Institutional Change in the World Polity

International Human Rights and the Construction of Collective Identities

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abstract: This article discusses the transformation of the classical nation-state, as articulated in contemporary struggles for recognition. Elaborating neoinstitutional world polity theory, it analyses global institutional changes that underlie those transformations. It is claimed that the worldwide diffusion of the classical nation-state model itself has had paradoxical consequences, which have in the long run generated a new model of multicultural citizenship, legitimating the decoupling of state membership, individual rights and national identity. The argument is based on empirical evidence from a semantic analysis of international legal discourse on human rights, particularly in the field of religion. Documentary sources suggest that the content of human rights has changed in the second half of the 20th century; the close link between human rights and national self-determination was superseded by the idea that the protection of human rights requires states to recognize a diversity of primordial or traditional identity groups.

keywords: collective identity ✦ human rights ✦ institutionalism ✦ nation-state ✦ world polity

Introduction

Since the second half of the 20th century, there has been a far-reaching transformation of nation-states worldwide. In its classical model, the modern nation-state was premised on a structural coupling of politics, law and collective identity. National citizenship, linking political participation to both individual rights and national identity, was perhaps the most prominent institutional manifestation of that model. Today, this

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model is successively losing plausibility. Regional movements, indigenous peoples, transnational migrant networks and ethnic, linguistic or religious minorities are making claims for full political and legal inclusion, while at the same time demanding the public recognition of their distinctive collective identities. The hitherto presumed congruence of state membership, individual rights and national identity is thus being called into question, while new models of 'multicultural' citizenship seem to emerge (Kymlicka, 1995).

Description and explanation of this transformation has become an important topic in international comparative sociology (Brubaker, 1992; Joppke and Lukes, 1999; Kymlicka and Norman, 2000; Münch, 2001). A particularly fruitful conceptual framework for analyzing conceptions of nation-statehood and citizenship has been proposed by scholars drawing on neoinstitutional world polity theory, as developed by John W. Meyer over the past decades. Moving beyond the epistemic blockages of what has aptly been called the 'methodological nationalism' in the social sciences (Glick-Schiller and Wimmer, 2003), world polity theorists see individuals, organizations and states as embedded in broader institutional environments. From this perspective, it has been argued that the decoupling of political membership, rights and identities results not so much from endogenous social forces, such as the political economy of postindustrial societies or the inner logics of liberal democracies, but rather from the global diffusion of human rights as a new vocabulary of political contestation and legitimacy (see notably Soysal, 1994). In this article, I aim to contribute to such institutional explanations by analysing the changing content of global cultural models in greater detail. Thus, rather than addressing the controversial question of whether global models really affect local practice, I focus on institutional change at the world polity level.

My major thesis is that the global institutionalization of universalistic human rights has paradoxically led to the proliferation of particularistic rights of sub- and transnational collectivities, thus undermining the classical link between individual rights and national identity. To substantiate my argument, I analyse changing semantics in international human rights law. A specific focus of my analysis is on religious human rights, which have provided particularly salient categories of collective identity in struggles for cultural recognition, notably in Western European countries where discursive categorizations of 'religion' and 'secularity' were of focal importance in the formation of classical nation-states. However, the underlying semantic change has similar implications for ethnic or linguistic minorities and indigenous groups alike, thus amounting to the emergence of a 'multicultural' model of citizenship.

To set the stage for my argument, I start with a brief discussion of merits and pitfalls of neoinstitutionalist 'world polity' theory. The next section

provides the broader context for my semantic analysis by recapitulating the global institutionalization process of human rights in the postwar period. The remainder of the article, drawing on a wide range of secondary literature and documentary sources from international human rights law between 1945 and 2001,[1] shows how and why national identity frames have been superseded by sub- and transnational identity frames in human rights discourse.

The World Polity in Neoinstitutional Perspective

The basic theoretical premise of new sociological institutionalism is that modern rational actors are embedded in an encompassing institutional order. Following the anti-utilitarian argument of classical sociology, identities, interests and relations of actors are situated within broader expectancy structures (Meyer and Jepperson, 2000). These expectancy structures are not only normative, but also cognitive in character; put differently, institutions not only consist in regulative rules, but also comprise constitutive rules – frames, scripts and models – through which modern rational actors are given ontological status (Scott, 1995).

The anti-realist and constructivist impetus of new sociological institutionalism is rooted in a strictly phenomenological reading of Max Weber's theory of occidental rationalization. Occidental rationality is viewed as a myth, rational action as its ritual accomplishment, and rationalization as the institutionalization of a cultural system of ultimate ends, legitimate means and rational actors. Historically, the cultural system of rationalism is attributed to internal transformations within Christianity in early modern Europe, when ideas of political sovereignty, bureaucratic efficiency and personhood emerged, through which states, organizations and individuals were constituted as agents of inner-worldly reconstruction (Meyer, 1989). Since the 19th century, this cultural system has become the symbolic core of an increasingly dense 'world polity', in which international organizations, transnational NGOs and epistemic communities play the role of significant Others, orientation to whom results in an increasing standardization or isomorphism of modern actors. Models of national statehood and citizenship figure prominently among the elements of rationalized world culture, and their impact on states has empirically been demonstrated in a variety of studies on educational systems, environmental protection, migrant incorporation or women's rights (see Meyer [2000] and Meyer et al. [1997] for further references).

Meyer's neoinstitutional world polity approach can be criticized on several accounts. First of all, the *mediating mechanisms* through which global expectancy structures are transmitted to the domestic or local level are not sufficiently specified. Beyond the general distinction of coercive, normative and mimetic isomorphism (Powell and DiMaggio, 1991), there is little

elaboration of social processes that actually cause the standardization of the form and function of modern actors. Some progress towards 'process-tracing' has been achieved by constructivists in international relations, where actor-theoretical and network-analytical tools have been included in institutional research agendas (e.g. Finnemore, 1996; Risse et al., 1999). Closely linked is a second point of criticism that concerns the *localizing mechanisms* of globally institutionalized expectancy structures. Borrowing from organizational sociology, neoinstitutionalists typically argue that the global embedding of actors can give rise to a strong decoupling of formal structure and activity structure (Meyer and Rowan, 1977). However, to explain the selective reception, partial implementation and context-specific interpretation of world cultural frames at the local level, it seems necessary to introduce arguments of historical path-dependency as developed in comparative historical institutionalism (see Acharya, 2004; Campbell, 2004). Third, the *generation* and *change* of cognitive and normative patterns institutionalized at the world polity level remain unclear. Modifying the neoinstitutional framework by introducing agency can be seen as a promising option for further progress in that respect. Thus, Finnemore and Sikkink (1998: 895, 898) have underlined that at different stages of institutionalization processes – 'norm emergency', 'norm cascade' and 'norm internalization' – distinctive logics of action prevail. Of these, so they claim, the stage of norm emergence was not so much characterized by dramaturgical action but by value-rational or communicative action of institutional entrepreneurs.

All these points of criticism underline that in spite of its uncontestable merits, the neoinstitutional world polity approach – as well as its application to the analysis of changing models of national statehood and citizenship – requires further theoretical elaboration and modification. In this article I focus on the third point, which calls for greater specification of institutional change at the world polity level. Here, I concur with Finnemore and Sikkink (1998) in emphasizing, in *short-term* pespective, the relevance of institutional entrepreneurs and their activities as proximate causes of institutional change in the world polity. Here, I concur with Finnamore and Sikkink (1998) in emphasizing, in *short term* perspective, the relevance of institutional entrepreneurs and their activities as proximate causes of institutional change in the world polity. In addition, however, I argue that ultimate causes are to be found, in *long-term* perspective, in macro-social processes including paradoxical effects of institutionalization. In other words, the actors engaging in institutional change have to be seen as constituted by prior institutional processes.

Human Rights in the World Polity

In neoinstitutional perspective, changing models of nation-statehood and citizenship are closely related to the global institutionalization of human

rights (Berkovitch, 1999; Boli, 1987; McNeely, 1998; Ramirez et al., 1997; Soysal, 1994). Human rights are indeed a particularly salient world-cultural frame for structuring the relationship between states and individuals. In *cognitive* terms, human rights are constitutive rules that first of all define bearers of legitimate actorhood, notably the individual and the state. In *normative* terms, they are regulative rules with universal applicability that determine the relationships between those actors. And finally, in *expressive* terms, human rights are polysemic signs open to multiple interpretations providing symbolic representations of the imagined community of 'humankind' (Bonacker, 2003: 131).

The global institutionalization of human rights has occurred, most notably, through their incorporation into the body of international law. Given its inherent formalism and universalism, law is a particularly well-suited medium for constructing cultural frames of rationality (Boyle and Meyer, 1998: 215). Law constitutes both individual and corporative actors ('legal subjects') and regulates their relationships through rights and obligations. International law, moreover, encompasses highly elaborated and reflexive visions of world order from which more specific constitutive and regulative ground rules of interaction are deduced. While 'Westphalian' international law was centred around the doctrine of state sovereignty, the juridification of human rights in the 20th century has put greater emphasis on relations between states and individuals (see, for example, Henkin, 1990; Philpott, 2001; Sohn, 1995; Vincent, 1986). It was indeed as restrictions of state sovereignty that individual human dignity was, along with peace, promoted as a universal value in light of the experiences of fascism, genocide and two world wars. To better protect the individual from state interference, the recognition of state sovereignty was successively made conditional on the acceptance of value-rational expectancy structures giving charismatic status to the individual person.

The global institutionalization of human rights through the medium of international law occurred in three stages (see Buergenthal, 1997), which by and large correspond to Finnemore and Sikkink's norm cycle. In a first stage (1945–66), starting with the Charter of the United Nations (1945) and the Universal Declaration of Human Rights (UDHR) in 1948, general human rights norms were formulated. The UDHR encompasses civil and political rights, social, economic and cultural rights as well as the right to a just international order, thus prefiguring what later came to be called first, second and third dimension rights. In this stage of 'norm emergence', communicative action of institutional entrepreneurs was particularly decisive. Alongside several international non-governmental organizations (INGOs) based in North America, it was above all a coalition of Latin American states and political elites in the still existing colonies, which urged for the international codification of human rights against the initial resistance of

the US, the USSR and the colonial powers, Great Britain and France (Opitz, 2002: 51). Contrary to what neorealists would have to expect (Krasner, 1999: 105–27), these entrepreneurs successfully lobbied more powerful states to create new standards of universal human rights protection.

The second stage (1966–89) was characterized by the adoption of major binding conventions specifying individual human rights norms and establishing implementation procedures and monitoring bodies, most notably the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965), the International Covenant of Civil and Political Rights (ICCPR) (1966) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966). This 'norm cascade' resulted in promotional, if not implementational human rights regimes (see Donnelly, 1989: 206). Among the monitoring procedures set up by these treaties and other charter-based mechanisms, individual complaint procedures are of particular importance as they establish transnational public arenas to resolve conflicts between individuals and states; moreover, they provide opportunities for monitoring bodies, such as the Human Rights Committee (HRC), to develop their own jurisprudence and thus to reinterpret institutionalized human rights. Moreover, consultation procedures with NGOs were strengthened, thus creating new opportunity structures for the mobilization of transnational human rights networks, which, through their strategies of naming and shaming, have strengthened normative pressure on non-compliant states (see Sikkink, 1993; Smith, 1995: 191ff.).

Alongside the further diversification and specification of human rights, the third stage (1989–2001) was marked by increasing concerns for the implementation and enforcement of human rights. This is evinced by the practice of 'humanitarian interventions' and the establishment of the International Criminal Court (ICC). That coercive elements of implementing human rights standards were now put on the agenda is not least due to the demise of the Soviet Union and the end of the Cold War, which until then had structured international politics in the field of human rights (see Falk, 1998: 49–108). Given the growing robustness of the international human rights regime, it is not astonishing to find an increasing commitment of states to internationally codified human rights ('norm internalization'), as shown by accelerating ratification rates of major human rights conventions (Tsutsui and Wotipka, 2001).

In sum, the juridification of human rights in 'post-Westphalian' international law has structurally altered the relationship between states and individuals. Of course, it is true that the enforceability of internationally codified human rights is highly limited and the effective guarantee of subjective rights remains ultimately linked to the state as organizational form of political and legal inclusion. To a certain extent, human rights

may even strengthen state authority as they provide governments with new repertoires of legitimization (Hafner-Burton and Tsutsui, 2005). However, the international juridification of human rights does entail a far-reaching devolution of authority – and charisma – from the state to the individual. It is not only as citizens, but also as members of the imagined community of humankind that individuals are assigned legitimate agency and enjoy rights. Rights are no longer born out of struggles between governments and social movements, but result from political elites' ritual enactment of globally diffused cultural models or from the contentious claims of protest groups capable of mobilizing such models through transnational networks (Risse et al., 1999).

Against this background, it should be obvious that global human rights need to be taken into account as a crucial, although certainly not the only causal factor for the transformation of models of nation-statehood and citizenship. Yet, understanding the rise of 'multicultural citizenship' also requires scrutinizing the *internal semantic shifts* of human rights that have occurred alongside their global institutionalization, and it is this particular point to which I turn in the following analysis.

Reconstructing Collective Identities – Semantic Changes in Human Rights Discourse

The global institutionalization of human rights has, throughout the three stages, been accompanied by the proliferation of new rights and obligations. Of specific importance for the topic at hand is the emergence of particularistic rights of sub- and transnational collectivities. To understand this development, one has to realize that institutionalized relations between the state and the individual as modern actors have always been mediated by constructions of collective identity. Occidental rationalism conceives of states not only as bureaucratic apparatuses but also as political communities, and of individuals as members of various intermediary groups. By formulating (often implicit) systems of classifications and categorization, human rights discourse contributes to the legitimacy of specific identity frames and their primordial, traditional and universalistic, and codes.[2] Early notions of human rights in the French Revolution were closely linked to constructions of the 'People' or 'Nation' as collective bearer of rights. More recently there has been a shift from such national to sub- and transnational collectivities in human rights discourse. This shift can in *long-term perspective* be explained as a paradoxical result of the worldwide diffusion of the nation-state model.

It is well known that the worldwide diffusion of the classical model of the nation-state was not only premised on the Westphalian principle of state sovereignty but also on the idea of national self-determination as a human

right (Mayall, 1990; Strang, 1990: 857). As early as the 19th century, independence movements in Latin America and Europe drew on the anti-imperial discourse of human rights, which since the French Revolution had been strongly linked to the idea of national sovereignty (see Arendt, 1951; Hall, 1999: 133ff.). The principle of national self-determination was partially institutionalized in the League of Nations, where it legitimated the formation of nation-states on the Central, Eastern and Southeastern European territories of the former Ottoman, Austrian and Russian empires, while the populations of the colonies were denied the right to self-determination on the grounds that they had not yet reached political 'maturity' (see Strang, 1996: 31ff.). It was an increasing emphasis on the principles of equality and non-discrimination in human rights discourse that made possible that the right to self-determination could eventually also be mobilized by independence movements in Africa, Asia and the Middle East against the 'racism' of colonial powers (Anderson, 1991: 114–40; Emerson, 1960). After 1945, the principle of self-determination was generally recognized and accelerated the almost inevitable decay of colonial and other imperial structures. Initiated and supported by the new postcolonial states, it was codified in formal international law by the UN General Assembly's Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) and was then included as the first and most fundamental human right in the two major human rights conventions of 1966 (see Art. 1 ICCPR and ICESCR, respectively). Human rights discourse thus contributed to the construction of 'peoples' and 'nations' as legitimate collectivities that states were obliged to properly represent. Yet the very same discourse, in its anti-imperial versions and its emphasis on equality and non-discrimination (Morsink, 1999: 93–6; Opitz, 2002: 50, 53), also institutionalized categories of 'race' and 'culture', which later became the nucleus for the reconstruction of new sub- and transnational collectivities.

As a structural consequence of the global institutionalization and diffusion of the nation-state model, new actors were constituted and gained legitimacy within the world polity. Thus, in the wake of decolonization, actor-constellations within the UN were changed and new social problems entered the horizon of international human rights discourse. According to the *uti possidetis* principle, postcolonial state formation had largely reproduced the territorial borders of colonial or mandate administrations that hardly ever coincided with settlement patterns of the population. The new postcolonial political elites, legitimated by the UN's fear of cascades of secessionism, prevented any subnational groups from claiming their right to external self-determination. Instead, these were granted a right to internal self-determination. As a consequence, the governance of 'plural societies' became increasingly relevant in human rights discourse, and in response a whole series of new human rights were

formulated, which gradually contributed to the delegitimization of the classical nation-state model and the institutionalization of 'multicultural' citizenship.

The decoupling of state membership, individual rights and collective identity can thus be understood as the result of *long-term* structural processes in the world polity. In *short-term perspective*, a more fine-grained account of this institutional change can be given by relating the new global actor constellations to the changing semantics of international human rights law. As the example of religious rights shows, the relationship between state and individual, originally mediated by the national collectivity, was increasingly complicated by the construction of new collectivities.

The first stage of the institutionalization of human rights in the world polity (1945–66) is marked by a strong focus on individual rights. Due to negative experiences with the League of Nations' minority system, group rights were intentionally excluded from the codification of human rights in the UN Charter and the UDHR,[3] and debates about minority protection, such as those eventually resulting in Article 27 of the ICCPR, were strictly framed in individualistic terms (see Sohn, 1981: 274–5).

This focus on individual human rights is reflected in the right to freedom of religion.[4] Freedom of religion had already been on the international agenda during the negotiations that led to the founding of the League of Nations, in spite of the eventual failure of Woodrow Wilson's call to codify it in international law (Dickson, 1995: 330). Roosevelt also had included religious freedom in his 'list of four freedoms', and a number of newly established INGOs specialized in the protection of (private) religion.[5] In this climate, it was evident that religious freedom was included in the list of internationally recognized rights in Article 18 of the UDHR. However, the further specification of this right was accompanied by various intense conflicts. A first line of conflict quickly emerged between the US and the Soviet Union with regard to the very definition of the term 'religion'. Whereas the Communist states demanded to treat religious and atheist belief equally, the US representatives insisted on a particular protection of 'religion' in a more narrow sense. The second conflict referred to the right to change one's religion, a notion rejected by conservative Islamic theologians, who saw this as a right to apostasy (see Lerner, 2000: 22; Morsink, 1999: 24ff.). Both conflicts are reflected in the final text of Article 18 on religious freedom in the ICCPR. As a compromise between western and Communist states, the drafters chose the formulation 'religion or belief'; and as a concession to Muslim states, the explicit mention of a right to change one's religion was avoided, even though it continued to be seen as an implication of religious freedom by most international legal scholars. Article 18 thus acknowledges the right to freedom of religion, followed by the right to exercise one's religion in the four

manifestations of worship, observance, practice and teaching; only the right to manifest one's religion, but not the fundamental freedom of religious convictions may be restricted by law. The latter is in fact considered as a fundamental, non-derogable right in the sense of Article 4(2) of the ICCPR (Dickson, 1995: 341; Lerner, 2000: 15).

Interpreted as a constitutive rule, the right to freedom of religion implies a reciprocal definition of religion and individual personality. Religion, as the Lebanese delegate Malik stated during the *travaux préparatoires* of the UDHR, is understood as a 'fundamental point of view of ultimate matters' (see Morsink, 1999: 260), and the individual is seen as a rational actor autonomous in his or her choice of religious worldviews (see Dickson, 1995: 327; Lerner, 2000: 5). This conception largely conforms to the western, voluntaristic definition of 'religion'; while it is admitted that religion can be practised 'in community with others', only the individual is considered as legal subject of the right to religious freedom. Seen as a regulative rule, the right to religious freedom did restrict states' discretion in their political practice vis-a-vis religious communities. Yet, as states were merely obliged to tolerate individual religious convictions and their collective manifestation, not to publicly recognize or even promote religious identities, institutional arrangements of church–state relations that had emerged in the course of state formation and nation-building remained untouched (Lerner, 2000: 132).

In further specification of the principles of equality and non-discrimination, during the second stage (1966–89), states were increasingly obliged to actively promote the equality of groups. As the prevalence of the category of 'race' in international human rights discourse shows, groups or collectivities were now constructed in primordial terms. It is true that the UN General Assembly, under the impression of anti-Semitic assaults at the end of the 1950s, first considered adopting a declaration and a convention on the prevention of religious discrimination, to be passed along with separate instruments on racial discrimination.[6] However, it was the convention against racial discrimination that quickly became a primary concern. Apart from the diplomatic sensitiveness of the topic of religion in the conflict between Israel and the Arab states, this was due to the active lobbying of newly independent states who wanted to put an end to all colonial practices of segregation.[7] The critique of racism, originally articulated by the elites of independence movements against western colonialism, was now transposed to the field of domestic politics, where it resonated well with the US civil rights movement and emerging policies of 'multiculturalism' in Australia and Canada. The rules of racial anti-discrimination as set forth in the ICERD – today acknowledged as *ius cogens* – have both regulative and constitutive aspects. Article 2(2), for instance, obliges t he states to take 'special and concrete measures' to grant equal status to ethnic groups or persons. The Commission on the Elimination of Racial

Discrimination as monitoring body of the ICERD increasingly interpreted this norm as obligation of the state to adopt 'affirmative action' policies, to ensure not only de jure but also de facto legal equality; formal equal treatment was thus considered as discriminatory to the extent that it perpetuated existing inequalities.[8] That the ICERD also implied constitutive rules is evinced by the fact that its monitoring body regularly recommended states to include categorizations of ethnic groups in their demographic statistics.[9] The relationship between state and individual was thus mediated by highly reified subnational collectivities. The discourse of racial discrimination was promulgated in a variety of UN international decades, world conferences and action programmes. In that context, new rights were formulated drawing on the semantics of 'cultural identity', a notion referring to traditionally more than to primordially coded collective identity frames. The UNESCO Declaration on Race and Racial Prejudice (1978), although soft law, is most revealing in that respect; here, both individuals and groups are granted a 'right to difference' and a 'right to cultural identity'.[10]

The semantics of racial discrimination and cultural identity considerably affected the perception of religion in international human rights discourse. Religion, along with language, could be included in the catalogue of features characterizing ethnic groups under the ICERD. For instance, with reference to a legal dispute in Norway, where the discriminating representation of Islamic immigrants in flyers was judged illegal, the ICERD's monitoring body debated in 1984 whether Article 4 (prohibition of racist statements) of the convention could be extended so as to cover religious discrimination. Provided that discriminatory statements expressly referred to the religious group or its members and not to the religious belief system, such an extension was indeed deemed appropriate (Meron, 1986: 35). Thus, religion was categorized as element of a primordial group identity.

That the individual right to religious freedom was also reinterpreted in the light of the right to cultural identity is shown by the Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, which was passed in 1981 after lengthy negotiations.[11] The declaration confirms the general right to freedom of religion (Article 1) and the ban on religious discrimination (Article 2), and then specifies both these principles. On the one hand, several rules are laid out which conform to the classical individualist conception of religious freedom based on the implicit definition of religion as 'one of the fundamental elements of (one's) conception of life'. On the other hand, the declaration clearly goes beyond this conception by calling on states to proactively engage in the elimination of religious discrimination. To implement the principles of this declaration, the Human Rights Commission and its Subcommission, assisted by the Special Rapporteur on Freedom of Religion and Belief and in a dialogue with various religious INGOs, engaged in a wide range of activities (see

Lerner, 2000: 29–32). Critical themes were the inequalities resulting from historical state–church relationships, and the field of public educational policy. To the extent that religious non-discrimination is framed in the idiom 'cultural identity' and 'difference', religion was thus recategorized as an element of traditional collective identities.

The construction of new collectivities in international human rights discourse, hence, meant that religion was either primordialized within the semantic field of 'race' or traditionalized within the semantic field of 'culture'. In both dimensions, religion is categorized as a collective 'identity' to be actively protected by the state. In other words, states should no longer merely tolerate, but actively promote religious diversity. National identities with strong religious or secularist components are thus delegitimated. Characteristically, states with secularist conceptions of religious freedom, such as France, have been increasingly criticized by international human rights bodies.[12]

The third stage of the international juridification of human rights (1989–2001) was marked by the increasing specification of minority rights. Although Article 27 of the ICCPR had been framed in terms of individual human rights, changing definitions of the very concept of 'minorities' successively introduced collectivist dimensions. Thus, it was already being argued in the 1970s that the existence or non-existence of minorities on a given territory was not in the respective state's discretion, but had to be determined on the basis of 'objective' features in combination with the 'subjective' will of a group to maintain its own 'identity'.[13] After the breakdown of the Soviet empire and the emergence of new minorities in its national successor states, questions of minority protections moved up on the agenda of international organizations, both regionally (CSCE/OSCE, European Council, EU) and globally (UN, UNESCO, ILO). The HRC, in its interpretation of Article 27 of the ICCPR, increasingly emphasized collective dimensions of the rights of persons belonging to minorities.[14] The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities, adopted by the UN General Assembly in 1992, points in a similar direction. In Articles 2(1) and 2(5), it repeats the principles of equality and non-discrimination, yet it clearly goes a step further in its programmatic Article 1(1) by obliging states to protect the identity of minorities and to actively promote the conditions for its maintenance.[15] Article 4(2) explicates the underlying assumption, that equality and non-discrimination of members of minorities can only be guaranteed by the active promotion of their collective identity. Interestingly, migrant communities were included in the catalogue of legitimate collectivities, as the concept of 'minority' was no longer restricted to citizens, but primarily defined by the subjective perception of a situation of discrimination.[16] Furthermore, migrant workers received particular

attention under a separate human rights instrument, adopted upon the initiative of sending countries by the UN General Assembly in 1990; alongside civil, political and social rights, transnational migrants are also granted respect for their 'cultural identity' (Article 17(1)).[17]

Along with equality, anti-discrimination and minority protection, religion has also become a more prominent concern in the post-Cold War era. In a series of resolutions, the UN General Assembly, the Commission on Human Rights and its Subcommission requested member states to implement the normative standards set forth in the Declaration of 1981. The HRC submitted a detailed interpretation of Article 19 of the ICCPR on the right to religious freedom, in which it stresses, among other things, that the state's privileging of a particular religion must not imply discrimination of any other religion. In this way, national historical church–state relationships have become increasingly challenged.[18] Assuming a broad definition of religion, the trend towards a traditionalization of religion has continued. Religion is now often categorized as 'cultural human heritage' and – as demonstrated by the UNESCO Declaration on the Role of Religion in the Promotion of a Culture of Peace (1994) – has become one of the central factors of 'cultural diversity'.[19]

To conclude, the changing content of human rights in international law suggests that the classical model of national statehood and citizenship has become successively deinstitutionalized.[20] Sub- and transnational collectivities have become highly legitimated through international human rights discourse. The emerging model of 'multicultural' citizenship, amounting to the decoupling of state membership, individual rights and national identity, provides new repertoires of contestation for groups engaged in struggles for recognition and formulates new obligations and public functions of modern states. It is beyond the scope of this article to assess the actual *impact* of this model on domestic politics. Preliminary evidence suggests that, although the classical nation-state model still continues to legitimate political mobilization (Brubaker, 1997), the institutionalization of human rights has indeed contributed to the proliferation of ethnic and other identity-based movements (Gurowitz, 1999; Tsutsui, 2004). By increasing tensions between individual and collective rights it has also intensified controversies over the proper interpretation of human rights, notably of religious rights.[21] The classical European conception of individual religious freedom within a secular nation-state is subjected to particularly far-reaching transformations (Koenig, 2005); the separation of state and nation – in other words, the desacralization of the nation – may potentially lead to a renewed politicization of religion, understood as an expressive dimension of primordially or traditionally coded collective identity. In sum, changing semantics in global human rights discourse do seem to have at least some impact on domestic political change.

Discussion and Conclusion

In this article, I have dealt with changing models of national statehood and citizenship. Building on previous neoinstitutional research, I have assumed that the contemporary transformation of the classical model of the nation-state, as evinced by identity politics and various struggles for recognition, can at least partly be attributed to the global institutionalization of human rights in the second half of the 20th century. Against this background, my main research interest has been to describe and explain the underlying processes of institutional change at the world polity level in greater detail.

In my semantic analysis of international human rights law, I have tried to show that a new model of social order has been institutionalized in the world polity in which the state is defined as the framework for a plurality of collective identities. States are no longer expected to represent a homogeneous national community, but rather have to publicly recognize a variety of particularistic collective identities legitimated by universalistic human rights. As the example of the right to freedom of religion demonstrates, the content of international human rights goes beyond the classical western tradition of political philosophy; the close connection of human rights and popular sovereignty has been superseded by the formulation of sub- and transnational collective identity frames mediating the relationship between individual and state.

To explain this institutional change, I have paid close attention to the influence of institutional entrepreneurs and actor-constellations on the content of international human rights law. While in short-term perspective, world polity institutional change thus results from bottom-up social dynamics, it can in more long-term perspective be explained by the structural consequences of global institutionalization processes. Thus, the worldwide diffusion of the nation-state model, legitimated by the link of national self-determination and human rights, led to the appearance of new actor-constellations and situations in international human rights discourse that required a further specification and differentiation of collective human rights and, paradoxically, resulted in the eventual delegitimization of national statehood and citizenship.

In theoretical terms, I have argued that the neoinstitutional framework requires further elaboration so as to account for multi-level dynamics of institutionalization. The focus of my argument has been on how to explain the generation and change of world cultural model by reference to short- and long-term dynamics. Further research has to show how such multi-level dynamics result in varying mediating and localizing mechanisms of world culture. For instance, one may expect that the diversification of internationally codified human rights gives rise to more intensive contestations over their proper interpretation at the local level. Far from constituting a coherent

system, human rights comprise conflicting expectations that may be exploited by actors to legitimate their various claims by relating them to more local or national institutional trajectories. As a consequence, for instance, the concrete patterns of politics of religious recognition in Western Europe, although influenced by world-level processes, are still very much shaped by historical state–church relationships and religious dimensions of national identities (see Koenig, 2005). What I hope to have shown in this article is that neoinstitutional world polity theory provides a fruitful conceptual framework for the study of contemporary transformations of the nation-state – as long as it is pushed to more process-oriented and actor-sensitive modes of analysis.

Notes

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1. Selecting the adoption of the UN Charter (1945) as the *terminus a quo* for global institutionalization should be uncontroversial. The *terminus ad quem* is less clear-cut, but it seems obvious that the events of 11 September 2001 did significantly alter the course of international politics and international law.
2. Here, I build on the typology of codes of collective identity developed by Eisenstadt and Giesen (1995).
3. One of the draft articles proposed in the *travaux préparatoires* for the UDHR did contain a minority clause; it was supported by representatives from the Soviet Union, Yugoslavia, Lebanon and – at the beginning – even France! Due to resistance from the US and some Latin American states, claiming that no minorities existed on their territory, the article was, however, not adopted (see Morsink, 1999: 274).
4. Note that the respect for individual religious freedom was part of the 'standard of civilization' in international customary law as early as the times of high imperialism (Donnelly, 1998: 5).
5. Noteworthy in that respect are the International Religious Liberty Association, founded by Adventists in 1946, the International Association for the Defence of Religious Liberty (1946) and the Commission of the Churches on International Affairs of the World Council of Churches (1948). The Catholic Church at that time was still critical of religious freedom and, for that matter, of human rights in general, embracing these world cultural principles at the Second Vatican Council (1962–5).
6. The UN Commission on Human Rights had commissioned an expert study on religious discrimination in the 1950s. The 'Study of Discrimination in the Matter of Religious Rights and Practices', prepared by Arcot Krishnaswami

(India) and providing a survey of the legal situation in 82 countries, became a crucial reference point in all subsequent discussions on the problem. It included 'Draft Principles on Freedom and Non-Discrimination in the Matter of Religious Rights and Practices', which were adopted by the Sub-Commission for the Prevention of Discrimination and the Protection of Minorities; UN Doc. E/CN.4/Sub.2/200/Rev.1 (see also Lerner, 2000: 11–14).

7. The preamble to the respective declaration plainly criticizes colonialism and South African apartheid; see UN Doc.A/Res/1904 (XVIII) (10 November 1963). For further details on the negotiations of the declaration and the convention against racism, see Lerner (1991: 77ff.; 2000: 21) and Banton (1996: 51–62).
8. On 'equality in law and in fact' and the obligations of the state to adopt an active anti-discrimination policy, see Meron (1986: 36–44) and Lerner (1991: 27).
9. See UN Doc. CERD/General recom 4 (25 August 1973). Comments of the monitoring body on state reports have regularly repeated this point.
10. 'All individuals and groups have the right to be different, to consider themselves as different and to be regarded as such' (Article 1(2)). The 'right of all groups to their own cultural identity' is established in Article 5(1); see also Lerner (1991: 35).
11. See UN Doc. A/Res/36/55 (25 November 1981). On the background of this declaration, see Lerner (2000: 20ff.)
12. Thus, although France had declared the non-applicability of Article 27 when ratifying the ICCPR (1980), the HRC repeatedly requested the French government to acknowledge the existence of ethnic and religious minorities on its territory; see UN Doc.A/38/40 (1983), para. 318 and UN Doc.A/43/40 (1988), para. 410.
13. Francesco Capotorti, author of a standard-setting study on the protection of minorities commissioned by the Subcommission of the HRC, defines:

    > A group numerically inferior to the rest of the population of a state, in a non-dominant position, whose members – being nationals of the state – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language

    UN Doc. E/CN.4/Sub.2/384/Rev.1 (1977), para. 568. By excluding immigrants from the definition of minorities, Capotorti took into account worries expressed frequently by western governments, namely that the codification of minority rights might challenge their policies of assimilation.
14. 'Although the rights protected under article 27 are individual rights, they depend in turn on the ability of the *minority group* to maintain its culture, language or religion. Accordingly, positive measures by states may also be necessary to *protect the identity* of a minority and the rights of its members to enjoy and develop their culture and language and to practice their religion, in community with the other members of the group', UN Doc. CCPR General Comment 23: The Rights of Minorities (8 April 1994), para. 6.2; author's emphasis.
15. 'States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity', Article 1(1) Declaration on the Rights of Persons Belonging to National or Ethnic,

Religious or Linguistic Minorities; see UN Doc. A/Res/47/135 (18 December 1992); see also Thornberry (1995).

16. See the report 'Possible Ways and Means of Facilitating the Peaceful and Constructive Solution of Problems Involving Minorities', written by Asbjørn Eide (UN Doc. E/CN.4/Sub.2/1993/34 (10 August 1993), at para. 41. The HRC's comment on Article 27 ICCPR also emphasizes that the status of citizenship was irrelevant for the term of minorities; see UN Doc. CCPR General Comment 23: The Rights of Minorities (8 April 1994), para. 5.2.
17. UN Doc. A/Res/45/158 (18 December 1990). The Convention on the Rights of Migrant Workers and Their Families (MWC) had been prefigured by several ILO declarations and conventions. The MWC entered into force in 2003 after a lengthy ratification process, in which so far not a single receiving country has participated.
18. 'The fact that a religion is recognized as a state religion or that it is established as official or traditional or that its followers comprise the majority of the population, shall not result in any impairment of the enjoyment of any of the rights under the Covenant . . . nor in any discrimination against adherents to other religions or non-believers', UN Doc. CCPR General Comment 22 (30 July 1993), para. 9.
19. See UNESCO Doc. SHS-98/WS/2: 25f.; see also the UNESCO Declaration on Cultural Diversity, UNESCO Doc. 31C/Res/25 (2 November 2001).
20. How far the consequences of 9/11 had not only motivated a renewed strengthening of state authority, but also a return to assimilation policies, cannot be discussed here in more detail; see Joppke (2004).
21. For an analysis of the social carrier groups for individualist, 'voluntaristic' and more collectivistic 'expressive' conceptions of religious freedom see Thomas (2004: esp. 243).

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