



UiO : **Faculty of Law**

University of Oslo

Human Rights, Civic Actors and Democratization

From Commitment to Compliance

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Lecture 5

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Discussion of Thomas Risse, Stephen C. Ropp and Kathryn Sikkink (eds). *The Power of Human Rights. International Norms and Domestic Change* (Cambridge University Press, 1999); *The Persistent power of Human rights. From Commitment to Compliance* (CUP, 2013)

- The project has two main purposes:
- To develop a **general theory** that explains processes of making which international human rights norms function in national political systems through processes of socialisation
- Suggest a five-phase “spiral model” /the boomerang theory of human rights change
- Test this out on empirical cases
- *Not just to show that ideas and norms matter, but which ideas matter, why and how. And to explain variations among different cases*

Main trust of the theory

- Explore conditions for establishing/functioning of networks of domestic and international actors that may bring change in domestic human rights practices and institutions
- Takes issue with the ***realist position in IR theory*** , modernisation theory to political development, analytical links to the ***Stimulus-Response model*** of Claude (1976)
- Human rights for empirical testing: The right life (interpreted as right to be free from extra-judicial execution and disappearances,; freedom from torture and arbitrary arrest and detention (with exceptions – E Europe assembly rights, SA racial equality)
 - A problem?
- Human rights to be constitutive elements of modern statehood

A five-stage model of human rights regime socialization

- Starting point: REPRESSION
- Second stage/phase: DENIAL
- Third stage/phase: TACTICAL CONCESSIONS
- Fourth stage/phase: PRESCRIPTIVE STATUS where the state accepts international norms
- The final stage/phase: RULE CONSISTENT
- The “BOOMERANG” theory, or “Spiral model”

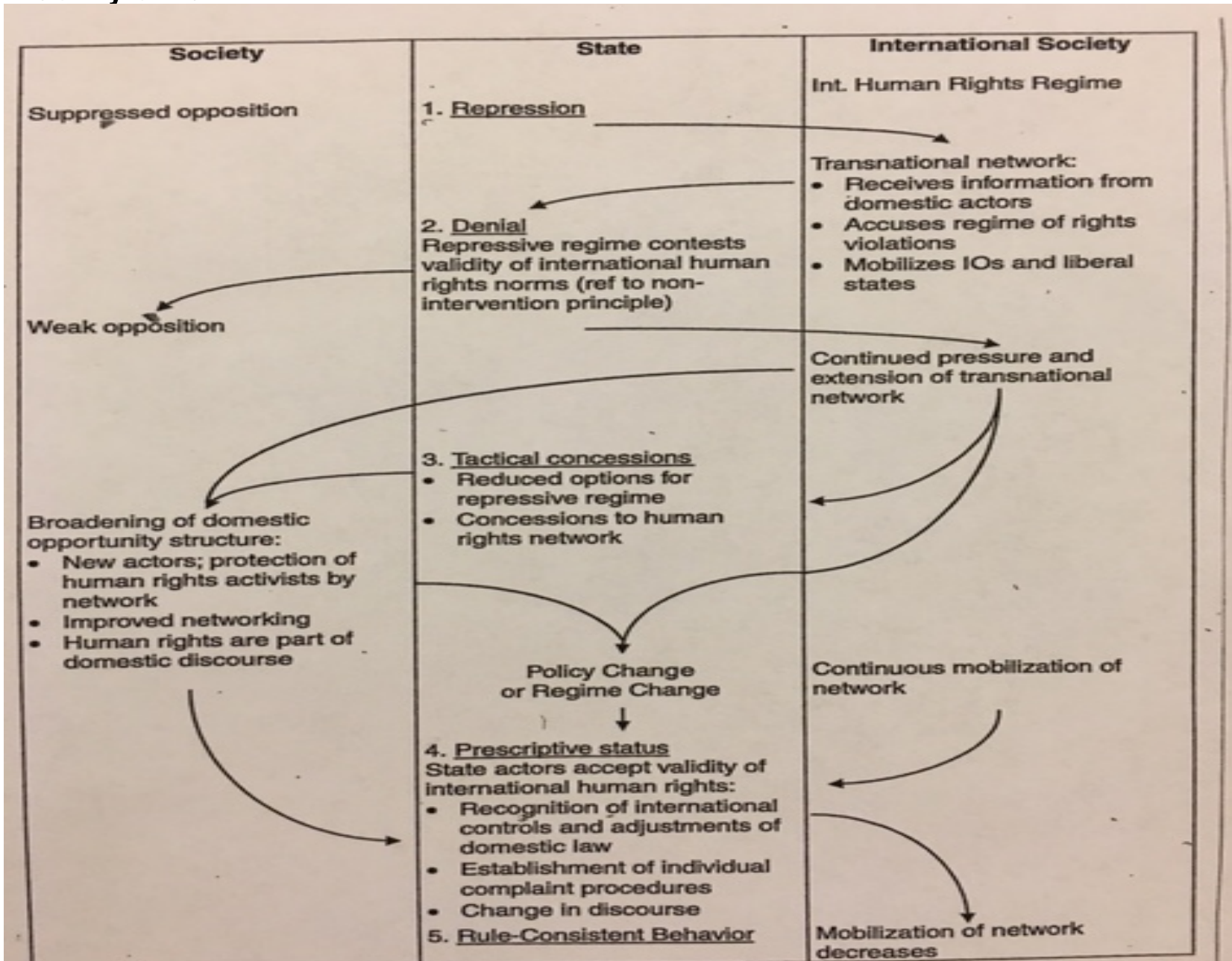


Figure 1.1 The "spiral model" of human rights change

Actors, modes of interaction

Dominant actors in each phase

Phase 1: Transnational HR networks (TNHRN)

Phase 2: TNHRN

Phase 3: TNHRN/ domestic opposition

Phase 4: Nat. government/Domestic society

Phase 5: Nat. government/Domestic society

Dominant mode of interaction

Instrumental rationality

Instrumental rationality

Instrumental rationality
Rhetorical action
Argumentative rationality

Argumentative rationality
Institutionalisation

Institutionalisation and
habitualisation

Comments

- Phases 1-2: processes of *pressure* and ***instrumental adaptation***
- Phases 3-4: ***communicative rationality*** (cf. Habermas)
- Phases 3-4: Socialization through persuasion, and acceptance
 - If successful, this represents ***communicative power***
 - Operates through ***three modes of social interaction***
 - Instrumental adaptation, strategic negotiations
 - Moral conscious-raising among elites, argumentation, dialogue and persuasion
 - Institutionalization and habituation

Main findings

1. Transnational pressure have made a very significant difference
2. Transnational pressure represents necessary but not sufficient condition
3. The international effort to strengthen domestic networks is crucial
- conditions for this today?
4. Different modes of socialization operates in different phases
5. The role of norms and legal references and instruments are more important in IR theory than the Realists have assumed
6. External sanctions (economic etc) can be productive as well as counterproductive
7. Constructive dialogue does not seem to work in the REPRESSION and DENIAL phases

Critical comments

- Strengths: focus on social movements, agency and balancing agency and structure (regime type)
- Portrays decision-makers as passive “responders” to movement pressure rather than active agenda setters
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- Can state actors also go through socialization processes from the “start” through learning, adaptation to international norms, regime change from within (the Gorbachev factor)?
- Limited set of rights covered
- Eurocentrism? (“What can Western governments do?”)
- **Other: Checkel**

Comparative human rights research – power and civic action

Bård A. Andreassen & Gordon Crawford (eds.) *Human Rights, Power and Civic Action: Comparative Analyses of Struggles for Rights in Developing Societies* (Routledge 2013, *Research in Human Rights Series*)

Background

- The missing dimension of power in the human rights and development literature
- Much emphasis on ‘empowerment’, but not on power as an obstacle to securing rights
- Statement: Need for understanding how “deeply embedded power relations and structural (are) barriers to securing rights” in development (Pettit and Wheeler 2005: 5)

Project aims

To understand the interrelationship between **forms** and **uses** of power and **the impact** (positive/negative) on human rights

Academic: Introduce power analysis into human rights research

Practical: Develop insights and lessons for human rights advocacy

Objectives

- To examine **HR/power/civic action** in differing socio-political contexts
- To identify obstacles and constraints on securing rights for people living in poverty
- To explore whether rights promoters have **challenged** and **altered** power structures
- To contribute to debates about the relationship between CPR and ESCR, and between **governance** and human rights

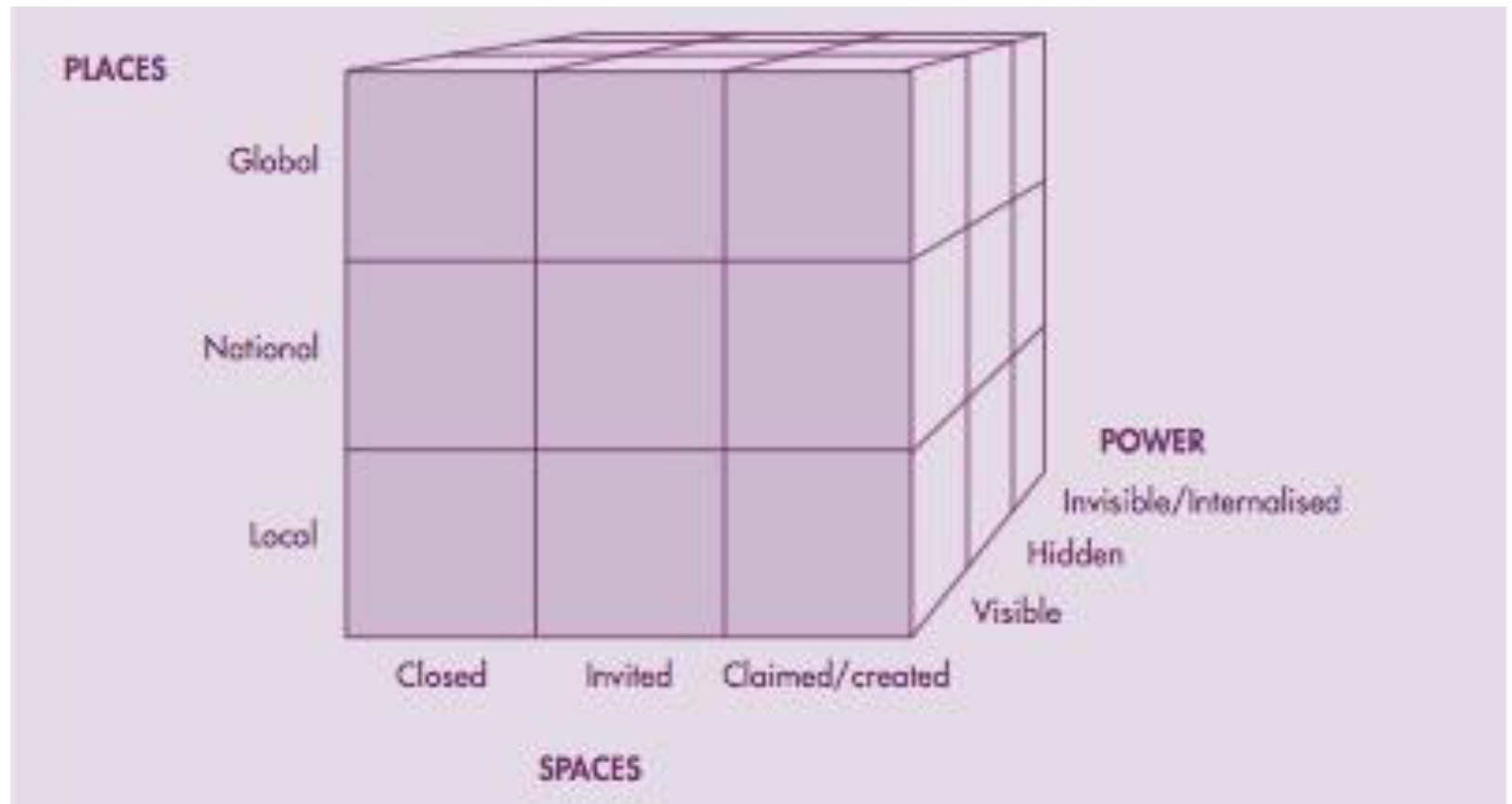
Research Questions

- In what ways have *struggles for human rights* in contexts of poverty been *constrained* by power relations and structural inequalities?
- In seeking to secure rights, how and to what extent have non-governmental human rights promoters been able to build *countervailing power* and *challenge power structures* at both local and national levels?
- To what extent have rights-promoting organisations been successful in *transforming power structures* and *securing rights*, especially for vulnerable groups and people living in poverty?

Qualitative methodology

- **Organisational studies** in 6 countries: i.e. in-depth case studies of selected rights-promoting organisations within distinct country contexts
- **Country selection**: differing political contexts with regard to political regime and degrees of democratisation, and thus varying ‘opportunity structures’ for civic action
- Adopted ‘**power cube**’ as analytical tool

Gaventa's power cube



Giddens's and structuration

- Social structures exist, but produced, reproduced, challenged and transformed by human agents
- Therefore continuous cycle or dialectic in which actors influence structures and structures shape actions – social/political interaction- power exchange
- **Structuration** as a bridge between structure and agency

Research starting point

- Undertake power analysis to gain critical insight into how power structures limit claims for human rights. Yet agency remains central.
- Awareness of coercive power potentially leads to social action to challenge and transform such power structures, thereby enhancing prospects for realising rights
- What did we find regarding power constraints?

Visible power

Widespread as explicit or implicit state action, including failure to reform customary practices

Examples

- Opposition to Domestic Violence Bill in Ghana, esp. from Women's Minister.
- Resistance to lobbying for land reform in Kenya – both from government / regime and hidden power of clientelist networks – ie nested power
- In China, ZLAS – women's rights organisation – had to negotiate with the visible power of the party-State and the All China Women's Federation, a mass social organisation.
- Increasing role of visible corporate power

Hidden power

Pulling strings behind the scenes, agenda setting

Examples:

- In Ghana, WACAM up against hidden power of mining TNCs. Used financial resources to influence local power structures (local governments, chiefs, community leaders) and gain their support.
- White farm-owners in post-apartheid South Africa were able to secure the collusion of local officials in a conflict with farm workers
- Hidden power of patriarchy in several case studies
- ‘Hiddenness’ vs. transparency – a basic issue in a human rights critique of governance

Invisible power

Harder to perceive; concerns attitudes, life views, behavioral norms, often embedded in social traditions and customs

Examples:

- Ghana – Bill on Domestic Violence (2003-2009)
- Patriarchal structures, socialization of inequality, found across the cases
- China: ‘Stigmatizing the weak’, e.g. migrant workers, and their ‘internalization of prejudice’, undermining their self-esteem and capacity to mobilize for rights
- Patterns of invisible power – hard to change and also how to strike a balance between critiquing repressive practices without undermining the legitimacy of the entire culture?

General findings on power constraints

Confirmed the significance of dominant power as an impediment to human rights realisation and that, as a result, claims for rights have met with limited success

- Power constraints found in all political contexts
- Visible power – operates in more legitimate forms (state institutions, parliament) in open political systems, but tends to be exercised in more repressive ways in closed and authoritarian systems (Zimbabwe, China).
- Different forms often nested and reinforcing each other
- Visible power – more prevalent when used to defend rights related to elite interests (e.g. land)
- Hidden and invisible power – typically prevalent in constraining claims for women's rights

Challenging power and building countervailing power

How did organizations challenge power?

Three dimensions:

- **Civic action strategies**
- **Spaces of engagement**
- **Forms of countervailing power**

Strategies: Cooperation, confrontation, alliance-building

- **Cooperation** in all contexts
- **Pragmatism** – Zimbabwe & China – little scope for opposition
- More scope for success in open and democratic contexts
- **Confrontation** – mobilisation and public protests
 - Abhalali baseMjondolo (shack dwellers movement) in SA
 - WOZA in Zimbabwe
- **Alliances and networks** particularly for small groups (CBOs) who sought shelter among larger groups. WACAM in Ghana – local to national to international linkages and solidarity
 - “Host institutions”

Spaces of engagement: closed, invited, created and claimed spaces

- Strategies depended partly on **political and social spaces** that organizations operate in: trying to prise open 'closed spaces' spurs more confrontation; engaging in invited and claimed spaces leads to cooperation; creating spaces is often related to networking and alliance building
- **Claimed spaces**: 'The Teaser' – Domestic Violence Coalition, Ghana
- **Invited spaces**: WACAM invited by Newmont Mining Ltd to be an observer on Resettlement Negotiation Committee and Responsible Mining Alliance. WACAM declined both invitations as wary of co-option

Forms of countervailing power

- **Power to** – organization and mobilization of local people (e.g., Abahlali, South Africa against forced eviction)
- **Power with** – alliances
- **Power within** - individual capacity to act, enhanced self-esteem

Transformation of power structures?

Some successes but limited:

- *Legislative changes*, e.g. Domestic Violence Act in Ghana
- *Changes in public policies*, e.g. KLA and land reform policy
- *Institutional changes*, e.g. Domestic Violence Secretariat and Victims of Domestic Violence Management Board in Ghana
- *Cultural changes*, e.g. greater awareness of women's rights in both autocratic (China, Zimbabwe) and democratic (Ghana, Kenya) contexts

Qualifications

- Not all organizations sought transformative change, but rather supported victims of injustices or were issue-based
- Where organizational mobilization has contributed to some changes, exact impact and attribution are difficult to assess
- Changes have been limited, and power imbalances remain which continue to constrain HR advocacy

Concluding thoughts

- Human rights-based approach – rise and decline? Another failed strategy? The normative debate
- Significance of coercive power as impediment to human rights realisation is confirmed
- If not addressed, then HRBA becomes ‘tamed’ and ‘depoliticised’
- Non-governmental rights promoters shown awareness and determination to challenge powerful interests
- Bringing power back in and recognising HR struggles as power struggles, i.e. re-politicisation of rights-based approaches