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Human Rights: The New Agenda

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The emergence of a new model of criminal accountability and of the Responsibility to Protect norm has signaled the change within human rights policies. In addition to new actors within human rights – private actors such as rebel groups and firms – the scholarship on human rights has evolved to include quantitative studies besides previously dominant approach of comparative case studies. This paper reviews the state of the art on human rights and traces the evolution of its scholarship. Afterwards, recognizing the growing influence of the areas of limited statehood on commitment and compliance within human rights, this paper discusses the new agenda for human rights.

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Human Rights: The New Agenda

Thomas Risse and Tanja A. Börzel*

Human rights Democracy

Over the past ten years, human rights policies have changed considerably.[1] First, we witness the gradual emergence of a *new model of criminal accountability* used by states acting collectively through the International Criminal Court (ICC) to hold individuals responsible for human rights violations (Deitelhoff 2006; Sikkink 2011). And a new international norm has emerged, the Responsibility to Protect (R2P), referring to the responsibility of the international community to intervene – by military means, if necessary – if state rulers are unwilling or incapable of protecting their citizens from gross human rights violations (Weiss 2005; Evans 2008). R2P was recently put to a test with the Western intervention in Libya which had been endorsed by the United Nations Security Council (UNSC) and backed by the Arab League as well as the domestic opposition in Libya.

Second, we see an increasing recognition by states and other actors in the human rights field that weak or limited statehood has become a major obstacle with regard to domestic implementation and compliance. *Limited statehood* refers to parts of a country's territory or policy areas where central state authorities cannot effectively implement or enforce central decisions or even lack the monopoly over the means of violence (Risse 2011b).

Third, *private actors* such as firms and rebel groups are increasingly committed to complying with international human rights standards in a direct way rather than through the mechanisms of domestic law. Within companies, for example, we can observe an emerging international norm of corporate social responsibility that embeds human rights standards in corporate doctrine (e.g. Prakash and Potoski 2007; see Deitelhoff and Wolf 2013; Mwangi, Rieth, and Schmitz 2013; regarding rebel groups see Jo and Bryant 2013). Moreover, other private actors, such as families and religious communities, are increasingly recognized as violators and subject to international campaigns (Brysk 2005).

Last but not least, human rights scholarship has evolved considerably. Human rights research of the 1990s was

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1 This paper summarizes Risse and Ropp 2013 and Börzel and Risse 2013.

characterized by comparative case studies as the dominant approach (e.g. Brysk 1994; Clark 2001; Hawkins 2002; Keck and Sikkink 1998; Risse, Jetschke, and Schmitz 2002). This has changed in that researchers using *quantitative methods* have begun to investigate the processes and mechanisms by which international human rights norms spread (particularly Simmons 2009; Hafner-Burton 2008). At the same time, international lawyers have become aware of the increasing social science scholarship on human rights, while political scientists started to take the particular characteristics of law seriously (see e.g. Alston and Crawford 2000; Goodman and Jinks 2003; in general Goldstein et al. 2000).

This paper accomplishes two tasks. First, we summarize the "state of the art" with regard to mechanisms and scope conditions moving actors – state and non-state – from commitment to human rights to compliance. Second, we discuss the new agenda of human rights in areas of limited statehood. Throughout the paper, we refer to the spiral model of human rights change as developed in *The Power of Human Rights* (PoHR) (Risse, Ropp, and Sikkink 1999) and further updated in *The Persistent Power of Human Rights* (Risse, Ropp and Sikkink 2013).

1. From Commitment to Compliance: Mechanisms and Scope Conditions

We focus on the processes leading from commitment to compliance. By "commitment," we mean that *actors accept international human rights as valid and binding for themselves*. In the case of states and apart from *ius cogens*, this usually requires signing up to and/or ratifying international human rights treaties. With regard to non-state actors such as firms, non-governmental organizations (NGOs), or rebel groups, commitment implies at a minimum some sort of statement that the respective actors intend to accept at least voluntary codes of conduct as obligatory (from self-regulation to multi-party "soft law" such as the Global Compact, see Mwangi, Rieth, and Schmitz 2013). "Compliance" is defined as *sustained behaviour and domestic practices that conform to the international human rights norms*, or what we called "rule-consistent behaviour" in the original spiral model.

Over the past decade, quantitative research on human rights has confirmed that ratification of international treaties does not lead to compliance per se (e.g. Keith 1999; Hathaway 2002; Hafner-Burton and Tsutsui 2005). Some authors have even gone so far as to suggest that rights violations became more severe after treaty ratification. This in turn led others to argue that qualitative and quantitative studies on human rights change were reaching different conclusions, with the authors of small-n case studies reaching more optimistic conclusions than those of large-n studies (Hafner-Burton and Ron 2009).

1.1 Social Mechanisms to Induce Compliance

How do the various socialization mechanisms that move the human rights process along go together and hang together? Scholars studying compliance have identified four such mechanisms based on different modes of social (inter-)action (e.g. Risse, Ropp, and Sikkink 1999; Börzel et al. 2010; Hurd 1999; Checkel 2001; Tallberg 2002; Simmons 2009).

Coercion: Use of Force and Legal Enforcement. State and non-state actors can be coerced to comply with costly rules. Coercion does not leave them much choice but to abide by the norms. Two cases need to be distinguished here, though. Compliance with human rights norms can be imposed either through domestic law enforcement mechanisms or through the use of force by external actors. The emerging norm of the Responsibility to Protect ultimately aims at legitimizing such use of force to establish basic human rights standards.

Changing Incentives: Sanctions and Rewards. Coercion, whether applied directly and against a recalcitrant actor's will or as part of a legal enforcement mechanism, undoubtedly needs to be recognized as playing a role in the overall change process. However, we believe that incentive structures play an even more important role in moving state and non-state actors from commitment to compliance. Utility calculations can be changed by raising the costs of non-compliance. This is the rational choice mechanism par excellence insofar as it is up to the respective targeted actor to decide whether or not to change her behaviour in response to the changed incentives. Once again, we can distinguish two cases here. *Sanctions* are negative incentives often used by the international community to punish non-compliance.[2] The same holds true for *rewards*, i.e. positive incentives (such as foreign aid) to enhance compliance with international human rights. The portfolio of most international organizations as well as individual states contains strategies and instruments to induce compliance through incentives (for a discussion with regard to democracy assistance see Magen, Risse, and McFaul 2009). The effectiveness of such sanctions and rewards will depend in part on the material and social vulnerability of the target actors, as we discuss below.

Persuasion and Discourse. PoHR heavily emphasized arguing, persuasion, and learning. If persuasion works, it has an advantage over either coercion or the manipulation of incentive structures in that it induces actors into voluntary compliance with costly rules (see e.g. Risse 2000; Deitelhoff 2006; Müller 2004). Persuasion is also more long-lasting as a socialization mechanism than manipulating incentive structures, since the latter leave actors' interests untouched. However, the successful use of pure persuasion through recourse to nothing but the "better argument" is extremely rare in international affairs. In reality, we mostly observe the use of a combination of arguing and incentive-based mechanisms, particularly when external actors try to induce rule targets – whether states or non-state actors – into compliance with human rights (for a general discussion see Deitelhoff and Müller 2005; Ulbert and Risse 2005).

But even if we do not observe processes of persuasion, discourse matters enormously as a mechanism leading to compliance. Naming and shaming, for example, can only be successful if either the target actors or an audience which is significant for the process actually believe in the social validity of the norm. Moreover, once human rights have become a dominant discourse, this discourse exerts structural power on actors and, as a result, are likely to induce compliance.

Capacity Building. There is a fourth mechanism leading to sustained compliance with international norms which we did not discuss in the original spiral model. Compliance research, however, has always emphasized capacity-building as a pathway to compliance. The "management" approach to compliance points out that involuntary non-compliance with costly rules is at least as important as non-compliance that results from the unwillingness of actors to abide by them (see Chayes and Chayes 1991, 1993, 1995). However, if human rights norms are violated in areas of limited statehood because of a lack of state capacity to enforce them, the three other mechanisms discussed will not do the trick. PoHR did not pay attention to this mechanism and to the fact that commitment might not lead to compliance when central state authorities lack the institutional and administrative capacity to enforce decisions including human rights standards. In other words, PoHR assumed that governments were primarily unwilling rather than unable to comply, thus implicitly taking consolidated statehood for granted.

In sum, we believe that the four processes identified here capture the main social mechanisms which induce or prevent compliance with international human rights norms (see figure 1).

2 In some borderline cases, sanctions amount to coercion if they leave the target virtually no choice other than to comply.

• Figure 1 | **Social Mechanisms to Induce Compliance**

Mechanism	Modes of Social (Inter) Action	Functional Cooperation	Underlying Logic of Action
Coercion	Use of Force Legal Enforcement	Derivative of interdepedence	Hierarchical Authority (Herrschaft)
Incentives	Sanctions Rewards	Most important driver of cooperation	Logic of Consequences
Persuasion	Arguing Naming/Shaming Discursive Power	Important; Regulate activities, constrain and enable behavior	Logic of Arguing and/or Logic of Appropriateness
Capacity-building	Institution-Building, Education, Training	Less important	Creating the Pre-Conditions so that Logics of Consequences or of Appropriateness can apply

Source: Author's own compilation

1.2 Scope Conditions for Compliance

We also need to specify more clearly the scope conditions under which we would expect these four social mechanisms to induce compliance by both state and non-state actors with international human rights law. We have identified four such factors related to different types of states, regimes, and to the degree of vulnerability to external and domestic pressures of states and other rule targets. The first two scope conditions apply only to states, while the remaining ones apply to any type of rule target.

Democratic vs. Authoritarian Regimes. The original spiral model was developed and applied only to states with authoritarian and repressive regimes. We asked under what conditions a combination of external and internal mobilization of advocacy networks would bring about greater liberalization and respect for human rights within these regimes. The empirical case studies then showed that improvements of an authoritarian country's human rights record almost always resulted from regime change and democratization processes (Morocco being the one exception, see Gränzer 1999). Subsequent quantitative research also demonstrated that countries with democratic regimes are much more likely to comply with human rights norms than authoritarian ones (for details see Simmons 2013; also Simmons 2009). In other words, regime type seems to matter.

We assume that regime type as a scope condition not only affects the general propensity to move from commitment to compliance but also makes a difference with regard to the various social mechanisms specified above. In particular, one would expect that legal enforcement of human rights through domestic, foreign, or international courts would bring democracies back into compliance. Moreover, one would also assume that mechanisms of persuasion, naming, and shaming are particularly effective with regard to stable democratic regimes given that respect for human rights constitutes an institutionalized logic of appropriateness in such systems. In contrast, using incentives – whether sanctions or rewards – to induce democracies into compliance might be counterproductive, because it might be perceived as insulting (Goodman and Jinks 2003). The opposite might be true for autocratic regimes, since there is no institutionally embedded logic of appropriateness which could shame them into compliance.

Consolidated versus Limited Statehood: The original spiral model assumed that states are unwilling rather than incapable of complying with human rights norms. We did not take into account that some states lack the kinds of efficient and effective administrative structures and institutions that would allow them to enforce and imple-

ment central decisions. We took consolidated statehood for granted, with a full monopoly over the means of violence and the capacity to implement and enforce rules. However, as the literature on weak, fragile, and even failed states reminds us, the institutional capacity of states should be treated as a variable rather than a constant (see e.g. Rotberg 2003 and 2004; Schneckener 2004). "Limited statehood" as a major obstacle to compliance is not confined to fragile or failed states (see Börzel and Risse 2013; also Risse 2011a). Many states contain political and administrative institutions which are too weak to enforce the law on the whole territory, in some issue-areas (such as human rights), and/or with regard to particular parts of the population. Related to this, many states of the Global South do not hold a monopoly over the means of violence in parts of their territory. We discuss this aspect in more detail below.

Centralized vs. Decentralized Rule Implementation. Our third scope condition relates to the degree of centralized or decentralized rule implementation in a given situation and with regard to any targeted actor (e.g. states, rebel groups, or corporations). The original spiral model in PoHR treated states as unitary actors with regard to compliance. However, the degree to which decision-making is centralized with regard to norm compliance makes a difference (Lutz and Sikkink 2000). Beth Simmons, for example, argues that there has been greater compliance with the norm against death penalty because the sanction associated with the norm is centrally carried out by public authorities, and thus easy to monitor (Simmons 2009: 200). Compliance is also more likely if those actors who are committed to human rights norms are also those who comply with them directly. Compliance is more difficult to achieve if it has to result from collaborative or conflict-ridden negotiations between different decentralized actors. In other words, decentralized rule implementation means that rule addressees (those who commit to human rights) are not exclusively the rule targets who have to comply (see Börzel 2002).

Take the case of torture. Central state authorities (in *consolidated* states, see below) usually have direct control via a clear chain of command over their military and should, therefore, be able to implement the prohibition against torture by members of their armed forces. In the case of the George W. Bush administration's endorsement of controversial practices such as waterboarding, for example, it was not the United States (US) military per se that undermined the taboo against torture, but rather the efforts to weaken the anti-torture norm that came from the highest quarters. At the same time, and given the competencies of communal authorities in most countries, central governments have much less control over the local police forces. As a result, we would expect that it is more difficult to implement the prohibition against torture with regard to the police as compared to the military (see, for instance, the case of Turkey as discussed in Liese 2006).

Things become more complex if states commit to international human rights norms, but firms or even private citizens are the rule targets and have to comply (Brysk 2013). In such cases, the implementation process can be extremely decentralized, since states are legally responsible for compliance, but private citizens have to change their behaviour which includes transforming long-standing cultural practices. The problem is exacerbated, of course, in cases of limited statehood (see below).

Centralization vs. decentralization of rule implementation also affects non-state actors as rule targets. As Hyeran Jo and Katherine Bryant show, rebel groups with clearly defined hierarchical organizational structures are more likely to comply with humanitarian norms than loosely organized groups (Jo and Bryant 2013). As to business actors, the longer the supply chain, the more problematic is compliance with such norms as social and labour rights (Deitelhoff and Wolf 2013).

Material Vulnerability. Our two final scope conditions affecting the passage from commitment to compliance relate to any given rule target's vulnerability to external (as well as to internal domestic) pressure. It makes a

difference, of course, whether China, Russia, or the US are accused of human rights violations as compared to the Philippines, Guatemala, or Kenya (on the latter see Schmitz 1999; Jetschke 1999; Ropp and Sikkink 1999). The same holds true for non-state actors commanding different types of resources.

On average, rule targets commanding powerful economic and/or military resources are expected to be less vulnerable to external pressures toward compliance than materially weak targets. This "realist" assumption is straightforward and does not need further specification. Everything else being equal, great powers can fight off external network mobilization more easily than small states. The same should hold true for non-state actors such as companies. If a small or medium-sized enterprise (SME) is subjected to a consumer boycott because of its violations of social rights in a country where it invests, the costs incurred are much higher than, say, in the case of a big oil company experiencing a similar campaign.

Note that we do not assume that materially powerful actors are immune to external pressures or transnational mobilization. We only expect that mechanisms based on material coercion and/or negative incentives such as sanctions are less likely to yield results against materially powerful actors as compared to weak ones. Even if China or Russia were to be exposed to material sanctions by Western states or the international community as a whole, such sanctions alone would probably not be able to move their governments from commitment to compliance. Materially powerful actors are by definition less vulnerable to external economic or military pressures than weak actors.

Social Vulnerability. A more interesting proposition concerns a target's vulnerability to social pressures. As we argued in PoHR, the more states and other actors care about their social reputation, the more they want to be members of an international community "in good standing," the more vulnerable they are to external naming and shaming as well as to efforts at persuasion and, thus, to social mechanisms relying on the logics of arguing and of appropriateness. Social vulnerability is premised on an actor's desire to be an accepted member of a social group or a particular community. Constructivists argue that a state's identity may influence its social vulnerability to pressure. States with insecure identities or those that aspire to improve their standing in the international community may be more vulnerable to pressures (Gurowitz 1999). Sociological institutionalists would argue that the logic of appropriateness comes into play here, while rational choice scholars refer to "reputational concerns." In any event, social vulnerability works, because actors care about their standing in a social group. The more the relevant community cares about human rights, the more the target is vulnerable to pressures to comply with these norms.

In the case of states, these concerns are mostly about international legitimacy (see Hurd 1999). With regard to non-state actors, things are a bit more complex. As Jo and Bryant show (Jo and Bryant 2013), rebel groups that are likely to win and take over national government tend to start complying with international humanitarian law precisely because of the expected gain in international legitimacy. In the case of transnational companies, particularly those with a brand name to defend, social vulnerability often connects with material vulnerability. In the case of Shell, the Anglo-Dutch energy multinational, for example, transnational advocacy networks were able to organize consumer boycotts in retaliation against its rights violations in Nigeria, which then resulted in a serious loss of revenue for the company (Deitelhoff and Wolf 2013; Mwangi, Rieth, and Schmitz 2013). In this case, consumers cared about human rights which made even a materially powerful corporation vulnerable to external pressures.

But social vulnerability is not unidirectional. This is where we have to correct the original spiral model of PoHR. Some rule targets command powerful social resources which allow them to "fight off" external pressures. "Soft

power," as Joseph Nye put it (Nye 2004), is not the sole domain of the "good guys" in world politics. The "Asian values" debate demonstrates, for example, that some states command sufficient international legitimacy to establish a counter-discourse to the Western-led human rights arguments (Jetschke and Liese 2013). The US administration in the post-9/11 environment was also able to establish a counter-discourse against the universal applicability of the prohibition against torture – at least temporarily. In other words, human rights are not the only discourse in town – and some actors command enough social legitimacy to be able to establish persuasive counter-narratives which then reduce their social vulnerability.

2. Human Rights in Areas of Limited Statehood

PoHR developed a spiral model of human rights change that started from four implicit and interrelated assumptions:

1. Human rights-violating states are consolidated states that enjoy both the monopoly over the means of violence and the ability to make and fully implement central political decisions.
2. Illiberal regimes violate human rights intentionally, that is, because they want to, not because they lack the capacity to comply with international norms.
3. Rights-violating perpetrators are state actors for the most part.
4. Transnational non-state actors promote compliance with international human rights by pressuring sta te actors towards norm adoption and implementation and by socializing them into the new norms, respectively.

These assumptions are valid for the cases discussed in PoHR and beyond. But they do not fit "areas of limited statehood," that is, territorial or functional spaces in which national governments do not control the means of violence and/or are incapable to implement or enforce central decisions including the law. We argue in the following that consolidated statehood forms the exception rather than the rule in the contemporary international system and that "areas of limited statehood" are more widespread than is commonly assumed (see Risse 2011b; Risse and Lehmkuhl 2007). In particular, areas of limited statehood are not confined to fragile, failing, or failed states, but characterize most developing countries in the current world system.

If we take limited statehood as a scope condition affecting the transition "from commitment to compliance" seriously, we have to re-formulate and re-conceptualize the human rights agenda, both in terms of research and policies. Naming and shaming, the "boomerang effect," and the other mechanisms developed in the broader literature on transnational advocacy networks (Keck and Sikkink 1998) primarily target governments that are *unwilling* to comply with international norms rather than *incapable* of doing so. However, human rights violations in areas of limited statehood are often committed because of two interconnected phenomena:

1. Central governments do not enforce the law, because they not (only) lack the willingness but also the means to control their own enforcement agencies, e.g. the police.
2. Non-state actors or "state" actors uncontrolled by central authorities are primary perpetrators of human rights violations in areas of limited statehood – be it warlords, private militias, (multinational) compa nies, or transnational criminal organizations.

In the following, we discuss the conceptual-analytical as well as the political consequences of these insights. We begin by defining our understanding of "limited statehood" and map the phenomenon and its relevance

for human rights. We then show how limited statehood significantly mitigates the well-known positive effect of democracy on human rights, another scope condition (Simmons 2009: 82; Moravcsik 2000). Many transition countries on a path to democratization have committed themselves to international human rights and have ratified the respective treaties. But human rights are nevertheless violated because of limited statehood. At the same time, we find a number of countries whose domestic institutions lack both democratic quality and effective statehood and which nevertheless are not human rights violators. These double findings of norms-violating democratic transition countries, on the one hand, and norms-respecting weak states, on the other, suggest that consolidated statehood is not a necessary condition for compliance with human rights.

2.1 Conceptualizing Limited Statehood

The spiral model as developed in PoHR implicitly assumed that states are fully capable of complying with international human rights norms if they only want to or are forced to by transnational mobilization through mechanisms such as the "boomerang effect".[3] In other words, the original spiral model took it for granted that states would be able to enforce the law. The underlying theory of compliance was one of deliberate or voluntary non-compliance (Raustiala and Slaughter 2002). Autocratic regimes violate human rights because, among other things, they want to stay in power. The spiral model and the built-in boomerang effect then meant to pressure norm-violating states "from above and from below" (Brysk 1993) and, thus, raise the costs of non-compliance for them. But as most scholars have noted, commitment as such does not lead to compliance in the human rights area (Keith 1999; Hafner-Burton and Tsutsui 2005). Some have taken this as an indication of a cynical attitude adopted by leaders of authoritarian regimes (particularly Hathaway 2002, for a critique see Simmons 2009; Simmons 2013, Dai 2013).

But what if governments commit to international human rights through ratification of relevant treaties, appear willing to comply, but cannot do so for a variety of reasons? The literature calls this "involuntary defection" (Putnam 1988) or "involuntary non-compliance" (Chayes and Chayes 1993 and 1995). What if governments do not have sufficient capacity to enforce the law to which they have committed? What if central decision-making authorities lack the institutional means to enforce law, e.g., military or police forces, let alone to rein in non-state actors violating human rights? These considerations lead us to the discussion of "limited statehood". We suggest that scholarship on human rights ought to take limited statehood more seriously as a significant obstacle for moving from commitment to compliance.

What constitutes "limited statehood?" We start with Max Weber's conceptualization of statehood as an institutionalized authority structure with the ability to steer hierarchically (*Herrschaftsverband*) and to legitimately control the means of violence (Weber 1921). While no state governs hierarchically all the time, consolidated states at least possess the ability to authoritatively make, implement, and enforce central decisions for a community. In other words, they command what Stephen Krasner calls "domestic sovereignty," that is, "the formal organization of political authority within the state and the ability of public authorities to exercise effective control within the borders of their own polity" (Krasner 1999: 4). This understanding allows us to distinguish between *statehood* as an institutional structure of authority, on the one hand, and the kind of *governance* services it provides, on the other hand. The latter is an empirical, not a definitional question. The ability to effectively make, implement, or enforce decisions constitutes statehood. Whether this enforcement capacity is exercised within the boundaries of the rule of law and through the respect for basic human rights or not, concerns the quality of governance, but not the definition of statehood.

3 See Risse 2011a for the following.

We can now define more precisely the concept of "areas of limited statehood." While areas of limited statehood belong to internationally recognized states, it is their domestic sovereignty which is severely circumscribed. Areas of limited statehood concern those parts of a country in which central authorities (usually governments) lack the ability to implement and enforce rules and decisions and in which the legitimate monopoly over the means of violence is consequently lacking. The ability to enforce rules or to control the means of violence spans various dimensions: 1) territorial, i.e. concerning parts of the territory; 2) sectoral, that is, with regard to specific policy areas; and 3) social, i.e. with regard to specific parts of the population. As a result, we can distinguish different configurations of limited statehood.

Areas of limited statehood are an almost ubiquitous phenomenon in the contemporary international system, but historically they do not constitute any significant novelty. After all, state monopoly over the means of violence has only been around for a little more than two hundred years. Most states in the contemporary international system contain "areas of limited statehood" in the sense that central authorities do not control the entire territory, do not completely enjoy the monopoly over the means of violence, and/or have limited capacities to enforce and implement decisions, at least in some policy areas or with regard to large sections of the population.

The concept of "limited statehood" needs to be distinguished from "failing" and "failed" statehood. Most typologies in the literature and datasets on fragile states, "states at risk," etc. reveal a normative orientation toward highly developed and democratic statehood and, thus, toward the Western model (see e.g. Rotberg 2003 and 2004). The benchmark is usually the democratic and capitalist state governed by the rule of law. This is problematic on both normative and analytical grounds. It is normatively questionable, because it reveals a bias toward Western statehood and Euro-centrism. It is analytically problematic, because it tends to confuse definitional issues and research questions. If we define states as political entities that provide certain services and public goods, such as security, the rule of law, and welfare, many "states" in the international system will not qualify as such.

Moreover, failed and failing states comprise only a small percentage of the world's areas of limited statehood. Most developing and transition countries, for example, contain areas of limited statehood insofar as they only partially control the means of force and are often unable to enforce collectively binding decisions, mainly for reasons of insufficient political and administrative capacities.[4] Brazil and Mexico, on the one hand, and Somalia and Sudan, on the other, constitute the opposite ends of a continuum of states containing areas of limited statehood. Moreover, we do not talk about "states of limited statehood," but areas, i.e., territorial or functional spaces within otherwise functioning states in which the latter have lost their ability to govern. While the Pakistan state enjoys a monopoly over the use of force in many parts of its territory, the so-called tribal areas in the country's Northeast are largely beyond the control of the central government.

2.2 Limited Statehood, Human Rights, and the Spiral Model

The spiral model developed in PoHR implicitly assumed consolidated statehood. It focuses on authoritarian regimes (the Northwestern cell of figure 2 below) and describes various mechanisms and stages by which such governments can be brought into compliance with international human rights norms through pressures "from above and from below". The spiral model also assumed that authoritarian regimes are unwilling to rather than

4 This is not to say that limited statehood is confined to developing countries. Southern Italy, for example, contains areas of limited statehood insofar as the Italian central state authorities are incapable of enforcing the law vis-à-vis those parts of the population who are directly or indirectly involved with the mafia. The same holds true for the drug business in many parts of the world's major cities including New York, London, Paris, or Berlin.

incapable of protecting basic human rights. It maintained that such regimes – once pressured and/or persuaded into compliance – would have no problem in implementing basic human rights standards through various enforcement mechanisms. To put it in terms of the various compliance theories (Börzel et al. 2010; Raustiala and Slaughter 2002; Hurd 1999), the spiral model incorporated compliance mechanisms theorized by enforcement and legitimacy approaches. Enforcement approaches focus on sanctions as well as positive incentives to change the cost-benefit calculations of actors, thereby inducing compliance. The legitimacy school concentrates on persuasion and learning to induce actors "to do the right thing" and thereby comply with costly rules. Each of these approaches ultimately assumes a functioning state that is in principle capable of enforcing central decisions and the law. The compliance problem derives here from a lack of willingness rather than state capacity.

The spiral model also assumed that democratic and consolidated states (the Southwestern cell in figure 2) are mostly good compliers with human rights norms, an assumption which quantitative work has corroborated in the meantime (Simmons 2009; Sikkink 2013). In this sense, PoHR took regime type into account as a scope condition, but only implicitly.

• Figure 2 | **Human Rights by Regime Type and Degree of Statehood**

Regime Type	Configuration of Statehood	
	Consolidated Statehood	*Limited Statehood*
Authoritarian Regimes	Human rights violations due to a lack of willingness (as in PoHR)	Human rights violations due to a lack of willingness and capacity
Democratic Regimes	Mostly in compliance with Human Rights	Human rights violations due to a lack of capacity

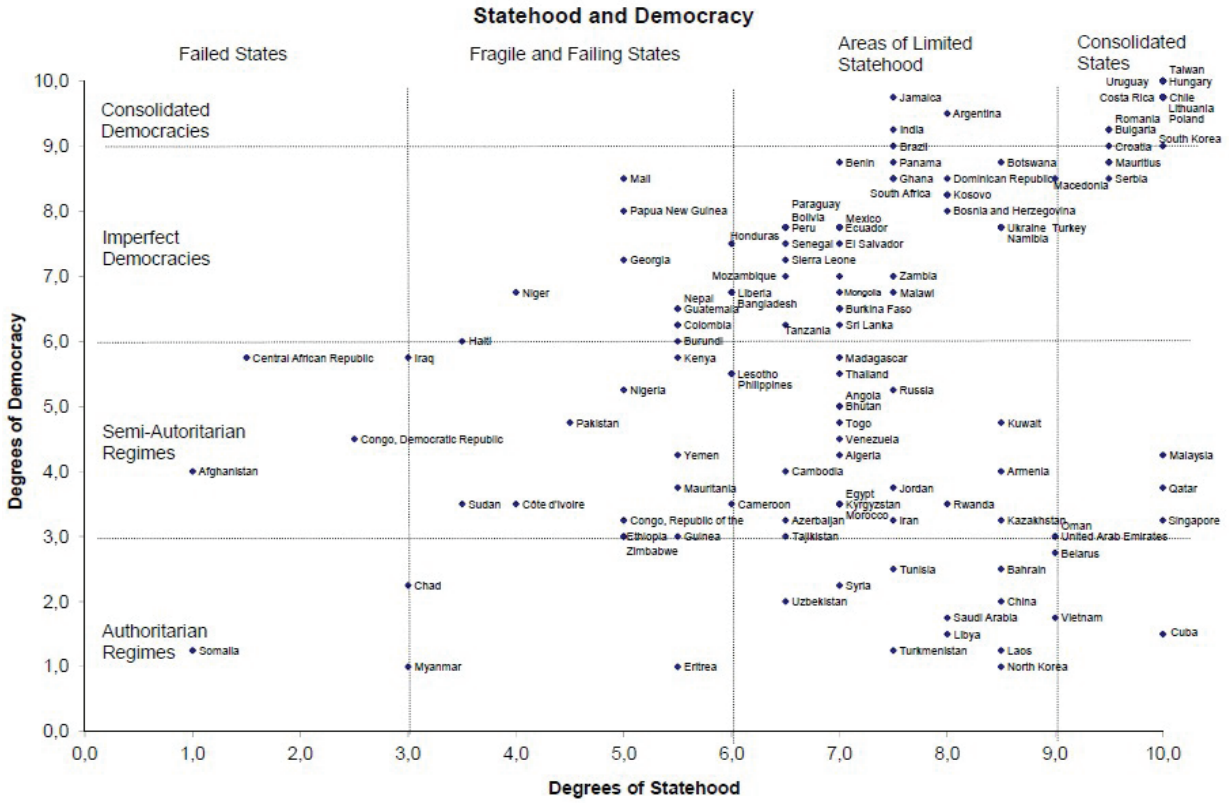
Source: Author's own compilation

The world is full of authoritarian as well as democratic regimes that try to govern areas of limited statehood. Many African states fall in the Northeastern cell of figure 2. This also holds true for Russia, a semi-authoritarian regime, which does not fully control its territory. These authoritarian and semi-authoritarian regimes violate human rights, since they lack the willingness *and* the capacity to comply. Finally, the Southeastern cell of figure 2 is populated by democratic regimes with areas of limited statehood. India, the world's largest democracy, belongs in this category. If we assume that democracies are willing to commit to and comply with human rights at least in principle, rights violations in countries populating the Southeastern cell of figure 2 occur mainly because a state is not in full control of parts of its territory or with regard to parts of the police or military forces. In other words, the compliance problem is a capacity issue in these cases.

Figure 3 uses the *Bertelsmann Transformation Index* data to map 129 transition and developing countries according to their degree of statehood and their degree of democracy.[5] The figure yields the following picture: First, as is to be expected, most consolidated democracies are also consolidated states (the upper right corner of figure 3; exceptions are, e.g., India and Jamaica). At the same time, we do not find any consolidated democracy among failed, failing, and fragile states.

5 BTI Data are available online: http://www.bti-project.org/home/index.nc. To measure the degree of democracy, we use the composite "political participation" scale which is the mean of the following indicators: free and fair elections; effective power to govern; association and assembly rights; freedom of expression.

• Figure 3 | **Statehood and Democracy**



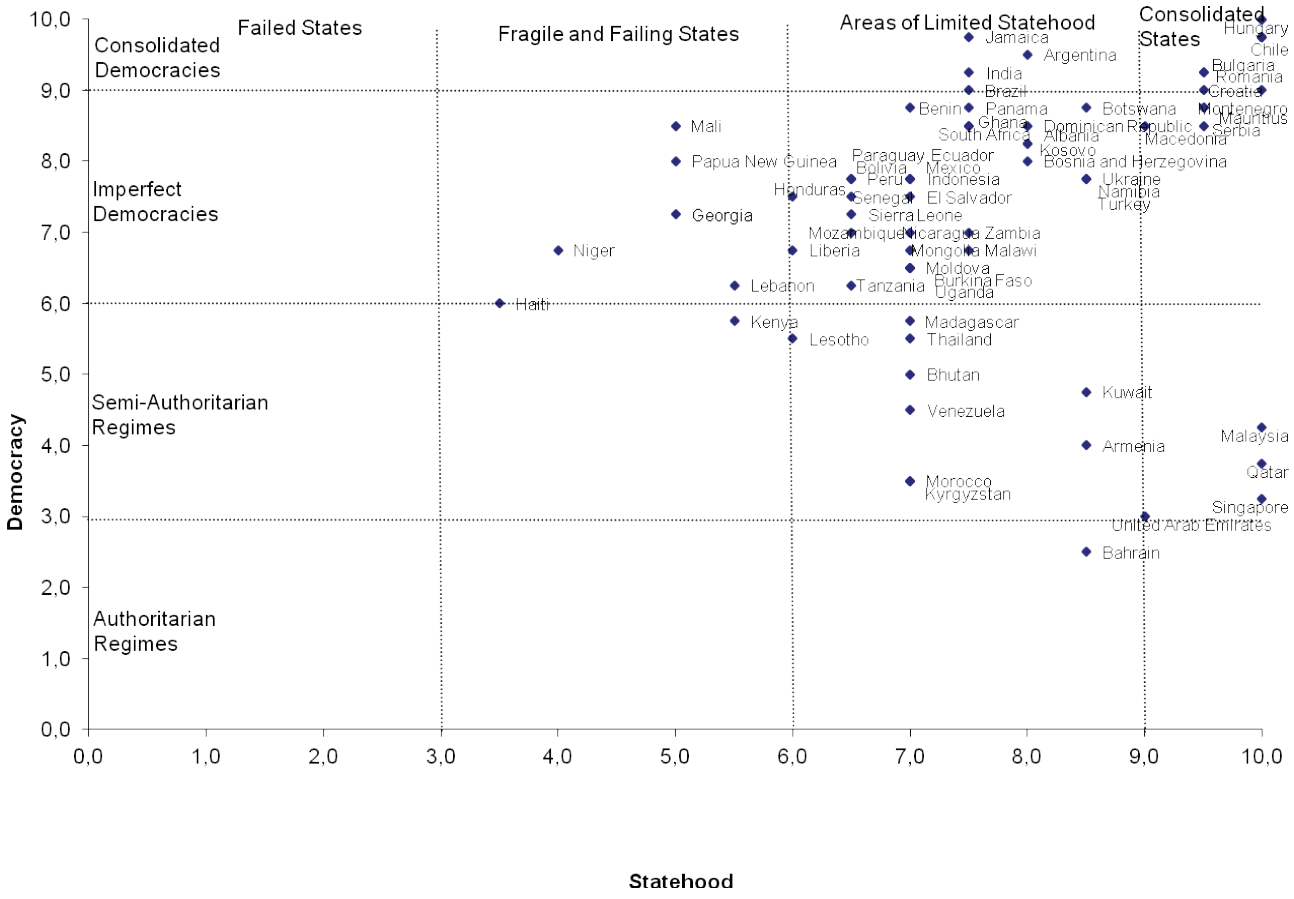
Source: Author's own compilation

Second, the lower right corner of figure 3 is populated by authoritarian and consolidated states, such as Vietnam and Cuba. Third, the most interesting picture can be found among failing and fragile states, on the one hand, and countries containing areas of limited statehood, on the other. Among them, we find both authoritarian and semi-authoritarian regimes (Uzbekistan, Syria, China, Russia etc.), but also many imperfect democracies scoring way above average on the participation scale of BTI 2010 (such as Georgia, Mozambique, South Africa, or Guatemala). If we use the categories introduced in figure 2 above and take democracy as an indicator for the degree of willingness to comply with human rights, while statehood indicates the degree of capacity to comply, we derive the following assumption:
The more fragile, failing, or limited in statehood a particular state is, and the more authoritarian its regime, the more human rights compliance will result from a combination of inadequate capacity and unwillingness to act.

In other words, the further we move down in the middle categories of figure 3 (failing/fragile states as well as areas of limited statehood), the more compliance with human rights is a question of both a lack of willingness and a lack of capacity. The more we move up in these middle categories, the more compliance with human rights becomes a question of capacity rather than willingness.

Let us now look at the human rights performance of areas of limited statehood. Figure 4 depicts the above-average human rights performers ("rights protecting states"; using civil rights performance as the indicator), while figure 5 shows the below-average performers ("rights violating states").

• Figure 4 | **Civil Rights Protecting States**

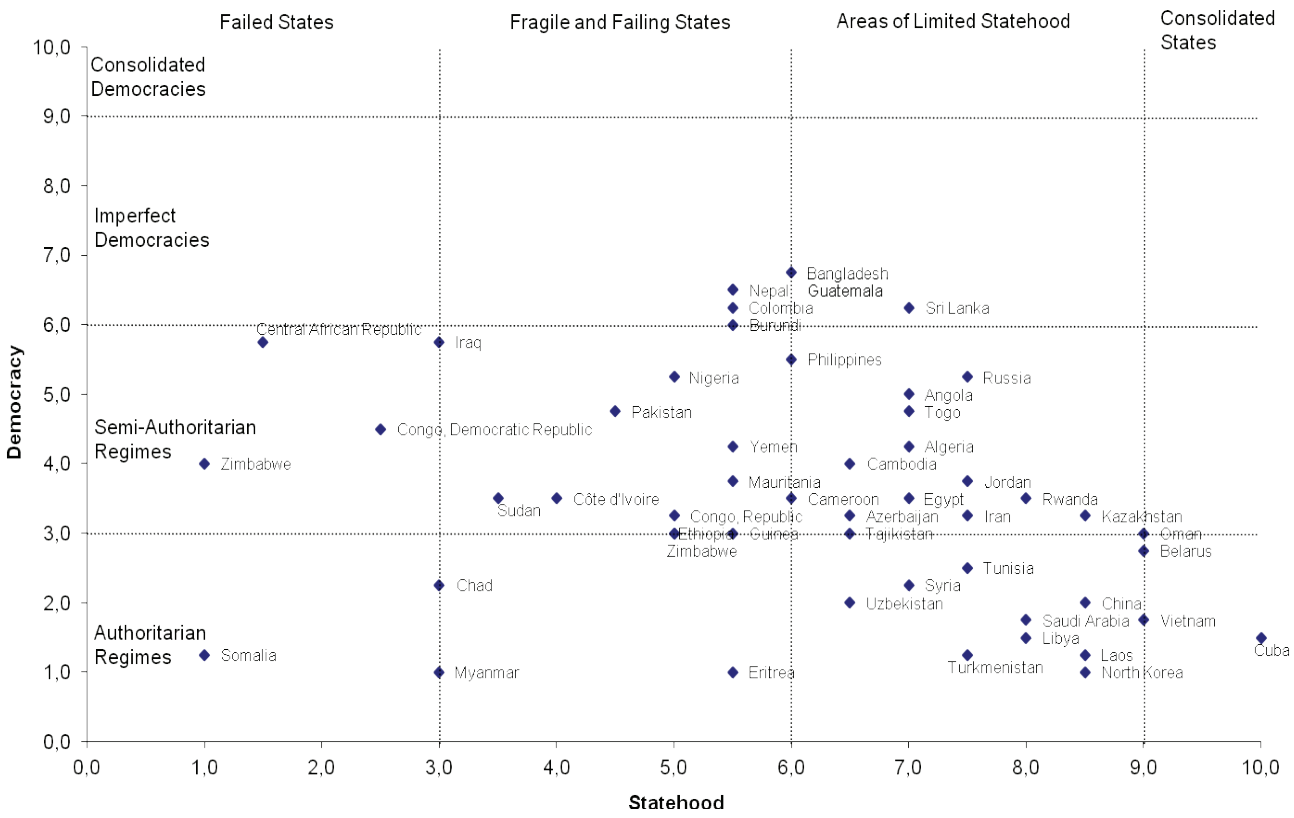


Source: Author's own compilation

A comparison of figures 4 and 5 yields the following insights: First, we find most rights protecting states in the upper right corner of figure 4. Semi-authoritarian regimes and imperfect democracies tend to show a higher respect for human rights, the more consolidated their statehood is. This suggests a positive interaction effect between democracy and statehood. Or to put it differently, the negative effect of authoritarianism on human rights violations is mitigated by statehood in regimes that are neither clearly autocratic nor democratic. However, a number of countries are quite advanced in their democratization process and suffer from problems of limited statehood, but do not systematically violate human rights (Georgia, Haiti, Niger, Mali, Papua New Guinea, Lebanon).

Second, most of the rights-violating states can be found among (semi-) authoritarian states that are fragile, failing, or contain areas of limited statehood. This confirms, of course, the well-known correlation between (semi-) authoritarianism and rights violations, even though there are quite a few imperfect democracies, too, that also violate civil rights (Nepal, Bangladesh, Guatemala, and Sri Lanka, among others). Lack of domestic sovereignty or limited statehood significantly contributes to the violation of human rights. Or, to use the categories in figure 2 above again, most rights-violating states in the international system suffer from both a lack of willingness *and* a lack of capacity to comply with these norms.

• Figure 5 | **Civil Rights Violating States**



Source: Author's own compilation

Emphasizing limited statehood and its interaction with democracy has significant consequences for the ways in which we analyze human rights policies as well as make policy recommendations. First, limited statehood directs attention toward an alternative explanation for human rights violations which has not yet been theorized sufficiently. Guaranteeing even basic human rights and establishing the rule of law require strong state capacities which are missing in areas of limited statehood by definition. National governments might be fully willing to enforce human rights and might be signing up to the whole range of international legal instruments. Yet, many governments do not have sufficient means to implement the law domestically. This lack of capacity could explain to some extent the observed discrepancy between the ratification of international human rights treaties, on the one hand, and continuing human rights violations in many countries, on the other (e.g. Hafner-Burton 2008; Hathaway 2002). Rather than postulating an alleged divide between quantitative pessimists and qualitative optimists in the study of human rights (Hafner-Burton and Ron 2009), the continuing discrepancy between a state's normative and legal commitment to human rights and actual compliance with them might point to areas of limited statehood.

Second, focusing on areas of limited statehood allows for disaggregating the state rather than treating it as a unitary actor. A national government might be able to control the national capital and its surroundings, but lacks the capacity to enforce the law in some of the provinces. Or the other way round: Somalia has been a failed state for the past fifteen years or more. Mogadishu, the capital, and the access routes have suffered from civil war and sustained violence through much of this period. In contrast, Somaliland – one of the provinces – has been relatively calm and has maintained a degree of order including the provision of some basic human

rights (Debiel et al. 2009; Menkhaus 2007). Likewise, a government might be able to introduce comprehensive human rights legislation but is unable to control or sufficiently equip its enforcement authorities, particularly if police and courts operate in remote parts of the country (Liese 2006; Hönke 2008). Thinking in terms of areas of limited statehood then allows for much more precise measurements where the real human rights problems are.

Third, an emphasis on human rights violations resulting from limited statehood directs our attention toward the "management school" in compliance research (particularly Chayes and Chayes 1993 and 1995). This group has always argued that non-compliance with international regulations does result from weak institutions, lack of resources and resulting problems of involuntary defection rather than lack of willingness by governments. A comprehensive quantitative study of compliance with European Union (EU) law and regulations demonstrates that variation in state capacities offers a powerful explanation for variation in compliance, alongside more traditional factors such as power (Börzel et al. 2010). Interestingly enough, many international organizations have long understood that capacity-building and assistance in building up sustainable institutions goes a long way in the promotion of human rights and democracy, and have acted accordingly (Magen, Risse, and McFaul 2009). Most of the resources spent on democracy promotion by donors such as the US and the EU focus on capacity-building through financial and technical assistance.

If the primary cause for rights violations is limited statehood and lack of capacity to enforce the law, positive incentives, sanctions, or persuasion will not do the trick, but have to be matched by institution- and capacity-building. In such cases, transnational campaigns and mobilization alone are unlikely to achieve results.

This does not mean, however, that the spiral model developed in PoHR is irrelevant under conditions of limited statehood. Rather, its mechanisms have to be directed toward actors other than the state or the national government. If non-state actors such as companies or rebel groups are primarily responsible for human rights violations, the mechanisms of the spiral model including transnational pressure can be directed against them (Deitelhoff and Wolf 2013; Mwangi, Rieth, and Schmitz 2013). Moreover, as Kathryn Sikkink has recently argued, the emerging norm of individual criminal responsibility might be used to hold non-state actors (or state actors behaving as criminals) accountable for human rights abuse thus providing a powerful deterrence effect. Her data suggest that prosecutions after transition to democracy lead to improved human rights. Since democratization processes often go hand in hand with weakening state capacities to enforce the law, human rights enforcements by international and other courts might compensate for limited statehood under these circumstance (Sikkink 2011; Kim and Sikkink 2010). Last but not least, the emerging international norm ofR2P might mitigate gross human rights abuses in failing and failed states. If national governments are either unwilling or incapable of protecting their citizens, the international community has to assume the responsibility to step in, if need be militarily (Evans 2008; Bellamy 2011; Finnemore 2003). While R2P has been invoked recently in the cases of Libya and the Ivory Coast, only the latter case however might qualify as a fragile or failing state.

In sum, focusing on areas of limited statehood alerts scholars and practitioners to the fact that capacity issues have to be taken at least as seriously in strategies to promote human rights compliance as the mechanisms theorized by the spiral model which target unwillingness to comply (coercion, incentives and persuasion). Moving states from commitment to compliance then requires us to take limited statehood as a structural condition of most countries in the contemporary international system more seriously. Capacity-building – be it through strengthening central state or using functional equivalents – must complement the socialization mechanisms proposed in PoHR.

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The Project

In an era of global flux, emerging powers and growing interconnectedness, transatlantic relations appear to have lost their bearings. As the international system fragments into different constellations of state and non-state powers across different policy domains, the US and the EU can no longer claim exclusive leadership in global governance. Traditional paradigms to understand the transatlantic relationship are thus wanting. A new approach is needed to pinpoint the direction transatlantic relations are taking. TRANSWORLD provides such an approach by a) ascertaining, differentiating among four policy domains (economic, security, environment, and human rights/democracy), whether transatlantic relations are drifting apart, adapting along an ad hoc cooperation-based pattern, or evolving into a different but resilient special partnership; b) assessing the role of a re-defined transatlantic relationship in the global governance architecture; c) providing tested policy recommendations on how the US and the EU could best cooperate to enhance the viability, effectiveness, and accountability of governance structures.

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