

1. Introduction: contesting human rights – pathways of change

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Human rights scholarship, and human rights themselves, stand at a crossroads: expanding and contracting, deepening and collapsing. In this project, we identify fundamental changes in pathways to the realization of rights and the quest for human dignity. The volume will interrogate the decline of democracy as a guarantee and now often a threat to rights; widening issues of translation and domestication of the international regime; and the decline of a consensus on the ethos of cosmopolitan universalism that may foster backlash – but also seems to spark dialectical debates on inclusion and solidarity.

Our inquiry is organized around the following questions which are pivotal to contemporary human rights scholarship:

1. *Pathways of influence*: How do human rights circulate and gain traction in particular places/communities? Human rights scholarship outlines the main dynamics of how transnational human rights pressure works: interdependence, diffusion, legalization, framing, and shaming. In an era of widespread democratization, access to information, and mobilization in social capital, domestication and citizenship may also be a parallel pathway that was not envisaged in the original international institutions and transnational campaigns.
2. *Human rights regimes as pathways and challenges*: What does recent scholarship tell us about the diversification of the global institutions of the international human rights regime to new treaty bodies and processes, regional courts, multi-purpose multilateral bodies, local implementation and other venues of rights adjudication beyond criminal tribunals? What are the potential and pitfalls of these evolving pathways in the international regime – and its diffusion and translation to the local level?
3. *Emerging contradictions*: Where and why do we see contradictions in the logics or impact of the global human rights regime: human rights foreign policy, humanitarian action, and NGO campaigns? Can pathways be

contradictory or reversed? How can human rights advocates cope with backlash and stagnation in the rights 'won' by past generations?

This chapter will analyze the changes in these overlapping pathways in the twenty-first century world order. Following this chapter, essays by Philip Ayoub (Chapter 3) and Amanda Murdie et al. (Chapter 2) map the attention dynamics of framing of human rights and of transnational advocacy diffusion of new norms, while George Andreopoulos (Chapter 4) considers the responsibility of international organizations. In the next section, we consider new or evolving institutional pathways for human rights: peer review (Elizalde, Chapter 5) transnational jurisprudence (Sandholtz and Feldman, Chapter 6), domestic legal incorporation (Meili, Chapter 7), and urbanization (Goodhart, Chapter 8).

We examine emerging contradictions and responses in traditional pathways of rights: NGOs (McMahon, Chapter 10), regional norms and courts (Hillebrecht, Chapter 9), and foreign policy (Apodaca, Chapter 11).

MAPPING THE EFFECTIVENESS OF THE INTERNATIONAL HUMAN RIGHTS REGIME

Although recent human rights scholarship has grappled extensively with testing, tracking, and critiquing the effectiveness of human rights efforts, the diffuse orientation and methodology of inquiry has yielded disparate conclusions (Hopgood, Snyder, and Vinjamuri 2017). Case studies document important reforms resulting from human rights campaigns, while statistical studies of human rights treaties show uncertain or even contradictory impact. Vulnerable populations like child laborers and indigenous peoples win new rights and remedies, but massive war crimes are met with impunity – and the resulting refugees are denied protection that was possible to some extent in a prior period. Some historical analyses conclude the regime is ineluctably undermined by its basis in an unsustainable liberalism, while others show a more hopeful diffusion, translation, and reinvention (Brysk 2018).

Therefore, it may be useful to first distinguish: effectiveness of what? And effectiveness for what? In attempting to gauge the effectiveness of the rights regime, human rights literature and policymakers mix assessments of the overlapping phases and levels of analysis of the impact of human rights initiatives on the development of international mechanisms, state compliance with international law or campaign demands, and human rights fulfillment on the ground for vulnerable individuals and populations. Studies variously trace the human rights response to the growth or

activities of some set of global institutions such as international criminal tribunals – often labeled “the human rights regime” – that serve as a proxy for multiple channels of international influence: treaties, resolutions, international organizations’ monitoring or programs (such as Universal Periodic Review), regional courts, legalization and judicial autonomy, domestic incorporation, sanctions, diplomacy, and transnational campaigns. It is not surprising that some of these measures work better than others, some move in different directions, most appear to have “scope conditions,” and interactions among international institutions and with domestic efforts are generally significant, sometimes inconsistent, and insufficiently studied. In this project, we will highlight some understudied or emerging channels of horizontal or dialectical international influence such as regional courts for Sandholtz and Feldman (Chapter 6), and Hillebrecht (Chapter 9).

To interpret studies of what works, the question of which elements or processes are effective is cross-cut by the question of how to track their influence. Conceptually, we may assess the impact of these diverse drivers of rights promotion indirectly by state compliance with an international standard; directly by a measurement or account of change in repressive behavior; indirectly by improvement in the condition of a vulnerable population (which may be influenced by multiple factors); or more structurally by improved access to some empowerment right or outcome such as voting or education. Beyond diverse methodologies to measure impact, different benchmarks may yield different results – whether we are measuring human rights standards, incidents, patterns, or conditions may yield very different results (see Landman 2013). Improved monitoring and rising expectations may create a false impression of worsening violations (Sikkink 2016). Moreover, these disparate approaches of any single measure tend to obscure more complex patterns of interactive effects and longer-term processes that are the most likely pathways of influence – our chapters emphasize this pattern, especially the shifting agenda and contexts discussed by Meili (Chapter 7), Goodhart (Chapter 8), and Ayoub (Chapter 3).

Moving to the impact on rights *for what*, our assessments also shift depending on how and how broadly we define rights. There are logical and overlapping differences between the impact of any form of international pressure on civil-political versus economic and social rights, on war crimes (governed by international humanitarian law, IHL) versus chronic government abuse, and between state-perpetrated repression and “private wrongs” by non-state or interstate actors such as labor abuse and gender violence. For example, Hafner-Burton (2008) suggests that adoption of international treaties does improve respect for political rights

but not physical integrity conditions. Meanwhile, some studies suggest that decentralized non-state or para-state violence responds less readily to international pressure (Risse, Ropp, and Sikkink 2013), but others highlight specific forms of transnational mobilization that can be uniquely effective for potentially positive-sum rights of women or workers that do not directly threaten state sovereignty (Brysk 2005; Hertel 2017). In this volume, Murdie et al.'s positive account of advocacy for children's rights contrasts with Apodaca's cautionary tale of foreign policy (Chapter 2, 11).

In tandem, it is also important to differentiate the dimensions of respect for any kind of rights: protection, empowerment, accountability, and remedy (Ruggie 2009). An international humanitarian intervention may bring protection without empowerment, a domestic effort that rejects international influence is likely to garner empowerment but unlikely to sustain accountability, many regime transitions are criticized for offering remedy without accountability in the restorative justice model, and many vulnerable or minority populations worldwide still struggle for protection even though they have gained both empowerment and accountability through democratization, civil rights movements, or peace settlements. Our chapters by McMahon (Chapter 10), Hillebrecht (Chapter 9), and Andreopoulos (Chapter 4) explore these tensions between contrasting facets of rights and responsibilities.

PATHWAYS TO CHANGE

Although the literature on effectiveness is wide-ranging and disparate, some patterned lessons do begin to emerge about pathways to change. Regime type and conflict are parameters for response. Numerous studies suggest that democracy and peace make states more receptive to international influence – albeit sometimes more during transitions than under stable configurations (Mitchell and McCormick 1988; Davenport 1999; Simmons 2009). Moreover, the impact of international initiatives for human rights is cumulative and interactive through combinations of institutions from above and campaigns from below, growing waves of advocacy and reform, law and policy, and empowerment and protection (Dancy 2013; Simmons 2013; Krommendijk 2015; Sandholtz and Stiles 2009; Hillebrecht 2014). Thus, the multi-level pathways charted by Sandholtz and Feldman (Chapter 6), Goodhart (Chapter 8), and Meili (Chapter 7) have special salience.

Within those parameters, studies show that the impact of international rights advocacy depends on a combination of the state's capacity, will, and incentives to change repressive behavior – or leverage over non-state perpetrators. Domestic political will depends in turn on the power

relations of domestic factions such as dissident elites, civil–military splits, democratizing institutions or agencies, and rising political representation of minorities and social movements. Compliance with human rights norms is conditioned by a combination of national regime type, legal structure, institutional networks, level of freedoms, and social mobilization (Cardenas 2007). Domestic capacity to respond may constitute an even more important filter (Mitchell 2004; Haschke 2014), and is affected by the centralization of perpetrators, as well as the level and location of limited sovereignty (Risse, Ropp, and Sikkink 2013). Rights are strongest when new claimants are incorporated into stable and internationally responsive domestic institutions, or new norms and responsibilities can be extended above and below the state. Conversely, rights are weakest in poorly governed states and issue areas like refugees that fall in the “citizenship gap” (Brysk and Shafir 2004; Brysk 2018). A fundamental lack of state capacity or will is present in all of the backlash cases discussed by Hillebrecht (Chapter 9), McMahon (Chapter 10), and Apodaca (Chapter 11).

How do these relationships of influence work, when they work? We can extend the Keck and Sikkink (1998) model that identifies transnational action pathways of symbolic politics, information politics, leverage, and institutionalization to the broader human rights regime scholarship to outline dynamics of linkage, diffusion, legalization and institutionalization, communication politics, and “naming and shaming.”

At the most material level, states – and transnational actors like corporations – may respond to human rights claims because they are enmeshed in international accountability through relationships of interdependence. State incentives and will are linked to material and moral vulnerability to international pressure (Risse, Ropp, and Sikkink 2013). This means we must examine and foster linkages of globalization, transnationalism, and international society to promote human rights. But we must also analyze carefully how they work; for example, one study suggests that economic globalization and social globalization may work in opposite directions to influence response to anti-trafficking norms (Cho 2013; Brysk 2009). Moreover, in our volume, the chapters by Hillebrecht and Apodaca both display regression or backlash in material leverage for human rights.

Second, international norms, institutions, and practices may circulate and diffuse to the local level with powerful effects. This can occur through structural emulation, national adaptations, regional convergence, networks, and even sub-national circulation (Sikkink 2011; Greenhill 2016; O’Brien 2013 on the most-different cases of Mexico and Nigeria). Our chapters by Elizalde (Chapter 5), Sandholtz and Feldman (Chapter 6), and Goodhart (Chapter 8) highlight the power of more horizontal network diffusion effects which may be a growing channel of influence.

In a related but distinct vein, legalization and the globalization of law are generally seen to foster greater compliance, but only under certain conditions that may overlap with diffusion but also manifest in domestication or other dynamics (Brysk 2013). At the state level, the presence and strength of an independent judiciary generally improves the efficacy of treaty adherence, and even social movement mobilization, and there are increasing findings of interactions between international norm commitment, grassroots pressure, and domestic institutions (Simmons 2009; Sandholtz 2017; Stobb 2015). The enforcement gap between commitment and compliance for legalization is also conditioned by characteristics of law itself: legal access, architecture, and accountability (Brysk 2017b). Moreover, the efficacy of legal incorporation interacts with the broader policy spectrum such as policing norms and practices (Brysk and Stohl 2018; Uildriks 2009). Meili's work on constitutional incorporation of human rights norms (Chapter 7) adds another dimension to this literature, while Andreopoulos (Chapter 4) and Sandholtz and Feldman (Chapter 6) chart the emergence of various venues of global law.

For the information politics channel of influence, communication power operates through introducing new and effective voices, frames, expertise, and performances of human rights claims that resonate with an audience due to bridging narratives, causes célèbres, and media campaigns (Brysk 2013). Frame contests and the creation of "new rights" influence the power of human rights, as frames generate different international authority and opportunity structures via distinct treaty mechanisms and human rights organization brands and resources (Bob 2009). Different rights frames both evoke and are constructed by mobilization, which influences state response directly and shapes new regime repertoires – such as Special Rapporteurs. Distinct frames like genocide legitimate intervention – while frames like religious freedom tap into the foreign policy of particular promoter states (Brysk 2017a). For Murdie et al. (Chapter 2) and Ayoub (Chapter 3), the framing of rights appeals facilitates or constrains monitoring, mobilization, and state response on repression, child marriage, and LGBT rights alike across the Mideast, Africa, and Europe.

Finally, symbolic politics gains impact by the original and modal activity of the international human rights regime: naming and shaming. The power of world society is seen as despite cultural differences and political controversies, global public opinion is now broadly supportive of the principles and civic proponents of human rights (Ron et al. 2015). Cross-national studies establish that "citizens will perceive the human rights conditions in their country more negatively when their country is shamed by the international community" (Ausderan 2014, p.81). Moving from perception to mobilization and impact, Hawkins (2002) traces how naming

and shaming are effective to advance human rights during democratic transitions, and Anne Marie Clark shows how states respond to Amnesty castigation combined with treaties even in non-democracies (Clark 2001). However, Murdie and Davis (2012) suggest that shaming works only if there are numerous local groups and third-party support, while Hendrix and Wong (2012) report that naming and shaming improves outcomes only in autocracies. Thus, the interactions and scope conditions of this pathway are less consistently understood than legalization or leverage. Among our authors, McMahon's work challenges the shame pathway in hierarchical NGO relationships in the Balkans, while Elizalde's conversely affirms the power of peer pressure over some sovereign states.

TWENTY-FIRST CENTURY CHALLENGES

In the twenty-first century, what has changed in each predicted pathway of impact? Those who decry the "endtimes" of human rights assert that human rights are rooted in an unsustainable package of liberal world order that does not translate into compliance under changing conditions of political economy and nationalism (Hopgood 2013). Others point to the persistence of diffusion and legalization and insist that in the long run these trends will overcome the retreat from rights (Sikkink 2016). We can observe and analyze system-wide changes in the role of regime type, the hierarchical dynamics of diffusion and leverage, and the global ethos for rights claims.

For the past generation, the scope conditions for the effectiveness of human rights have improved – but without commensurate enhancement of human rights, shifting the historic patterns observed for the twentieth century. The documented decline in interstate war historically linked to genocide and repression has been lamentably replaced by deadly protracted and murky internecine conflicts characterized by unfathomable levels of war crimes and sexual violence, from Central Africa to Mexico. Moreover, the rise of democracy worldwide has been blunted by overlapping combinations of stalled transitions, regressions, illiberal democracies, populism, and rising authoritarianisms that undermine civil liberties and treatment of minorities. Hillebrecht's work (Chapter 9) chronicles the chilling effect this has had on regional courts and even weakening second-wave democracies that were regime rights-promoters. The declining democracy effect is also visible in chapters by McMahon (Chapter 10), Ayoub (Chapter 3), and Apodaca's discussion of the Trump budget (Chapter 11).

As a further source of contradictions and challenges, twenty-first century neo-liberal economic globalization has shifted the impact of

linkage and material interdependence, fostering challenges to legal institutionalization: from Brexit to withdrawal from the ICC. This genre of nationalist backlash is notable in Eastern Europe and the Americas in discussions by Hillebrecht (Chapter 9) and McMahon (Chapter 10). However, the decline of liberalism and the rise of nationalism has had less impact on diffusion and framing, which explains in part disparate views on the persistence of progress. Thus, while challenges to neo-liberal globalization heighten the challenge of domestication of human rights, our chapters by Meili (Chapter 7), Ayoub (Chapter 3), and Goodhart (Chapter 8) show creative channels of national level legalization, counter-framing, and grassroots networking.

Perhaps the most protean shift in the regime's leverage is the meaning and valence of cosmopolitanism as an ideology of world order associated with human rights. Moreover, the leverage of framing has shifted due to the mobilization of counter-frames due to securitization (Brysk and Stohl 2018). With the deflation of universalism, we see a contraction of former regime dynamics – but a rise of horizontal solidarity, translation, and reconstructions of alternative vocabularies of human dignity. New visions of inclusive citizenship chronicled by Ayoub (Chapter 3), and Goodhart (Chapter 8), as well as notions of global responsibility cited by Andreopoulos (Chapter 4) – however imperfectly realized – suggest the potential for a post-cosmopolitan rights ethos.

FOSTERING RIGHTS RESILIENCE

If shifts in the parameters and underlying global conditions have changed the efficacy of some pathways to rights, what can we do to reconstruct the rights regime? Conceiving of human rights as a toolbox of strategies rather than a static bundle of norms and institutions means that rights understandings and practices can be shifted and expanded in new directions. Our review of human rights scholarship suggests that greater consciousness of interactive and cumulative aspects of the regime will advance this project.

In the interstices of the foundering liberal interstate order, we can learn from positive initiatives that address the sub-national dimension of the citizenship gap. The regime has made unexpected progress in setting norms, expanding access, and promoting responsibilities above and below the state: from indigenous rights to prior informed consent for development projects to the spreading doctrine of state “due diligence” for gender violence (Brysk and Stohl 2017). At the same time, we must recognize the increasing and intersectional vulnerability of non-citizen “people out of

place” worldwide and the near-collapse of the refugee system (Brysk and Stohl 2018).

Turning to the changing scope conditions, on a cautionary but constructive note, rights promotion can refocus on capacity-building that fosters autonomous and rights-based legal institutions. The rights regime has also shifted governance leverage through increasing recognition of the interdependence between law and other facets of public policy such as urban planning or water, along with rights-based development, health, and environment networks.

At the normative level, the presence of new voices in an enlarged public sphere has made some progress contesting parochial populisms, reactionary fundamentalisms, and securitization. The repertoire of “rights talk” can adapt via translation of global norms into vernacular concepts and repertoires to build local support, bridging new to established frames that appear to improve national responsiveness (like “femicide”), and a symbolic politics of rehumanization (Merry 2006; Anaya and Fray forthcoming; Brysk 2017a).

Global governance and cosmopolitan commitments are in transition in the twenty-first century with shifting parameters of political economy, security, and ideology, but aspects of the international human rights regime can adapt – and even lead. The limits are real, but so is the resilience and reinvention.

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