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Patchwork compliance: political dialogues about contested human rights

Benneker, V.L.

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Author: Benneker, V.L.
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English summary

Patchwork compliance: Political dialogues about contested human rights

There are very few states in the world, if any, that are in full compliance with human rights norms. Instead, states tend to comply with some articles of a human rights treaty extensively, only up to certain extent with some, and ignore or openly violate others – all at the same time. This is the pattern that this project calls patchwork compliance. Up to now, we have not been able to fully unravel these patchworks of compliance, or clarify the decision-making processes that create them.

This project proposes a political dialogue model to unravel the patchworks of compliance we see in countries around the world. This model helps us to understand how these patchworks are created by political decision-makers, who need to mediate between the mismatching norms of different communities. It demonstrates how and why they do not necessarily choose the norms of one community over the other. Rather, they can rely on political dialogues to create consensus between apparent mismatching norms of the different communities.

In such dialogues, parts of human rights norms are discussed, accepted, rejected, diluted to fit other communities' norms, or traded for other, often unrelated, laws and policies. When successful, such dialogues allow decision-makers to make small increases in compliance with human rights norms. Yet, precisely because the dialogue created consensus between different communities, the outcome will not be full compliance.

Moreover, these political dialogues do not always result in consensus between the different communities. Particularly when communities come to feel they are not sufficiently represented in the dialogue, or their norms are violated, a backlash effect against human rights can develop. Such backlash effects can further complicate decision-makers' compliance choices, lead to decreases in compliance, and make future attempts to increase compliance even more difficult. It is these processes of political dialogue that eventually result in the widely varying patchworks of compliance.

Crucially, political dialogues about contested human rights are not likely to take place in every state or under all circumstances. Instead, whether decision-makers see the need to start such a dialogue is dependent on two scope conditions. First, a state needs to be vulnerable to the international human rights community, and second, its human rights compliance needs to be closely monitored by that community. Such states are more likely to want to avoid pressures or sanctions, and are more likely to need the positive rewards that can come with compliance. A political dialogue then becomes necessary, in order to avoid

sanctions, and to create the consensus between normatively mismatching communities that will allow them to increase compliance.

To understand when and how such political dialogues lead to patchworks of compliance, this study investigated the implementation of the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), in particular Article 7 on women's political participation, and the International Covenant on Civil and Political Rights (ICCPR), in particular Article 18 on religious freedom. It relies on a wide range of empirical data. It includes a quantitative analysis of over 70 countries from around the globe. It also includes an elaborate case study of Jordan, relying on 59 interviews with former ministers and other political actors and experts; 50 personal notes and minutes of meetings; over 180 English and Arabic newspaper articles; 42 human rights monitoring reports; two autobiographies by Jordanian kings; and several academic studies on religious freedom and women's political participation in Jordan.

Findings per chapter

Chapter 2 presents the political dialogue model and outlines the central propositions of this project. To understand how decisions on compliance with contested human rights are made, the chapter details how state leaders can shape decision-making processes over human rights compliance in such a way that an outcome becomes possible which is acceptable to the parties at all levels involved, even if their norms are considered to be a mismatch, and how this results in a patchwork of compliance.

The chapter highlights the fact that decision-makers are likely to start a political dialogue when they wish to or see the need to comply with international human rights norms. This is dependent on two scope conditions: vulnerability to the international human rights community, and how often and how extensively a state is evaluated by other members in the community on its compliance record. Under these conditions, a political dialogue becomes necessary for state leaders to be able to move towards compliance, without being berated or punished by other communities whose norms they see as a mismatch with a human rights norm.

The space that decision-makers have to create consensus within that dialogue is again dependent on two path-shaping conditions, which are the state's vulnerability to the other communities involved, and the specificity of their respective norms. When the state is not very vulnerable to other communities, and their norms are not highly specified, the decision-maker can draw on various different strategies to create consensus and increase levels of compliance. These strategies include selecting specific participants, setting a restricted agenda, persuasion, reverberation and side-payments. However, the higher the

state's vulnerability to other communities and the more specified their norms are, the less space decision-makers have to deploy such strategies.

The theoretical model proposed in Chapter 2 outlines how, eventually, the attempts to create consensus through the use of these strategies result in patchwork compliance; decision-makers implement some articles but ignore or intentionally violate others. Consequently, the strategies used and trade-offs made in political dialogues might make human rights compliance acceptable to the different communities involved, but it also renders human rights protection less than perfect.

In Chapter 3, the first two of the propositions are explored in a quantitative study. It focuses on the relation between the cause, scope conditions and outcome of the political dialogue model. These are normative mismatches, compliance with strongly monitored human rights, and international vulnerability respectively. The findings suggest that normative mismatches are significantly correlated with lower levels of compliance. This finding is consistent for both CEDAW Article 7 and ICCPR Article 18. Yet, further probing of that relation also suggests interesting differences between the two treaties.

In the case of the CEDAW, the relation between the presence of communities with norms that are a mismatch with the Treaty's Article 7 and compliance with that Article is mediated by states' international vulnerability. The relation between the presence of such communities and levels of compliance is weaker in states that are vulnerable to the international human rights community. Or, to put it differently, highly vulnerable states seem more willing to increase their level of compliance, despite a mismatch between their domestic communities' norms and human rights. On the other hand, the relation between mismatching norms and compliance is stronger in states that do not have that vulnerability. That is to say, states that are not vulnerable to international human rights pressures seem more likely to abide to their domestic communities' norms instead. In short, these findings suggest that states with a large presence of communities adhering to norms that mismatch with CEDAW Article 7, but that are also very vulnerable to the human rights community, show higher levels of compliance as compared to states that have a similar presence of such communities, but who are not vulnerable.

This is not the case for the ICCPR; regardless of the extent of international vulnerability, a majority presence of communities whose norms are a mismatch with ICCPR Article 18 is correlated with lower levels of compliance. Even more so, it suggests that vulnerability to the international community actually decreases levels of compliance with the ICCPR articles on religious freedom. This stands in stark contrast to the role of international vulnerability when it comes to the CEDAW. This striking finding, and the way in which political dialogue

as an explanatory model can help us understand it, is further explored in the qualitative chapters 4, 5 and 6.

Chapter 3 concludes by selecting the case study of Jordan, as based on the quantitative findings. Jordan is a highly suitable case study to further investigate the workings of the political dialogue model, because there is a considerable presence of communities whose norms are a mismatch with the CEDAW as well the ICCPR. In addition, both scope conditions of the theoretical model are present; Jordan is vulnerable to the international human rights community, and its compliance with the CEDAW and the ICCPR is strongly monitored.

Chapter 4 investigates the presence of the scope conditions that bring about the start of a political dialogue as well as the conditions that shape such a dialogue. It discusses Jordan during the first years of the reign of its current king, King Abdullah II, who ascended to the throne in 1999. It describes Jordan's vulnerability to the international human rights community, as well as the norm monitoring carried out by and demands for compliance made by the respective UN monitoring bodies, as well as the US. It also describes the space Jordanian decision-makers had to create consensus, by discussing Jordan's vulnerability to the Arab-Islamic international community and several domestic communities, and the specificity of their respective norms.

The chapter then moves on to describe the changes in these conditions that occurred over time from the beginning of King Abdullah II's reign up to 2017. It finds that there are two focal points: first, the period after 9/11, the day of the attack on the United States' Twin Towers, and second, the Arab Spring and its aftermath. The chapter concludes with further specified propositions as based on these findings, that are further investigated in the following Chapters 5 and 6.

The findings discussed in Chapter 5 on the CEDAW support the proposed political dialogue model, and demonstrate its usefulness for explaining decisions on compliance. It finds, first of all, that vulnerability to and norm monitoring by the international human rights community have triggered the start of several political dialogues in Jordan. Through the use of different consensus-creating strategies, Jordan's main decision-makers have succeeded in making a small increase in Jordan's level of compliance acceptable to most communities involved. The chapter thus suggests that increasing levels of compliance is possible and can be made acceptable through political dialogues, even if communities whose norms are a mismatch with human rights have a large majority presence.

The chapter also discusses some unexpected but highly interesting findings. It describes when and how political dialogues can also lead to strong backlash effects. Especially in

instances when the pressure to comply from key partners in the human rights community became very strong, Jordanian decision-makers overstepped other communities' red lines during the dialogue. In this way, the chapter demonstrates how the use of the consensus-creating strategies without sufficiently accounting for communities' norms can have the opposite effect: instead of creating consensus, they can cause strong backlash effects. The evidence in this chapter further suggests that these effects can even force state decision-makers to retract their decision, especially when they are very vulnerable to the mobilized communities.

Chapter 6 discusses ICCPR decision-making in Jordan, and sheds light on the similarities, but also the differences suggested by the quantitative analysis between the CEDAW and ICCPR. Also in the case of the ICCPR, Jordanian decision-makers responded to international vulnerability and monitoring by starting a political dialogue. However, the outcome of this dialogue was very different from the CEDAW. It safeguarded the existing religious freedom for some groups, while legitimizing repression of some other religious groups, and therefore in effect resulted in an overall decrease in compliance. However, also in contrast with the CEDAW, the dialogue on religious freedom did not generate a backlash effect, as some important communities' red lines were carefully respected.

Chapter 7 concludes the project and discusses the differences found between the use of dialogue between the CEDAW and the ICCPR. It highlights the importance of the scope conditions as well as path-shaping conditions during political dialogues. It also discusses some of the surprising findings of the empirical chapters, and uses them to further develop the political dialogue as a model to better understand states' decisions on compliance. This includes an expansion of the possible consensus-creating strategies that decision-makers can use. It also further theorizes the role of the backlash effects. Specifically, it proposes a further elaboration of the political dialogue model, by including the moments when a backlash effect can develop and the reasons why it might do so.

Finally, the chapter suggests avenues for future research, and gives policy recommendations for organizations working on political dialogue, human rights NGOs, as well as states aiming to implement or advocate for human rights.