aspects of that governance.⁷

Metaphor is useful in imagining a state that does not 'do' sovereignty in the manner of the contemporary nation state. Metaphor is helpful in conceiving a community whose members constitute their own sphere of human rights, a sphere that exists only in its members' convictions and self-understanding and commitment. In this way a human rights state can escape the nation state's logic of exclusion, and from that standpoint a human rights state can advocate for the logic of inclusion at the core of the human rights idea. Members constitute their metaphorical community by 'excluding exclusion'. In other words, the human rights state includes, as human rights-bearers, those citizens that the corresponding nation state excludes from human rights.

Actors generate membership; they do so through their individual participation in a human rights-inspired form of 'sovereignty-free' membership. A human rights state needs no sovereignty to be a sphere for human rights-advocacy by its members acting in concert. Individuals who advocate that their nation state give up a measure of its sovereignty to adopt human rights into the national constitution thereby render themselves members or 'citizens' of the human rights state. Advocacy is itself constitutive of membership in the human rights state. Advocates do not forsake membership in the corresponding nation state but seek to change the nation state of which they remain members by having it adopt rights that obtain on either side of national borders.⁸

To be sure, when speaking of the human rights state, one might well speak of sovereignty but in one sense only: sovereignty as the political agency of the individual authoring the very human rights addressed to him or her, in an act of *sovereign* self-determination. Sovereignty in the sense of self-determination does not refer to territorial sovereignty, to the exclusion of outsiders. With its logic of inclusion, a human rights state extends membership to any participant.

This logic is itself metaphorical, not territorial. It allows participants to 'perform' human rights among themselves, at first only within the human rights state, but always as an argument, an example, an exhortation, addressed to the corresponding nation state.

Constructing Cosmopolitanism Inside the Domestic

In short, I argue that the territorial nation state is not the only possible articulation of political community. What I propose is not a permanent alternative to the nation state but rather something that would exist alongside it, something that would seek to displace the nation state's exclusionary logic with the inclusionary logic of cosmopolitanism, practiced by the human rights state. Put another way: a human rights state inhabits two spheres simultaneously – the subnational space of a membership constituted by citizens of a particular nation state, and the global public of human rights cosmopolitanism. Many of the members of a human rights state, and likely most, are citizens of the corresponding nation state.

Political behavior of this sort is possible only as a metaphor: the idea of a human rights state denaturalizes the term *nation state* by offering a metaphor for the nation state that recognizes human rights as an element internal to itself. By an *element internal to the nation state* I mean that a human rights state aims to introduce and institutionalize the authority of human rights inside the national state's institutional apparatus.

Such a dramatic development within a highly formalized and institutionalized apparatus exceeds policymaking. It generates a novel arrangement of the domestic, namely a domestically based cosmopolitanism. The nation state loses some of its territorial sovereignty in exchange for the cosmopolitan dimension of human rights: a cosmopolitanism now structured inside the domestic, as an element internal to the nation state, as human rights that partially 'denationalize' the national.

A novel global configuration then emerges from multiple such national states, each of which has embraced human rights as an element internal to its national constitution. A novel global configuration emerges from encasing human rights in domestic institutions. It emerges in the mutual interdependencies of these nation states and in their interactions. It begins not internationally but domestically. Cosmopolitanism is first established not at super-national levels but at national ones. The mutual relations among human rights-observing nation states begin with single nation states embracing human rights.

When authority and rights are denationalized to the extent necessary for the domestic recognition of human rights, national territory and its geographic boundaries remain intact. The idea of exceeding the nation state is not new; a variety of social systems challenge its logic of exclusion. Particularly striking examples come from the economic sphere, where we observe the mobility of capital, commodities, services, and technologies. Here we witness multinational corporations not tied to territorial sovereignty. Here we note international free trade agreements. Here we see labor migration and market penetration.⁹ The sphere of technology provides an ever more significant example. Here we encounter community formation as well as social movements through digital technology such as the Internet. Here we find location-independent communication. Here we observe transportation technologies facilitating the flow of information, goods, services, and people across borders. A third example comes from the cultural sphere, in the form of transnational communication flows, life styles, as well as some consumption patterns. Some forms of denationalization generate certain global risks, such as environmental crises, as well as some types of crime that flow from abroad. A fourth example of exceeding the nation state is political: the trend, with ever-greater migration, toward legal provisions for legal residence and naturalization.

My proposal is itself political, of course, with each member of a multiplicity of human rights states attempting to establish, in the corresponding domestic institutions, the cosmopolitan features of human rights. In this way, multiple human rights states attempt to partially denationalize the national. Such a constellation of nation states defies imperial logic and imperial geographies by building a system of human rights-observing nation states that favors the circulation of human rights within and across national borders.

Each member of this system is a state of domestic cosmopolitanism, something both national and non-national in the sense of what Saskia Sassen (2008: 13) discusses as ‘new jurisdictional geographies’: a

variety of national legal actions which notwithstanding their transnational geographies can today be launched from national courts. The critical articulation is between the national (as in national court, national law) and a global geography, outside the terms of traditional international law or treaty law. A good example are the lawsuits launched by the Washington-based Center for Constitutional Rights in a national court against nine multinational corporations, both American and foreign, for abuses of workers’ rights in their offshore industrial operations, using as the national legal instrument the Alien Torts Claims Act. ... Even if these lawsuits do not quite achieve their full goal, they signal it is possible to use the national judiciary for suing US and foreign firms for questionable practices in their operations outside their home countries.

Sassen describes the use of domestic resources to achieve cosmopolitan goals. In that spirit, a human rights state deploys local resources, namely self-granted human rights, to the same end. Its advocacy of human rights draws on a particular component of the nation state, although not in the manner of the nation state itself: a human rights state draws on a political community’s capacity to establish rights. To be sure: the nation state’s parliament legislates laws that provide domestic rights – but not laws that provide cosmopolitan rights. If citizens ever enjoy cosmopolitan rights

within the nation state, then it is only as a gratuitous grant from the state, a grant to passive groups and individuals, a grant revocable at any time.

By contrast, a human rights state allows the addressees of human rights to become normative agents, as the authors of their own human rights.¹⁰ That is, participants grant themselves the human rights they advocate as an internal feature of the corresponding nation state. Participants mutually recognize these rights among themselves. They recognize them as a feature of the nation state's constitution. In this way I reconceive the idea of a domestic constitutionalization of human rights. I reimagine it as a domestic form of cosmopolitanism.

I reconfigure constitutionalization along multiple dimensions. To realize its potential in ways urged by the corresponding human rights state, a nation state must revise the idea and practice of its sovereignty to include human rights as an element internal to itself. *Internal* means: in its legislative, judicial, and executive branches, the nation state is no longer the sole source, foundation, and center of all legitimate domestic power and all domestic law. *Internal* refers to incorporation of human rights into the national constitution. Such a nation state, thus modified, is no longer free of all non-domestic legal restraints in its treatment of its own citizens. My proposal replaces one form of sovereignty – with its apex exclusively in the state – with another: a sovereignty that allows for cosmopolitan rights. To say that domestic power allows for cosmopolitan rights is to say that domestic power shares the highest instance of legal validity with all nation states that have incorporated human rights into their respective constitutions. Through incorporation, the highest domestic instance becomes the cosmopolitan instance of human rights. This instance is not geographically delimited domestically. It is not topographically contained within a nation state. Participating states surrender their monopoly on decision-making and law-making to the extent that they bind themselves to human rights. Yet they do so without surrendering national sovereignty altogether.¹¹

I do not propose that nation states should enjoy sovereignty only as long as they observe human rights. That is, I do not make sovereignty an entitlement granted by, say, some global power or world state. Nor do I conceive of human rights as some kind of global administration or policing power. Instead I include the free embrace of human rights in the nation state's conception of its own autonomy and self-determination as a sovereign political community.

The core goal of the human rights state is a cosmopolitanism situated domestically. I do not propose constitutionalizing international law;¹² I propose constitutionalizing human rights within as many nation states as possible, always and only through voluntary participation. Constitutionalization so understood is not a global polity or world public legal order providing political and legal autonomy. It is not an inclusive form of post-national, even global statehood, let alone cosmopolitan world government. It is not global-level democratization or a global state (democratic or otherwise).¹³ It is not some complex, differentiated, multi-level cosmopolitan polity.

When I advocate the domestic constitutionalization of human rights, I seek the benefits of constitutionalism understood as the application of several principles. I seek the application of accountability, the separation of powers, the protection of rights, and legally enforceable constitutional limits to the exercise of law-making and regulatory powers. These limits should secure the core charter principles of sovereign equality – and, I suggest, human rights as well.

I propose constitutionalism at both domestic and supranational levels, without denying the sovereign equality of member states. I have in mind a voluntary supranational legal order that arises out of shared commitment, an order lodged domestically in each of the participating nation states. I imagine multiple autonomous constitutional states, each a site of norm creation and political power, coexisting and cooperating through an overarching commitment to human rights that, to the extent that those commitments overlap (not entirely, but any extent is helpful), constitute a shared governance of human rights.¹⁴ By *shared governance* I mean that these various nation states

mutually recognize each other in their autonomy and in their human rights commitment. They relate to each other horizontally not vertically; they relate to each other heterarchically not hierarchically. Participating states' constitutional orders that have internalized human rights enjoy autonomy vis-à-vis each other. The legal order of each is influenced by the shared commitment to human rights. Yet this constellation of participating nation states is not itself a state.

Members tied to each other through this shared commitment are tied through dialogue and mutual accommodation. These ties hardly preclude differences, competition, or conflict among members. Participating nation states are associated through a shared human rights commitment as an internal feature of each of the participant's domestic orders. Association of this sort is not statist; it is a community of political communities. Just as a human rights state exists alongside the corresponding nation state, so nation states transformed by their respective human rights states co-exist in a shared cosmopolitan commitment that exceeds the national boundaries of each participant. Together they form a pluralism of nation states, each of which observes its own conception of human rights, likely with significant overlap among those conceptions.

By *pluralism* I refer to a world of human rights-observing nation states. I refer to a world of modified legality, modified rights, and modified political autonomy. I do not intend a monist global state. A shared commitment to self-determination understood in this new way does not delimit the range of justified political arrangements. Sovereignty so understood can conduce to public autonomy. It can conduce to collective self-determination, including forms of self-determination other than the liberal-democratic ones favored in the West. Sovereignty so conceived is consistent with far-reaching political pluralism and with many different political and legal institutions. It comports with a rich menu of institutional possibilities, with national self-determination expressed in multiple ways.

Within the association, on the one hand, sovereignty remains with each participant; for the association itself has no sovereignty. On the other hand, a framework of multiple participants does not undermine the integrity of the binding medium, namely a shared code of human rights. An inter-relationship of this design mirrors a form of self-realization by means of communal, 'universal' activities as Hegel (2004) imagines them. Axel Honneth (2001: 78) extrapolates this Hegelian trope into a 'form of cooperative practice in which every subject can recognize in the activity of the other a contribution to common aims; the subjects achieve freedom by carrying out actions that are intertwined, by "laws and principles based on thought and hence universal," to such an extent that their cooperation serves to realize something "universal".'¹⁵ I deploy this trope as follows. For *subject* I read *a nation state practicing domestic cosmopolitanism*. For *universal* I read *the validity of human rights among participating nation states*.

Jurisdictional conflicts are inevitable, of course: if they are to be resolved, then only within the association, and always with reference to human rights. There is no third party to adjudicate between or among contesting members of the federation. If resolution is not always possible, if it sometimes fails, the association does not fail, although it may be weakened. As long as resolution is possible some of the time, among some of the members, the association perseveres.¹⁶

Several aspects of this proposal merit emphasis. First, it builds on core political and legal features of the world today. It builds on the nation state. It builds on the importance of human rights discourse across the world. It builds on the proliferation of international covenants. It builds on the development of an International Criminal Court. It builds on a United Nations that can make resolutions, and on international courts that attempt to enforce them. It builds on the emergence of forms of humanitarian intervention and ideas such as a 'duty to protect'.¹⁷

The economic, technological, and military power of nation states does not preclude the possibility of effective international law and organizations. That participating states may sometimes instrumentalize international organizations for self-serving interests need not destroy the still unrealized

promise of international law and organizations. And a world with nation states some of which have constitutionalized human rights holds out promise for cooperative international relations. It aligns with the equality of sovereign nation states in the sense of a meaningful presence in institutions of international governance. Such institutions include the United Nations, the International Court of Justice, and the International Criminal Court.¹⁸

Second, independent yet interdependent nation states in the overarching human rights community require no ultimate locus of authority. *Community* can describe autonomous yet interconnected, domestic constitutional orders bound by their mutual human rights commitment. These overlapping constitutional orders cooperate, but they compete as well. They compete in terms of their respective understandings of human rights, to the extent that those understandings differ.

Membership and Participation

Advocates of the domestic constitutionalization of cosmopolitan human rights begin their advocacy locally: to each nation state corresponds a human rights state composed of national citizens who seek their nation's embrace of human rights. Participants need not be resource-rich or otherwise advantaged. Particular individual participants can experience cosmopolitanism through the abstract space of a human rights state; they do not require options and resources to travel across the globe. Participants may include novel types of actors; they need not be political experts. Participation might proceed without formal roles. In the aggregate, the advocacy of participants is constitutive of a human rights state.

Membership in this metaphorical state is public rather than contractual. The power that members give to themselves to author and mutually recognize human rights is responsible power because it depends on advocating and facilitating human rights, where advocates and facilitators make autonomous choices. Self-legislation and self-representation of the members does not depend on the 'will of the people'. It depends on the self-declared human rights of the members – rights recognized at first among the participants and eventually by the nation state, in ways I show below. Members tie their respective wills not to an entity but to an idea and aspiration (just as human rights today are a guiding idea and utopian aspiration).

A human rights state does not practice identity as the *politics of presence*. Rather, it marks the deferred presence¹⁹ of an anticipated, future form of a current nation state. In this future form, it embraces human rights. A politics of deferred presence is advocacy. Like all advocacy, it may well fail, at least in some cases, at least some of the time. If it fails in all cases, all of the time, its value may be more hortatory than practical.

The member who identifies with a human rights state identifies with the project of advancing human rights commitment, particularly in the corresponding nation state. This is not a static identity of passive persons. It is an actuating identity of participants who challenge forces hostile to human rights, including a nation state. They challenge it insofar as its sovereignty is configured in ways that preclude a nation state in which human rights form a constitutive internal feature rather than, say, a cancerous foreign body. Sovereignty of this sort ultimately becomes a feature anchored in the domestic constitution.

Metaphor with Deontic Power

A human rights state makes a universalist form of membership possible by defining membership on the basis of species membership. It takes the individual's species membership as the criterion of potential membership in a human rights state. By *species membership* I do not mean the fact of being human, biologically understood. No biological fact carries a 'status function' (which I define

shortly). Instead, I understand the fact of being human *politically*. Humans so understood think and behave in terms of social and political institutions that usually possess status functions.

To define terms: one can grasp the meaning of *deontic* by analogy to members of a liberal constitutional democracy. These members regard themselves as bound even by those judicial decisions they view as wrongly decided. By so regarding themselves, they recognize the binding (or deontic) normative power of the status function that a political community assigns to judicial holdings. Such decisions are binding not because of anything inherent in the decisions themselves but because of the deontic power of the court's formal legal status, as defined by the constitution, and by its status as defined over time by historical practice (in the United States, for example, the never constitutionalized custom of judicial review). The decisions are binding because the community regards them as binding.

By *status* I mean a rights-bearing capacity that can be ascribed by a political community. A human rights state ascribes human rights-bearing status to all human beings.²⁰ A *status function* is a work of collective intentionality. Members of a community generate, recognize, and perpetuate a status function collectively.

I draw on John Searle's work to conceive of human rights as deontic powers deriving from status assigned within political community. According to Searle (2010: 7), humans can 'impose functions on objects and people where the objects and the people cannot perform the functions solely in virtue of their physical structure'. The 'performance of the function requires that there be a collectively recognized status that the person or object has, and it is only in virtue of that status that the person or object can perform the function in question' (2010: 7).²¹ Status, associations, and rules are all social constructions. They can generate 'institutional facts' in the sense of someone's possessing rights or legal membership. These facts obtain only within the institution. Someone who has rights has them because they are attached, institutionally, to one's position or status within that institution.

For example, a person attains one kind of status function who, through a legitimate process of selection, gains the legal authority to legislate for a legal community. He or she has been assigned the status function of a legislator, for example through a democratic election. Communities grant status functions to codified practices, as well, for example by recognizing private property or domicile rights. And communities grant status functions to legitimizing rituals, such as swearing a legally binding oath to uphold a public office or to tell the truth in courts of law. Performed within recognized spaces under specified circumstances, these special actions are invested with a legally binding power they do not otherwise possess. Status functions find everyday expression in institutions such as legal tender; in the position of prime minister or police officer; in marriage and other institutions that unite individuals into a recognized group, from university faculties to fire departments to diplomatic corps to taxing authorities.

A status function is possible only if embedded within a system of social recognition. Recognition of status functions, a form of recognition that Searle calls *deontic power*, has the force of normative obligations. These may be socially enforced duties, requirements, permissions, authorizations, or entitlements. In short, status functions carry deontic powers in that 'they carry rights, duties, obligations, requirements, permissions, authorizations, entitlements, and so on' (2010: 8–9). They are 'positive' as rights and 'negative' as obligations. They are essential to social life; once recognized, deontic powers 'provide us with reasons for acting that are independent of our inclinations and desires' (2010: 9). Every person born into a particular community is born into any number of already existing social institutions with status functions with deontic powers.

Status functions with deontic powers are vital to social stability. To return to one of my examples: members of a liberal constitutional democracy regard themselves as bound even by those judicial decisions they view as wrongly decided. By regarding themselves in this way, they recognize the

binding (or deontic) normative power of the status function that a political community assigns to judicial holdings. These decisions are binding not because of anything inherent in the decisions themselves but because of the deontic power of the court's formal legal status, as defined by the constitution, and by its status as elaborated over time by historical practice (such as the American custom of judicial review I refer to above). Decisions are binding as a matter of communal self-understanding.

Deontic Powers Carried in a 'Backpack'

A human rights state is open to the individual's state membership on the basis of his or her species membership. The status of species membership contrasts with what, in the nation state, is citizenship status. The latter status is determined by the answer to the question: Does this particular political community recognize you as a legal citizen, for example with a passport? The former status follows from the answer to a different query: Are you a human being?

And just as a passport marks the legal terms by which nation states classify the international traveller with respect to right of entry,²² so too, in a human rights state, the individual's physical body, now with a metaphorical backpack, marks the presence of a human rights-bearer. On this approach, human rights are 'located' in the person who carries a human-rights boundary 'within' him- or herself. He or she metaphorically 'embodies' that boundary.

The defining feature is a bordering authority, detached from national territorial jurisdiction and displaced onto the individual. The individual 'carries' this border around with him- or herself. He or she does so not because of some metaphysical or theological attribute, but on the basis of a status recognized by a human rights state. It recognizes the human rights of its members by recognizing their agency as individuals capable of assigning themselves human rights.

My proposal replaces geographic national boundaries with nongeographic borders metaphorically embedded in the individual (quite regardless of citizenship status). By displacing, to the individual, the primary bordering authority of the world today – national territorial jurisdiction – the human rights backpack begins to enhance the bearer's political agency. It qualifies the nation state's sovereignty with respect to human rights, as participants mutually recognize each other's status as backpackers. The backpackers do not wait for nation state recognition of a human rights state to practice recognition among themselves. But they always advocate for recognition by the nation state and by other institutions, such as nongovernmental organizations (NGOs) and multinational corporations, as well as organizations such as the United Nations. Individual agency is enhanced, and state sovereignty diminished, inasmuch as the backpack's contents are indifferent to the wearer's geographic location. What matters in practice is what the backpack 'contains' or 'carries', not where on earth the backpacker stands at any given time. The backpack metaphor encapsulates the argument that the world has always had the relationship between legal rights and physical geography exactly backwards: territory has long determined if a particular member of our species enjoys any particular legal right. In the spirit of universal inclusion that opposes the nation state's principle of almost universal exclusion, my proposal reconceives how one's status as a human being – rather than the territory one inhabits – could possibly determine whether one bears human rights.²³ A human rights state is a metaphor *alongside* a particular nation state. It does not inhabit national institutions. And it is not territorial.

The metaphor of a backpack of rights is already familiar as a general category. Some states offer citizens a backpack containing domestic rights.²⁴ Members of these political communities enjoy the same domestic rights regardless of where, on national territory, they are located physically. A domestic backpack is among the greatest merits of those states that in fact offer one. Entitlement to a backpack surely ranks very high on the list of things many people mean when they speak of the

possible benefits of citizenship. Persons who enjoy domestic rights enjoy rights that are available only *within* the nation state's bounded territory. Anyone persuaded that domestic rights should obtain without regard to the geographical location of the rights-bearer should find human rights attractive for the same reason.

Two Examples of Human Rights Advocacy via Deterritorialization

A human rights state is hardly a familiar container for political community. It is a novel type of jurisdiction that cuts across the stark differences between nationalism and cosmopolitanism. It does so by disaggregating the nation state's rights-making capacity from the nation state's territorial sovereignty. The nation state has a capacity to make cosmopolitan law. But the nation state must free its capacity to recognize human rights from the strongest forms of territorial sovereignty, all of which preclude human rights and other forms of cosmopolitanism.

A human rights state is highly specialized: its sole task is to extend its specialized order – human rights – into the corresponding nation state. In this way it no longer focuses on the domestic state and cosmopolitanism as two distinct entities. It seeks to change the corresponding nation state, and its national constitution, into a novel territoriality: national sovereignty that respects human rights.

For this approach there are no clear rules, no established pathways, no historical precedents. Participants take existing capabilities to identify and advocate human rights and redeploy those capabilities to a sphere of influence with an organizing logic different from that of the nation state. The organizing logic of a human rights state deterritorializes human rights by deterritorializing the practice of *recognizing* human rights.

As human rights advocates, members mutually recognize themselves as possessing human rights despite the corresponding nation state's rejection of human rights. This act of self-recognition contributes to a platform for advocacy that reinforces itself with group solidarity. Advocacy takes the form of a counter-factual claim: *despite what a nation state claims, we claim human rights for ourselves* – today within the human rights state, eventually within the nation state. Counterfactual is the notion of rights despite the absence of the usual territorial basis for those rights. After all, a human rights state is not a nation state. But the very idea of human rights is counterfactual, and for the same reason.

For human rights to be possible absent a world state without national boundaries and exclusive sovereignty, they need to be possible in tandem with sovereign nation states. *Possible in tandem* is possible by means of deterritorializing human rights such that the integration of human rights into the nation state does not lead to some kind of post-national citizenship. A human rights state is a means to seek that integration. The territorial nation state and the non-territorial (because metaphorical) human rights state co-exist side-by-side. The participant in the latter is in most cases a citizen of the former.

To see how co-existence might work in practice, consider two examples by analogy: (a) Médecins sans Frontières and (b) international law.²⁵

(a) Médecins sans Frontières (MSF) is a transnational NGO that deterritorializes the nation state in ways that could allow a human rights state to recognize and protect human rights. (I distinguish the recognition and protection of human rights from the capacity to adjudicate disputes, which I address as a feature of my second example, below).²⁶ Again, by *deterritorialization* I refer to the capacity of transnational organizations (such as MSF) to intervene across nation state borders. Such organizations can establish pockets within the nation state where at least some individuals may be recognized as rights bearing, and as bearing human rights in particular. A human rights state exists within these humanitarian zones as well. These zones have the capacity to form a kind of human rights state. Even as they are temporary, fragile, insecure, and without central authority,

they may still provide a venue for human rights practice, even if only on a narrow basis, and even if for only a limited time.

As a non-governmental, medical and humanitarian organization, MSF recognizes its addressees as human rights bearers – unlike the host nation state. It transcends national boundaries not only by sending physicians across them. It transcends national borders by asserting a universal right of assistance and by establishing, if only temporarily, loosely protected humanitarian sanctuaries. Such measures challenge the host state's territorial authority with respect to human rights whenever recognition trumps a nation state's rejection of human rights. These measures challenge the host state's territorial authority by providing a humanitarian service. MSF defines the addressees of its work in a human rights-friendly way: any person, without regard to political allegiance, religious faith, racial or ethnic characteristics, cultural membership, socio-economic status, sex, and so forth. MSF defines itself over against the host state as 'neutral', 'independent', and 'impartial'. It resists the particular identifiers that otherwise classify individuals as members of this or that particular community with these specific domestic rights. It outfits its addressees with a metaphorical human rights backpack, and it recognizes the deontic power of that backpack.

In the absence of any effective global law enforcement of human rights, the MSF example provides answers to several questions: Who or what bears obligations to recognize the self-granted rights of participants in a human rights state? And who or what enforces human rights and adjudicates relevant disputes? Sovereignty-reinforcing domestic law neither offers nor protects human rights. In some cases it provides civil rights, but those are tied to territorially bounded citizenship. And in some cases, civil rights are tied to membership in preferred groups, such as ethnic, religious, or socio-economic groups.

But a human rights state is different from those NGOs that facilitate the neoliberal withdrawal of a nation state from cosmopolitan normative commitments and responsibilities. It pursues a nation state's eventual embrace of human rights. The human rights project aims to change state behavior and the behavior of groups within the political community. It counters efforts and trends that leave the state out of that project.

This analogy highlights a potential weakness of any particular human rights state. NGOs may lack 'policy making experience' or be 'unhelpfully divided over which ... policy course is optimal' or be 'reluctant publicly (as distinct from privately) to endorse coercive measures which may be necessary' (International Commission on Intervention and State Sovereignty, 2001: 73). A human rights state could be equally plagued by any of these problems. The composition of its members derives from the commitment of participants to human rights and not, say, from technical expertise or political savvy. This is a problem for any social movement, by definition: social movements are not professional organizations but grass-roots activism by ordinary people.

(b) My second example comes from the legal sphere. It helps us imagine a human rights state as it might develop alongside the nation state through the interpretative incorporation of human rights treaties into domestic law.²⁷ Interpretation of this sort would require that domestic courts view their roles as 'dualist'. On the one hand, participating courts are deeply rooted in the domestic legal regime. Their legitimacy derives from domestic constitutional texts, with final allegiance owed to domestic legal sources rather than to international human rights treaties. On the other hand, courts could explore, on a case-by-case basis, the extent to which they might legitimately reach out to specific international sources for assistance. Through nuanced interpretive incorporation techniques, domestic courts might draw upon human rights treaties (and perhaps human rights scholarship and jurisprudence) in their work. And they might draw on the experience of domestic courts in other countries that also pursue incorporation techniques in this sense.²⁸ In so doing, they outfit their addressees with a human rights backpack, and their jurisprudence aims at persuading the nation state to recognize its deontic powers.

By *jurisprudential techniques* I mean an evaluative framework that mediates between the domestic legal system and international legal regimes. The court asks itself, for example: What is the domestic value of any given human rights document? That is, to what extent is the treaty an authoritative expression of the views of the domestic polity? The greater the entrenchment of the treaty in a country's political and legal culture, the higher the domestic value. The higher the domestic value, the more leeway courts might give themselves to further incorporate its provisions into domestic law. To be sure, treaties may enjoy high value in one domestic legal system and low value in another. While such differences among various systems generate problems, such a situation would still be preferable to the status quo.

A court might determine a human rights treaty's domestic value by examining legislative and executive intent of the nation state regarding that treaty: Has it been ratified? Did the executive branch attach reservations, understandings, or declarations modifying the treaty commitments with respect to particular treaty provisions? Beyond the lack of implementing legislation, have policy-makers taken additional measures that indicate support for the treaty? Assessment of 'domestic value' need not be limited to the views of the federal government. Assessment might consider expressions of strong commitment to the treaty by state governments or municipalities but perhaps also popular expressions of commitment.

International Relations among Human Rights States

A human rights state does not advocate the demise of the corresponding nation state. It advocates undoing some of the conventional ways of treating complex national and international matters. Above all, it seeks to qualify state sovereignty, along one dimension, yet without destroying it. A human rights state weakens nation state sovereignty with respect to its capacity to deny or violate human rights. It erodes territorial reach insofar as that reach precludes human rights domestically. It proposes, for inclusion in the constitution of the corresponding nation state, the cross-border jurisdictions for political action entailed by human rights – jurisdiction now confined to the national. But the erosion of sovereignty in this sense does not erode the state's territorial protections in other ways. For example, it does not erode the provision of civil rights. It does not degrade the citizen's entitlement to diplomatic protection. It does not end the sovereign right of a nation state to decline to extradite its own nationals to foreign authorities.²⁹

Consider supra-national institutions that do not undermine state sovereignty even as they qualify it. For example, with massive migration, participants may maintain significant relationships with communities in more than one nation state, such that membership can no longer be confined to the particular political community in which one actually lives and works. Currently the European Union offers the most significant example. By analogy, in the presence of a human rights state, nation states would continue to mediate between structures larger than the state, such as the global economy, as well as structures below the level of the state, such as local economic systems. Just as sub-state organizations might well be regulated, so, too, organizations beyond the state might be regulated. (They might be regulated as they are today, above all in the economic sphere, by the International Monetary Fund, the World Trade Organization, the World Bank, and meetings of the Group of Seven or Group of Eight.)

Even then, the nation state retains most of its current functions. Many of these are best performed by the nation state. For example,

markets, NGOs, media companies, commercial organizations and interests, and all the other institutions that propel globalization need a secure environment to prosper. They look to the state to protect them from criminal or terrorist attack; to ensure law and order and the stabilization and enforcement of property

rights; to develop communications infrastructure; to prepare the labor supply through education and training; and, more generally, to provide economic support through congenial tax regimes, subsidies, or other forms of state intervention. (Axtmann, 2004: 271)

And states continue to provide the most plausible basic unit for international political structures and organizations that allow for the participation of non-states as well, such as multinational corporations and NGOs.

Finally, in my proposal, the nation state retains its role in securing social integration, communal solidarity, and welfare in the face of so many threatening forces. These forces include socio-economic inequalities, ethnic or religious conflicts, regionalism, as well as the locally disruptive and dislocating consequences of globalization.³⁰ In this context, some states might sometimes act as critics of international organizations. And some states might sometimes reinforce the work of some international organizations through domestic law and local powers.³¹

To embed human rights domestically in the nation state, as the human rights state advocates, is to embed the cosmopolitan in the domestic venue of the nation state. When this embedding occurs in multiple nation states, the transnational jurisdiction of human rights becomes established, at least among participating nation states. This leads to international relations among human rights states, with several features: (a) a system of trans-locally recognized human rights, connecting multiple national spaces; (b) local activists in a human rights state incorporating various non-national sites and creating global publics; and (c) the various human rights states forming a community of international solidarity based on what they share across their various differences. This community is not defeated by the co-presence of non-human rights states. Consider each of these features in turn.

(a) I distinguish between the organizing logic of the nation state – its logic of exclusion – and the nation state's capacity for the rule of law. The human rights state advocates for the nation state's adoption of a logic of inclusion that would expand rather than narrow the rule of law. The change in organizing logic does not diminish the rule of law. Rather, the change enhances the rule of law by developing it beyond the exclusive, national, territorial domain. The rule of law is no longer strictly coterminous with that domain. The authority of human rights becomes more critical than the authority of national territory.

In its advocacy, a human rights state does not operate in a vacuum. On the contrary, each human rights state operates alongside a corresponding nation state, in the presence of various international organizations, with possible support from international human rights law. Each human rights state also operates in an emergent landscape of multiple human rights states. This landscape multiplies the sources of human rights advocacy, each directed at a particular nation state but each related to the other sources.

As human rights states proliferate, each state practicing and advocating human rights and each targeting a particular nation state for the incorporation of human rights into the national constitution, the authority to advocate for domestic change and new domestic laws is no longer as firmly ensconced as it once was within the nation state. The multiplication of human rights states is the multiplication of non-territorial normative orders. Each human rights state challenges a corresponding conventional nation state, in a world of nation states each emphasizing national sovereignty.

Multiple human rights states offer a kind of horizontal cosmopolitanism. Even as this cosmopolitanism is centered on diverse human rights states, it constitutes a network of local activists dispersed globally. Participation is decentralized and the activities of diverse human rights states are simultaneous. That is, any given human rights state is part of a growing, cosmopolitan public space constituted by human rights states. These states pursue the same goal, even as the goal in each case can only be realized individually, in a particular nation state, rooted in all the concrete, particular features and contexts and struggles of that state.

(b) Local activists in a human rights state incorporate various non-national sites in their struggle for human rights within the nation state, and for human rights embraced by the nation state. Such non-national sites include international organizations such as the European Court of Human Rights and the International Criminal Court, as well as 'identities previously unseen by international law' that might find legal recognition 'through their attachment to non-state players. For instance, membership of a non-governmental organization or a religious body could be recognized in international law as granting standing' (Rubenstein and Adler, 2000: 547).

Local activities and non-national sites might create global publics, at first informal and hardly institutionalized³² yet capable nonetheless of creating a normative landscape that could empower actors weak in power and poor in resources. These global publics constitute a kind of democratization in the generation and assignment of human rights. Absent the human rights state, the actual, current source of human rights can only be the nation state which, if disposed toward human rights at all, then is disposed at most for its citizens and perhaps other residents but not for other populations in the world. A human rights state displaces rights construction from the nation state to local individuals. In this sense it radically 'democratizes' the authoring and assignment of human rights.

(c) Alongside the various nation states, the various human rights states form a community of sorts, in part because of what they share among themselves across their various differences. They share overlapping understandings of human rights. They share a political community whose inclusionary logic states: all persons, those inside state boundaries as well as those beyond, may be members of the community, as persons who author their own human rights. And even as different human rights states develop lists and understandings of human rights at points different from those of fellow human rights states, in each case the particular state applies its particular list to persons both inside and outside the nation state's boundaries.³³ All members of the community of human rights states confront the fundamental problem that human rights are not self-defining and that, in some cases, competing definitions of particular rights can be mutually exclusive. For this reason, the project for human rights will always be a political project in the sense of requiring ongoing deliberation about definitions. It will always be political in the sense of a willingness to take seriously definitions with which one disagrees. And it will always be political as a capacity to live with different understandings, even as such differences may be unhelpful to the goals of some human rights.³⁴

Further, a community of human rights states could transform competition among states from what it so often is – each seeking advantages over others – into competition in realizing the human rights project on either side of national boundaries. Human rights states could form transnational communities of people working toward the same aims of the human rights project. The object of any one human rights state is always the nation state in which its members reside.

Finally, a community of human rights states need not be defeated by the co-presence of non-human rights states, even as differences between the two types of community may sometimes spawn conflict. Conflict is likely above all because global justice in terms of a community of human rights states includes the project of encouraging nation states to recognize and respect the human rights of its national citizens and other residents, as well as of persons who are neither its citizens nor its residents. A community of human rights states may sometimes succeed in discouraging national sovereignty from preventing the extension of human rights across national borders. But it may sometimes fail, for example if it fails to connect some assertions of human rights to agents or agencies obliged to provide and protect that right.³⁵

Conclusion

Toward realizing the human rights state across societies of different levels of economic development and forms of political organization, I suggest two approaches. Both denationalize the nation

state somewhat to make it more human rights-friendly. These approaches are not in competition with one another; they can be complementary. The first is more appropriate to powerful Western nations; the second, to developing countries. (a) One form of denationalization deploys powerful global organizations as human rights advocates; (b) another form emphasizes a coordinated, multi-polar advocacy. I now turn to consider each:

(a) Multiple human rights states across the globe, each networked with the others, together constitute a kind of standardized cosmopolitan sphere, a space for human rights outside the nation states that reject human rights. In this sphere, participants advocate the rule of law by advocating human rights. Rule of law so understood is different from the way the term *rule of law* is used in referring to the principle of domestic government by domestic law (applied fairly and enforced on all persons and institutions within the community). Here *rule of law* means the rule of human rights, or the rule of cosmopolitan law.

Legal frameworks for human rights and the rule of law can strengthen the nation state, of course. In my proposal, however, they denationalize the nation state to an extent, yet without undermining it. The proposal denationalizes the nation state by installing in it something that is not (yet) part of it: human rights legality, or a rule of law that recognizes human rights. Powerful Western nation states can pursue this approach through organizations in which they wield great power, such as the World Bank, the International Monetary Fund, and the World Trade Organization. They can pursue this goal by committing these institutions to human rights. To commit them requires that these institutions, in all their activities, consider the impact on human rights. It calls for mitigating or precluding negative impacts, and for encouraging positive ones. It refuses to support any activities that threaten human rights or contribute to their violation.

In effect, institutions such as the World Bank would use their influence to support the human rights project domestically, for example through human rights-compatible implementation of development projects. Institutions could support the project by monitoring legal and financial aspects of all projects for human rights compatibility. They could support it by sustainable development that includes a human rights commitment, such as a commitment to eradicate poverty without violating human rights. They might buttress it by analyzing the human rights impacts throughout the life cycle of a project and beyond because human rights violations can impact victims' lives in enduring ways. They would promote it by encouraging such institutions to undertake what might be called *human rights due diligence*: not 'the "naming and shaming" of countries receiving development aid' but consideration of 'how each of its activities may create human rights problems or exacerbate existing ones in order to determine how to constructively and proactively mitigate those risks. Project activities should also aim at maximizing positive human rights impacts' (Evans, 2013: 301).

(b) Another approach constructs multiple, networked human rights states in the context of a multipolar world. Consider a particular group of developing nations: Brazil, Russia, India, China and South Africa (BRICS). India and China have long advocated a transition from bipolarity (the West and the rest) to multipolarity. They also advocate expanding the Security Council and transforming existing structures of world economic governance (Mielniczuk, 2013: 1086–7). For their parts, in the previous decade Brazil, Russia and South Africa embraced a unilateral model of international relations coupled with a 'view that liberalism, structured around the pillars of free economic enterprise, political democracy and respect for human rights, would promote development and a fair international order' (2013: 1087). Today they have come to identify with the Chinese and Indian advocacy of a multipolar world. This confluence, despite differences in emphasis,³⁶ constitutes the BRICS position. It advocates non-intervention; poverty alleviation; technology transfer to promote development; Security Council reform; restructuring of economic global governance institutions, including the IMF and World Bank; and respect for international law (Mielniczuk, 2013).

Multiple, networked human rights states corresponding to each of the BRICS seek to integrate human rights into each of these national territories, as well as across them. These human rights states might pursue the project of a free embrace of human rights not only as a multi-sited pursuit, but also as a pursuit no longer headquartered in the liberal West. That is, human rights states diverge not only from the territoriality of the nation state. They diverge from the historic preeminence of the West with regard to human rights advocacy. This constellation challenges not only the national state in the historical sense of the term. It challenges Western dominance of the human rights discourse. On the one hand, it partially denationalizes each of the corresponding nation states. On the other, it opens up an operational space for human rights advocacy that is itself cosmopolitan because it is multipolar.³⁷

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Notes

1. See, e.g., the *Convention on the Elimination of All Forms of Discrimination against Women*, adopted in 1979 by the UN General Assembly. It defines discrimination against women and proposes an agenda for national action to end such discrimination. Some of its provisions are unenforceable, such as: 'Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations.'
2. For empirical evidence and analysis, see Hathaway (2002).
3. *Ibid.*
4. For a book-length development of this idea, see Gregg (2015), which builds on Gregg (2012a) and carries this idea further.
5. No country has more slaves than India: between 13.3 and 14.7 million, many through debt bondage or bonded labor and many enslaved as child brides (Global Slavery Index, 2013: 43–9). In Norway, by contrast, all identified victims (fewer than 700) are non-nationals (2013: 82).
6. This description of the world holds regardless of which dimension of the modern nation state one emphasizes, whether self-determination of an ethnic community (Kaiser, 1994), management of territorial power (Giddens, 1981; Agnew and Corbridge, 1995), or steward of an economy within a world of competing economies, among other possibilities.
7. When I say a *possible* right, I point to a right recognized at least in principle by liberal democratic polities. Balibar (2004: 321) points to a different but related tension: in the nation state, 'man is made by citizenship and not citizenship by man'.
8. This view of sovereignty rejects Agamben's (1998, 2000). He views sovereignty not as autonomy but only as power, as if any sovereign state can only be the neoliberal state in particular, a state tied to corporate privilege against which ordinary individuals are forever powerless.
9. The economic sphere provides compelling examples of how post-national trends may diminish some of the lives they influence. The integration of poorer countries into the global market, and their regulation by supra-national entities, may involve structural adjustments to the national economy. These adjustments often include reducing state expenditures, social services, and welfare for the poor. Post-national, multilateral institutions such as the International Monetary Fund, the World Bank, and the World Trade Organization often curtail the national sovereignty of weaker members in economic domains. For its part, a human rights state, which diminishes a country's national sovereignty to the extent entailed by domestic recognition of human rights, does not require that the nationstate transfer responsibilities for managing economic and social relations to parastatal, nongovernmental, private actors or commercial actors, or to exercise public functions in partnership with them.
10. I develop the idea of individuals as authors of human rights in Gregg (2010a).

11. Nation states so modified still participate in the creation of some international law. And they still participate in some decision-making at the global level.
12. For a range of supportive arguments, see Cohen (2012), de Wet (2012), and Habermas (2006).
13. Arguments against a world state are many. It is congenitally susceptible to tyranny. It violates democratic legitimacy. It may resist the rule of law. It has a totalizing character. It eliminates any space not occupied by the state, a space of refuge in cases of tyranny or injustice. It may display imperialist tendencies. It could preclude meaningful political participation, hence self-government. It possesses martial tendencies in light of the great power and coercive apparatus it yields. It may incline against some forms of diversity among some of the many different groups of citizens.
14. This conception differs from the Habermasian one of global governance without government. Guided by a belief in the primacy of global law, it pursues democracy beyond the nation state in the form of post-national democratization without post-national statehood. Compare, critically, Schmalz-Bruns (2007).
15. Honneth cites Hegel (2004, §258).
16. For a skeptical view of legal pluralism, see Fischer-Lescano and Teubner (2004).
17. To be sure, none of these items ensures progress on the human rights front. Unpromising, for example, is the notion of an a priori responsibility to protect. And the danger remains that powerful nation states and regional alliances may deploy institutions and discourses toward new hegemonic powers and global hierarchies that retard the advance of human rights.
18. Compare Chayes and Chayes (1995), who offer hopeful evidence of widespread compliance with the norms, rules, and practices of some multilateral regimes.
19. I draw the term *deferred presence* from Urbinati (2007), who gives it a different meaning and deploys it in a context different from mine.
20. I distinguish *status* from *role* even as they overlap. In the nation state, status and role can be in tension with one another. Like Halfmann (1998: 527), I think of citizenship as a *status* insofar as it 'secures membership in a nation state by birth', but as a *role* in the sense of a 'specific type of inclusion in the political system which liberal democracies provide in the form of certain rights vis-à-vis the state'. By framing the individual not only as human-rights *bearer* but also as an *agent* and *advocate* of human rights, namely as *author* of his or her own human rights, a human rights state facilitates the individual's participatory *role*. In this way it reconciles status aspects of citizenship with role aspects of membership.
21. Collective recognition of the status is not necessarily approval: 'Acceptance ... goes all the way from enthusiastic endorsement to grudging acknowledgment, even the acknowledgment that one is simply helpless to do anything about, or reject, the institutions in which one finds oneself' (Searle, 2010: 8).
22. Note that a status function may function variably across cases. For example, some passports convey more authority than others with respect to visa requirements. According to an index by Henley & Partners (Upe, 2013), passports that allow entrance to 170 or more countries and territories without a visa include the UK, Finland, Sweden, Denmark, Germany, Luxembourg, the USA, Belgium, Italy, the Netherlands, Canada, France, Ireland, Japan, Norway, Portugal, and Spain. Passports that allow entrance to 160 or more without a visa include New Zealand, Switzerland, Austria, Australia, Greece, Singapore, South Korea, Iceland, Malaysia, and Malta. The weakest passports are Afghanistan (allowing visa-less entry to 28 countries), Iraq (31), Pakistan and Somalia (each 32).
23. Like all metaphors, *backpack* is imperfect. An actual backpack can be taken off whereas the metaphorical backpack, as I image it, once slipped on cannot be shed. And whereas a physical backpack can be stolen, a metaphorical one may be denied but never stolen.
24. Compare Parekh (2002: 41–2).
25. For yet a third example of human rights deterritorialized, this time with respect to digital communication and the internet, see Gregg (2012b).
26. For critical perspectives on MSF, see Redfield (2013), Magone et al. (2011) and Debrix (1998).
27. See Benvenisti (2013) and Waters (2007) for critical perspectives on this approach.
28. On the idea of human rights claimable only as individual rights enforceable by national and international courts, see Buchanan and Golove (2002) as well as Gardbaum (2008).
29. Except if obliged to do so by treaty (which, in some cases, may violate the person's human rights).
30. Compare Jessop (2002: 210–13).

31. Compare Hirst and Thompson (1999: 276).
32. *Informal and weakly institutionalized* by contrast to the global capital market, which is strongly institutionalized in both domestic and international law.
33. For a pluralistic conception of human rights, and of the human rights project as an enduring variety of cognitive communities, sustained by a variety of learning processes, see Gregg (2010b). There I address some of the problems generated by pluralism.
34. The project for human rights will always be political for another reason as well. Any given nation state might be willing to cooperate in such an arrangement, at least to the extent that its core administrative functions are not compromised. But insofar as this arrangement challenges the status of the political and economic elite, or the dominant cultural and religious understandings, or long-standing practices of other sorts, the project for human rights states can expect opposition, sometimes fierce. A human rights state is then a political project also in the sense of tactics, strategies, and campaigns against hostile forces and in toxic environments. As for the nature of the project: a human rights state focuses on long-term processes of cultural, social, political and economic change that facilitate the embrace of human rights. It is not suited to the urgent mobilizations of international resources in human rights emergencies, such as genocide or ethnic cleansing. For an example of the emergency approach, see Risse et al. (1999).
35. Compare Linarelli (2009: 384).
36. For example, 'Russia is more multipolar than developmental, while in South Africa the order of intensity of these aspects is the contrary. China and India confer on human rights a different meaning than one shared by Brazil and South Africa. In some cases there are other dimensions of their identity that are not even shared, like their democratic nature' (Mielniczuk, 2013: 1088).
37. A constellation of human rights states in a multipolar world changes the dynamics of global power struggles over economic, political and security spaces. It changes the dynamics of development specific to the field (which do not simply mirror global power struggles): 'As Northern donors lose influence over key areas of the global South and are edged out in many places by South–South providers, they seek to keep a 'foothold' in the global South. In essence, Northern donors are struggling to redefine their roles and expand their power, both within and beyond the field of development cooperation' (Abdenur and Da Fonseca, 2013: 1487).

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