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Victims, Harms and Grievance Formation

This chapter lays the theoretical and methodological groundwork for this work's earlier-stated three main arguments. To repeat, these are, firstly, that the international human rights law framework has provided a weak master frame for the conceptualisation of involuntary sterilisation and castration in the countries investigated, both in a legal and remedial sense. Moreover, apart from as legal instruments, the notion of rights as sociocultural entitlements has been key to victims' formation of individual and group identities and their access to public and institutional recognition. Finally, the concept of grievance formation is helpful to better understand the diverse forms of recognition and remedial responses by states for different victim groups.

1.1 Terminology

At the outset, some central concepts that figure in the work must be determined. The term 'involuntary' is used to express that an intervention has been involuntary from the point of view of the person who was sterilised or castrated, not of the surgeon carrying out the intervention. I have settled on this umbrella term for two main reasons. The first is that it highlights the lack of free will rather than the use of external force. An involuntary intervention is one carried out without the free, full and informed consent of the person in question. It covers a range of terms, from 'forced', 'enforced' and 'coerced', to some forms of 'compulsory' and 'non-consensual' interventions. Such interventions may be characterised by either lack of consent or by formal consent, for example, expressed by a signature, nevertheless obtained under coercive circumstances. The second reason behind the choice of this term is that I am interested in the situations where legal letter or practice has disregarded individual applicants' will and voluntariness, rather than determining if individual interventions have been involuntary or voluntary.

Two other important terms to explain are 'cis' and 'trans'. The former, short for cisgender, is an open category to define people whose gender identity, that is, personal perception of one's own gender, is in line with their birth-assigned gender.[1]

[1] Aultman 2014: 61.

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'Trans' is used to cover a range of identities that are not cisgender: people whose gender identity is not in line with their birth-assigned gender. A central group in this volume is people with a strong desire to assume characteristics associated with the 'opposite' sex in a binary world, often referred to as transsexual people.[2] In recent years, trans identities beyond the transsexual have become increasingly visible, particularly through mobilisation. Despite these attempts to clarify 'trans' as a term for explanatory purposes here, I would like to emphasise that this book embraces the open-endedness of trans existences, not confined and situated in relation to 'a destination, a final form, a specific shape, or an established configuration of desire and identity'.[3]

I also consider it necessary to define my use of the words 'gender' and 'sex'. Aware of the interdependency of the two, the work rejects categorical divisions of the former as 'social' or 'cultural' and the latter as strictly 'biological', recognising that they are in constant interaction and are often used interchangeably. I understand sex as connected to hormonal and physical factors, by definition diverse, non-binary.[4] Gender is however often used and portrayed as binary: man and woman. In this view, the law and public administration are primarily concerned with 'gender' rather than 'sex', which aligns with the interests of this research.

Moreover, an important distinction should be made between 'remedies' and 'reparations'. 'Remedy' is broadly understood here as a form of legal recourse, redressing a problem or harm through, for example, compensation or rehabilitation. 'Reparation' rather emphasises state responsibility and public liability as a legal basis.[5] In this monograph, I primarily use the term 'remedies', as many forms of redress to victims of involuntary sterilisation and castration have not been based on legal liability but on other grounds, such as solidarity, instead.

A final terminological issue is the choice between 'victim' and 'survivor'. I have chosen the first over the second. This choice does not seek to undermine the agency of the people victimised, nor their abilities to rebuild their lives, get organised and claim their losses. These narratives are in fact a crucial element of the book.[6] Existing relevant social movements and organisations

[2] The medical term 'transsexual' is controversial however, because it views gender variance as a pathology, a 'gender identity disorder' (F64.0 of ICD-10; no longer included as a mental and behavioural disorder in ICD-11). On the right of trans people to depathologisation under international human rights law, see Theilen 2014.

[3] Halberstam 2018: 4.

[4] This is evident in the many biological variations of sex characteristics outside of 'male' and 'female', often referred to as intersex conditions. See the important contribution by Fausto-Sterling 2000. Intersex 'normalising' surgeries are excluded from the scope of this book, as their aim is not the elimination of reproduction or the sexual drive.

[5] Liable entities related to the sovereign administration of public power are primarily referred to as 'state' in the international legal context, while national legislation often defines them as 'public'. In this book, I use the term 'state responsibility' in a wider sense than the term 'public liability', the latter referring mainly to domestic doctrinal conceptualisations of liability.

[6] On victim/survivor terminology and agency, see Kelly 1988. See also Polletta 2006: 111, who claims that the dichotomy between victimhood and agency is false.

tend to avoid the use of both 'victim' and 'survivor', rather talking about, for example, 'the forcibly sterilised'.[7] For legal clarity, I have chosen to use the word 'victim' nevertheless. International human rights law, international criminal law and national regulations of liability construct their notions of loss and harm around the concept of victimhood.[8] A further reason to use the term 'victim' is that a significant part of the victims' struggles has centred on achieving victim status. In fact, many victims have encountered great difficulties in creating counter-narratives to the dominant ones formulating sterilisation/castration as a voluntary choice, in the best interest of the people affected.[9] The fluidity in determining free will has added to this complexity.[10] In conclusion, 'victim' is a word that highlights the power imbalance between the individual victims and the grantor of rights and remedies: public authorities.

1.2 Methodology

The methodology used in this work builds on a layered, socio-legal approach, where the law is seen as a social construction, contextually embedded. The law is not merely understood as top-down regulation, but rather as ideas and terminology used communicatively to create individual, common and public identities and to provoke state response. Understanding the law as part of a discursive reality – as a tool, an actor and an expression – allows for a wider cultural understanding beyond the letter of the law.[11]

Starting from traditional black-letter legal analysis, a method that can be described as the law's 'inner perspective', the narrative moves towards the margins of the law. Going beyond the law's universal claims, the study historicises and contextualises legal development. Approaching the law's outer reaches, it begins to formulate an 'outsider perspective' where victims either engage with the law or refrain from such engagement. The methodology used can

[7] See, for example, RFSL 2017.

[8] In the UN Basic Principles and Guidelines, determining the right to reparations for victims of gross violations of international human rights law and serious violations of international humanitarian law, the term 'victim' is defined as:

> […] persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term "victim" also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. A/RES/60/147 (2006), Art 8.

[9] This counter-narrative is used as an act of creating counter-hegemony. See Hunt 1990.

[10] Eivergård & Jönsson 2000 have addressed this.

[11] Discourse is taken to mean the process in which knowledge is produced through 'social practices, forms of subjectivity and power relations which inhere in such knowledges and relations between them'. Weedon 1987: 108, referring to a Foucauldian concept of 'discourse'. See also Niemi-Kiesiläinen et al 2007.

be understood along the lines of Hilary Charlesworth's thoughts on feminist legal methods:

> But when confronted with a concrete issue, no single theoretical approach or method seems adequate. A range of feminist theories and methods are necessary to excavate the issues. In this sense, feminist explorations can be likened to an archaeological dig.[12] There are various layers of practices, procedures, symbols, and assumptions to uncover and different tools and techniques may be relevant at each level.[13]

Accordingly, the overarching way of approaching knowledge can be defined as feminist, emphasising 'conversation and dialogue rather than the production of a single, triumphant truth'.[14] Additionally, in this scholarly context, I understand 'feminism' as critical research perspectives that challenge biologically deterministic, generally accepted 'truths' about the social order, focusing on gender, but embracing intersectionality.[15] This said, the book draws on a wide range of literature, not only on feminist or intersectional. Critically investigating legal development with reference to involuntary sterilisation and castration, I look at which issues are regulated by law and which are not, and the manner in which – if regulated. I use comparative methodology in a dialogic, feminist tradition. On the outskirts of the law, as regards involuntary practices of sterilisation and castration and their victims, stories appear about the law as a means of oppression as well as a hope for emancipation.

More precisely, from the point of departure of black-letter legal analysis, the book firstly queries what rules and principles apply to involuntary sterilisation and castration. This question is raised in particular with reference to the international legal regulation of involuntary sterilisation and castration but also to the national laws in question. The study analyses legal sources issued by states and supranational bodies, taking into consideration their hierarchical position and the doctrinal literature of the countries in question, particularly concerning the interaction between national and supranational law. This stage of the analysis can be depicted as the 'inner' core of the law.

Adding a further layer to the analysis, the work explores how the law has developed. I present and analyse relevant historical laws and decrees, particularly their often-extensive *travaux préparatoires*, and the related legal and political debates on the establishment of these laws. I also engage with secondary legal and historical literature. In doing so, this volume renders visible how

[12] Here, Charlesworth refers to Naffine 1990. [13] Charlesworth 2004: 161. [14] Ibid: 159.

[15] Angie-Marie Hancock describes intersectionality's intellectual project as 'twofold: an analytical approach to understanding between-category relationships *and* a project to render visible and remediable previously invisible, unaddressed material effects of the sociopolitical location of Black women or women of color' (2016: 33). In her book, she attributes particular weight to the writings of Patricia Hill Collins and Kimberlé W Crenshaw. In my monograph, 'intersectionality' is broadly understood as recognising the multiplicities of oppression and discrimination – for example, gender, race, sexuality, class, age and ability – which exist in interaction in the world.

laws and national legal cultures have unfolded in a historical context. This stage of the analysis moves away from the law's insider perspective, emphasising its embeddedness and historical dependency.

A third layer is added to develop the study further. This socio-legal component asks how the law is used and by whom, and correspondingly, how it is not used, and by whom. This reveals the reasons behind national differences in victims' and civil society's legal engagement and mobilisation. The actors of special interest can be divided into three categories: (i) activists and civil society representatives; (ii) state representatives, members of state-appointed investigations and national experts (often employed or appointed by the state); (iii) actors who have contributed to forming public and scholarly debates, that is journalists and academics. Sometimes, these categories may overlap, for example when prominent academics or activists take part in state-appointed investigations, or when academics or journalists speak out on behalf of victims or civil society causes.

The analysis is based on interview material with central actors in all three categories. The underlying objective of including multiple actors is to engage different perspectives in a dialogical, balanced manner, which is in line with the research's aim of contextual understanding. I have interviewed 83 people in total, out of which 23 have been mainly active in the Swedish national context, 27 in the Norwegian, 21 in the Finnish and 12 in an international or non-Nordic context.[16] The interviews have been semi-structured, and the interviewees are all actors who can broadly be defined as key informants.[17] Many of the interviews are of an in-depth character.[18] All cited interviewees have agreed to their names being fully included in the study.

It is important to highlight that I have not sought to interview victims of involuntary sterilisation or castration directly, at least not in their capacity as such.[19] This choice is motivated firstly by the research interest, which

[16] Two of the interviewees have been interviewed twice, and five interviews have been carried out in a group format, with two or three people present.

[17] I have given the interviewees the opportunity to look at a set of guiding questions a couple of days before the interviews. The guiding questions have been used as a starting point for the conversations. I have mainly conducted the interviews in person, sometimes over the phone or through teleconference calls, and exceptionally, in written format. I have also used electronic correspondence, for instance in order to inquire about administrative procedures or to access centralised statistics.

[18] In-depth interviews are preferable for gaining information from key informants. See Della Porta 2014: 229. The length of the interviews has ranged from one to four hours. The interviews have been recorded, transcribed and coded according to central themes, except for when interviewees have not consented to this procedure. While some interviews have been solely beneficial to provide background information for the book, most of the interviewees are referenced in the book.

[19] This said, civil society representatives and activists may themselves be victims of involuntary sterilisation or castration, but I have not inquired about personal experiences during the interviews. If such experiences have come up, I have listened and respected the interviewee's wish to talk about them, but neither posed further personal inquiries nor transcribed these narratives.

foregrounds socio-legal development rather than individual experiences of harm and loss, and secondly, by ethical concerns, from a wish to protect the privacy of the people affected.

The themes in the thoughts and experiences that the interviewees have shared with me varied greatly, and therefore provided me with extensive material. Consequently, only a small part of the information is included here. Above all, the interviews have helped me to understand the processes that take place in different actors' decisions to engage with the law through, for instance, civil society rights mobilisation. Understanding the complex underpinnings of, for example, legal mobilisation, primarily through the platforms of civil society organisations, has made me appreciate the importance of factors such as organisational and legal infrastructures. By looking at the weakly resourced groups that have not organised, the absence of such crucial contextual factors renders visible how and why some groups mobilise and organise, while others do not.[20]

A final analytical layer is added to the study by means of comparative analysis. The interest in such analysis lies in revealing any similarities and differences in how the relevant legal regulation and other forms of state reactions have developed in the three countries.[21] Against a backdrop of an ambiguous, developing, patchwork international legal framework, which manifests dissimilarly in the different countries, the book investigates the relevant particulars. The comparative analysis aims to understand, analyse and illuminate the diversities in frame alignment and grievance formation in relation to rights.

1.3 Conceptualising and Redressing Harm

Before diving into the topic of rights and remedies, a few words should be said on harm. Fully taking into consideration the complexities of people's harm and suffering may be an impossible task, but some engagement with the topic is vital for understanding the importance of appropriate, complete and transformative remedies.[22] Keeping in mind Fionnuala Ní Aoláin, Dina Haynes and Naomi Cahn's account of 'feminist methodology', which 'listens to what women say' 'about the forms and nature of harms experienced',[23] I wish to use the (direct and indirect) stories of harm of some people – women, men or non-binary people – directly or indirectly victimised through involuntary sterilisation as an analytical point of departure. Due to a lack of extensive mapping

[20] I understand 'weakly resourced groups' as groups that have little political influence and resources. Chabanet & Royall 2014: 6.

[21] This is in line with Frankenberg's aim of 'distancing and differencing'. Frankenberg 1985: 415.

[22] This should be complemented with a full establishment of the relevant facts, properly identifying the victims and alleged violation(s) and engendering reparations. Rubio-Marín & Sandoval 2011: 1064–1071.

[23] Ní Aoláin et al 2011: 432.

of victims' accounts, particularly regarding the involuntarily castrated,[24] I draw on secondary accounts of victims' stories of involuntary sterilisation as recounted in academic literature, non-governmental organisation (NGO) reports and court cases from different geographical contexts.

Both involuntary sterilisation and castration involve multiple harms. One is the violation of integrity inherent to the intervention being carried out against the free will of the victim. The amount of force, coercion, deception or authoritative persuasion at the time of the intervention may differ. One Romani woman who was involuntarily sterilised in Slovakia retold her story in the following way:

> The doctor told me that if I had a cesarean a third time, then I would die. The doctors and nurses kept repeating this to me. I said that I was young and that I wanted more children. The doctor kept reminding me that when they take me to surgery, they will ligate me. I was in great pain at that time […] I agreed because I was scared. I had a baby boy at home, my husband works, my mother is ill. I had to make it home. I thought maybe I could have a third child, but then I thought I would die and I cried […] and thought how could I abandon my boy and my new baby girl.[25]

As seen in her story, the Slovakian woman was presented with false information in a highly stressful situation, depriving her of a free and informed choice. Another woman, sterilised according to historical sterilisation laws in Sweden, retold another kind of coercion, namely the threat of infinite institutionalisation by the authorities: '[I]f I had not signed [the papers], I would have ended up at [a state institution for women considered mentally ill] and never regained my freedom'.[26] A man, belonging to the traveller minority, who was coerced into sterilisation according to the same Swedish historical sterilisation laws, retold the intervention as one of deception by the authorities:

> I got an injection and fell asleep. When I woke up, I was angry. Yes, then I got really angry and said, 'what have you tricked me into'. 'You have signed here', they said. But they never explained what it was. They only said that it is so you can be released. There was a guard there. He was a prison guard and surely a Nazi. He said that 'the race that you belong to should not have children'. That is what he said. And then I understood what would happen to me. But then it was too late.[27]

In other situations that were coercive, the coercion resulted from oppressive legislation rather than pressure by individual civil servants or medical personnel. A trans man in Sweden retold the coercion inherent in the mismatch

[24] Important exceptions exist of breaking the silence and sharing victims' stories, such as Eugenicsarchive.ca or the Quipu Project.
[25] Center for Reproductive Rights et al 2003: 56.
[26] Lomfors 2000: 287. Translated from Swedish.
[27] Ibid: 328. Translated from Swedish.

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between legally registered gender and expressed gender identity, forcing him to undergo sterilisation:

> If I had not agreed to the sterilisation, then I would not have been allowed to change my legal gender and then I would have continued to live like some kind of living dead, so to speak. I would probably not have been able to access all the treatment I needed, and I would not have been respected as a man. The state would not have recognised that I existed. The state would have thought that I was a woman. And relatively many in the surroundings who saw my [identity] papers would also have thought that I was a woman. So, they would not have seen me. And you cannot live like that.[28]

The consequences of the intervention can be many. A direct consequence is unwanted infertility which victims experience in various ways, depending on individual, social and cultural circumstances. This can also affect other people than the direct victims, such as their partners and family members. A woman who was sterilised according to Canadian historical sterilisation legislation recounted how her possibilities to enjoy parenting were excluded after the surgery:

> I won't be able to enjoy the children I would have had […] We don't know these things. But had I had children, I would have loved them, and they would have loved me back, and they would have been a support system and a family […] I'm missing that. I missed that.[29]

Involuntary infertility is an experience of loss of (future) family relationships, affecting one's life project, by definition incommensurable.[30] Rather than subsiding, the harm of such infertility can take different expressions and intensify during the course of a person's life. Apart from a missing relationship with biological children, infertility can also affect relationships with other people, such as intimate partners. A trans man in Sweden depicted the legislated infertility requirement as a constant impediment, a daily struggle, likely to affect any future relationships:

> I have thought multiple times if [amending legally registered gender] is worth it. Because it is so much, one sacrifices so much. And it will be a bloody difficult life and I constantly have to fight for my rights. It will always be a struggle. For example, having a family. A person who is comfortable in their body and relatively happy with their life can still have a family. I, on the other hand, cannot have a family. And then, depending on whether I meet a man or a woman later, someone who I really want to be together with for a longer period, then I cannot… If it is a man, I cannot have children with him. I cannot adopt because there are a lot of regulations and rules and so on. If it is a girl, she can at least get inseminated and have children that way. In that situation, it is possible, if one

[28] RFSL 2015, second personal story in video material. Translated from Swedish.
[29] Wilson 2018a.
[30] On the notion of harm to life project and its reparation, particularly developed in the jurisprudence of the IACtHR, see, for example, Tonon 2011.

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> wants to go down that road. But do you have to choose [between amended legal gender and fertility]? It feels so difficult and I guess that is the part I have been thinking about the most… the social part, families and relationships and so on. Is it worth it?[31]

This account highlights the importance of the social element in the experience of harm. The individual expectations of what constitutes a 'good' or 'normal' life – for example, the desirability of having children and/or a big family – are not just individual but also highly sociocultural. The role of the social context in magnifying the meaning and impact of infertility is addressed in the European Court of Human Rights Case of *V.C. v. Slovakia*:

> [O]wing to her infertility, the applicant experienced difficulties in her relationship with her partner and, later, husband. She indicated her infertility as one of the reasons for her divorce in 2009. […] Owing to her inability to have more children the applicant has been ostracised by the Roma community.[32]

Compound negative effects of infertility were also brought up in my interview with Marta González-Dominguez, legal advisor at the Center for Reproductive Rights. She told me about a Chilean case she was involved with where an HIV-positive woman was involuntarily sterilised in connection to giving birth:

> Different forms of violence act as a circle… so when [the applicant] realised that she could not have more babies, her husband also started to beat her and to mistreat her, because she couldn't have more babies… and this is also very important because it shows how these gender stereotypes […] act. Her role as a woman in society was completely cut. She was very frustrated, she wanted to be a mommy, a young mommy… and it was very difficult for her to accept that she could not have more babies.[33]

Infertility is nevertheless not the only harm. Some victims recount decreased sexual desire and changes in their sexual lives after the involuntary surgery.[34] This also holds true for the involuntarily castrated, for whom the surgery aimed to disrupt sexual drive. The victims' harm and experiences of involuntary castration depend on the socially constructed values and ideas related to sexuality, such as the gendered importance given to men's erectile and penetrative abilities.[35] The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (European Torture Committee) lists the harms of surgical castration as infertility, an increased risk of osteoporosis, mental depression and altered physical appearance – such as diminished body hair, oily skin and the increased formation of breast tissue.[36]

[31] Bremer S 2011: 204–205. Translated from Swedish.
[32] ECtHR, *V.C. v. Slovakia* (2011): Para 118.
[33] González-Dominguez, 5 January 2018.
[34] See, for example, Fodstad 2000: 145.
[35] This is built on differences in social construction between male and female sexuality and reproduction. For the construction of masculinity through, for example, sexuality and fatherhood, see Edwards T 2006; Kimmel et al (eds), 2004.
[36] CPT/Inf (2009) 8: Para 14.

The experience of sexual harm is also affected by the social and cultural context. A woman who was sterilised according to the historical sterilisation laws in Sweden mourned her inability to share her experiences of changed sexual life with her generation due to a general sense of stigma:

> And you get weak in another way. Nowadays they speak so openly about the sexual. The sexual became different in comparison to earlier, if one puts it like that. And one gets sad too, particularly being unable to talk to anyone [about it].[37]

Silence and inability to speak about the surgery, even to spouses, are echoed by other victims. A man sterilised according to historical sterilisation laws in Sweden recounted feelings of shame, limiting his communicative ability in relation to close ones but to authorities as well. This affected his general well-being in turn, such as his access to health:

> Yes, I was ashamed. Even when I was about to get heart surgery and they saw the scar I was ashamed. But I also became hateful. Because they were holding me down. At the time, one could not talk to people from the authorities at all. Nobody cared. This has often come over me. Especially when I have met girls. Because I knew that I could not have children. At these times, it happened that I drank. But it was worst when I was married. Because then I had to lie and say that I had suffered from mumps. But I did not feel good about sitting there lying. So I had to tell.[38]

A general theme of a damaged relationship with authorities, particularly medical ones, appears in victims' stories. Stigmatisation and stereotyping are common, impacting victims' lives beyond the involuntary surgery. One forcibly sterilised Slovakian Romani woman, who only found out that she would be permanently infertile after the surgery, retold her struggle to access healthcare, facing stigmatisation and stereotyping:

> The local gynecologist told me that it would be forever. I was surprised. I wanted to ask the doctor if I could do something to have more children, but I am ashamed to ask because usually gynecologists tell off Romani women for having more children and say that we have children to get [state] benefits. So I was ashamed to ask.[39]

Victims have suffered from physical, mental, emotional, sexual and reproductive harms. One of the few extensive documentations of such harm is nine qualitative interviews with victims of Swedish historical sterilisation practices by Ingrid Lomfors. In the victims' stories, some of the direct physical manifestations of harm are infertility; unattractive, uncomfortable and itchy physical scarring; bleeding; headaches; stress; gastric ulcers; nausea; abdominal pain; decreased sexual pleasure. Some of the psychological, emotional, and social materialisations of harm were destroyed marriages and other intimate relationships, stigmatisation and related psychological problems, a constant fear of public disclosure of the sterilisation, feelings of shame, longing for children and grandchildren, the

[37] Lomfors 2000: 295. Translated from Swedish. [38] Ibid: 330.
[39] Center for Reproductive Rights et al 2003: 62.

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need to take psychotropic drugs with side effects, negative effects in sexual life, loss of self-esteem and perceived human dignity, lost opportunities of family life, the feeling of being mutilated, loss of joy and happiness in life, difficulties of engaging in personal relationships, feelings of loneliness and lack of interest in sexual relations. The social stigma regarding sterilisation sometimes led to marginalisation, denied access to adoption services (because of the diagnosis which led to the sterilisation), loss of career and housing opportunities and costs for treatment and therapy with immediate financial effects.[40]

The direct victims also mentioned indirect victimisation of close ones: destroyed relationships, loss of opportunities to have biological children with the sterilised partner or for their children to have siblings. In short, the harms of involuntary sterilisation and castration – and, in most cases, of the inability to access redress – have been manifold and continuous, and impacted a great period of the victims' lives.[41] The accounts tell general life stories of marginalisation, of being considered as less valuable socially.

It is important to take into consideration the multiplicity of harm for remedies to be not only corrective but also transformative.[42] Monetary compensation is often a standard remedy in legal systems. According to Alan Hyde, financial compensation rests on a murky concept of the body as property, where unquantifiable harm is financially valued according to 'notions of social opportunities'.[43] Financial compensation might, for example, increase victims' possibilities of accessing rehabilitation or health services. On its own, it fails to hold any transformative promise, however. Writing primarily on tort law, Leslie Bender has suggested that feminist ethics of care should inform remedies and legal notions of 'responsibility'.

> My suggestion is that we use feminist theory to change the meaning of responsibility in tort – which now means primarily an obligation to make monetary reparations for harms caused – to a meaning rooted in a concept of care. This enriched meaning of responsibility arises out of our recognition of our interconnectedness as human beings and has to do with responding through interpersonal caregiving to the needs of someone who has been injured. It means taking care of. Responsibility as taking care of, rather than solely as paying for, seems completely absent from the law, although it is part of our social understanding of the meaning of responsibility that arises out of our experiences as parents, siblings, lovers, friends, and neighbors. It is time for legal responsibility to include this meaning.[44]

Bender therefore suggests broadening the modalities of redress beyond monetary compensation. Such a broadening exercise also involves understanding the range of victims' harms, including their social aspects. In the case of involuntary sterilisation and castration, one such social aspect is the injury involved when considering a person as a member of a group unworthy of engaging in reproduction or sexual intercourse. In writing on violence against women,

[40] Lomfors 2000. [41] Ibid. [42] See Rubio-Marín 2009b: 382.
[43] Hyde 2003: 63. [44] Bender 1990: 768.

Adrian Howe refers to the collective aspects of harm as 'social injury', pointing to the impact of such violence on not merely individuals, but the whole group.[45] Ruth Rubio-Marín has indicated that the recognition of group-based injuries might be 'useful in contesting the inherited stigmas and hierarchies that often underpin those rights violations in order to build a new democratic order'.[46] Having acknowledged the importance of both the recognition and redress of victims, I now move on to remedies and conceptions of rights as challenging the notion of the state prerogative to decide who is worthy of sexuality and reproduction.

1.4 Rights and Remedies

The world after the great wars has witnessed democratisation efforts, rising individualism and the emergence, and increasing constitutionalisation, of human rights.[47] The idea that people have universal, inherent, inalienable and indivisible rights by virtue of being human is a powerful thought. The post-war international proliferation of rights is manifested, for example, in the increasing number and importance of supranational institutions, conventions and documents regulating human rights.[48] Recognised violations are important for state accountability and responsibility. Developing norms concerning state responsibility and reparations have led to these matters gaining a central role in the international community.[49] From being considered an inter-state phenomenon, realising state responsibility has come to include redress and reparation to individuals and groups.

Indeed, the right to a remedy is a generally accepted principle in international human rights and humanitarian law. In the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), this right is expressed as the state party's obligation to ensure 'that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible'.[50] General Comment No. 3 of the Committee Against Torture (CAT Committee) specifies the obligation to provide redress as 'two-fold: procedural and substantive'.[51] The International Covenant on Civil and Political Rights (ICCPR) clearly formulates the obligation of parties to ensure that people

[45] Howe 1991: 156. [46] Rubio-Marín 2009b: 383.

[47] I understand human rights primarily within the international legal framework, taking shape within international organisations in the aftermath of the Second World War, affecting notions of constitutional rights. On the constitutionalisation of international law, particularly human rights, see Klabbers et al 2009; Greer and Wildhaber 2012; Sweet 2009.

[48] On the proliferation of the human rights discourse in the light of human rights mobilisation, see Simmons 2009.

[49] This development is well depicted in Shelton 2015; Crawford 2013.

[50] United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (1984), Art 14(1).

[51] CAT/C/GC/3 (2012): Para 5.

whose rights have been violated have access to an 'effective remedy'.[52] In 2005, the United Nations General Assembly (UNGA) adopted a resolution on *Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*.[53] In this document, central international legal principles for the remedy of individual and communal harms were determined. According to the Basic Principles and Guidelines, the modalities of reparations are restitution,[54] compensation,[55] rehabilitation,[56] satisfaction,[57] and guarantees of non-repetition.[58]

[52] United Nations International Covenant on Civil and Political Rights (1966), Art 2(3). Other regulations of the right to remedies are, for example, the Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms (1950) Art 13 and 41; Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (1994), Art 7(f)–(g); Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (2001), Art 4(f), 25.

[53] A/RES/60/147 (2006).

[54] According to the UN Basic Principles and Guidelines, restitution:

> […] should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property. (A/RES/60/147 (2006), Art 19)

[55] Compensation:

> […] should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as: a) Physical or mental harm; b) Lost opportunities, including employment, education and social benefits; c) Material damages and loss of earnings, including loss of earning potential; d) Moral damage; e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services. (A/RES/60/147 (2006), Art 20)

[56] Rehabilitation 'should include medical and psychological care as well as legal and social services'. A/RES/60/147 (2006), Art 21.

[57] Satisfaction:

> […] should include, where applicable, any or all of the following: a) Effective measures aimed at the cessation of continuing violations; b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations; c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities; d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim; e) Public apology, including acknowledgement of the facts and acceptance of responsibility; f) Judicial and administrative sanctions against persons liable for the violations; g) Commemorations and tributes to the victims; h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels. (A/RES/60/147 (2006), Art 22)

[58] Guarantees of non-repetition include:

> […] where applicable, any or all of the following measures, which will also contribute to prevention: a) Ensuring effective civilian control of military and security forces; b) Ensuring that

Remedial debates have particularly developed in post-conflict settings over the last decades. With radical regime changes, earlier national narratives are challenged and rewritten. Truth and reconciliation commissions and international and national war tribunals often disclose past practices of gross human rights violations.[59] Apart from the criminal legal responsibility of individual wrongdoers, violations often entail international legal state responsibility.[60] With a developing human rights framework, definitions of rights and violations evolve, and the exact nature of state responsibility changes accordingly. This remedial development might evoke criticism of state authority and historical oppression.[61]

The further back the oppression dates, however, the trickier the questions regarding responsibility and remedy. The legal obligations for countries to provide remedies for historical injustices are widely contested. One

all civilian and military proceedings abide by international standards of due process, fairness and impartiality; c) Strengthening the independence of the judiciary; d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders; e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces; f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises; g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution; h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law. (A/RES/60/147 (2006), Art 23)

[59] Famous examples of truth and reconciliation commissions in transitional justice settings during the last decades have been, for example, the South African Truth and Reconciliation Commission; the Commission for Reception, Truth and Reconciliation in East Timor; the Argentinian National Commission on the Disappearance of Persons; the Indian Residential Schools Truth and Reconciliation Commission in Canada; the National Truth and Reconciliation Commission in Chile; the Rwandan International Commission of Investigation on Human Rights Violations in Rwanda and the Peruvian Truth and Reconciliation Committee.

[60] Such a principle was laid down in *Chorzów factory* case, formulating reparation as 'the indispensable complement of a failure to apply a convention, and there is no necessity for this to be stated in the convention itself'. PCIJ, *The Factory at Chorzów* (1928): 21. The concept of reparations has later developed within international law from an inter-state matter to one which concerns human rights violations of the state against its own citizens. An important milestone for the development of state responsibility is the UN General Assembly's 2010 adoption of a resolution on state responsibility. See A/RES/65/19 (2010). The resolution was intended to become a legally binding treaty, which however never materialised. See Crawford 2013: 42–44.

[61] A famous example of such debates is whether reparations for the Atlantic slave trade should be made to the descendants of slaves or to (colonised) countries which have suffered from slavery. So far, these debates have not led to any large-scale reparations apart from individual initiatives and apologies. One important milestone was the UN Durban Declaration and Programme of Action, which recognises that 'slavery and the slave trade are a crime against humanity, and should have always been so' in its preamble. Effective remedies form an integral part of the declaration, see UN 2002.

issue in respect of the passing of time and state responsibility is retroactivity. This particularly concerns historical injustices which would amount to serious violations of international human rights law today but were committed at a time when the state had not ratified relevant treaties, or such treaties not yet existed. In particular, a tension is present in international law between prevailing understandings of the temporality of binding legal norms, on the one hand, and the non-temporality of *jus cogens*, on the other. Particularly important in this respect is the principle of non-retroactivity of treaties, expressed in Article 28 of the Vienna Convention of the Law of Treaties, rejecting state responsibility arising from a treaty concluded before state commitment.[62] As both temporality and non-temporality are generally accepted principles of international law, human rights bodies have attempted to strike a balance between them. The CAT Committee, for example, has given peremptory norms some weight, attributing responsibility to a state for torture and ill-treatment also (immediately) before ratification.[63] Moreover, the ECtHR has considered that pre-ratification responsibility can arise in some cases when there is a 'genuine connection' between the violation and the entry into force of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),[64] such as when violations happened close to the time of ratification, and the investigation took place after the entry into force of the Convention. The 'genuine connection' rule forms a recognised exception, albeit a limited one, to the principle of non-retroactivity.

Another question concerning the passage of time is that of statutory limitations. This particularly becomes an issue when the injustice was considered a violation of rights at the time it happened, but the victims present their claims when they are time-barred. In this regard, a general principle of international law is to accept domestic rules pertaining to prescription.[65] Illustrated in the Inadmissibility Case of *Thiermann and Others v. Norway* (2007) concerning the maltreatment of German-Norwegian war children in Norway, their failure

[62] 'Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party'. Vienna Convention on the Law of Treaties (1969), Art 28.

[63] This was crucially the case in CAT Committee, *Gerasimov v. Kazakhstan* (2012), where the Committee found the State to have violated the Convention, referring to torture and ill-treatment carried out by law enforcement officers in 2007, one year before the Convention entered into force there.

[64] As established in ECtHR, *Šilih v. Slovenia* (2009): Para 163. It was later reinforced in ECtHR, *Janowiec and Others v. Russia* (2013), see particularly Para 104.

[65] This is seen in the rules on admissibility, expressed in the ECHR, Art 35(1): 'The Court may only deal with the matter after all domestic remedies have been exhausted […] and within a period of six months from the date on which the final decision was taken'. The same principle is recognised in the American Convention on Human Rights (1969), Art 46.

'to comply with the time-limits laid down in domestic law' was interpreted as a 'failure to exhaust domestic remedies' by the ECtHR.[66] The principle is however not without exceptions. Allowances can be made in some cases, such as when victims of violations have been particularly helpless or vulnerable,[67] or when the harm or violations are ongoing. Regarding enduring harm and the effects of torture, the CAT Committee has stated that 'statutes of limitations should not be applicable as these deprive victims of the redress, compensation, and rehabilitation due to them'.[68] The Committee continued that time does not have a healing effect for many victims, but may in fact increase harms.[69]

While the international legal obligations to provide remedies for historical violations are restricted by non-retroactivity and statutory limitations, remedial debates often broaden their scope from strictly doctrinal arguments to including moral and political considerations. The question of victimhood, that is, who can be deemed a victim, is often a central tenet of such debates. Dinah Shelton has recounted arguments in favour of and against remedies for historical injustices. The main arguments in favour are the illegality of oppressive measures at the time of the actions, earlier unavailability of remedies, continuous inequality between the oppressor and oppressed communities, and the need for recognition of legacies of suffering.[70] Common arguments against remedies are the principle of non-retroactivity, the difficulty of determining causality, questions concerning intergenerational responsibility and caution expressed about promoting 'victim psychology'.[71]

Difficulties in determining state responsibility and effective and appropriate remedies can inevitably be seen in relation to historical sterilisation projects. Remedial debates have awakened in recent decades as such historical practices have become increasingly questioned, and victims have mobilised. Some states have responded to such mobilisation and discussions by establishing remedies. For example, in Virginia, California, North Carolina and Oregon, governors have issued official apologies for past sterilisations.[72] Compensation schemes for victims have been launched in some US states, such as North Carolina (2013) and Virginia (2015).[73] Germany has also remedied victims of Nazi-enforced sterilisations by establishing a special hardship compensation fund in 1980, and a monthly compensation system in 1988.[74] The decisions of the German Hereditary Health Courts were declared a Nazi injustice in 1988.

[66] ECtHR, *Thiermann and Others v. Norway* (2007): 25–26.
[67] See, for example, the Grand Chamber's conclusion in ECtHR, *Mocanu and Others v. Romania* (2014); IACtHR, *García Lucero et al v. Chile* (2013).
[68] CAT/C/GC/3 (2012): Para 40. [69] Ibid. [70] Shelton 2015: 274–275. [71] Ibid: 276.
[72] Silver 2004: 886–888.
[73] The number of victims coming forward has been limited, however. North Carolina instituted a 10 Million US Dollar compensation package which was distributed among approved applicants in 2013–2014. Neuman 2013. Conversely, Virginia compensated each approved applicant with 25,000 US Dollars. Robertson 2015.
[74] Weindling 2014.

In 2007, moreover, the 1933 sterilisation legislation was declared constitutionally invalid by the German Parliament.[75] Japan apologised as well, and established a compensation scheme to victims of eugenic sterilisations in 2019.[76] Furthermore, sterilisation victims have been included in broader national compensation schemes to victims of historical oppression in Switzerland (2016)[77] and Nazi injustices in Austria (1995).[78] Most recently, in 2021, the Czech Republic established a compensation scheme for involuntarily sterilised Roma women.[79] These remedies constitute examples of national attempts to redress oppressive sterilisation histories.

Some victims have taken their case to courts. An internationally exceptional case is *Muir v. Alberta* (1996). In this case, a victim of involuntary sterilisation, Ms Leilani Muir, claimed compensation before national courts for her involuntary sterilisation and 10-year wrongful confinement at a Canadian state institution. Ms Muir was sterilised as a teenager in 1959 without her consent upon the authorities' decision. The province of Alberta declared that the sterilisation had been wrongful, refrained from an objection based on statutory limitations and left it to the court to decide what the damages would amount to. In the judgment, the Alberta Court of Queen's Bench found that the irreversible sterilisation had caused the plaintiff 'catastrophic' physical and emotional damage and permanent suffering. It also found that the damage was 'aggravated by the associated and wrongful stigmatization of Ms Muir as a moron, a high-grade mental defective', which had 'humiliated' her 'every day in her life, in her relations with her family and friends and her employers and has marked her' from when she had been institutionalised 'at the age of 10'.[80] The total amount of damages and interest to the plaintiff for her involuntary sterilisation and wrongful confinement added up to a substantive 740,780 Canadian Dollars. The case demonstrates a judicial attempt to engage with the extensive harm done to an involuntarily and wrongfully sterilised and confined individual, harm which is lifelong and not easily quantifiable. Following the Muir Case, hundreds of other victims of involuntary sterilisation turned to the courts for reparations, claims which the Alberta Government eventually settled with compensations.[81]

[75] However, few victims (around one per cent) have benefited from the reparations, which have been provided at a late stage. Weindling 2014.

[76] See The Japan Times 2019.

[77] Bundesgesetz über die Aufarbeitung der fürsorgerischen Zwangsmassnahmen und Fremdplatzierungen vor 1981 (AFZFG) [Federal Law on the Processing of Compulsory Welfare Measures and Third-party Placements before 1981], 2016. The law entered into force in 2017.

[78] Bundesgesetz über den Nationalfonds der Republik Österreich für Opfer des Nationalsozialismus [Federal Law on the National Fund of the Republic of Austria for Victims of National Socialism] BGBl. 432/1995.

[79] Koslerova 2021. See also Amnesty International 2021.

[80] Alberta Court of Queen's Bench, *Muir v. Alberta* (1996): Paras 1–2.

[81] The compensation amounts depended on the claims at hand. The around 600 lawsuits settled in 1998 were awarded 100,000 Canadian Dollars each. See Dambrofsky 2016.

High-profile cases of individual victims seeking redress from public authorities are exceptional globally, as victims generally remain silent about their harms. Such cases highlight how social development, rights and notions of human dignity have contributed to seeing former state policies of eugenic sterilisation in a different light, raising questions on how the current legal system should approach such practices. Ultimately, they show the incommensurability of the victims' harms and the immense difficulties courts face when engaging with such extensive and complex injuries. Confronted with the insufficiency of legal liability systems, which are built on financial compensation of financial loss, courts deal with the question of how society ought to redress the same individuals which it has long excluded and harmed.

1.5 Rights, Legal Mobilisation and Grievance Formation

Involuntary sterilisation and castration have progressed from being generally accepted to becoming perceived as human rights violations, and being remedied as such in some cases. The interconnection between rights, remedies and mobilisation (or the lack of such) is unfolded borrowing theoretical tools from legal mobilisation and social movement studies, particularly frame analysis and grievance formation. Other key analytical tools in social movement studies, especially resource mobilisation[82] and political/legal opportunities,[83] are given a minor role in the work. Important questions are whether different groups of victims have mobilised, in organised form or individually,[84] to improve their position, the type of mobilisation used and how the state has reacted to it.

Mobilisation shapes the law and the law shapes mobilisation. In the words of Scott Barclay, Lynn C Jones and Anna-Maria Marshall, the law plays a role in 'spawning the initial claims of inequality or injustice, in building movements, and in framing the issues to be challenged'.[85] For social movements, notions of inequality and injustice are often connected to the law and conceptualisations

[82] In order to mobilise socially and legally, the ability to acquire and channel resources is crucial. Resource mobilisation theories primarily focus on social movements' internal elements. See Snow & Soule 2010: 91; Hilson 2002: 240.

[83] There are theories focusing on *political* and/or *legal* opportunities (sometimes referred to as opportunity structures to highlight their structural, rather than contingent, elements). Unlike resource mobilisation theories, opportunity theories focus on the external elements of movements and highlight the importance of context. In Ellen Andersen's account, the law shapes 'the *kinds* of claims that can be made' and the '*persuasiveness* of those claims' (emphasis in original). According to Gianluca De Fazio, legal opportunities consist of 'the features of the legal system which facilitate/hinder social movements' chances to have their grievances redressed through the judiciary'. Andersen 2006: 7, 9–16; De Fazio 2012: 4.

[84] In social movement theory, such mobilisation builds on the 'social' and is often understood as collective, more or less organised. See Bosi 2016: 344. 'Mobilisation', particularly 'legal mobilisation', can also take on a more individual form. The lines between individual and collective are, however, often blurred in social movements. Johnston et al 2009: 8.

[85] Barclay et al 2011: 2.

of 'rights'.[86] In an idealised fashion, rights have been viewed as the means to construct a just social order. Famously theorised by Stuart Scheingold as the 'myth of rights', this vision of emancipatory rights links rights, litigation and remedies.[87] Distinctly connected to the US political context and framed by the traditional American beliefs in individualism, private property and market economy, the myth of rights 'rests on a faith in the political efficacy and ethical sufficiency of the law as a principle of government'.[88] The idea is also firmly established in the US common law cultural background, epitomised in the Blackstonian reassurance that every wrong must have a remedy and reinforced in the liberal classic *Marbury v Madison*,[89] later exported to other parts of the world.[90] While many critical accounts question the empirical truthfulness of the interconnection between rights, litigation and remedies,[91] the legal, social and cultural imaginary of such interconnectedness is, however, an important analytical approach in this context.

Even though the specific link between rights, framing and grievance formation has received minimal attention in scholarship on social movements and legal mobilisation so far, it is important for the emergence and non-emergence, the existence and non-existence, of mobilisation.[92] A large part of the theoretical tradition of social movements conversely builds on existing social movements, groups which are already organised and have access to a wide range of resources. Yet, the paradigmatic analytical frameworks based on such social movements become challenged when addressing out of the ordinary subjects of study, weakly resourced groups, such as the involuntarily sterilised and castrated.[93]

'Grievances' could broadly be defined as a sense of injustice, wrong or harm, individual or collective. Individual grievances are, for example, one person's frustration and sense of harm after undergoing a surgery which they had not given informed consent to. Such grievances become collective when shared with other people, all victimised through similar involuntary interventions, leading to a collective sense of injustice within the group. In investigating collective mobilisation, social movement theory is particularly concerned with shared grievances which 'contribute to the emergence and operation of social movements',

[86] This is true for many 'new social movements', a term which typically refers to social movements that have emerged since the 1970s and includes groups such as women's movements and environmental movements. The term is often used to contrast such movements to 'old social movements', such as workers' movements. See Della Porta 2015: 767.

[87] Scheingold 2004: 5. [88] Ibid: 17.

[89] Supreme Court of the United States, *Marbury v. Madison* (1803). See D'Souza 2018: 16.

[90] Scheingold 2004: 18; Nader 2007: 118.

[91] See Speed 2007: 178. Also Radha D'Souza has questioned the reliance on rights by social movements and critical legal scholars alike, continuing 'to assume that having rights will provide legal remedies and bring justice'. D'Souza 2018: 17.

[92] See Hilson 2010.

[93] Investigating the mobilisation of weakly resourced groups, Chabanet and Royall highlight the benefits of moving away from the more established models, particularly cost-benefit analysis, in favour of micro-studies and descriptive accounts. Chabanet & Royall 2014: 15, 18.

so-called mobilising grievances.[94] In this work, the concept of grievances is presented as closely connected to rights, as the notions about rights – and violation of rights – shape the 'cultural stock for images of what is an injustice, for what is a violation of what ought to be', as expressed by Mayer Zald.[95]

Grievances are strongly linked to notions of entitlement and identity. As such, they can be recognised and validated by a collective group of victims, courts, other state institutions, mass media or the public. Grievances might also fail to be expressed, since a person, a group, the courts, the state or the public might not perceive certain harms as legally or morally wrong.[96] Judith Butler has written about the normative validation of grievability and the inherent situatedness of such validation. Butler expresses this as follows: '[T]here is no "life itself" at issue […], but always and only conditions of life, life as something that requires conditions in order to become livable life and, indeed, in order to become grievable'.[97] Linking grievability to framing, Butler contends that 'certain lives are perceived as lives while others, though apparently living, fail to assume perpetual form as such'.[98] The loss of some lives and populations are framed as 'eminently grievable', while others remain 'ungrievable'.[99] Grievances and the individual, collective and public formation of grievances, are inherently connected to the analysis of frames and groups' abilities to align with them.

'Frame analysis' in turn means the analysis of the sociocultural meaning assigned to certain people, populations, institutions or phenomena. Introducing the concept of 'frame' into social movement studies, David Snow and his collaborators explained it as 'borrowed from Goffman […] to denote "schemata of interpretation" that cognitively enable individuals and groups "to locate, perceive, identify, and label" occurrences within their life space and the world at large'.[100] Hence, frames organise experience and steer individual or collective action by assigning meaning to events or occurrences.[101]

Frame analysis theories emphasise the importance of communication and language in mobilisation, such as in the formation and interpretation of grievances. Snow and Robert Benford underline the essential function of framing:

> [Social movements] frame, or assign meaning to and interpret, relevant events and conditions in ways that are intended to mobilize potential adherents and constituents, to garner bystander support, and to demobilize antagonists.[102]

This creation of meaning is important when it comes to framing grievances as, for example, sexism, racism and discrimination – or more broadly, as rights violations. In this book, rights create an overarching mechanism, a socio-legal 'master frame' of validation, which has bearing on both legal and sociocultural aspects. As such, rights can be either legal or sociocultural instruments

[94] Snow & Soule 2010: 24. See also, for example, Nownes 2019: 49–66. [95] Zald 1996: 266.
[96] On the personal and intra-group level, the grievance formation process is hence linked to the concept of legal consciousness. See, for example, Chua & Engel 2021.
[97] Butler 2016: 23. [98] Ibid: 24. [99] Ibid. [100] Snow et al 1986: 464. [101] Ibid.
[102] Snow & Benford 1988: 198.

of entitlement and identity. In their understanding of wrongs, rights violations and in possible mobilisation, actors can align with, or fail to align with, the master frame of rights.[103]

Creation of meaning takes place at both the individual and collective levels. In the 'frame alignment process', individuals or groups mobilise and interact with a frame, identify a problem and propose a solution and call to arms.[104] The existence of grievances does not, however, guarantee mobilisation.[105] Furthermore, in order to be successful, the grievances need to be aligned with existing legal, social and cultural frames.[106] Grievances which fail to do so, gain no resonance. Zald exemplifies this with the slogan 'a woman's body is her own', which 'frames a problem and suggests a policy direction for women in relation to abortion policy and the medical establishment'.[107] However, the slogan only makes sense in a society and 'cultural discourse that highlights notions of individual autonomy and equality of citizenship rights: autonomy because it focuses upon individual choice, equality because it presumes that women are equal citizens'.[108] It would not make sense, for example, in a society where most people were slaves, or believed to belong to their families or the collective.[109] Based on this example, Zald concludes:

> Contemporary framing of injustice and of political goals almost always draws upon the larger societal definitions of relationships, of rights, and of responsibilities to highlight what is wrong with the current social order, and to suggest directions for change.[110]

With reference to rights, framing is explored by Lisa Vanhala in her study of disability rights mobilisation in Canada and the United Kingdom. She highlights that the creation of meaning and the movement's own understanding of its members as rights-holders is crucial for the likelihood of movements to engage in strategic litigation.[111] Framing for social movements means creating meaning and strategically utilising existing cultural frames and aligning with them in order to achieve desired outcomes – pushing 'the right buttons'.[112] Vanhala hypothesises that groups which frame themselves as rights-holders are more likely to pursue their agendas before courts than groups not framing themselves as such.[113] Similarly, Lasse Lindekilde emphasises that 'framing becomes a strategic attempt to guide the activation of particular discourses and repertoires of understanding with the purpose of mobilizing consensus'.[114]

In the frame alignment process, competing frames may be presented and affect people's abilities to form grievances and strategically frame them as rights violations. Competing frames to individual rights can be state prerogative or public order.[115] Another example of competing frames is alternative rights

[103] On the concept of master frames, see Snow & Benford 1992; Markowitz 2009.
[104] Snow & Benford 1988: 199. [105] See Chua 2022: 14. [106] Snow & Soule 2010: 47–63.
[107] Zald 1996: 266. [108] Ibid: 267 [109] Ibid. [110] Ibid. [111] Vanhala 2010: 32.
[112] See Andersen 2006: 8. [113] Vanhala 2010: 32. [114] Lindekilde 2014: 201.
[115] See, for example, Shriver et al 2018; Barkan S 1984.

frames presented by civil society counter-movements. An example of the latter is mobilisation for access to safe abortions, on the one hand, and mobilisation against abortions, on the other. The former generally frames the issue of abortion as one of equal rights to personal autonomy and health for women, while the second aligns its arguments with the right to life of the unborn child.[116] In both these alternative frames, interestingly, rights act as master frames, demonstrating the multifaceted nature of rights. Alternative frames and their resonance and ability to dominate public or legal debate have an effect on mobilisation at all stages: grievance formation, dynamics and outcomes.

In terms of mobilisation, rights have an important discursive value as they carry a normative meaning. Framing an issue as one of 'rights' is a way for actors and movements to create a separate space from 'interests' in legal and political discussions.[117] Ideally, a rights framing prevents the subject matter from being limited by budgetary deficits or other political prioritisations. This type of an idealistic discourse is central to rights, as visible in universal human rights claims. Therefore, rights idealism views rights as neutral and apolitical.[118]

For civil society organisations in the Nordic countries, rights mobilisation has recently become a more popular tool to alter their positions and further their interests. Nordic public authorities in turn increasingly embrace rights and accept rigorous judicial review.[119] This development stands in stark contrast with the countries' earlier culture of state power concentration in parliament. A persistently enhanced profile of the ECtHR and national supreme courts, resolute rights commitments in the international arena, together with the establishment of anti-discrimination and equality legislation, are factors which have worked in unison to promote courts and lower-threshold ombudsman institutions as forums where rights claims can be presented.[120]

Against this background, victims of involuntary sterilisation and castration have – or have not – mobilised. In such mobilisation, the idea of rights as legal and sociocultural instruments comes into play. Accordingly, the idea of rights as legal instruments entails phenomena such as legal regulation, established rights, rights violations, public or individual legal responsibility, liability for harms and access to remedies. As sociocultural instruments, rights entail claims to entitlements, rights-holder status, individual identities, collective identities,

[116] See, for example, Siegel 2012: 1059.

[117] Alan Hunt has depicted efforts to create counter-hegemony in terms of rights as requiring 'transition from the discourse of "interests" to the discourse of "rights" […] the project of counter-hegemony requires a shift from the plane of the "corporate" to the "universal"'. Hunt 1990: 320.

[118] See Merry 2007.

[119] Hirschl 2011:450–451; Wind & Follesdal 2009; Karlsson Schaffer 2017.

[120] The Nordic ombudsmen present more cooperative, less formalist and often more accessible alternatives of authoritative legal evaluation than the courts, potentially important for the legal mobilisation of disadvantaged and weakly resourced groups. However, with 'softer' legal powers than the courts, often with limited possibilities to order remedies, relying on recommendations and the goodwill of public institutions, an implicit hierarchy exists between courts and ombudsmen. See Hellum 2017: 213–214.

public identities and public images. When mobilising in terms of rights, people and organisations need to conform to and fall in line with already-existing legal, social, historical and cultural understandings of how an intelligible rights claim is made, what it encompasses, and who a rights holder is. The process of grievance formation reveals how some personal experiences of harm and trauma develop into individual, shared, collective and/or public notions of wrong and rights violations, while others do not.