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SOCIALIZATION OF INTERNATIONAL HUMAN RIGHTS NORMS

Socialization of Human Rights Norms: Regime analysis and recommendations

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Research questions: How do conceptions of international regimes apply to the international human rights regime? Does treaty ratification and formal acceptance of norms correlate with compliance? How can models focusing on transnational advocacy account for the socialization of states such that formal commitments accord with actual practice? Finally, how can communicative reasoning substantiate norms by acculturating their legitimacy in states whose practice does not follow legal and rhetorical acceptance of rights?

I. Introduction -

Human rights are the core of human security, whether it is in the political rights providing for freedom from fear or economic rights providing for freedom from want.¹ Successfully realizing human security requires what UNESCO has referred to as “mainstreaming the human rights normative framework”.² Moreover, the United Nations General Assembly links human security to human rights when it included in its resolution the statement that “Human security recognizes the interlinkages between peace, development and human rights...”³

Achieving human security as freedom from fear in authoritarian states depends, in part, on the globalization and strengthening of the international human rights regime. A significant amount of literature is dedicated to offering an account of the growth and development of international regimes. A widely utilized definition of an international regime can be traced to Krasner who holds that a regime is composed of a complex of norms, decision-making, and policy-making procedures involving expectations of future behavior.⁴ Nickel's definition of the human rights

1. Alkire, Sabina “Conceptual Framework for Human Security”. Available at www.unocha.org/humansecurity/chs/activities/outreach/frame.pdf. “Elements of the vital core are fundamental human rights which all persons and institutions are obliged to respect or provide, even if the obligations are not perfectly specifiable. The rights and freedoms in the vital core pertain to survival, to livelihood, and to basic dignity.”

2. UNESCO. Human Security: Approaches and Challenges, p. 76. Available at <http://unesdoc.unesco.org/images/0015/001593/159307e.pdf>

3. UNDP. Human Security: A Thematic Guidance Note for Regional and National Human Development Report Teams. Available at http://hdr.undp.org/sites/default/files/human_security_guidance_note_r-nhdrs.pdf

4. Krasner's definition of regime holds, “International regimes are defined as principles, norms, rules and decision-making procedures around which actor expectations converge in a given issue area”. Krasner, Stephen D., “Structural Causes and Regime Consequences: Regimes as Intervening Variables,” *International Organization* 36 (1982): 185-205, at 185. Keohane and Nye hold a regime is a formation of “networks of rules, norms, and procedures that regularize behavior and control its effects.” Keohane, Robert O. and Joseph S. Nye., *Power and Interdependence: World Politics in Transition* (Little, Brown, 1977), 19. For early discussions specifically on the human rights regime see Donnelly, Jack “International Human Rights: a regime analysis,” *International*

regime includes agencies to investigate rights violations, means for promoting respect for rights, as well as NGOs and sympathetic states.⁵

In accordance with the notion of transnationalism, the definition of regime can include both intergovernmental organizations and non-governmental organizations. Both legal studies and institutional analysis support the claim that the international human rights regime has increased in strength. However, insufficient attention has been paid to states that resist acculturation and developing an account of how transnational advocacy networks—involving domestic NGOs, international NGOs, and IOs—can acculturate repressive states. It is the contention of this paper that deliberative argumentation and reasoned discourse can overcome the problem of the decoupling of legal commitments and actual compliance.

This paper first discusses the different conceptions of regimes by way of a brief account of regime theory and the possible mechanisms for motivating state compliance. Next, it turns to the issue of the impact of international law on the socialization of states to show that it insufficiently motivates states to comply with human rights norms and may even be used as a tool for states to persist in repression. This compels a focus on the domestic politics of repressive states and warrants a discussion of the impact of transnational advocacy models of socialization, which will be done in the third section. The final part of the paper will argue for the creation of support for human rights based on legitimizing norms through reasoned argumentative deliberation.

II. Theorizing International Regimes and their Compliance Mechanisms -

A summary categorization of the literature discussing the evolution and strength of the international human rights regime is consistent with the three main camps in international relations theory—realism, liberalism, and constructivism.⁶ Note that admitting the existence of the regime, to some degree, presupposes an at least temporary process of strengthening consistent with its formation and sedimentation. Neoclassical realists assert regimes that support rights

Organization 40 (1986) 3; Donnelly, Jack, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 1989), 205-213; Ruggie, John Gerard "Human Rights and the Future of International Community," *Daedalus* 112 (1983): pp. 93-110; Onuf, Nicholas G and V. Spike Peterson "Human Rights from an International Regimes Perspective," *Journal of International Affairs* 28 (1984): 329-42.

5. Nickel, James. W. "Is Today's Human Rights System a Global Governance Regime?" in *The Journal of Ethics*, vol. 6, 2002, pp. 353-71.

6. Hasenclever, Andreas, Peter Mayer and Volker Rittberger, "Integrating Theory of International Regimes," *Review of International Studies* 26 (2000): 3-33, at 5. Moravcsik, Andrew, "The Origins of Human Rights Regimes: Democratic Delegation in Postwar Europe," *International Organization* 54 (2000): 217-252.

are based on the use of human rights or democratic norms as a rhetorical and ideological instrument for the pursuit of self-interest.⁷ Structural realists such as Waltz present the use of rights as an (unavoidable) assumption of duties that thinly veil underlying self-interests.⁸ The condition of anarchy precludes the possibility of regimes developing beyond short-term cooperation or on the basis of norms other than national self-interest in security.⁹ Donnelly, although not a realist, accounts for the expansion of the human rights regime in terms of coercive power and the self-interests of dominant state actors.¹⁰

Liberals tend to base their regime analysis on rational choice behavioralism and pluralism or interest group competition within the domestic politics of states.¹¹ Keohane presents a view of regimes as based on the common interests of states and rational decision-making.¹² Additionally, Krasner supports the view that regimes involve an independent impact on international relations. He holds, “Once principles, norms, rules, and decision-making procedures are entrenched they may alter the egoistic interests and power configurations that lead to their formation in the first place.”¹³

Note that, despite their differences, they may converge around the claims that there is an international human rights regime, which is to say it has attained a material and institutional existence, and that the regime has grown stronger over time.¹⁴ Despite the range of domestic political systems from dictatorial to democratic, given the value of sovereignty and independence,

7. See Carr, E.H., *The Twenty Years' Crisis 1919-1939* (London: Macmillan, 1946); Morgenthau, Hans J., *Politics Among Nations: The Struggle for Power and Peace* (New York: Alfred Knopf, 1960).

8. Waltz, Kenneth N., *Theory of International Politics* (Reading, Mass.: Addison-Wesley, 1979), 200.

9. Grieco, Joseph M., “Anarchy and the Limits of Cooperation: A Realist Critique of the Newest Liberal Institutionalism,” *International Organization* 42 (1988): 485-507.

10. Donnelly, Jack, “International Human Rights: A Regime Analysis,” *International Organization* 40 (1986): 625.

11. Moravcsik, Andrew, “Explaining International Human Rights Regimes: Liberal Theory and Western Europe,” *European Journal of International Relations* 1 (1995): 157-89.

12. Keohane, Robert O., “The Demand for International Regimes,” *International Organization* 36 (1982): 325-255.

13. Krasner, Stephen D., “Regimes and the Limits of Realism: Regimes as Autonomous Variables,” *International Organization* 36 (1982): 497-510, at 503.

14. For research that supports the strengthening of the regime see: Donnelly, Jack “State Sovereignty and Human Rights”, Human Rights and Human Welfare working paper, 2004. Available at <http://www.du.edu/gsis/hrhw/working/2004/21-donnelly-2004.pdf> ; Nickel, James W. “Is Today's International Human Rights System a Global Governance Regime?”, *The Journal of Ethics* 6 (2002): 353-371; Ruiz Fabri, Hélène, “Human Rights and State Sovereignty: Have the Boundaries been Significantly Redrawn?” in Philip Alston and Euan MacDonald eds. *Human Rights, Intervention, and the Use of Force* (Oxford University Press, 2008), 33-86; Weiss, Thomas G., David P. Forsythe and Roger A. Coate, *The United Nations and Changing World Politics* (Westview Press, 1994), 115-130; Mertus, Julie A. *The United Nations and Human Rights: A Guide for a New Era* (Routledge, 2009), 41-43.

the question arises as to why would states allow or enable the formation of a regime of rules that places constraints on their domestic policy formation.¹⁵

Human rights regimes are distinct from other types of regimes that foster coordination or cooperation between states given that human rights protection cannot be designated as a collective action problem. Human rights regimes are not procured as solutions to the externalities of state action which impact other societies via international connections as they are structured to regulate the behavior of states in their domestic affairs.¹⁶ Moreover, they are not enforced by interstate policy, which means that such enforcement cannot have a directly traceable effect on improvements in domestic practices of rights respect.

On the one hand, states have the ability to protect human rights inside their territory without cooperating with other states. On the other hand, states do not necessarily have an inherent interest in promoting human rights inside their territory as such protection is not a necessary means to attain national security.¹⁷ Put differently, international human rights norms are not self-sustaining or imbued with any endogenous capacity of enforcement because human rights protections are not a coordination problem. Moreover, states that comply with the standards of the regime are often unwilling to utilize pressures to coerce non-compliant states.¹⁸

Alternative accounts of regime formation entail predictions about the sustainability of the regime. For realists, a regime is built by coercive pressures and reflects state interests, which result in a condition that will not persist once that pressure is removed or those interests change.¹⁹ Liberal idealists are more committed to the notion that regimes exhibit a certain self-sustaining tendency. They view the regime to follow from a commitment to principles and an understanding of identity on the part of states, but they are at pains to clarify why principles *per se* endure and why the self-understanding of the identity of the states will not change. Even accepting the strength of the regime in terms of the autonomy of its components faces the problem of explaining intransigent states. Nickel concludes his evaluation of the human rights regime as follows:

15. Moravscik, *supra* note 6, at 219.

16. Moravscik, *supra* note 6, at 217

17. Goodman, Ryan and Derek Jinks "How to influence states: Socialization and international Human Rights Law," *Duke Law Journal* 54 (2004): _____

18. *Ibid.*

19. For this reason, realists such as Neibur conclude that human rights are ultimately impossible in international relations since they are built on (general) principles which will always, at some point, be abandoned in favor of (particular) national interests.

“Can the international human rights system that exists today properly be described as a global governance regime? Almost, but not quite. The system is almost such a regime because it has well-established norms, institutions for creating modifying norms, institutions for identifying human rights violations around the world, agencies that can investigate these violations can call governments to account for them, and means of promoting respect for human rights norms. In performing these tasks the system receives regular and useful assistance from NGOs and sympathetic governments. International human rights agencies are authorized or legitimated in appropriate ways, and some of them are incipiently federal at the global level. The power of these agencies is sufficiently independent in most cases.”²⁰

With the above considerations in mind, it is important to point out that neither realist nor idealist models have been convincingly supported with extensive empirical evidence.²¹ Insufficient substantial empirical research has been developed to test the main claims of each against the historical record. More recently, the theory of the international human rights regime has been made more complex by focusing on the socialization of states.

Human rights standards provide a valuable opportunity to study how norms are internalized and contribute to change in practices for three reasons: they challenge the sovereignty of states, making their generalized acceptance counterintuitive in that they contradict the most basic understanding of state interests; these norms are significantly sedimented in international laws and supporting IOs; and, their acceptance will necessarily limit the pursuit of at least some other values.²²

Whereas accounts of the formation of international regimes tend to divide into realist and liberal (idealist) approaches²³, explanations of the impact of regimes on state behavior focus on coercion or persuasion. The persuasion camp is exemplified in the work of various neoliberals and constructivists.²⁴ The coercive model holds transforming the ratio of cost and benefits can generate state compliance without changing the preferences of states. The same holds for the liberal approach to international institutions, although the motivating factor is interests rather than power. For neoliberals, international regimes can be created and strengthened based on common interests because they accept absolute gains calculations by states, as opposed to realists who view

20 Nickel, James W. “Is Today’s International Human Rights System a Global Governance Regime?” in *The Journal of Ethics*, vol. 6, 2002, pp. 353-71, at 371.

21 Moravcsik, 2000, 219.

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states as calculating based on relative gains.²⁵

Goodman and Jinks have supported their constructivist argument for the importance of acculturation by giving several reasons against coercion models. They hold that coercion is ultimately an unpersuasive account of the international human rights regime because this regime simultaneously exhibits normative isomorphism in terms of a general tendency of states to subscribe to human rights treaties and, at the same time, evidences persistent decoupling on the part of many states. This decoupling, the distance between formal standards and implementation cannot be explained by the coercive model of regimes. Coercion would logically have a greater impact on smaller states, but decoupling occurs in both major and minor powers. In addition, for human rights, legal isomorphism does not correlate with the presence of significant external pressures.²⁶

A constructionist or cognitivist approach centered on the roles of persuasion and acculturation accepts the possibility of strong institutionalism because the interests of actors can change such that norms can become accepted values. Consider:

“In particular, institutionalized cooperation is likely to initiate a process in which actors' egoism is dampened and actors increasingly respect, rather than merely take into account, the legitimate interests of others. In the process, cooperative norms are internalized, even when, initially, they were viewed by the actors as mere instruments to further their individual goals.”²⁷

States are understood as socially embedded with the capacity to develop an identity in relation to others, on the basis of interests considered to be legitimate.²⁸ As role-players in a community, the accepted norms of that community are essential measures for the determination of their goals and policies.²⁹ Such lines of thinking can account for altering levels of state compliance with international norms through a variety of mechanisms. States can be persuaded to change their behavior in order to achieve congruence with values that reasonable discourse supports. This follows from active reflective evaluation of rules. Engaging states to do so occurs by convincing

25. Hasenclever, Adreas, Peter Mayer and Volker Rittberger, “Integrating Theories of International Regimes,” *Review of International Studies* 26 (2000): 3-33, at 7-9.

26. Goodman, Ryan and Derek Jinks, “Incomplete Internalization and Compliance with Human Rights Law,” *The European Journal of International Law* 19 (2008): 725-48.

27. Hasenclever *et al.*, *supra* note _____, at 11.

28. See Wendt, Alexander, “Collective Identity Formation and the International State,” *American Political Science Review* 88 (1994): 384-96.

29. Franck, Thomas M., *The Power of Legitimacy among Nations* (New York: Oxford University Press, 1990).

authorities, teaching them the logical foundations of certain values such that they come to understand their interest in them, and orienting them to reflect on and justify any already existing rejection of the norms. Moreover, deliberative discourse based on rational argumentation instills in states an understanding of the expectations of the international community, a conception of their role in that society, and their status in the group. By doing so it opens the possibility of laudatory or condemnatory treatment by transnational networks and increases the cognitive costs of non-compliance.³⁰

In the following section, various attempts to empirically establish the effects of international law on the socialization of states in acceptance of human rights norms will be discussed. It will be demonstrated that international law alone not only does not effectively socialize states but it can also be strategically manipulated by states who intend to continue or increase repression in the form of rights violations. Following that, in section four, the paper will turn to an examination of the role of transnational advocacy networks to clarify how compliance is cultivated, offering an account of how the decoupling of law and practice can be resolved through a process of socialization.

III. Socialization and International Law -

Empirical studies of international law have concluded that law does have an impact on international relations.³¹ Multiple scholars have investigated the issue of the behavioral effect on states of international law, nevertheless, this scholarship has not reached any firm conclusion regarding the ability of international law to both regulate and socialize states independent of the mediation of domestic political factors.

On the one hand, several scholars have argued that human rights treaties foster other human rights instruments and constitutional adoption, thereby demonstrating socialization in the international community in terms of norm adoption. For example, Henkin has demonstrated that the Universal Declaration of Human Rights led to the elaboration of the ICCPR and ICESCR.³²

30. For a typology of mechanisms for the socialization of states see Goodman, Ryan and Derek Jinks, "How to Influence States: Socialization and International Human Rights Law," *Duke Law Journal* 54 (2004). Note that the argument offered here diverges from their approach in that the focus on persuasion through reasoned argumentation incorporates elements.

31. For example, see Slaughter, Anne-Marie et al., "International Law and International Relations Theory: A New Generation of Interdisciplinary Scholarship," *American Journal of International Law* 92 (1998): 367.

32. Henkin, Louis. *The Age of Rights* (New York: Columbia University Press, 1990), 19.

Today there are nine core treaties, that have expanded the human rights regime, to normalize the promotion or protection of certain specific rights such as the CAT, or to support specific at-risk groups such as women (CEDAW) and migrants (ICMW).³³ Hannum has elaborated on how the UDHR has been incorporated into national constitutions.³⁴ Moreover, there is empirical research to show that the form of constitutions themselves has become normalized.³⁵ The case has been made that acceding to treaties allows domestic interests to mobilize support for putting norms into domestic law.³⁶

Moreover, certain empirical studies normative congruence exists between international human rights treaties and national constitutional law, indicating a normalizing of the international standards through their reiteration at the national level.³⁷ Norms may be incorporated into national constitutions in order to 'signal' commitment.³⁸ It is also possible that international human rights treaties can have an indirect effect on states' behavior even without ratification. This line of argumentation has been developed by Cassel who posited that rights treaties create a common language of rights, normalize the universality of the standards, and provide support to human rights advocates and activists.³⁹

However, there is also argumentation that posits that acceptance of the international human rights regime actually reduces the implementation of international standards. This has been argued both conceptually and empirically. In terms of the first, the reasoning is that subscription to norms may be the case because human rights standards allow for rhetorical manipulation by a state uninterested in compliance.⁴⁰ Empirical comparative studies of the law have found that adherence

33. Note that the timeline for the creation of these treaties and their entering into force demonstrates the progressive development and strengthening of the international human rights regime. For a complete list of the nine core human rights treaties see: www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx

34. Hannum, Hurst. "The Status of the Universal Declaration of Human Rights in National and International Law" *Georgia Journal of International and Comparative Law* 25 (1995): 287-89.

35. Tushnet, Mark. "The Inevitable Globalization of Constitutional Law" in *Virginia Journal of International Law* 49 (2009): 985-89.

36. Simmons, Beth A. *Mobilizing for Human Rights: International Law and Domestic Politics* (Cambridge: Cambridge University Press, 2009). See also Forsythe, David P. *The Internationalization of Human Rights* (Lexington, Mass.: Lexington Books, 1991).

37. Elkins, Zachary, Tom Ginsburg and Beth Simmons "Getting to Rights: Treaty Ratification, Constitutional Convergence, and Human Rights Practice" in *Harvard International Law Journal* 54 (2013): 61-95.

38.

39. Cassel, Douglas "Does International Human Rights Law Make a Difference?" *Chicago Journal of International Law* 2 (2001): 121-35.

40. For example, Kennedy, David, "The international human rights movement: part of the problem?" *European Rights Law Review* 3 (2001): 245-67.

to international human rights treaties may have negative effects on human rights practice. For example, Hathaway argues that repressive regimes exploit the 'expressive' gesture of support for norms in treaty ratification in order to persist practices of rights violations.⁴¹ States can exploit the appearance of acquiescence while maintaining the reality of noncompliance.

Hill has argued that empirical evaluations of the effects of treaties must account for domestic institutional conditions that might affect compliance in order to demonstrate that signing the treaty really did impact human rights practice rather than itself result from changing domestic conditions. In his comparative research he found that ratification of the CAT correlated with worsening respect for the right to not be tortured. On the other hand, joining CEDAW did seem to be result in improved rights for women. Notably, he concludes that the difference between the two has to do with the difference in types of rights. State authorities attempting to eliminate political dissidence are seeking to maintain a hold on power, where respect for women's rights can be improved without disrupting the internal power structure of a state.⁴²

Neumayer concludes with an emphasis on the strength of civil society in domestic politics in accounting for the degree of impact of treaty ratification. Without civil society mobilization treaty ratification often correlates with deterioration of respect for rights. However, “[R]atification of human rights treaties often does improve respect for human rights, conditional on the extent of democracy and the strength of civil society.”⁴³ Transnational advocacy networks are essential to pressuring the transformation of formal commitments to human rights into actual practice. Moreover, domestic civil society and interest groups interact with formal ratification in order to catalyze the compliant behavior of states.⁴⁴ Elkins, Ginsburg, and Simmons conclude their empirical study by asserting:

“We find that, while both treaties and constitutions exert their own direct influence on compliance, there also appears to be a distinct mediating effect of constitutions on actual rights protection. In other words, one way in which international norms work is *through* adoption in national constitutional texts. This result is consistent with a theory that

41. Hathaway, Oona “Do Human Rights Treaties Make a Difference?” in *Yale Law Journal*, 2002, pp. 1935-2042; Hill Jr., Daniel W., “Estimating the Effects of Human Rights Treaties on State Behavior,” *The Journal of Politics* 72 (2010): 1161-1174; Neumayer, Eric “Do International Human Rights Treaties Improve Respect for Human Rights?” *Journal of Conflict Resolution* 49 (2005): 925-953.

42. Hill supra note ____ at 1172.

43. Neumayer, supra note _____ at

44. Hafner-Burton, Emile and Kiyoteru Tsutsui “Human Rights in a Globalizing World: The Paradox of Empty Promises,” *American Journal of Sociology* 110 (2005): 1373.

constitutions and international treaties supplement each other in terms of enforcement mechanisms. Adoption of a norm at both levels increases the probability that the norm will actually be enforced, probably—in our view—because it provides multiple monitors and alternatives in which to challenge government behavior. ...We know from recent analyses that domestic mobilization is crucial for the efficacy of international norms. We have shown that constitutions provide one channel through which domestic mobilization can occur.”⁴⁵

Nielsen and Simmons conclude their study of what motivates states to ratify international treaties by noting that governments are not driven by international rewards.⁴⁶ Hafner-Burton provides several more reasons to turn to domestic politics and the construction of state interests and identity. First, she argues that treaties do not correlate with respect for human rights in terms of existing protection. Second, domestic factors such as the judiciary and civil society have an important impact. Third, authoritarian regimes are uninfluenced by international rights law regimes. Finally, she agrees with the idea of a decoupling of legal commitments and actual behavior in that in repressive regimes legal commitment often correlates with increased rights violations.⁴⁷

The above discussion of the impact of international human rights law and ratification on compliance leads to two conclusions. First, there is widespread 'decoupling' in the form of legal commitments and actual human rights practices. Second, there is a need to mobilize national and transnational advocacy networks in civil society to further the implementation of international human rights law. Turning to persuasion through reasoned argumentation we can avoid what Marsh and Payne have conceived of as, “[T]he myopia inherent in expecting the adoption of laws and treaties to necessarily promulgate human rights norms without accompanying cultural change.”⁴⁸

Focus on the international human rights regime leads to a challenge to the coercion approach and support for the persuasion-centered approach to state compliance. Without effective persuasion international and constitutional law protecting rights is often disregarded in the practice

45. *Ibid*, p. 92. (note 11)

46. Nielsen, Richard A. and Beth Simmons “Rewards for Ratification: Payoff for Participating in the International Human Rights Regime?” available at <http://www.isanet.org/Publications/ISQ/Posts/ID/1457/Rewards-for-Ratification-Payoffs-for-Participating-in-the-International-Human-Rights-Regime>

47. Hafner, Burton, Emilie M., “International Regimes for Human Rights” *ILAR Working Paper* no. 11 (2011). Available at ilar.ucsd.edu/assets/001/503025.pdf

48. March, Christopher and Daniel P. Payne “The Globalization of Human Rights and the Socialization of Human Rights Norms,” *Brigham Young University Law Review* (2007): 665-687.

of states. Moreover, a lack of persuasion combined with treaty ratification and constitutional provisions manifests as a decoupling of law and implementation, which enables states with an intentional or incidental strategy for persisting in rights violations while avoiding national and international condemnation.

Models of political socialization provide a needed supplement to predominant explanations of the impact of the international human rights regime. The utility of applying political socialization as an explanation of the impact of the human rights regime becomes apparent in terms of providing an account of how norms are legitimized in the process of domestic politics through the activity of transnational advocacy. These models can be furthered through an elaboration of the means to foster the socialization of human rights norms on the basis of deliberation or reasoned argumentation.

III. Resolving Decoupling: Accounting for Socialization Beyond Formal Commitment -

Successful norm socialization requires overcoming the strategic adaptation of repressive states. It has been demonstrated that the international human rights regime demonstrates a certain amount of socialization in terms of the acceptance of norms by states in terms of both treaty ratification and constitutional congruence with international law. Nevertheless, multiple cases of serious violations remain, ranging from persistent repression of authoritarian regimes to massive egregious violations of conflict situations. Moreover, the analyses of the impact of human rights treaties have variously supported the notion of the importance of transnational advocacy as formal acquiescence does not necessarily result in compliant behavior and may even correlated with deterioration of respect for rights.

In this section, we turn to socialization models which focus on the role of transnational advocacy networks to examine an empirical account of the mechanisms of changing state behavior and to offer a prescription for remedying the problem of decoupling—the distance between formal agreement and actual behavioral compliance. To do this we will utilize the 'spiral model' developed by Risse and Sikkink.⁴⁹

49. Risse, Thomas and Kathryn Sikkink "The socialization of international human rights norms into domestic practices: introduction" in Risse, Thomas, Stephen C. Ropp and Kathryn Sikkink eds. *The Power of Human Rights: International Norms and Domestic Change* (New York: Cambridge University Press, 1999).

The model elaborates upon three means of norm socialization and acceptance and attempts to empirically verify their varying importance at different stages of the socialization process. These mechanisms are, first, instrumental or strategic reasoning which propels the bargaining process and initial adaptation by the state. Second, moral reasoning and argumentation allow for increased awareness and altering the perception of values. Finally, institutionalization and effective habituation drive and signal the completion of the internalization process. If effective, internalization and habituation will concord with the internalization of the norm in the form of a state that sees the norm as integral to its identity and behaves as such.

In this essay, we take the approach that the model is useful for overcoming the problem of decoupling as it explains how general or formal principles become norms exhibited in the actual behavior of states. The international law of rights is, in its foundation, intersubjective in that it is only relevant in a community of states. This community is always endogenously stratified or bifurcated into members who are worthy of the admiration of others and those considered to have 'lesser' states. States are not lauded on the basis of power alone but on their ability to attain good governance. The spiral model seeks to explain the mechanics that cause states to care about their identity in a system of society of states characterized by unequal inclusion, and to identify with the norms of good government. This follows from applying the conception of political socialization of individuals to the level of states.⁵⁰

Supported by empirical studies looking at a variety of cases, the model holds that the process of human rights norm socialization begins in response to national and international coercion. The change in the state that results is only strategic adaptation and does not reflect acceptance of the norms on the part of national authorities. Despite this, it is contended that this initiates a process of identity transformation where norms are maintained on the basis of real belief. The import of rational argumentation is that it legitimizes norms through their incorporation into national identity. Consider:

“Moral discourses in particular not only challenge and seek justifications of norms, they also entail identity-related arguments...The logic of discursive behavior and of processes of argumentation and persuasion rather than instrumental bargaining and the exchange of fixed interests prevails when actors develop collective understandings that form part of their identities and lead them to determine their interests. Those principled beliefs carry

50. “Political socialization produces a political self...It is political socialization which molds and shapes the citizen's relation to the political community.” Dawson and Prewitt, 1969.

the day when they persuade actors in potentially winning coalitions to interpret their material and political interests and preferences in light of the idea and to accept its social obligations as appropriate.”⁵¹

To reiterate, the process of norm socialization begins with purely strategic adaptation on the part of the state. In the early stage of the process if the pressure to transform subsides then the state will return to repressive policies. However, if maintained for sufficient time, avowed acceptance that results from the gesture of strategic adaptation generates the expectation that the behavior of the state becomes consistent with the ideology evident in the law and discourse. At this point, further socialization occurs on two levels: identity in the international system where some states attain reputability, and domestic demand resisting and criticizing persistent hypocrisy. Risse and Sikink hold that repressive regimes, “[B]ecome entangled in arguments and the logic of argumentative rationality slowly but surely takes over.”⁵²

The spiral model offers a narrative for the gradual staged socialization of rights. Phase 1, 'Initiation of Network Activity and Repression' is characterized by the initiation of activity by the transnational advocacy network and resultant repression on the part of the target state. The movement to the second stage of the process through the integration of transnational advocacy pressures (principally pressures from established democratic states and INGOs) and domestic demands.

Phase 2 of the process is 'Denial' on the part of the target state. Increased international shaming and publicizing of the repressive behavior of the target states are met with the declarations of the national government that the norms themselves are not valid, that the record of rights violations is not accurate, and the affirmation of sovereignty as a higher value. Importantly, the authors concede that the national government will respond by mobilizing nationalist sentiments to resist socialization pressures, and that the initial stages of the process can have counterproductive effects.⁵³ The proponents of the spiral model contend:

“We count the denial stage as part of the socialization process because the fact that the state feels compelled to deny charges demonstrates that a process of international socialization is already underway. If socialization were not underway, the state would feel no need to deny the accusations that are made.”⁵⁴

51. Risse and Sikink, *supra* note ____ at 13.

52. Risse and Sikink, *supra* note ____ at 16.

53. Risse and Sikink, *supra* note ____ at 22-23.

54. Risse and Sikink, *supra* note ____ at 23.

The third phase is a period of 'Tactical Concessions' by the national government and requires a conjunction of transnational pressures and a susceptibility to that pressure by the target state. If such conjunction exists, the target state will seek superficial reforms as a means to diffuse international pressures. Whereas phase 2 can begin because the behavior of the target state is put on the international agenda, phase 3 occurs because increased efforts of transnational rights advocacy coincide with increased vulnerability on the part of the target state. Notwithstanding the need for transnational pressures to initiate this phase, its completion is predicated on organized domestic opposition.

Regarding strategic adjustments, such cosmetic alterations provide space in which domestic opposition can mobilize and publicize its own criticism of the state. Therefore, the importance of Phase 3 of the process is not a shift in the behavior or norms of the target state, but to provide grounds from which domestic opposition can organize a critical challenge to the repression from the state. Effectively, although the adaptation of the government remains merely strategic, the state is no longer in control of its internal political climate.

At this point, the national government can opt for a return to repression fracturing the network of domestic rights advocates, freezing the socialization process, and eroding the capacity of local actors to mobilize. Nevertheless:

“While such actions can temporarily nip an incipient domestic opposition in the bud, this rarely suspends the spiral indefinitely, but mostly delays it. The additional repression is costly to the government in terms of its domestic legitimacy, and may validate international criticism by revealing more clearly the coercive power of the state.” (26)

In this essay, we diverge from the two accounts of political socialization heretofore discussed in order to emphasize the importance of the role of domestic civil society actors in the overall network of transnational advocacy, and to iterate the need for civil society actors to further efforts towards argumentative rationality. On the one hand, socialization models such as Risse, Ropp, and Sikkink discount the impact of efforts by domestic actors promoting rights, and instead focus on the international system of treaties and international NGOs. On the other hand, the model of socialization articulated by Goodman and Jinks finds persuasion to be a distinct process from acculturation and argues that the latter better explains the socialization of states.

For example, Risse and Sikkink hold that the socialization process is complete with habituation of the norms, and describe it as little more than sustained practices and institutions of the prior stage termed 'prescriptive status'. They argue that evidence indicates attaining

prescriptive status is not due primarily to the influence of domestic actors such as political opposition or civil society.⁵⁵ Instead, their comparative study across states leads them to conclude that prescriptive status results from the concretization of the various components of the international human rights regime which makes it a transnational advocacy network, such as monitoring international institutions, a complete set of treaties, strong international NGOs, and a human rights component of democratic states. Nevertheless, the problem with this model is that it cannot account for the resistance of certain states in the form of a failure to be influenced by that regime. The authors hold that shaming effectively demotes a state into an 'out-group' in the international community and defiles the international image of the state in a way sufficient for it to have a self-interest in change. They cannot, however, account for the persistence of human rights violations in states where material pressures of the international community generate sufficient shaming over a long period with the effect of only increasing the resolve of the state to maintain its repressive behavior.

Given that phase 4 of the model 'Prescriptive Status' is characterized by rule-following behavior by all relevant domestic actors, it is symptomatic of successful infusion or internalization of the norm, and one would predict that the last phase in the process, habituation, is simply a matter of time. Indeed, reflection upon the spiral model leads to the conclusion that the entire process is encapsulated internally to the phase of tactical concessions. That is because the succeeding stage of 'prescriptive status' involves the promotion of the norm even when the influence of material pressures is absent, and it involves a national government that seeks to validate its own behavior on the basis of the norm.

Cases such as Cambodia provide a problem for the spiral model for several reasons. Despite long-term significant material pressures from donor states, the government has resisted 'normalizing' the standards of international human rights law. Despite ratification of several of the core human rights treaties, Cambodia demonstrates widespread and consistent violations of human rights, exemplifying the practice of 'decoupling' discussed above. The Cambodia constitution is on par with the constitutional law of established democracies and, by law, there is an institutional system of adjudication allowing for remedies of rights violations. In addition, with the creation of the anti-corruption ministry, Cambodia has ostensibly committed national institutions to the protection of human rights in the form of more effective enforcement of its national laws and

55. Risse and Sikink, p. 31.

international treaty commitments.⁵⁶

The elements of 'prescriptive status' most evidently lacking in the authoritarian states are: recognition of the legitimacy of human rights norms by the national government concurrent to an absence of the discursive rejection of rights on the basis of the higher value of sovereignty; competition between national government and domestic opposition that takes the form of argumentation attempting justification; and, sustained effort on the part of the state to remedy abuses demonstrating 'rule-consistent' behavior.

The situation of human rights in violating states compels a re-evaluation of the spiral model since the presence of international material pressures and formal adherence to human rights standards correlates with an absence of human rights protections in practice. This 'decoupling' of *de jure* and *de facto* authority of human rights standards in such cases supports their relegation to stage 3 of the socialization process. As such, both the subscription to different international human rights treaties and the discourse on rights promulgated by the state can be understood as modes of tactical concessions or strategic adaptations by a state that is, in reality, not interested or committed to the protection of human rights. This challenges the model of socialization offered by Risse and Sikkink which classifies existing legal standards supporting rights and government discourse on rights as evidence of prescriptive status.

Nevertheless, once these discursive elements, which are ultimately required for the full socialization of rights, are also understood as tools for the instrumental pursuit of power on the part of the national authorities, it is also possible to make prescriptions for the further socialization of rights which center on the use of persuasion and argumentation. Without state support for the protection of rights domestically and in conditions where international diplomatic and material pressures are ineffectual, the socialization of rights can only occur through the discursive promotion of rights based on argumentation which successfully inculcates acceptance of rights in the domestic society on the basis of the legitimacy of rights standards.

56. For example, the case of Cambodia. The Royal Government of Cambodia has ratified the following core International Human Rights Treaties: ICCPR, ICESCR, ICERD, CEDAW, CAT, and CRC. See <http://cambodia.ohchr.org/EN/PagesFiles/RuleOfLawIndex.htm>. Moreover, the Constitution of the Royal Kingdom of Cambodia clearly stipulates, in Article 31, "Cambodia shall recognize and respect human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights, the covenants and conventions related to human rights..." The 'Anti-Corruption Unit' is itself more a result of civil society pressures than government initiative as evidenced by the 905,000 signatures on a petition requesting the government pass a law prohibiting corruption. See *Cambodia Daily* newspaper April 10, 2008.

Persuasive or argumentative reasoning is capable of furthering the socialization of rights in states that have adjusted by making strategic adaptations. The acceptance of human rights standards into law even without implementation is consistent with a superficial reform which is sufficient to alter the political opportunity structure. Consistent with the formal acceptance of rights into law, the government's efforts to either temper international or national pressures and boost its international reputation, an opportunity is afforded for civil society to mobilize.⁵⁷

McAdam conceives of the 'political opportunity structure' (POS) as composed of four elements: the degree of openness of the institutional system of politics; the arrangements of elites and its stability; the existence of elite supporters of a given issue; and the relative tendency of the state toward repression.⁵⁸ A formal acceptance of human rights norms via treaty ratification or constitutional provisions provides an important opening in the POS for rights advocates such as political opposition and civil society organizations to mobilize.⁵⁹ Drawing on the work of Simmons, it is possible that formal or legal adherence of rights in regimes whose behavior does not comply, creates two modes of alterations in the POS. These are augmenting the individual and societal acceptance of rights by recognizing them as legitimate values, and increasing the perception of the possibility for protecting those rights on the part of domestic actors.⁶⁰

The role of transnational advocacy networks is essential opening POS for reformers. International NGOs provide a context where rights violations are more likely to be monitored and publicized. Moreover, in conditions of transnational networks, domestic civil society aims to gain an awareness of rights, publicize their concerns, and promote the legitimization of rights standards.⁶¹

“Network members actively seek to bring issues to the public agenda by framing them in innovative ways and by seeking hospitable venues. Sometimes they create issues by framing old problems in new ways; occasionally they help transform other actors’

57. Layton, A.S. *International Politics and Civil Rights Policies in the United States, 1941-1960*, 2000; McAdam, D. “On the International Origins of Domestic Political Opportunities” in A. Constan and A. McFarland eds. *Social Movements and American Political Institutions* (Lanham, Maryland: Rowman and Littlefield, 1998).

58. McAdam, D. “Conceptual Origins, Current Problems, Future Directions” in D. McAdam, J.D. McCarthy and M.N. Zald eds. *Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures and Cultural Framings* (Cambridge: Cambridge University Press, 1996), 23, 27.

59. Tarrow, S., *Power in Movement: Social Movements and Contentious Politics*, 1998, pp. 71-90.

60. Simmons, B. “International Human Rights: Law, Politics and Accountability” available at www.iilj.org/courses/documents/2008Colloquium.Session3.Simmons.pdf

61. Hafner-Burton and Tsutsui, “Human Rights in a Globalizing World: The Paradox of Empty Promises” in *American Journal of Sociology*, vol. 110, 2005, p. 1398.

understanding of their identities and their self-interests.”⁶²

Formal commitment to human rights can enable what Elster terms the “civilizing force of hypocrisy” in which international and national civil society can foster the implementation of standards formally accepted through reasoned argumentation in both public deliberation and policy-making forums.⁶³ Domestic civil society can engage in an argumentatively based mode of 'rightful resistance' focused on engendering compliance with commitments and discourse accepted by the state. Because this occurs in line with the officially expressed norms, violent repressive responses from the state can be elided.⁶⁴ Reasoned deliberation can drive a desire to decrease the cognitive dissonance that exists when professed values are not accompanied by consistent behavior. The task of persuasion based on reasoning legitimizing the norm, is to provide state authorities with the desire and means to reduce the distance between rhetoric and real compliance.⁶⁵ Only by way of ideas and discourse can openings in the POS translate into mobilization which augments acceptance of human rights norms.

This section of the paper sought to elaborate on the process of norm socialization in terms of the role played by transnational advocacy networks. The spiral model offers a useful description of the process but fails to adequately address the problem of strategic adaptation by states and explain that it will not perpetually forestall the socialization process. The following section will turn to analyses of the power of ideas and discourse in order to elucidate their capacity for socializing the acceptance of norms.

IV. The Power of Discourse in Norm Socialization -

An account of the influence of human rights regimes which attempts an explanation or recommendation for how they impact state behavior, can be supplemented with an understanding of how international organizations influence states. Research on the power of IOs sheds light on the role that transnational advocacy might play in advancing the socialization of norms. The practice of IOs can contribute to bridging the gap between the law and state compliance through

62. Keck, Margaret E. and Kathryn Sikkink, *Activists Beyond Borders: Transnational Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 1998) reprinted in Richard Little and Michael Smith eds., *Perspectives on World Politics* (New York: Routledge), 171-185 at 177.

63. Elster, J., “Deliberation and Constitution Making” in Elster ed. *Deliberative Democracy*, 1998, p. 97.

64. O'Brien, K., “Rightful Resistance” in *World Politics*, vol. 49, 1996, p. 33.

65. Elster, J., “Deliberation and Constitution Making” in Elster ed. *Deliberative Democracy*, 1998, p. 111.

managing information and engaging in discourse which provides a reasoned foundation for norms and generates public acceptance and commitment. Given that the modes of 'soft' power exhibited by IOs are mirrored in INGOs, this can provide for a more complete understanding of how transnational society can effectively socialize states.

Persuasion is the mechanism of attaining state compliance found in constructivist approaches to international relations.⁶⁶ However, rather than simply viewing law as itself persuasive human rights norms can be understood as affecting the behavior of states by way of transnational networks of actors. As such, the actors that compose the transnational networks and the manner in which they can influence states serve as the link in a model of the mechanisms of regime influence. Whereas transnational advocacy networks support human rights and help to catalyze compliance on the part of states, the power of their persuasion can be understood in terms of rational argumentation. The power of IOs in the process of persuasion is repeated in the activities of transnational NGOs, such that an understanding of that power goes a long way to explaining how a regime that has no direct benefit for states can grow and influence compliance.

Barnett and Finnemore have noted that IOs have two forms of power: rational legitimacy and control over information. In terms of the first:

“The authority is 'rational' in that it deploys socially recognized relevant knowledge to create rules that determine how goals will be pursued. The very fact that they embody rationality is what makes bureaucracies powerful and people willing to submit to this kind of authority.”⁶⁷

This type of authority was first conceptualized by Weber who linked the effect of legitimacy in producing legality.⁶⁸ Whereas traditional or power-based authority is embodied person of the power-holder, rational authority is manifest in the rule that attains fixity as procedure. For the purposes of explaining the impact of international regimes, the second type of IO power is more pertinent. They hold that, “As IOs create transparencies and level information asymmetries

66. The categorization links liberal rationalism to coordination games, realism to coercion, and constructivism to persuasion. For example, Drezner, Daniel W. “Introduction: The Interaction of Domestic and International Institutions” in Drezner ed. *Locating the Proper Authorities: The Interaction of Domestic and International Institutions* (University of Michigan Press, 2003), 11. See also Hurd, Ian “Legitimacy in International Relations,” *International Organization* (1999): 379.

67. Barnett, Michael N. and Martha Finnemore “The politics, power and pathologies of international organizations,” *International Organization* 54 (1999): 695-732, at ____

68. Weber's discussion can be found in Gerth, H.H. And C. Wright Mills, *From Max Weber: Essay in Sociology* (New York: Oxford University Press, 1978), 299.

among states...they create information asymmetries between IOs and states.”⁶⁹

The influence of transnational advocacy is generating discourses that classify information and identities, that fix meaning, and that diffuse norms. The autonomy of the IO is demonstrated in the ability to develop categories and then group individuals into different categories. To classify is to create one or more categories and to locate or place members of the category in that category.⁷⁰ Public deliberation furthered by IOs, INGOs, and their domestic civil society partners can also effectively fix the meaning of different concepts. This is evident in the example of the conception of security. “The consequences of redefining security...Democratization, human rights, and the environment have all now become tied to international peace and security, and IOs justify their interventions in member states on these grounds, particularly in developing states.”⁷¹

Most importantly, the discourse and activities of transnational advocates of human rights can diffuse human rights norms. Indeed this diffusion extends to normalizing the very identity of states. In fact, the IOs helped to determine what it meant to be a state and to ensure the new states enjoyed the condition of territorial integrity by insisting upon it as a norm or value that had to be included in the definition of the state.⁷²

However, in the context of repressive or authoritarian states, the neutrality of the IOs themselves cannot be presupposed. As such, it must first be created and this can occur through deliberative discourses promoted by the members of transnational advocacy networks which provide reasoning to demonstrate that both the functions or goals of the IOs are legitimate and that the information they provide is accurate. Ideas can provide grounds for enabling collective action and for contesting existing modes of authority.⁷³ Most importantly, through reflection and discussion on human rights norms transnational advocates can provide reasoning supporting norms which establish their legitimacy (and neutrality) and engender the foundation for their further socialization. An evaluation of the impact of IOs may:

“[F]ind the role of IOs in implementation to be more, or less, circumscribed depending on the perceived legitimacy of the rules and norms that they promote and on which they are founded. The more that rules and norms are disputed and questioned, the less likely it is that states will

69. Barnett and Finnemore, *supra* note ____ at ____.

70. *Ibid.*, at ____.

71. *Ibid.*, at ____.

72. *Ibid.*, at ____.

73. Blyth, Mark, *Great Transformations, Economic Ideas and Institutional Change in the Twentieth Century* (Cambridge: Cambridge University Press, 2002), 34-45.

follow and accept their carriers.”⁷⁴

Following what Habermas terms 'the active search for contradictions', “moral argumentation can assume—beyond the tasks of testing the consistency of values and the realizability of goals—the productive task of critically developing values and norms.”⁷⁵ The resulting norms are neutral or unbiased and rational given that to be successfully infused in the polity they are based on generalizable interests common to the plurality of the citizenry.⁷⁶ Studies on the impact of international regime participants find that successful IO activities depend on using reasoned arguments to persuade states to comply with their international commitments.⁷⁷ Discourse involves a cognitive component through which reality is understood, as well as a normative component through which reality is judged and norms are justified. By way of communication, policies are legitimized and coordination can occur regarding its implementation.⁷⁸

V. Conclusion -

This paper has had several aims. First, to demonstrate that there is significant disagreement among IR scholars regarding the formation and sedimentation or strengthening of international regimes. The human rights regime and its socialization have not been adequately explained and there is a need for prescriptions to remedy the existing lack of compliance. Second, international law is not only insufficient for socializing states with regard to rights norms but may be used as a tool for persistent repression of rights as evidenced in the decoupling of law and its implementation. Third, studies of transnational advocacy networks provide an account of socialization but lack a prescription for how rights can be promoted in the context of strategic adaptation and intransigence by authoritarian states. Finally, research into the power of ideas and

74. Joachim, Jutta, Bob Reinalda and Bertjan Verbeek, “International organizations and implementation: pieces of the puzzle” in Joachim, Reinalda and Verbeek eds. *International Organizations and Implementation: Enforcers, managers, authorities?* (London: Routledge, 2008), 1-18, at 12.

75. Habermas, Jurgen, “On the Logic of Legitimation Problems” in *Legitimation Crisis* (Cambridge: Polity Press, 1976), 106.

76. *Ibid.*, 108. Note that the approach in this paper differs from Habermasian understandings of legitimacy that view discursive will formation as a solution to legitimacy problems, since the socialization of human rights in authoritarian states requires engendering a legitimacy crisis which compels state reform.

77. Risse, Thomas “‘Let’s Argue!’ Communicative Action in World Politics,” *International Organization* 54 (2000): 1-35.

78. Radaelli, Claudio M. and Vivien A. Schmidt “Conclusion,” *West European Politics* 27 (2004): 364-379.

discourse provides key insights into how norm socialization occurs, and more specifically, how the international human rights regime can be strengthened. It is hoped that transnational advocacy networks supporting human rights will increase their activity and focus on the discursive legitimation of norms in order to generate a transformation in rights-violating states. This appears to be the most fruitful strategy for promoting and protecting human rights in cases where states have strategically adapted to external and internal pressures without corresponding implementation of international law.