

The Social Construction of Human Rights and Two Different Perspectives: *Ethical/Moral Construction and the Political Construction*

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ÖZET Birkaç on yıldır, İnsan Hakları'nın ortaya çıkışı ve gelişimi, Realizm ya da Faydacılık gibi çeşitli disiplin ve yaklaşımlar tarafından konu edildi. Fakat Sosyal İnşacılık teorisi de, ulusal ve uluslararası bir olay olarak İnsan Hakları'nı analiz etmeye ve anlamaya uygun niteliktedir. Bu çizgide, makalenin amacı da, meseleyi Sosyal İnşacılık yaklaşımının teorileri, formülleri ve kavramları dâhilinde ele almaktır. Makalenin, bu ilişkilendirmeye dayanan iki temel iddiası vardır. Bu iddialardan ilki; daha önceki yaklaşımların aksine Sosyal İnşacılık teorisi, İnsan Hakları'nın ortaya çıkışı ve gelişimini *düşünsel (ideational)* bir temele oturtabileceğidir. İkincisi ve daha önemli olanı ise, İnsan Hakları'nın inşası için verilen mücadelenin iki kategoride değerlendirilebileceğidir. Bu kategorilerden ilki, ahlaki sembolik olgular, normlar ve bilgiler temelinde ve yasal gücü olan devletin rolüyle gerçekleşen etik/ahlaksal inşa; diğeri ise, daha ziyade sosyal hareketlerden, kamusal ve siyasi eylemler temelinde halktan da gelen olumsal mücadelelerle meşrulaşan politik inşadır.

ANAHTAR KELİMELER Sosyal İnşacılık, İnsan Hakları, düşünsel temel, siyasal olan ve etik.

ABSTRACT For several decades, the emergence and development of Human Rights has been the subject of various disciplines and approaches such as Realism and Utilitarianism. However, the theory of Social Construction can also be applicable to analyze and understand Human Rights both as national and international phenomenon. In this line, the aim of this article is to deal with the subject within the theories, formulations and concepts of social constructionism. Depending on this relation, the article put forwards two basic claims. Firstly, as opposed to previous approaches, the Social Construction theory can explain the emergence and development of Human Rights from *ideational* perspective. Secondly and more importantly, there are two dimensions in the struggles for construction of Human Rights; firstly the ethical/moral one realized by moral symbolic facts, norms, knowledge and the role/power of the states at legal base and secondly the political one realized by social movements, contingent struggles from below and public-political actions.

KEYWORDS Social Constructionism, Human Rights, ideational base, the political and ethics.

Throughout its historical development, social construction theory seems to have served and provided an alternative realm to explain and comprehend various general social formations and especially significant political phenomena, instances or changes both nationally and internationally or locally and globally. Generally speaking, one of these crucial social and political phenomena that emerged and evolved in the second half of the 20th century is Human Rights in national politics and also in international political relations. Additionally, as a strong alternative to realist, positivist, materialist, utilitarian—which take the world as it is—, post-structuralist and idealist –which take the

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world only as it can be imagined and talked about— approaches¹, the social construction theory have dealt with and tried to explain the emergence, evolution and establishment of Human Rights as a philosophical idea or knowledge; social, moral and cultural norms, legal concepts and also political project in both local and global extent.² Still, it can be concluded that in the realm of social constructionism, the absence, at least the deficiency, of systemic studies that are directly and specifically analyzing Human Rights phenomenon within theories and concepts of social constructionism seems easily conspicuous. In this line, the aim of this article is to take into consideration, evaluate and interpret the fact of Human Rights within the theories, formulations, concepts of social constructionism not only nationally in the sense of Berger and Luckmann³ but also internationally in the sense of contemporary social constructivist thinkers studying within International Relations theory. The initial efforts of this article will be to introduce the philosophical foundations/ground works of Human Rights into *ideational* perspective in both national and international scales and so to distinguish it from the realist, liberal, rationalist and utilitarian approaches. Connectedly, the next attempts will be to show that the Human Rights norms has been constructed socially in national and international bases. Here the analysis will be based on the question that “How the Human Rights have been socially constructed?” and the reason of the attempts to apply to *social construction theory* is to explain and comprehend the Human Rights phenomenon with its creation and establishment. The final and the most personal attempts will be to develop the thesis which claims that there are two dimensions in the struggles for construction of Human Rights; firstly the ethical/moral construction of Human Rights by moral symbolic facts, norms, knowledge, and more importantly by the role/power of the states at legal base, and secondly the political construction of Human Rights by social movements, contingent struggles from below, and political actions of people as well at social and political base; and here the analytical question will be based on the discussions about “How the Human Rights be constructed?”.

1 Emanuel Adler, “Constructivism and International Relations”, *Handbook of International Relations*, Ed: Carlsnaes, W., Risse, T., Simmons, B. E., London, SAGE, 2005, p.95

2 Susan Eileen Waltz, “Universalizing Human Rights: The Role of Small States in the Construction of the Universal Declaration of Human Rights”, *Human Rights Quarterly*, Vol. 23, No. 1, 2001, p.44

3 Peter L. Berger and Thomas Luckmann, *The Social Construction of Reality*, New York, Anchor Books Publication, 1967

THE SOCIAL CONSTRUCTION OF HUMAN RIGHTS

In general terms, it seems necessary to cover shortly the history of Human Rights in order to show its *ideational* foundations and rise in the West and then development in international arena. It can be inferred that Human Rights rose and developed within the base of the adoption of Convention on the Prevention and Punishment of the Crime of Genocide by UN General Assembly, following the Universal Declaration of Human Rights (UDHR) of the Assembly in 1948, International Covenants on Human Rights in 1966, and other comprehensive codified notions to support the legitimation Human Rights in ideal-normative-moral forms in international networks.⁴ Such international networks of advocacy for Human Rights have functioned to implement Human Rights norms and also to realize its internalization by the states. At the very beginning, this formation of Human Rights in local and its widespread acceptance in international arena can quite be evaluated as a kind of *social construction* by sharing of *subjectively* emerged normative idea-knowledge, by its recognition and *objectivation* in *inter-subjective realm* with other individuals in different societies and by its *institutionalization* in legal and political spheres.⁵ Similarly, the model of *the norm life cycle* developed by Finnemore and Sikkink can also explain the process with its stages; norm emergence, norm cascade and then internalization of the norm.⁶ This is somehow *power of ideas and norms* or *imposition of meanings on the material world*⁷ that have inter-subjective and also constitutive quality/nature to be internalized in domestic and also international politics.⁸

Actually, in her book “The History of Human Rights”, Ishay adopts constructivist perspective with its main characteristics and examines the evolution of Human Rights as an idea or as an ethical understanding and ideational components of Human Rights in 20th century.⁹ According to most of Human Rights scholars such as Donnelly, Freeman,

4 Jack Donnelly, “The Social Construction of International Human Rights”, *Human Rights: Critical Concepts in Political Science*, eds: Falk, R., Elver, H., Hajjar, L., New York, Routledge, 2008, p.78

5 Peter L. Berger and Thomas Luckmann, *The Social Construction of ...*, p.129

6 Özgür Tezer, *A Constructivist Analysis of Turkey-EU Relations Within the Context of Five Phase Spiral Model: “Human Rights Dimension”*, Unpublished BA Thesis, Supervisor Assist. Prof. Dr. Kürşad Ertuğrul, Metu, 2008, p.50

7 Emanuel Adler, “Constructivism and ...” p.103

8 Thomas Risse and Kathryn Sikkink, “The Socialization of International Human Rights Norms into Domestic Practices: Introduction”, *The Power of Human Rights. International Norms and Domestic Change*, eds: Risse, T., Ropp, S. C., and Sikkink, K., United Kingdom, Cambridge University Press, 1999, p.7

9 Micheline Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era*, Berkeley: University of California Press, 2004

Vincent, Shue and Kuçuradi, it is the conception of “humanity” that has been constructed as a moral idea, and the Human Rights has emerged as an *idea* of human beings that claims the equality of all human beings because they are human beings.¹⁰ Importantly, most states were satisfied with such an international Human Rights regime based on this moral idea or norm, although Human Rights norms had been initially adopted for instrumental reasons.¹¹ Human Rights scholars think that the great achievement of Human Rights is to detach the rights from all other previous forms of justification. The claim that all human beings equally have Human Rights because they are human beings has been suitable to be evaluated certainly as an *idea, knowledge, set of norms or conception of human mind*, rather than the facts derived from Law of Nature as did in Aristotle’s tradition of justice, or the rights justified by Natural Rights as did Locke’s claims in liberal tradition.¹² As there were specific attempts to see the Human Rights in continuity of the Christian ethic, liberal equality principles and also Natural Rights tradition, the crucial attempts of Human Rights scholars are to see the phenomenon of Human Rights on the base of *moral consensus* in national and international arena. In philosophical foundations of Human Rights, it is accepted that both the creators/constructors and the subjects of the rights (both in the sense of being holder of and being subjected to) are human beings; and the Human Rights –in ideational (idea of Human Rights), epistemological (knowledge of demands for Human Rights) or ethical (norms of morality of Human Rights) forms– are *inalienable* rights for everyone, they are not given rights by nature, God or divine and powerful King; however, they are constituted/constructed by human beings¹³, they are nothing more than what human beings proclaim they *ought to be* and so they are the products of *human self-determination*.¹⁴ Here it is necessary to remember “*the dialectical and mutual construction*” perspective of causality in social construction theory¹⁵, which states that people, the agents, socially construct their world

10 Henry Shue, *Basic Rights*, Princeton, Princeton University Press, 1996; Ioanna Kuçuradi, I., “Human Rights, the Idea, the Demands and the Instruments”, *The Idea and Documents of Human Rights*, ed: Kuçuradi, I., Ankara, Philosophical Society of Turkey, 1995; Michel Freeman, *Human Rights-An Interdisciplinary Approach*, Cambridge UK, Polity Press, 2002

11 Thomas Risse and Kathryn Sikkink, “The Socialization of International Human Rights Norms...”, p.10

12 Burns H. Weston, “Human Rights”, *Human Rights: Critical Concepts in Political Science*, eds: Falk, R., Elver, H., Hajjar, L., New York, Routledge, 2008, pp.20-23

13 Jack Donnelly, *Universal Human Rights in Theory and Practice*, New York, Ithaca: Cornell University Press, 2003, p. 17

14 Rhoda E. Howard, *Human Rights and the Search for Community*, Boulder, Westview Press, 1995, p.13

15 Peter L. Berger and Thomas Luckmann, *The Social Construction of ...*, p.141, Emanuel Adler, “Constructivism and International ...”, p.96

as a reality and conversely this constructed reality also makes and actually constructs the agents/subjects within certain inter-subjective and relational realms.¹⁶ In this *ontological* fact of social constructionism, it is possible to perceive the phenomenon of Human Rights as constructed reality by human beings as agents and also to consider the Human Rights as a fact making and constructing the subjects (as human beings in domestic realm or as states in international arena) and their social, political and moral thought.

For the matter of internationality of Human Rights, it is necessary to consider another important detach of Human Rights from the historical –generally 17th century– understanding that the subjects of the rights, for example, were only “*citizens*” in Law of Nature tradition or were only male proprietors in Natural Rights tradition, etc.¹⁷ Today there is the *universality* of Human Rights because the subjects of Human Rights are not members of this or that society, but of the community of humankind.¹⁸ This universality of Human Rights is an *ideational* claim itself because it is constructed by being based on the idea of universality. That is, the construction of the Human Rights includes its universality characteristic that claims the *validity* of Human Rights norms to all societies and cultures. Today, the dominant idea is that the reason behind the internationally acceptance, recognition and internalization of the Human Rights by most of the states in all around of the world is its idea/norm of being universal and valid for all humankind. This is the other name of the fact that Human Rights become international and global sovereignty within/by a socially constructed/constituted *idea, knowledge* or *norm* once it has been accepted, recognized and then shared by other states and also people in these states. That is, the historical process for the emergence and establishment of Human Rights seems to have realized into *ideational* means and ways. The universalistic characteristic of Human Rights can be evaluated as a *holistic* construction in the international arena rather than *individualistic*.¹⁹ All these show the accountability and applicability of *ideational* history of Human Rights into social construction theory because it is obvious that the Human Rights as an idea, knowledge or norm has been socially constructed first, and became a kind of *ideational* power in national and international scale with its being accepted and recognized by people and the states. The Human Rights has become the commonly

16 Erik K. Leonard, “Globalization and the Construction of Universal Human Rights”, *Human Rights and Human Welfare*, vol. 6, 2006, p.153

17 Burns H. Weston, “Human Rights”, *Human Rights...*, p.28

18 Robert J. Vincent, *Human Rights and International Relations*, New York, Cambridge University Press, Cambridge, 1990, p.9

19 Alexander Wendt, *Social Theory of International Politics*, New York, Cambridge University Press, 1999, pp.29-20

shared idea or an *objectivated knowledge* and it has become internalized by both ethical/moral norms even in everyday discussions/discourses of people and also by their adoption into legal principles/language of the states.²⁰ Like monarchialism and nationalism in the past, such an ideational power/sovereignty of Human Rights in national and international realm²¹ provides their being *institutionalized* in political discourses, civil movements/actions and ethical norms as well. It can be said that Human Rights norms become *socialized* within cultural dialogs, political and social interactions and relations.

ETHICAL/MORAL CONSTRUCTION PERSPECTIVE

It must be acknowledged that because the attempts to apply the social construction theory is important especially for the adoption, construction and establishment of Human Rights, rather than to explain or to understand the status of Human Rights in national and world politics in the past and present, the advocacy of Human Rights continues to allow the construction in both national and international realm and the perception of Human Rights is in the way of being constructed as social reality. For the matter of that construction, I suggest that the advocacies of the construction of Human Rights can be categorized in two general lines, namely ethical/moral perspective and political perspective.

Firstly, what the ethical/moral perspective does mostly emphasize on is not to forget that the Human Rights phenomenon developed as an idea and to make the Human Rights be based on ethical/moral norms; and the source of Human Rights is the moral nature or the life of dignity of human being.²² The people who are holding this view claims that Human Rights will be explained by its epistemological-ethical-moral backgrounds and brought to the states, and the enlargement of Human Rights idea will be mostly based on legal adoption of supranational Human Rights norms into domestic jurisdiction or national laws and constitutions.²³ According to this view, the main agent and guarantor of the construction of the Human Rights in local/national social formation will be the

20 Peter L. Berger and Thomas Luckmann, *The Social Construction of ...*, p.141, Emanuel Adler, "Constructivism and International ...", p.101

21 Samuel J. Barkin, "The Evolution of the Constitution of Sovereignty and the Emergence of Human Rights Norms", *Millennium*, vol. 27, no: 2, 1998, p.249

22 Michel Freeman, "The Philosophical Foundations of Human Rights", *Human Rights Quarterly*, Vol. 16, 1994, p.502

23 David P. Forsythe and Kelly Kate Pease, "Human Rights, Humanitarian Intervention and World Politics", *Human Rights Quarterly*, 1993, vol.15, no.2, p.31

states as *human-legal institutions* that will adopt, recognize and then respect/obey to Human Rights norms legally/officially.²⁴ Although *the gross-Human Rights violations* in the last half of 20th century were made by the states²⁵, the ideal way of institutionalization and internalization of Human Rights for ethical/moral perspective is to force the states guarantee fundamental freedoms and rights to its citizens in national and international realm officially by being part of international treatments/instruments of Human Rights law. This is the way to protect the rights of individuals against the state, political power or any kind of forces. The state which is one of such and internal sovereignty guarantees and provides its citizens to be treated according to the demands of national or international Human rights standarts. The highly *individualistic* characteristic of Human Rights mostly comes from such an attempt of ethical/moral perspective to the individuals rather than to community, society, group, etc. Besides the state, this ethical/moral perspective trusts in the roles of social dialogs both among people in one state and also between states and the role of services of NGOs in civil realm for the advocacy of Human Rights in encouraging the diffusion, institutionalization and internalization of Human Rights norms into the social reality. However, the process of construction of Human Rights is more likely to be in the framework of legal positivism that obeys the international bills of Human Rights and that contains such issues as standard setting, monitoring and reporting, enforcement, and interventions.²⁶ Certainly, such legal codification of the construction of Human Rights mostly refers to the legal efforts of the ethical/moral construction perspective because of its dependency on the role and power of the state and state-centric legal-regulatory advocacies.

An important motive of that ethical/moral perspective and an important philosophical foundation for the advocates of that perspective is their Kantian-ethical/moral groundwork that believes in “the perpetual peace” that is mostly based on a *categorical imperative*, a *universalizable* idea or an ethical-moral norm that can be demanded by anyone for all people. The perpetual peace is possible only when states organize externally promoting peace and respecting Human Rights, and the perpetual and universal peace, for Kant, is legal peace as external freedom and has a positive effect on morality as inner freedom. In this sense, Kant’s theory of peace seems to represent a classic theoretical framework

24 Ioanna Kuçuradi, *Epistemological Specificities of Norms and Human Rights*, 2000, p.7

25 Cem Deveci, “İnsan Hakları Normları ve Dost-Düşman Ayrımı Siyaseti”, *Yirmibirinci Yüzyılın Başında İnsan Haklarına Yönelik Tehditler*, ed: Kuçuradi, I., Ankara, Hacettepe University Center for Research and Application of the Philosophy of Human Rights, 2004, p.207

26 Michel Freeman, “The Philosophical Foundations ...”, p.499

for developing a set of normative ideals concerning international relations and the Human Rights of individuals.²⁷ On the other hand, it must be acknowledged that Kantian understanding of morality is *constructivist* in the sense that human being is the constructor of his/her own moral existence. That is, the derivation of moral law from *the pure-practical reason* is just a construction, and this *pure-practical realm* is the only *autonomous* realm of the reason in Kantian sense. It can be inferred that this symbolizes or signs the bidirectional detach or autonomy of the Human Rights both from previous system of laws or justice understanding –determined by any interests, natural facts, religious givens and ideological powers–, and from the particularity of the subjects of the rights. To illustrate, for the matter of internationalism, the ethical/moral perspective claims that since the World War II, as a *moral evil* as much as *material danger*²⁸, states continue to pursue *moral* objects based on Human Rights in global scale. As a last point crucial to comprehend this ethical/moral line of construction of Human Rights, it must be offered that the efforts of this ethical/moral perspective has quite attempts to *found/ground* the idea of Human Rights into ethical/moral norms, knowledge of moral human potentialities, or universality of human dignity.²⁹

We know that there is a current approach to explain the process of internalization of Human Rights especially in the few last decades, namely five-phrase spiral model of Human Rights norms socialization. It seems that the model generally considers the states as taken-for-granted and tries to explain how a particular state adopts and internalizes international Human Rights norms into its domestic legal practices by such stages as repression of the states on Human Rights, denial of the validity Human Rights by the states, tactical concessions of Human Rights by the states, Human Rights gaining prescriptive status in the domestic legislation of the states and their rule-consistent behavior or full domestic institutionalization of Human Rights norms. All these phases are based on *persuasion* in principle. Persuasion assumes the internalization of Human Rights only by the role of states in adopting to international sovereignty of Human Rights norms.³⁰ In this sense, I also suggest that the five-phase spiral model and persuasion for the construction of international Human Rights norms in domestic and particular normative structures can be conceived as possible-potential mechanisms of ethical/moral construction as well. As

27 Pauline Kleingeld, “Kant’s Theory of Peace”, *The Cambridge Companion to Kant and Modern Philosophy*, New York, Cambridge University Press, 2006, pp.493-500

28 Jack Donnelly, “The Social ...”, p.77

29 Michel Freeman, “The Philosophical Foundations ...”, p.510

30 Thomas Risse and Kathryn Sikkink, “The Socialization of ...” p.20

does in the ethical/moral construction perspective generally, the main process here realizes in normative line with moral-consciousness-raising, the agent/actor/guarantor is again the state –as dependent entity to independent international sovereignty–, and the real attempt is the adoption of the Human Rights norms in supreme, regulative and legal level, rather than collective and political. The persuasion is based on the power of ideas and values embedded in norms that are realized by states and interstate organizations at international level. For the matter of Human Rights, this persuasion as mechanism can be interpreted in the category of ethical/moral construction perspective as well.

Actually, these have always been considered as the traces of international *society-centric model of construction and also state-centric constructionism*.³¹ I suggest that *international society-centric constructivist approach* and *state-centric constructivism*–developed by Hobson in his study dealing with the state in international relations– among the variants of constructivism³² should be conceived as in the category of ethical/moral perspective of construction. In the former type, states in both *deep structure* –containing socializing norms– and *surface structure* –including the process of international diffusion of norms– are normative, adaptive, and socialized entities that seek to be in compliance with universally accepted Human Rights norms in order to reduce uncertainties in domestic politics.³³ In the latter form, it is the state’s domestic agential power again that effects upon norms, and in this model, the normative structure –of Human Rights coming from its international establishment– and the states are fully embedded within each other while the state is somehow moderate international agential power and enjoys a strong autonomy from its society or the social.

Additionally, I think that even if the *boomerang* model of advocacy for Human Rights –conceptualized by Keck and Sikkink in social construction theory and defined as the constitution of a outside effect or pressure on the state to force it to move along the path toward improvement of human rights– seems confusing about its place in two lines of construction perspective, I suggest it can be conceived as another mechanism of the ethical/moral construction. The boomerang theory shows how to pressure the state by foreign states, local and international organizations that mobilize external struggle for the acceptance and adoption of Human Rights norms by that state.³⁴ Here, even if the crucial attempts seem to be made to advocacies outside the state, the emphasis and importance

31 Özgür Tezer, *A Constructivist Analysis of ...*, p.49

32 John M. Hobson, *The State and International Relations*, New York, Cambridge University Press, 2000, p.150

33 Özgür Tezer, *A Constructivist Analysis of ...*, p.47

34 Thomas Risse and Kathryn Sikkink, “The Socialization of International Human Rights Norms...”, pp.18-19

is given to construction of the Human Rights norms by the state-centric or official acceptance, and to the legitimation of the adoption and implementation of Human Rights only within state-centric and legal regulations. In this sense, what the boomerang model of advocacy follows can be considered as the ways/means of the ethical/moral construction perspective.

THE POLITICAL CONSTRUCTION PERSPECTIVE

The second line of struggle for the construction of Human Rights can be defined as political construction. This line is composed of emphases on the belongingness of Human Rights to the sphere of *the political*, existence of popular demands for Human Rights and the development of Human Rights into more political ways that are based on socially contingent and dynamic actions and movements of any political actors, mobilizing and converting collective energies into a force capable of standing up other forces in political arena.³⁵ The attempt of the political construction perspective is to assert the Human Rights as a political project constructed within the possibilities of *the political*, rather than to found/ground the Human Rights into state-centric and legal/regulative processes. A political project refers to concerted efforts to build public-popular and more social energies around the idea of Human Rights. Such an approach to Human Rights opposes the claim that its validity has a foundation deeper than the beliefs and values of Human Rights supporters; however, this is not the rejection of the validity of Human Rights doctrine.³⁶ It must be acknowledged that this view is not of *cultural relativism* or *strong particularism* because they totally reject the validity of the human rights by claiming absolute cultural and anthropological differences from society to society.³⁷ However, it seems possible to connect the political perspective for the construction of Human Rights to republican and communitarian understanding because their common point is to reject the efforts to make Human Rights theoretically foundational in one certain idea, knowledge, norm, etc. and because no idea, knowledge or norm has its power to be justified and each of them represents one of the contingent perspectives none of which are more crucial and super-perspective than others. The political perspective of construction opposes the supreme-legal adoption of Human Rights law as *constitutive power* –that is conceived as

35 Claude Lefort, *The Political Forms of Modern Society*, Cambridge, Mass. : MIT Press, 1986, p.239

36 Michel Freeman, “The Philosophical Foundations ...”, p.498

37 *bid*, p.495

unquestionable and unchallengeable— and likely to support the construction of the idea of Human Rights as *constituted power*—that is defined as the contingent and historicist power constituting the politics in order to legitimate the state and judiciary.³⁸ Similarly, Human Rights beliefs or values are historically contingent, and it is only the political and popular-social support which will make these beliefs, ideas or norms more strong and justifiable. The way for the political construction of Human Rights is mostly based on *human self-assertiveness* as opposed to founding/foundationalist legitimacy. In this line, the collective and political action, but not the state merely, signs or represents sovereignty, and the legitimation of the construction of the Human Rights must be derived from collective-political sovereignty within the possibilities of *the political*. Also, because the fact that *the rights are the rights of individuals* harms the collective/communitarian spirit of *the political*, the political construction perspective criticizes this *individualism* inherent in the discourse of Human Rights.³⁹ It is important for the political construction to develop and establish Human Rights locally, and especially in a republican way that tries to save the different and autonomous cultural and political *ontology* of the societies. The political construction argues that the ethical/moral perspective is *foundationalist* in deriving *normative* demands for rights to all human beings from *descriptive* explanation of the moral human nature. In other words, the principle that each person has the right to equal concern and respect is a moral axiom; however, it is always subjected to contingency and controversy.⁴⁰ Even if Human Rights can have foundations, these foundations cannot be superior to all rival means of justification. The political perspective questions the state's "taken-for-granted" characteristic, and it rejects the construction of the Human Rights coming from *above* in state-centric, legal and supreme level by adopting the international laws of Human Rights because this process closes the possibilities of *the political* to content and to legitimate Human Rights norms. The political perspective emphasizes to define/determine the Human Rights norms in *the political* dynamics and internalize their legitimacy by detaching them from the law-based and state-centric agential power.

Regarding their common attempts to the possibilities of *the political* and also to derivation of the Human Rights from the political, I suggest that Arendt, Lefort, Ranciere, Žižek and Stammers be some of the supporters/thinkers of political construction

38 Michel Freeman, "The Philosophical Foundations ...", p.512

39 Rhoda E. Howard, *Human Rights* ..., p.13

40 Michel Freeman, "The Philosophical Foundations ...", p.513

perspective. Even if Arendt pioneers/leads attempting so much importance to the political –the public action– and criticizes the international Human Rights law for holding/trans-forming rights of *man/human* –those who are pure *abstract* human beings– as rights of only *citizens* –those who have states⁴¹, Lefort, following Arendt in most extend and among the other radical–political constructivists, is most outstanding and leading figure in the efforts to establish the *abstract* Human Rights norms into possibilities of *the political*. The constructivist sense of Lefort is crystallized in his attention to development of *awareness* of the Human Rights norms as ideas and also their *institutionalization* in public life. However, *the symbolic dimension* of the awareness of Human Rights cannot be reduced to only legal objectification; the politics of Human Rights is necessary in the formation of social power including multiple, distinct and independent elements combined with *the political*. Another importance of Lefort, for me, is his great criticism to Marx for being unable to conceive of Human Rights as anything other than the rights of bourgeois/egoist individuals. This means that Marx labels the state and Rights of Man belonging to liberal ideology, and ignores the possibilities of *the political* that could have changed and transformed the Rights of Man into more egalitarian and more socialist forms and that Marx avoids enjoying the possibilities of *the political* for *ideational* struggle. Additionally, Arendt and Lefort criticizes the states for closing *the political* once the states sign the legitimacy and supreme power of Human Rights as a law over *the political*. For both, the origin of the totalitarianism comes from the closing/restriction of *the political* sphere and its contingent possibilities while the power and authority of state is increasing. Accordingly, Lefort tries to conceive Human Rights into the political sphere, rather than the state obeying the authority of laws national or international. For Lefort, “the principle of law” is different from “the principle of political power” and it is *the political* that gives legitimacy to juridical discourse as well. The general attempt in the political construction perspective is not to ignore and eliminate the state power, but it must be the fact that the struggle for the construction of the Human Rights makes the relation possible with power of the political in order to create collective aspirations to challenge the state legitimacy on Human Rights and also on violations of Human Rights.⁴²

Likewise, Ranciere, following Arendt as well, claims that the construction of Human Rights in state based processes closes *the political* (for Human Rights) that is *ontologically* based on *dissensus* rather than *consensus* and that the Human Rights given

41 Hannah Arendt, *The Origins of Totalitarianism*, New York: Harcourt Brace, 1966, p.291

42 Claude Lefort, *The Political Forms ... pp.257-265*

by state-centric and legal-regulative sovereignty to the individuals are the rights of *unpoliticized* person who lives just his/her *bare life* guaranteed by the state power. Ranciere rejects the agenda of ethical/moral construction perspective because it eliminates legal *distinctions* and the *disclosure* of political intervals of *dissensus*; and he defines the subjects of Human Rights as those who have collectively done something political to have their rights within the possibilities of *the political*.⁴³

Connectedly, Stammers acknowledges the *ideational* fact of Human Rights and explains the crucial roles of social movements being key collective actors in the historical-development of Human Rights. Social movements can be evaluated as one possibility of *the political* that might become more effective agential power for global socio-cultural change in respect of Human Rights than existing nation-states and emerging supranational institutional structures. In this line, he proposes to engage the social movements as forms of the possibilities of *the political* to construct resistance against the relations and structures of power and to construct Human Rights claims and discourses in local and international arena.⁴⁴ Similarly, I suggest that the summary of Zizek's remarks on Human Rights is somehow criticism to the ethical/moral construction of Human Rights.⁴⁵ He claims that the ethical/moral reference, *let's-just-protect-human-rights rhetoric* and purely humanitarian legitimization of Human Rights *passivates* political subjects and the political struggles for the construction of Human Rights. It tries to go to *post-political* era and *depoliticizes* the Human Rights as well. In this sense, his attempt is against to moralist-mystic *depoliticization* and for the continuity of social/political dynamic for the construction of Human Rights as imaginable serious political project.⁴⁶

CONCLUSION

To conclude, what this study has tried to show is firstly that the emergence, construction and establishment of inter-subjectively formalized and objectively shared Human Rights norms within local and international realm realized in *ideational way*, that

43 Lacqués Ranciere, "Who is the Subject of the Rights of Man", *South Atlantic Quarterly*, vol.103, no:2-3, 2004, pp.297-306

44 Neil Stammers, "Social Movements and the Social Construction of Human Rights", *Human Rights Quarterly*, vol. 21, no. 4, 1999, p.981

45 Slavoj Zizek, July 2010, "Human Rights and Its Discontents", <http://www.egs.edu/faculty/zizek/zizek-human-rights-and-its-discontents.html>, 1st July 2010 (p.8-10)

46 Slavoj Zizek, July 2010, "Against Human Rights", <http://libcom.org/library/against-human-rights-zizek>, 1st July (pp. 127-130)

is, it was the idea of Human Rights that become power and discursive sovereignty over the nations. Secondly, the social construction theory –within both its fathers Berger and Luckmann and also its contemporary interpretation in International Relations theory– is quite applicable to analyze the short history of Human Rights as an idea or set of norms. Lastly the thesis of this article is that even if there is a consensus on that internationally recognized and accepted human rights as an idea and set of norms *should* be constructed into and internalized by the nations, there exist generally two kinds of sub-categories about the legitimate way and process of the construction of human rights. I have suggested to call one of these as ethical/moral construction perspective that supports the internationally valid ethical and moral position of the human rights and mostly relies on the guarantee of the states within legal/regular legitimacy and the other as the political construction perspective that asserts to construct human rights norms within certain contingent possibilities of *the political* and assumes such a form of construction as constituted legitimacy of the power of the idea human rights. We can say that both ethical/moral perspective and political perspective for the construction of Human Rights are in the area of constructivist theory; however, while the former is strongly based on the foundational and grounding advocacy of Human Rights within universal scale, the latter is emphasizing mostly to the contingency of “*the political*” and also any kind of *ontology* –in terms of *becoming*– of Human Rights. In the ethical/moral construction perspective, the target is the state with its jurisdiction and to persuade and change the state’s legitimacy in international arena, while in *the political* construction perspective the aim is to enjoy the mechanisms of *the political* and to realize the potentialities of *the political* in order to create discourse and collective will for legitimate construction of the Human Rights norms contented and defined politically.

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