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978-1-107-02893-7 - The Persistent Power of Human Rights: From Commitment to Compliance

Edited by Thomas Risse Stephen C. Ropp and Kathryn Sikkink

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PART I

Introduction and stock-taking

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Introduction and overview

THOMAS RISSE AND STEPHEN C. ROPP

More than ten years ago, Thomas Risse, Stephen Ropp, and Kathryn Sikkink co-edited *The Power of Human Rights: International Norms and Domestic Change*, a volume whose centerpiece was a spiral model of human rights change (PoHR in the following, see Risse *et al.* 1999). PoHR was published on the occasion of the fiftieth anniversary of the Universal Declaration of Human Rights and ten years after the peaceful revolutions in Central Eastern Europe which then ended the Cold War. More than a decade later, dictators are on the run in the Middle East. These political changes in Tunisia, Egypt, Libya, and elsewhere are having profound effects on this region of the world, including the human rights situation there (see Chapter 10).

Over the past ten years, human rights policies have also changed considerably: First, we witness the gradual emergence of a new model of criminal accountability used by states acting collectively through the International Criminal Court (ICC) to hold individuals responsible for human rights violations (Deitelhoff 2006; Sikkink 2011). And a new international norm has emerged, the Responsibility to Protect (R2P), referring to the responsibility of the international community to intervene – by military means, if necessary – if state rulers are unwilling or incapable of protecting their citizens from gross human rights violations (Evans 2008; Weiss 2005). R2P was recently put to a test with the Western intervention in Libya which had been endorsed by the United Nations Security Council and backed by the Arab League as well as the domestic opposition in Libya.

Second, we see an increasing recognition by states and other actors in the human rights field that weak or limited statehood has become a major obstacle with regard to domestic implementation and compliance. Limited statehood refers to parts of a country's territory or policy areas where central state authorities cannot effectively implement or enforce central decisions or even lack the monopoly over the means of violence (Risse 2011b; see Chapter 4).

We thank the participants of the two workshops in Wyoming in August 2009 and in Berlin in June 2010 for their detailed comments on the draft of this chapter. We are particularly grateful to Arie Kacowicz, Kathryn Sikkink, and three anonymous reviewers of Cambridge University Press.

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Third, private actors such as firms and rebel groups are increasingly committed to complying with international human rights standards in a direct way rather than through the mechanisms of domestic law. Within companies, for example, we can observe an emerging international norm of corporate social responsibility that embeds human rights standards in corporate doctrine (e.g. Prakash and Potoski 2007; see Chapters 11 and 12; regarding rebel groups see Chapter 13). Moreover, other private actors, such as families and religious communities, are increasingly recognized as violators and subject to international campaigns – but not yet to consistent governance (Brysk 2005; see Chapter 14).

Last but not least, human rights scholarship has evolved considerably. Human rights research of the 1990s was characterized by comparative case studies as the dominant approach (e.g. Brysk 1994; Clark 2001; Hawkins 2002; Keck and Sikkink 1998; Risse *et al.* 2002). This has changed in that researchers using quantitative methods have begun to investigate the processes and mechanisms by which international human rights norms spread (particularly Hafner-Burton 2008; Simmons 2009). At the same time, international lawyers have become aware of the increasing social science scholarship on human rights, while political scientists started to take the particular characteristics of law seriously (see e.g. Alston and Crawford 2000; Goodman and Jinks 2003; in general Goldstein *et al.* 2000).

This combination of political and academic developments strongly suggests that we take a fresh look at the past twenty years of human rights research. On the one hand, the socialization mechanisms identified in the original PoHR for turning international law into domestic practices have generally held up well in the “laboratory” of subsequent empirical testing. More specifically, we see that much of the recent quantitative work seems to support our earlier largely qualitative findings (see Chapter 3). These mechanisms of change can also be applied to the new human rights agenda, particularly with regard to private actors and their compliance with international norms.

On the other hand, we recognize that our original work on human rights had several weaknesses. First, we under-specified the processes and scope conditions by which and under which states as well as private actors could be moved from commitment to human rights norms to actual compliance with them. Second, our earlier work assumed the presence of fully functioning states, suggesting in turn that compliance with human rights norms was a matter of state commitment and willingness rather than of institutional capacity. “Limited statehood” challenges this assumption and forces us to take a fresh look at the compliance *problématique*. Finally, we did not look at compliance with human rights norms by powerful states like the United States or the People’s Republic of China (see Chapters 8 and 9). This would seem to be a particularly important task in light of post-9/11 US non-compliance during the George W. Bush administration with the anti-torture norm and China’s continuing resistance to human rights pressures.

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In this volume, we concentrate on the following research question: *Under what conditions and by which mechanisms will actors – states, transnational corporations, other private actors – make the move from commitment to compliance?*

This chapter proceeds in five steps. First, we recapitulate the spiral model of human rights change as developed in PoHR. Second, we introduce this volume's own unique focus on the processes leading from commitment to compliance, define the respective terms, and discuss the book's expanded focus – not only on a much broader range of actors but also on a more inclusive set of human rights. Third, we take a closer look at the mechanisms and modes of social action that we believe can move these various targeted actors from commitment to compliance; here, we build upon and further specify the mechanisms described in the original spiral model. Fourth, and most important, we introduce the centerpiece of this book's theoretical argument – namely the impact of a set of scope conditions under which movement by state and non-state actors from commitment to compliance is more or less likely to occur. These scope conditions are then evaluated in subsequent empirical chapters. We conclude with a short description of the plan of the book.

The “spiral model” of human rights change revisited

We begin with a brief description of the spiral model of human rights change originally developed in PoHR. The key questions we wished to ask in PoHR were whether it was possible to model the various processes involved in the movement from norm expectation to real country-level results; and, if so, could we document the existence of these processes empirically through the use of country case studies of change in state human rights practices?

In attempting to answer these questions, our theoretical point of departure was the work of a well-known group of social constructivists who had been looking at the relationship between ideas and social processes in a number of diverse issue areas (Adler, 1997; Checkel 1998; Katzenstein 1996; Kratochwil 1989; Wendt 1992). The actual “spiral model” of human rights change that we developed in PoHR built upon work on the “boomerang effect” that had previously been done by Margaret Keck and Kathryn Sikkink (Keck and Sikkink 1998). Incorporating some of their insights about the causal relationships between various state and non-state actors and associated processes, we sought to come up with a more specified conceptualization of these relationships and processes that could be graphically represented.

The eventual result of these efforts was the “spiral model” of human rights change, for which we sought empirical evidence using a comparative case study approach. In our model, we identified three distinct types of socialization processes (instrumental adaptation, argumentation, and habitualization) that

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appeared to work together to socialize non-compliant states to human rights norms during a series of five distinct phases (see Figure 1.1):

- (1) *Repression*: there was an initial phase during which the leaders of authoritarian regimes engaged in repression. While the degree of repression that the various regimes in our case studies engaged in varied widely from the quasi-genocidal behavior found in Guatemala (Ropp and Sikkink 1999) to Tunisia's "softer" neo-patrimonialist variant (Gränzer 1999; see Chapter 10), the resulting informational vacuum made it extremely difficult for opposition groups to convince authoritarian leaders that they had anything to deny. As a result, this initial phase tended to be a long drawn-out affair during which none of our three socialization mechanisms worked particularly well.
- (2) *Denial*: if transnational groups eventually succeeded in gathering sufficient information on human rights violations to initiate the advocacy process, our spiral model posited and our case studies documented a second phase that we labeled denial. While the domestic opposition usually remained too weak during this phase to mount a serious challenge to the regime, the increased lobbying of international human rights organizations and of sympathetic democratic states by advocate groups often evoked outraged "How dare you!" denials from officials in repressive states. Such denials reflected a continuing refusal to recognize the validity of international human rights norms and thus an unwillingness to submit themselves to international jurisdiction in such matters. However, we also found this denial phase to be of critical importance in that discursive engagement in any form and no matter what the nature of the "conversation" opened the door to the process of international socialization.
- (3) *Tactical concessions*: we found the third phase of our spiral model to be a particularly precarious one, characterized by a repressive state's use of tactical concessions in order to get the international human rights community "off their backs." These concessions normally included measures such as releasing a few political prisoners, showing greater tolerance for mass public demonstrations, and/or signing up to international treaties. We found that their use of this instrumental logic and subsequent making of what they believe to be "low cost" tactical concessions had an important secondary effect in that it facilitated the rapid mobilization and further normative empowerment of domestic advocacy groups. We found this phase of tactical concessions to be particularly precarious because the government could react to this rapid increase in mobilization either by engaging in unrelenting repression or by making even more generous tactical concessions.
- (4) *Prescriptive status*: while the tactical concessions phase tended to be dominated by a state logic of instrumentality, we found that the "terrain of contestation" shifted radically during phase 4 when states granted human rights

norms prescriptive status (see chapters on Eastern Europe and South Africa, Black 1999; Thomas 1999). The “prescriptive status” phase was characterized by a well-defined set of state actions and associated practices such as ratifying relevant international treaties and their optional protocols, changing related domestic laws, setting up new domestic human rights institutions, and regularly referring to human rights norms in state administrative and bureaucratic discourse.

- (5) *Rule-consistent behavior*: we called the fifth and final phase of our model “rule-consistent behavior,” i.e. behavioral change and sustained compliance with international human rights. In hindsight, we view this phase as involving a set of sub-processes that were somewhat under-specified. To the extent that we did specify these sub-processes in PoHR, we viewed them as consisting of a two-level game at both the domestic and international level that pitted proponents of actual implementation of now prescriptively validated human rights norms against their opponents. From this perspective, sustainable change in actual behavior that was consistent with these norms was viewed as the result of local pro-change groups being able to leverage international support in such a way as to eventually triumph over their domestic opponents.

As mentioned above, we sought empirical evidence for the general validity of our model by using the comparative case study method. Our initial operating assumption was that, by selecting paired country cases of human rights “success” and “failure” in a number of different world regions, we would be able to tease out the various factors that made a difference as they related to the five phases of our model. For “success stories” during the 1980s, we chose Chile, South Africa, the Philippines, Poland, and the former Czechoslovakia. The more difficult cases included Guatemala, Kenya, Uganda, Morocco, Tunisia, and Indonesia. In the meantime, scholars have extended the analysis to China, Egypt, Turkey, and Israel (see Chapter 2).

After examining the evidence gathered from country-level field research that was conducted by our team of German and American scholars, we concluded that the socializing mechanisms of change that we had built into our spiral model had a good deal of explanatory power for most of the individual cases. More importantly, the phased processes of human rights change specified by the model appeared to be generalizable across different types of political regimes, socio-economic systems, and cultural regions. While human rights progress was often uneven and our various phases occurred asynchronously in different countries over time, there was a clearly identifiable pattern of human rights progress that we could also model as a larger norms cascade (Finnemore and Sikkink 1998; see also Haglund and Aggarwal 2011 for a discussion of economic and social rights). Over three decades from the 1960s until the 1990s, the various phases during which human rights change occurred grew progressively

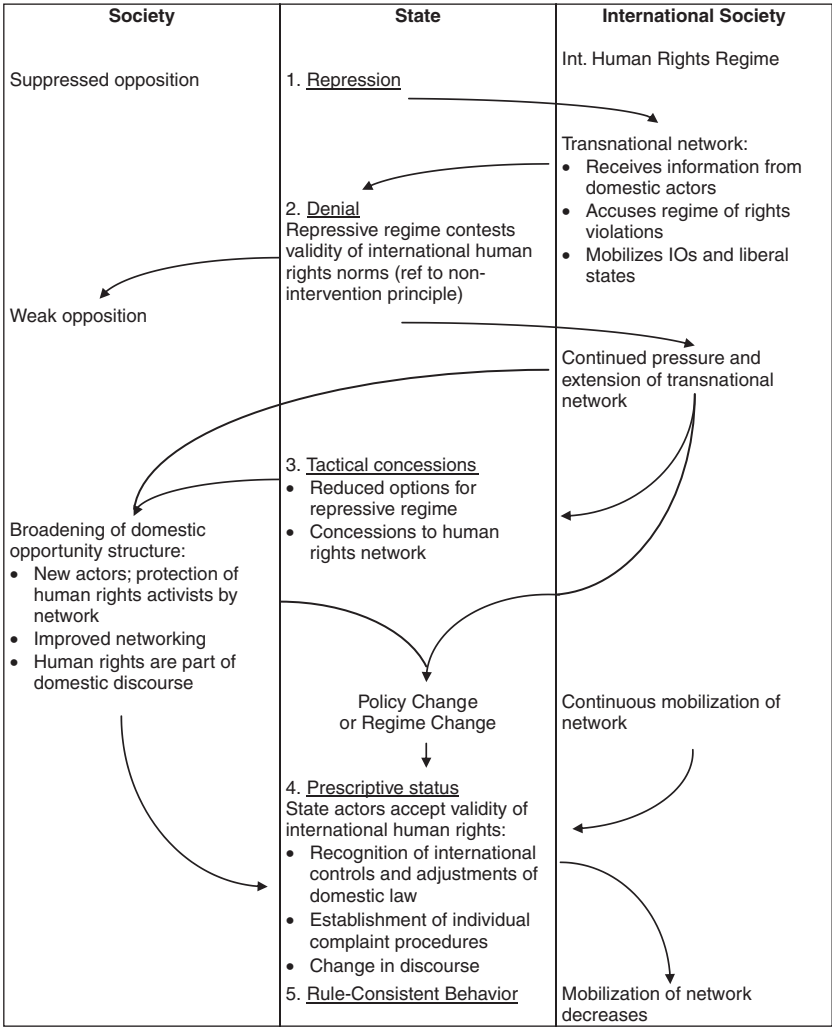


Figure 1.1 The “spiral model” of human rights change

shorter, leading to a “speeding up” of improvement in the overall global human rights situation.

Because we chose to model these causal processes, we opened ourselves up to both praise and criticism within the community of scholars working on human rights issues. Some of our scholarly critics emphasized certain sins of commission such as the fact that the spiral model seemed to “smuggle in” a hidden ideological agenda and that there was an associated linear teleological bent to the analysis. Additional alleged sins of commission included problems with the

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measurement and operationalization of key variables, cases where the author's application of the model to a particular country did not seem to square with the empirical evidence, and inadequate treatment of human rights situations where competing norms were involved (see Chapter 2).

Other scholars emphasized various sins of omission, sins that in retrospect were often the result of the time period when our model was developed (during the 1990s and dealing with cases from the 1980s). For example, the spiral model of human rights assumed the existence of a core group of developed democracies that adhered to human rights norms and could thus legitimately socialize norm-violating regimes to "proper" behavior. It did not seriously take into account the fact that these core states could become norm-violators themselves (see Chapter 8 on the United States). Additional sins of omission that have subsequently been recognized include the absence of attention to human rights violations in areas of limited statehood (see Chapter 4), and to the growing importance of non-state actors such as multinational corporations in the human rights field (see Chapters 11 and 12).

From commitment to compliance

The original spiral model dealt with the entire process relating to the human rights socialization of state actors – from repression and initial denial that international human rights law applied to them at all, to their eventual sustained compliance with these norms. More than a decade later, explaining state commitment to international human rights does not seem to be particularly interesting. In the twenty-first century, there is not a single state left in the international system that has not ratified at least one international human rights treaty (the Convention on the Rights of the Child topping all other global human rights treaties, see Liese 2006). Moreover, there is universal agreement that fundamental human rights constitute *ius cogens*, i.e. that part of international law to which states commit irrespective of whether or not they are party to individual treaties.

What does remain interesting is the fact that various actors other than states (e.g. NGOs, multinational corporations and rebel groups) increasingly commit themselves to basic human rights (see Part IV of this volume). As sociological institutionalists argue, the norm-guided logic of appropriateness now requires both governments *and* non-state actors in world society to at least pay lip service to the idea that there are such things as fundamental human rights (Meyer *et al.* 1997).

This book then focuses on the processes leading from commitment to compliance. By "commitment," we mean that *actors accept international human rights as valid and binding for themselves*. In the case of states and apart from *ius cogens*, this usually requires signing up to and/or ratifying international human rights treaties. With regard to non-state actors such as firms, NGOs, or rebel

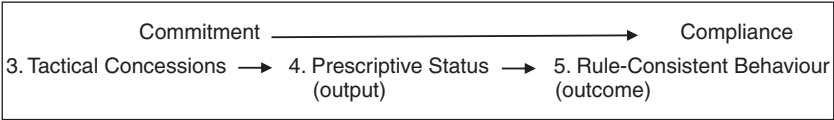


Figure 1.2 Commitment, compliance, and the spiral model

groups, commitment implies at a minimum some sort of statement that the respective actors intend to accept at least voluntary codes of conduct as obligatory (from self-regulation to multi-party “soft law” such as the Global Compact, see Chapter 11). “Compliance” is defined as *sustained behavior and domestic practices that conform to the international human rights norms*, or what we called “rule-consistent behavior” in the original spiral model. The authors of the various individual chapters in this volume specify in more detail what they mean by commitment and compliance.

We see commitment and compliance as two ends of a continuum (see Figure 1.2). The spiral model assumed that a government’s commitment to international human rights takes place initially as part of the “tactical concessions” phase. PoHR did not suggest that ratification of international human rights treaties automatically translates into compliance. Rather, we claimed that encouraging governments to move from commitment to compliance involves the application of continuous pressures “from above” and “from below” (Brysk 1993). Moreover, PoHR defined “prescriptive status” (phase 4 of the model) as the point in time when governments had not only ratified international treaties, but had also transposed them into domestic law, had created the necessary institutions to enforce these laws (e.g. human rights commissions), and had fully acknowledged the validity of international human rights in their official public discourse. In the language of research on compliance (e.g. Raustiala and Slaughter 2002), “prescriptive status” equals the output dimension of compliance while “rule-consistent behavior” (phase 5) refers to the outcome dimension.

Over the past decade, quantitative research on human rights has confirmed that ratification of international treaties does not lead to compliance per se (e.g. Hafner-Burton and Tsutsui 2005; Hathaway 2002; Keith 1999). Some authors have even gone so far as to suggest that rights violations became more severe after treaty ratification. This in turn led others to argue that qualitative and quantitative studies on human rights change were reaching different conclusions, with the authors of small-N case studies reaching more optimistic conclusions than those of large-N studies (Hafner-Burton and Ron 2009).

We disagree with the view that qualitative and quantitative methodologies are yielding strikingly different results (see particularly Chapters 3 and 5). The various chapters in this volume show a growing convergence between quantitative and qualitative findings on human rights compliance, especially when the quantitative researchers consider the impact of intervening variables such as regime