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Transnational dynamics of human rights violation and protection

Inaugural lecture by

prof. dr. Daniel C. Thomas

on the acceptance of his position as professor of International Relations

at Leiden University

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Mijnheer de Rector Magnificus, beste collega's, waarde studenten, dames en heren,

dear friends and family,

Just over a year ago, when I was considering the offer of the Chair of International Relations at Leiden University, I was attracted by the prospect of working at an institution whose long-standing motto is "Bastion of Freedom."

Today, I am humbled to give this inaugural lecture in the same hall where, seventy-four years ago, Professor Cleveringa defied the Nazi occupation, urging his students to remain true to the Dutch tradition of equality and non-discrimination.

That struggle against repression, against the denial and violation of the most fundamental human rights, remains with us today. But as scholars and teachers, we have a special opportunity to help sustain the values -- at home and abroad -- that Professor Cleveringa so bravely defended in this hall.

In that spirit, I would like to talk today about what social scientists have learned about how and under what conditions it is possible to promote greater respect for human rights across state borders. This has been one of my principal research and teaching themes for many years, and it remains so here at Leiden.

I will focus today on research related principally to two sets of rights -- physical integrity rights such as freedom from arbitrary arrest, torture, and extrajudicial killing, and civil and political rights such as freedom of assembly, speech, and religion. Scholarship of the sort that I will be discussing has examined the dynamics around economic, social and cultural rights, but to a far lesser extent, so I will mention it only in passing.

Toward the end of my remarks, I will highlight a recent development that social scientists did not foresee and that threatens to rollback much of the post-1945 effort to promote respect for human rights by establishing new international norms and accountability mechanisms.

Origins

As all of you know, there is nothing new about the use of power and even terror to elevate one group of people over another, sometimes culminating in violent abuses of human dignity and physical well-being. From ancient history to the latest newspaper headlines, there is no shortage of evidence of our capacity to mistreat our fellow human beings.

We also know, of course, that the same historical record contains repeated interventions by philosophers, politicians and activists who sought to create moral and institutional defenses against these abuses.

But for most of human history, whether or not individuals and communities were subject to such abuses depended almost entirely on the whims of their rulers and the prejudices of their neighbors. In this regard, the principle of sovereignty, defined since the 17th century as a state's freedom from foreign intervention, is a double-edged sword: though intended to shield us from distant threats to our freedoms, sovereignty also enshrines in law every person's vulnerability to neglect and abuse by local authorities.

The democratic revolutions and expanded franchise of the 18th and 19th centuries seemed to promise a national constitutional solution to this problem. But as Europeans learned in the 1930s and 1940s, national institutions can easily be converted from bulwarks of justice into mechanisms of terror.

And we're not talking only about authoritarian regimes. Many types of governments around the world rely on practices that make a mockery of internationally recognized "human rights." Even electoral democracies have engaged in systematic violations of human rights, sometimes for extended periods of time (Davenport 2007, 2013). Sometimes these abuses are sparked by specific threats to constitutional order or public safety, but other times they are simply a convenient way to sustain an illegitimate social order or to maintain a ruling clique's hold on power.

After the horrors of the Holocaust were revealed, and in response to the defense lawyers' arguments at Nuremberg that governments are entitled to treat their citizens as

they wish, an effort was made to embed national institutions and practices within an international legal framework designed to protect human rights.

The leaders of this effort, from John Humphreys to René Cassin to Eleanor Roosevelt, believed deeply in the power of international law. They were thus the pioneers of a conceptual paradigm that dominated both practice and scholarship in the human rights field for nearly half a century – the idea that the best insurance against human rights violations at the national level is institutional change at the international level.

Despite what the cynics say, this confidence was not entirely absurd: as legal scholar Louis Henkin (1979) observed, most states obey most international law most of the time.

But the international legal system differs from national legal systems in three important respects:

(1) It is not reinforced by strong normative consensus among relevant actors

(2) It is not supported by authoritative procedures for legal interpretation

(3) It lacks any robust centralized capacity to identify, arrest and punish violators

As a result, international law has far less "compliance pull" than national law.

To make matters worse, human rights law lacks the built-in incentives that have proven remarkably effective at promoting compliance in other areas of decentralized international governance, such as trade and arms control. Governments have little reason to care whether another government is violating the rights of its citizens, so there is no reciprocity dynamic that might motivate them to comply with human rights rules when doing so could contradict deeply held values or jeopardize their hold on power.

As such, if there is any reciprocity dynamic at work in this field, it is unfortunately one that reduces the incentive to respect human rights. Put simply, governments that know they may someday be charged with violating their own commitments to respect human rights have traditionally been reluctant to criticize others for the same violations.

As a result, the broadening and deepening of international human rights law, from the Universal Declaration of 1948 to the International Covenants of 1967, did not bring about any significant change in the internal structures or practices of states. Hence the

popular charge by the 1970s that such documents are “not worth the paper they’re printed on.”

It is therefore not surprising that political scientists in this period were not impressed by international lawyers’ detailed chronicling of the development of human rights law and the international institutions associated with it. There’s no need to study something that doesn’t have observable effects, was the general attitude in my discipline.

The First Wave

In retrospect, we can see that the problem was not that human rights law was always ineffective, but that political scientists at the time had no conceptual framework for understanding its effects. This was due in part to political scientists’ ignorance of international law – which was then quite widespread, but is now shrinking (Dunoff and Pollack 2013, Reus-Smit 2004, Simmons and Steinberg 2006).

But it was due principally to the deep divide within my discipline in this period between those who focused on relations between states (the prevailing definition of ‘international relations’) and those who focused on the internal structures and dynamics of states (the sub-field of ‘comparative politics’). In other words, much of the politics of human rights was invisible to political scientists because our discipline was blind to cross-border relationships between state and non-state actors (‘transnational relations’).

But my discipline’s conceptual blinders did not prevent human rights activists and social movements around the world from recognizing that the spreading web of political and legal commitments to the protection of human rights could be a powerful tool in their struggles against political repression. Opponents of one-party Communist rule in Eastern Europe and the Soviet Union starting in the mid 1970s, followed by opponents of military rule in Argentina and Chile in the 1980s, began to frame their mobilization, both at home and across borders, in terms of their states’ compliance with their commitments to respect human rights.

As I and other political scientists began to note in the early 1990s, these transnational campaigns were proving surprisingly effective at using international human rights norms to mobilize local actors, recruit foreign allies, entrap repressive state authorities in their legal commitments and thus move them toward political reform.

This new research agenda was founded on two simple assumptions: First, states value acceptance within international society, and this acceptance depends in part upon rhetorical and behavioral commitment to human rights norms that had been agreed at the international level. Second, states are increasingly unable to hide their human rights records or to prevent social mobilization across national borders (Sikkink 1993, Keck and Sikkink 1998, Thomas 1991a, 1991b, 1994).

This did not mean that every signature of a human rights treaty would be followed by radical changes in state behavior: there were still powerful incentives for states to ignore or even to violate human rights. But the aforementioned compliance sensitivity created counter-incentives that could help pro-compliance constituencies to build unprecedented alliances at home and abroad and pressure their leaders for change.

By the late 1990s, this new optimism about the political significance of international human rights law had coalesced into a 'spiral model' of human rights change -- a complex conjecture regarding the dynamics and consequences of transnational pressure on repressive states (Risse, Ropp and Sikkink 1999). This model has five stages:

- In stage 1, <u>state repression</u> motivates local non-state actors to reach out to potential allies abroad in the hope that they would pressure the repressive state to fulfill its legal obligations on human rights.
- In stage 2, repressive states <u>deny the charges</u> against them, claiming either that they are not subject to international norms or that they are already in full compliance with these norms.
- In stage 3, mounting transnational pressure, including clear evidence of non-compliance and a threat of social or material sanctions, leads the target states to make <u>tactical concessions</u>. These concessions could include stronger rhetorical commitment to international human rights norms, expanded space for grassroots

mobilization, and/or greater leniency toward high-profile dissidents or independent media.

- In stage 4, international norms acquire <u>prescriptive status</u>. As states accept the norms' validity, they become entrapped in a new rhetoric, setting in motion bureaucratic and political processes of adaptation.
- In stage 5, states move toward <u>norm-consistent behavior</u>, incorporating respect for human rights into their institutional identity and standard operating procedures and thus ending systemic violations.

While recognizing that repressive states might refuse to change their behavior, or might begin to reform and then clamp down, early proponents of the spiral model (myself included) were generally optimistic that as long as civil society was sufficiently tenacious, repressive states would find it hard to resist the reform dynamic. In short, political liberalization was a likely, if unintended and often even unanticipated, consequence of states' quest for international legitimacy (de Zwart 2013).

Early empirical research seemed to support this expectation: paired case studies from across Europe, Africa, Asia and Latin America indicated that once transnational mobilization set the spiral dynamic in motion, most repressive states moved toward stages 4 and even 5. There were relatively few cases of sustained denial or backsliding after initial concessions. All seven of the cases that reached prescriptive status (stage 4) eventually experienced sustained improvements in human rights protection (stage 5) (Risse, Ropp, Sikkink 1999).

My own study of transnational dynamics in Eastern Europe and the Soviet Union found that local and transnational mobilization around the human rights norms of the 1975 Helsinki Final Act had contributed significantly to the expansion of civil society and the weakening of one-party Communist rule across the region, and thus to the regime changes there fifteen years later (Thomas 1999, 2001, 2002, 2005).

But that was only the first wave of research on the transnational promotion of human rights.

The Second Wave

Before long, other scholars began to unpack the spiral model and examine its various claims in greater detail, often with large-N quantitative methods that had not been used widely in the first wave. Not surprisingly, the results revealed a complex reality – some but not all of it consistent with the first-generation scholarship.

So what has this new research revealed?

First, it tells us a lot about the conditions of state repression – why states violate the physical integrity and the civil and political rights of their citizens:

The simplest and most empirically robust answer is that governments become repressive when they perceive a threat to their survival: perhaps not surprisingly, research shows that repression is highly likely when governments face violent protest, rebellion and other strong forms of dissent (Carey, Gibney, Poe 2010, Conrad and Moore 2010, Davenport 2007, Franklin 1997). And democracy does not seem to help until it is well established: repression is rare in states with robust multi-party competition and strong accountability mechanisms, but common in weak and newly established democracies (De Mesquita et al 2005, Simmons 2009).

Economic variables matter as well. For example, repression is less likely in states with higher per capita GDP (Carey, Gibney, Poe 2010, Davenport 2007, Franklin 1997) and in states that rely on their citizenry for generating revenue, rather than on the extraction of high-value natural resources (DeMeritt and Young 2013). Despite extensive research on globalization, the evidence is mixed regarding its effects on repressiveness: higher trade flows do not seem to affect repressiveness, but high dependency on exports increases repression, and foreign direct investment has mixed effects (Hafner-Burton 2005).

Another contribution of second-wave research is its recognition that violations of human rights are often due to the inability of weak and failed states to protect their citizens, rather than to the choices of strong states that find repression useful (Englehart 2009, Risse, Ropp, Sikkink 2013). This highlights the limitations of the first wave's assumption that it is possible to prevent or reduce violations through social and material sanctions on non-compliant states.

The issue of state choice links directly to the question of why so many states -- including quite repressive states -- sign and ratify international human rights treaties in the first place, including treaties with relatively strong enforcement mechanisms. As one scholar (Simmons 2009) asked, why do states give their domestic and foreign opponents the tools with which to flagellate them?

There is some evidence that attributes this decision to a state's exposure to particularly compelling arguments (Hawkins 2004), but the consensus view among those who study this issue is that states make strategic choices. Some governments will ratify a human rights treaty because they value its content and expect to comply (which makes commitment cost-free) while others value the treaty's content but don't ratify because of particular constitutional obstacles. This leaves the 'strategic ratifiers' -- the large number of states that ratify human rights treaties because the gains are clear and immediate (reducing peer pressure, avoiding criticism) while the costs are unclear or distant (Simmons 2009).

Hence the concern that, in the absence of social mobilization, international human rights law enables repressive states to gain international legitimacy through symbolic commitments with very little costs – what sociologists call 'decoupling' between words and acts (Hafner-Burton, Tsutsui and Meyer 2008). This suggests that global expectations matter to states, but they remain sensitive to political costs. In fact, we know that states are sometimes willing to withdraw from human rights treaties when compliance becomes too costly (Helfer 2002). Taken together, this presents a real challenge to those who wish to promote respect for human rights by naming, shaming, and sanctioning those who fail to comply with their commitments.

Nonetheless, second wave research has confirmed its predecessors' general conjecture that international treaties on human rights create important opportunities for non-state actors to press for political change. For example, a multi-method analysis of political change in Argentina and Guatemala found that transnational pressure to respect human rights led the military dictatorships there to make critical reforms despite persistent and powerful cross-cutting incentives that favored continued repression (Cardenas 2007).

A major quantitative study of five major human rights treaties – civil and political rights, economic and social rights, torture, women's rights, children's rights – found that

treaty ratification resulted in significant improvements in states that are partially democratic with strong rule of law and judicial independence. Well-established democracies have better human rights records overall but -- the same study found -- their performance is not significantly affected by treaty ratification, presumably because they already offer adequate opportunities for local actors to mobilize for change (Simmons 2009).

Second-wave research also reveals that naming and shaming is remarkably effective. A large-N study of Latin American governments' responses to domestic mobilization between 1981 and 1995 found that criticism by foreign NGOs, religious groups and governments had a significant effect on reducing repression, and that this effect was reinforced by but not dependent on foreign direct investment (Franklin 2008). Similarly, shaming by the United Nations and by human rights NGOs has a strong negative correlation with the severity of politically-motivated mass murders (Krain 2012) and government killing of individual political opponents, though it appears to be more effective at preventing such atrocities than at stopping them (DeMeritt 2012).

All told, this research supports the view of repression as a choice – as a tactic that governments select (or don't select) in response to particular incentives. This should be encouraging to those who seek to promote respect for human rights by manipulating the incentives faced by governments around the world.

That said, the second wave of human rights research has left much to be learned about the 'compliance gap' – the empirical discrepancy between states' legal obligations to respect human rights and their actual behavior. In fact, our assessment of the gap is significantly affected by changes in how key information is gathered and reported (Clark and Sikkink 2013) and by differing approaches to how the resulting data should be analyzed (Dai 2013). As a result, scholars disagree over the size of compliance gap and whether it's growing or shrinking over time.

Furthermore, research focused on the most repressive states in the international system shows that they do not become less repressive after ratifying human rights treaties, leading some to conclude that human rights law fails precisely where it's most needed (Hafner-Burton and Tsutsui 2007).

In addition, the transnational effects of treaty ratification are far more conditional that we recognized in the 1990s. We now know that transnational mobilization for human rights compliance is most effective when targeted on new or partial democracies, on states with effective control over their own bureaucracies, on highly centralized states, and on states with high social and material vulnerability to sanctions. In contrast, stable autocracies and full democracies, weak and failed states, federal and decentralized states, and states with low social and material vulnerability all require different forms of human rights promotion (Risse, Ropp, Sikkink 2013).

NGOs, foreign ministries and international organizations committed to promoting respect for human rights would be wise to incorporate these research findings into their strategies. Failure to do so would mean wasting precious resources, at best, and at worst, selecting tactics that make things worse rather than better. For example, sanctions tend to undermine human rights conditions in weak states, but certain forms of capacity building are likely to help.

But making such tactical adjustments will not suffice.

Toward a Third Wave?

This brings me to the point I made at the outset -- the transnational politics of human rights have changed in recent years in ways that were unforeseen by most scholars in this field.

As I said earlier, scholarship on why repressive states ratify human rights treaties generally views this is a strategic choice. On the other hand, scholarship on transnational pressure for human rights compliance, both first and second wave, tends to view the states that are subject to this pressure as passive structures, incapable of responding strategically to such a direct threat to their political survival. As such, the literature incorrectly assumes, at least implicitly, that transnational dynamics are automatically conducive to the protection of human rights. The question is just by how much.

This is an important mistake. Leaders of authoritarian regimes do not gain power or in stay in power by being passive. They are fully capable of strategic action, including deliberate steps to confront their opponents and restructure the political environment in which they operate (Svolik 2012).

If we want to understand the dynamics and the conditions of human rights promotion, we must therefore learn more about how repressive states are shielding themselves from pressure by restructuring transnational dynamics in their favor. In other words, how they are turning the transnational dynamic on its head. This should be the third wave of human rights research in political science.

As a first step in this direction, I will now take a few minutes to discuss four ways that certain states are using transnational dynamics to shelter themselves from pressure to respect human rights:

First, some states are seeking to reverse the de-legitimation of repressive states that has occurred through the creation and spread of international human rights norms. This **defensive legitimation** takes various forms. By embracing human rights norms on paper while ignoring them in practice, states seek to gain the legitimacy that goes to treaty members without paying significant compliance costs. Sometimes this involves selective compliance: one study found that states targeted by transnational naming and shaming tend to reduce highly visible violations while increasing less visible forms of intimidation and abuse (Hafner-Burton 2008). This may explain why autocratic regimes that have ratified human rights treaties remain in power longer than non-ratifiers (Hollyer and Rosendorff 2012).

Another form of defensive legitimation is counter-shaming: regimes that are the subject of naming and shaming by foreign governments and international organisations frequently respond by highlighting (or exaggerating) human rights violations elsewhere. This was a common Soviet practice during the Cold War. In recent months, not long after a UN Commission of Inquiry issued a scathing report on systematic and mass abuses of human rights in North Korea, the government in Pyongyang released its own report on racism, poverty and social exclusion in the United States (Nebehay and Miles 2014, Korean Central News Agency 2014). Apart from a number of serious distortions and outright errors, the

North Korean report contained enough accurate material to be taken seriously in the world media, thereby diffusing pressure on China to rein in its Korean ally (Zurcher 2014).

A final form of defensive legitimation is when repressive governments embrace the global trend toward the establishment of "national human rights institutions" while quietly ensuring that their own NHRIs have weak mandates, insufficient autonomy, and inadequate funding, and increasing repression to ensure that their citizens don't get the 'wrong' idea. This is another example of the 'decoupling' of global scripts and local practice (Cole and Ramirez 2013, Koo and Ramirez 2009).

The second way that states are using transnational dynamics to shelter themselves from human rights pressure is through a form of **normative entrepreneurship**. Many of the same states that seek international legitimacy by wrapping themselves in the rhetoric of human rights are simultaneously working behind the scenes to weaken the newest normative innovations associated with human rights while promoting alternative norms. For example, since the Rome Statute establishing the International Criminal Court entered into force in 2002, and the UN General Assembly approved the 'responsibility to protect' in 2005, a handful of states have worked in the UN to resist the consolidation of a norm of international responsibility for human rights.

But these states are not just playing defense: since the Asian values debate of the 1990s and especially since the financial crisis of 2008 led to economic stagnation in the world's liberal democracies, autocratic states around the world have openly advocated a model of socio-economic development that prioritizes common goods over individual rights. Their goal, of course, is to challenge the hegemonic position of government focused on respect for individual rights and thus to reduce domestic and foreign pressure for compliance with international human rights treaties.

The third way that states are seeking to exploit transnational dynamics is through **institutional capture** -- the campaign by repressive states to shelter themselves from compliance pressure by taking over international institutions responsible for human rights monitoring. Some would say that we shouldn't exaggerate the novelty or importance of this tactic: after all, membership of the UN Commission on Human Rights was hardly limited to rights-respecting states between its establishment in 1946 and its closure in 2006, and

research shows that the actions of the Commission were significantly less politicized after the end of the Cold War (Lebovic and Voeten 2006).

However, the replacement of the Commission by the Human Rights Council in 2006 was supposed to ensure that the UN's lead human rights body would be composed of rights-respecting states and universal and objective in its activity. Instead, there does not appear to be any change in membership patterns, while the Council's activity appears increasingly politicized. Many of the world's most repressive regimes are regularly elected to the Council, where they and their allies overlook systematic abuses while twisting the language of human rights to justify practices that no neutral observer could square with the principles that the Council is meant to uphold.

Finally, states are seeking to shelter themselves from pressure to respect human rights by changing their domestic legislation in ways that delegitimate and obstruct transnational mobilization. This tactic, which I call **legislative insulation**, involves laws that limit use of social media, impose burdensome requirements on the registration of local NGOs, prohibitions on foreign financing of local NGOs, and criminal penalties for ill-defined acts of treason and subversion. Versions of this tactic are most evident in Russia and China, but Egypt, Turkey and others have adopted it as well. Once this legislation is in place, state authorities can crack down on dissent and block cross-border networking while telling the world that they are upholding the rule of law!

Taken together, these four tactics – defensive legitimation, normative entrepreneurship, institutional capture and legislative insulation – constitute a *reverse* version of Keck and Sikkink's (1998) famous boomerang effect. Unlike the dynamics that originally inspired this term, the reverse boomerang effect is not driven by human rights activists using transnational space to change the behavior of states that rule (and repress) them. Instead, the reverse boomerang effect is driven by repressive states using transnational dynamics to shield themselves from pressure to comply with human rights norms.

If this dynamic gains traction, it could significantly undermine whatever modest progress has been made by the human rights movement over the last 65 years. This is why political scientists working on human rights, like myself, need to make this an important part

of our research agenda. We need to understand this reverse boomerang effect in more detail, and especially how it interacts with the two pillars of the human rights movement since 1945 -- international legal codification and transnational mobilization. There is much to be learned in this area.

Concluding remarks

Having said all that, an *oratie* would not be complete without acknowledging those whose support was essential to my being here today.

In the first place, I would like to thank *het College van Bestuur* of Leiden University for appointing me to the chair in international relations. My thanks also go to the members of the Board of the Faculty of Social and Behavioral Sciences, and to the Board of the Institute of Political Science, who contributed to my appointment. In particular, I would like to acknowledge our faculty dean, Professor Hanna Swaab, and my institute's director, Professor Petr Kopecky. It is truly an honor to be part of this university.

Of course, without the devoted teachers that I have had over the years, I would never have been in a position to apply for this post. This could be a long list, but I would especially like to acknowledge Professors Robert Art and Gordon Fellman from Brandeis University, as well as Professors Peter Katzenstein and Sidney Tarrow from Cornell University. Many years after leaving their classrooms and offices, I am still inspired by them.

But just as my career has been shaped by my former professors, it has also been shaped by my students. From Chicago to Pittsburgh to Dublin, and now Leiden, I have had the privilege of working with students whose interest in international relations and especially the politics of human rights is a constant source of inspiration.

My deepest gratitude goes to the members of my family who are here today: my parents, Susan and Didier, my wife and son, Susanne and Julien. Thank you so much for all the years of loving support and encouragement.

Finally, ladies and gentlemen, thank you all for your kind attention and your interest. As many before me have declared in this hall: *Ik heb gezegd.*

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