UNDERSTANDING SOCIAL ACTION, PROMOTING HUMAN RIGHTS

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INTRODUCTION

Over the last twenty years, our understanding of human behavior has taken a significant leap forward spawning new fields of academic research. But very little of that learning has cross-fertilized into the field of human rights. This book aims to start that process, by collecting scholarship from a broad set of disciplines and underscoring its implications for human rights scholarship and practice.

By focusing on non-legal scholarship that touches on norm creation and diffusion, we will make this interdisciplinary knowledge available to human rights scholars and practitioners. And just in time. There are a number of coinciding developments that simultaneously threaten human rights and expand the reach and effectiveness of rights advocacy. The revolutions of communication and transportation have enabled rights abusers to be more "effective," to push their ideas faster and farther. But the same revolutions promise to provide new avenues for positive rights promotion. In sum, there has been a proliferation of: actors promoting human rights norms; tools for promoting human rights norms; lawmaking fora for human rights norms; and, more generally, audiences interested in and able to absorb new ideas. Human rights scholarship has not taken advantage of the latest work in the social sciences and humanities – work which facilitates both a deeper understanding of, and an enhanced capacity to manage and direct, these recent developments.

DESCRIPTION

We have surveyed the academy for scholarship that has the potential to yield new and important insights for the project of human rights promotion. Significant areas of academic research have left human rights largely unattended. Our book thus selects leading scholars who can generally represent and reflect upon central ideas in these fields of study. In particular, we assemble authors who study social change, collective action, and norm diffusion in general. These leading thinkers can provide broad and fresh perspectives on their field and its potential applications to the human rights realm.

Our approach collects for the first time some of the most important insights located in contemporary academic research and renders them available to human rights scholarship and practice. The book is designed to assist human rights academics, policymakers, and advocates. It will inform their consideration of topics such as the design of advocacy strategies, reforms of global and regional human rights institutions; influences on state actors' behavior and preferences, and risks of political cooptation and decay of human rights campaigns.

Because effective human rights promotion requires an understanding of human actors and of the communicative systems used to mobilize those actors, we organize the contributions along the following lines:

> **1. The Human Actor:** Social Psychology; Cognitive Studies; Empirical Economics; Behavioral Economics; Political Psychology
> **2. Means of Communication:** Linguistics; Communicative Theory; Social Entrepreneurship; Social Marketing; New Media Studies, Persuasion Studies
> **3. Group Dynamics:** Organizational Theory; Complexity Theory; Political Economy; Social Dilemmas/Game Theory; Social Network Theory; Social Movements

Consider an example from each of the three categories:

New research in *empirical economics* examines different mechanisms for stimulating socially desirable behavior. Experimental and field studies demonstrate, for example, that introducing material inducements can, under different conditions, either "crowd out" (displace) or "crowd in" (reinforce) individuals' non-instrumental motivations for engaging in pro-social behavior. Central insights from this research program can inform the use of sanctions to threaten state actors for poor human rights performance; the use of material incentives alongside moral sentiments to mobilize public support for a human rights campaign; and efforts to weaken illiberal organizations—such as terrorist groups—by influencing their techniques for attracting sympathizers and collaborators.

Scholarship on *social marketing* employs concepts from commercial marketing for the purpose of social change. Related research programs have been developed primarily by academics at business schools and schools of public health. Their scholarship can provide broader lessons for effectuating behavioral and attitudinal changes with regard to human rights. Lessons from social marketing can help a ministry of education, for example, in conducting human rights education to shape public perceptions of the disabled, terrorism suspects, sexual minorities, and so on. Social marketing concepts can also help a national human rights commission, for example, to establish a "brand" for itself within a complex of multiple state institutions.

New scholarship on *networks* analyzes the structure and effects of social ties among interconnected actors. Existing research suggests that the transmission of information, material, and influence may be a function of properties—such as the density, strength, and distance—of various ties that make up a network. Central ideas in network studies can foster new approaches to promoting the

spread of human rights norms. This research program provides cause to reconsider linkages between civil society and governmental actors and connections among different official networks. For example, there is cause to consider perforating or lowering the institutional walls that insulate human rights officials (e.g., members of treaty bodies; staff of national human rights commissions) from executive agencies to facilitate the flow of human rights norms. This research may also provide reason to reconsider the ability to produce sweeping normative changes through "small world" networks and weak ties; and this research may generate ideas for training advocates to perform as robust nodes within a network.

COHERENCE

In order to ensure coherence between chapters, we will provide each author a set of guiding principles. We will ask each author to use the following four themes as a common reference point:

1. The *articulation* of human rights norms
2. The *elaboration* of human rights norms
3. The *circulation* of human rights norms
4. The *internalization* and *implementation* of human rights norms

Authors may choose to write on one or more of these themes.

Under each theme, we invite authors to consider a range of cross-cutting questions. The following questions offer guidance for the type of issues authors might select for discussion. That is, the following are intended to illustrate the scope and specificity of issues that motivate the project. Authors are free to select their own questions of a similar nature. That said, we anticipate that each piece will touch upon some of the following questions.

    1. Change agents

        What developments in your field shed light on the most effective actors or institutions for communicating new ideas, new attitudes, and new behaviors?

            i. Who are *effective* change agents? What are the best institutions or actors for promoting social change? Is the involvement of particular actors helpful or counterproductive, necessary or unnecessary to achieve results? Students, professionals, experts/epistemic communities, quasi-governmental bodies such as a national human rights commissions; international actors (like Amnesty International), local social movements,

elites, the general public?

    ii. What distributional issues might arise in the selection (or self-selection) of change agents? Will members of particular classes or groups more likely engage in such initiatives, and with what effect?

    iii. What skills-training would assist in the development of effective change agents? For example, if a professional school or a university-based human rights center set out to educate and train prospective practitioners, what skills should it help students develop?

2. Target audiences

What developments in your field shed light on the human actor's receptivity to new ideas, new attitudes, and new behaviors?

    i. Do successful tactics vary across different audiences? How might different strategies or mechanisms of influence be exploited in rallying sympathetic individuals, securing allies, convincing recalcitrant actors? Are these strategies or mechanisms compatible with one another?

    ii. Do strategies for change differ if the responsible actor is governmental or nongovernmental (for example, if the targets for change are multinational corporations or armed opposition groups)?

3. Institutions for Change/Forms of Influence

What developments in your field shed light on designing systems for lasting social change?

    i. Does effective social change require formal/state enforcement? Might familial and social relations, or other informal institutions, be harnessed for social change?

    ii. What institutional devices might be utilized for mobilizing groups of actors -- perhaps against their self-interest?

    iii. What are the causal pathways for meaningful social change? Are direct connections between particular individuals important? (How) do elites matter? Civil society? Governmental bureaucracies?

iv. How might new technologies (such as the Internet) shape prospects for social change?

4. <u>Norm Characteristics/Message Content</u>

Does the nature of the cause matter?

i. Do the elements of social change differ if the cause or social movement is illiberal (e.g., spreading fascism)? Are there empirical insights from the study of illiberal settings (e.g., social networks of terrorists; group psychology and abusive prison guards) that might be reverse-engineered in the human rights domain (e.g., social networks of political dissidents/human rights advocates; group psychology and rights respecting officials)? What gaps in data/knowledge or differences in context preclude reverse engineering? What might those gaps or differences tell us about the information needed or conditions required to promote human rights?

ii. Do the teachings from your field apply universally (regardless of the use; regardless of the context) -- or are they substantively/situationally/culturally dependent? If they are culturally dependent, are there examples of successful "translation" projects -- which might offer (universal) tools for ensuring that culturally-dependent ideas are more culturally relevant or culturally resonant?

In addition to providing this common theoretical overlay, the editors will have several opportunities to ensure that the volume coheres into a whole. During Spring 2008, each author will present his or her contribution at a graduate-level seminar (co-taught by Goodman and Woods) at Harvard Law School. Each author will present his or her contribution in a workshop format to a group of approximately thirty students plus invited faculty. Students will produce written response papers critiquing each piece and, along with faculty, have ample opportunity to question the author during the class session. This will provide a significant learning opportunity for the authors, who will hear from a group with considerable expertise – both practical and academic – in human rights.

In Summer 2008, the Harvard Law School's Human Rights Program will host a conference for all authors to meet as a group, share and discuss their various pieces, and confer about the larger project.

We will work with the authors to revise their pieces according to the development of the book. But perhaps most importantly, we will write an introduction and conclusion to frame the project and to situate the reader in the

context of human rights scholarship and practice. We will identify some of the gaps in existing human rights scholarship; summarize the exciting and relevant work being done in the fields represented in this volume; and finally we will identify opportunities and avenues for new directions in human rights scholarship.

COMPETING BOOKS

The literature on human rights is, of course, vast. In recent years, this literature has increasingly emphasized interdisciplinary and empirical work. The proposed volume—although obviously interdisciplinary and indirectly empirical—would nevertheless occupy a unique niche in the literature. It would provide sustained reflection on some of the ways in which important recent advances in social research might inform human rights advocacy and formal regime design. There is, in short, no directly competitive text. Indeed, no work, to our knowledge, systematically applies the insights of the research programs we canvass to human rights issues. The potentially competing volumes, properly understood, demonstrate only the intensity of interest in the constellation of themes addressed in the proposed volume. Four broad categories of potentially competing books merit further discussion. The proposed volume intersects with, and importantly differs from, each category.

1. Empirical work on the ratification patterns and effects of formal human rights regimes. These works employ sophisticated statistical techniques both to determine which factors best predict state ratification of human rights treaties and to estimate the effect of state ratification on the prevalence of human rights violations. Illustrative examples include: BETH SIMMONS, INTERNATIONAL HUMAN RIGHTS: LAW, POLITICS, AND ACCOUNTABILITY (forthcoming Cambridge University Press 2008); OONA HATHAWAY, STRONG STATES, STRONG WORLD (forthcoming Princeton University Press 2008); TODD LANDMAN, STUDYING HUMAN RIGHTS (Routledge 2006); TODD LANDMAN, PROTECTING HUMAN RIGHTS: A COMPARATIVE STUDY (Georgetown University Press 2005); UNDERSTANDING HUMAN RIGHTS VIOLATIONS: NEW SYSTEMATIC STUDIES (Sabine Carey & Steven Poe, eds. Ashgate Publishing 2004). These important works help illuminate general patterns of state practice—patterns strongly suggesting that prevailing approaches to human rights advocacy are ineffective. These works, however, provide little understanding or assessment of prevailing actor- and organization-level tactics. The proposed volume, therefore, would supplement this category of work in two fundamental respects. On the theoretical level, it would provide interdisciplinary, empirically-grounded insights on the behavioral and organizational foundations of the observed statistical regularities. On the practical level, the proposed volume would help translate some of the general lessons of these works into a more concrete program of action for human rights activists.

2. Interdisciplinary work on the origins and function of formal human rights regimes. These works provide macro-level, positive accounts of human rights regimes—often with a view toward closing the compliance gap documented in the first category described above. Some of these works focus exclusively on human rights law, while others analyze human rights law as part of a more general theory of international law. Examples include: ANDREW GUZMAN, COMPLIANCE AND INTERNATIONAL LAW (forthcoming Oxford University Press 2009) (economics); RYAN GOODMAN & DEREK JINKS, SOCIALIZING STATES: PROMOTING HUMAN RIGHTS THROUGH INTERNATIONAL LAW (forthcoming Oxford University Press 2008) (sociology and psychology); SONIA CARDENAS, CONFLICT AND COMPLIANCE: STATE RESPONSES TO INTERNATIONAL HUMAN RIGHTS PRESSURE (University of Pennsylvania Press 2007) (political science); BRYAN S. TURNER, VULNERABILITY AND HUMAN RIGHTS (Penn State Press 2006) (sociology); ROBERT E. SCOTT & PAUL B. STEPHEN, THE LIMITS OF LEVIATHAN: CONTRACT THEORY AND THE ENFORCEMENT OF INTERNATIONAL LAW (Cambridge University Press 2006) ("law and economics"); JACK L. GOLDSMITH AND ERIC A. POSNER, THE LIMITS OF INTERNATIONAL LAW (Oxford University Press 2005) (rational choice theory); ANNE-MARIE SLAUGHTER, NEW WORLD ORDER (Princeton University Press 2004) (network theory); WILLEM DOISE, HUMAN RIGHTS AS SOCIAL REPRESENTATIONS (Routledge 2001) (social psychology); LEGALIZATION AND WORLD POLITICS (Judith L. Goldstein et al., eds. MIT Press 2001) (political science); THE POWER OF HUMAN RIGHTS: INTERNATIONAL NORMS AND DOMESTIC CHANGE (Thomas Risse, et al., eds. Cambridge University Press 1999) (political science and sociology); MARGARET KECK & KATHRYN SIKKINK, ACTIVISTS BEYOND BORDERS: ADVOCACY NETWORKS IN INTERNATIONAL POLITICS (Cornell University Press 1998) (political science, sociology, and anthropology). Collectively, these works provide an increasingly robust, interdisciplinary account of human rights regimes. The proposed volume, however, would help redress a few limitations of these works. For instance, it would provide a multidisciplinary perspective on human rights advocacy. The works in this category, however rigorous and erudite, typically analyze human rights regimes from the perspective of a single discipline, or even a single school of thought within a discipline. In addition, the proposed volume, as discussed above, would provide a richer understanding of micro-level processes—which would, in turn, facilitate a more fine-grained, mechanism-based theorizing about human rights regimes. The works in this category typically deemphasize—and often ignore altogether—these processes. (One important exception on this point is KECK & SIKKINK.) Finally, and most importantly, the proposed volume would link cutting-edge thinking in behavioral and organizational studies to the practical concerns of human rights activists.

3. A more conventional institutional reform literature—typically emphasizing formal reforms at the global or regional level. These works identify institutional weaknesses in both treaty law and the practices of monitoring and enforcement bodies. Examples include: MAKING TREATIES WORK: HUMAN RIGHTS, ENVIRONMENT, AND ARMS CONTROL (Geir Ulfstein, ed. Cambridge University Press 2007); THE UNITED NATIONS AND HUMAN RIGHTS: A CRITICAL APPRAISAL (Federic Megret & Phillip Alston, eds. Oxford University Press 2006); HUMAN RIGHTS: INTERNATIONAL PROTECTION, MONITORING, ENFORCEMENT (Janusz Symonides, ed. Ashgate 2004); ANNE BAYEFSKY, THE UN HUMAN RIGHTS TREATY SYSTEM: UNIVERSALITY AT THE CROSSROADS (Springer 2001); THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING (Phillip Alston & James Crawford, eds. Cambridge University Press 2000); ABRAM CHAYES & ANTONIA HANDLER CHAYES, THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS (Harvard University Press 1995). These works provide a low-to-the-ground, internalist perspective on formal regime design questions in human rights law. As a consequence, they are both indispensable and, in at least a few respects, inadequate. For example, these works do not systematically examine, or even make explicit, the considerable (and questionable) behavioral and organizational assumptions of their suggested reforms. In addition, these works do not adequately address the important role of various informal aspects of human rights regimes—such as human rights organizations, corporations, the media, and individual human rights activists. The proposed volume would provide a corrective on both fronts by making explicit and accessible the crucial link between theory and practice and, in doing so, by making clear the importance of informal aspects of human rights regimes.

4. Finally, a burgeoning practitioner-oriented literature addressing common organizational and political challenges faced by the human rights movement. This literature, to put it crudely, concerns "how to be a better human rights activist." These works typically provide either a thick description of instances of effective advocacy or, in the category's most integrative moments, a catalogue of best practices. Examples include: DAVID BORNSTEIN, HOW TO CHANGE THE WORLD: SOCIAL ENTREPRENEURS AND THE POWER OF NEW IDEAS (2nd ed. Oxford University Press 2007); ETHICS IN ACTION: THE ETHICAL CHALLENGES OF INTERNATIONAL HUMAN RIGHTS NON-GOVERNMENTAL ORGANIZATIONS (Daniel A Bell & Jean-Marc Coicaud, eds. Cambridge University Press 2006); FIGHTING FOR HUMAN RIGHTS (Paul Gready, ed. Routledge 2004); ENTERPRISING NONPROFITS: A TOOLKIT FOR SOCIAL ENTREPRENEURS (J. Gregory Dees, et al., eds. Wiley 2001). The great strength of these fascinating and instructive works is that they are grounded in the practical imperatives of human rights advocacy. Their anecdotal character and their often uncritical acceptance of various theoretical assumptions are, on the other hand, obvious weaknesses. The proposed volume, as discussed with

respect to category 3, would provide an important supplement to this literature.

At bottom, categories 1 and 2 are insufficiently attentive to the practice of human rights advocacy, while categories 3 and 4 are insufficiently attentive to the numerous advances in behavioral and organizational studies that might substantially improve human rights promotion. The proposed volume would build on the strengths of each category—and ameliorate some of the weaknesses—by improving human rights promotion though the translation of groundbreaking social research into effective regime design principles and advocacy tactics.

AUDIENCE

The proposed volume would have broad appeal to human rights scholars, students, policymakers, advocates, and regime architects. Indeed, it is widely recognized in the field that projects like this one are needed. Much of this norm-diffusion scholarship already exists, but only in bits and pieces, and scattered across several academic fields. Our project collects this information in one central location, for the benefit of the various disciplines involved, but ultimately for the benefit of human rights scholars and practitioners. Of the very limited interdisciplinary norm-promotion scholarship, little has been ported from the academy to practice. Thus, this project is an act of translation – both laterally between academic disciplines, and vertically between the academy and the world of practice. Ideally, the book's final form will reflect this theoretical layering, and will be available in several media. And, as a consequence, the volume should enjoy a wide readership.

a. Layer One: Collection of Scholarship from Across Disciplines

The book's final form will be a hardcopy collection of academic pieces by and for scholars, students, and advocates. In large part, the readership will be scholars and students of social change, in all fields, as well as anyone involved in the emerging discipline of human rights studies.

b. Layer Two: Lessons for Human Rights Scholarship and Practice

Because we will be tapping into scholarship from such a broad range of disciplines – some of which will be applied to the human rights realm for the first time – the editors will do a significant amount of framing and summarizing in order to underscore how the selected works are relevant to the study of human rights. (See "Coherence" above for a fuller explanation of this.) This framing work will come in the form of an introduction and a conclusion, as well as a page at the end of each chapter highlighting those '"points of interest" for

human rights scholarship and practice – suggesting new areas of legal research, identifying gaps in previous scholarship, and proposing new reform agendas.

c. *Layer Three: Website for a Broader Audience*

This collection will contain information of enormous value to human rights scholars and practitioners across the globe. To that end, we will collect our "points of interest" from each chapter and upload them to a website. The site will be simple, but will give the project immediate relevance, a wider audience, and will give us a source of feedback for possible subsequent editions.

TIMELINE

Our authors will be asked to deliver their pieces by September 2008, in order for us to deliver the full manuscript to the publisher by January 2009. Each author will present his or her work before a classroom workshop (co-taught by Goodman Woods) at Harvard Law School during Spring 2008, and all authors will meet as a group at an authors' retreat hosted by Harvard Law School's Human Rights Program in Summer 2008.

LENGTH

The manuscript will be approximately 280 pages.

ABOUT THE EDITORS

Ryan Goodman is the Rita E. Hauser Professor of Human Rights and Humanitarian Law, and the Director of the Human Rights Program at Harvard Law School. Professor Goodman received his J.D. from Yale Law School, where he served as an articles editor of the Yale Law Journal. He received a Ph.D. in Sociology from Yale University. He has worked at the U.S. Department of State, the International Criminal Tribunal for the former Yugoslavia, and nongovernmental organizations in India, South Africa, Switzerland, Thailand, and the United States. His recent publications have appeared in the American Journal of International Law, the California Law Review, the Duke Law Journal, the European Journal of International Law, the Harvard Law Review, the Stanford Law Review, and the Yale Law Journal. His publications also include International Human Rights in Context (Oxford University Press, 3d ed., forthcoming 2007) (with Henry Steiner & Philip Alston), Socializing States: Promoting Human Rights through International Law (Oxford University Press, forthcoming 2008) (with Derek Jinks), and International Humanitarian Law (Oxford University Press, forthcoming 2009) (with Derek Jinks). He is a member of the Board of Editors of the American Journal of International Law. His research interests include public international law, international human rights law, and the law of armed conflict.

Derek Jinks is a Professor of Law at the University of Texas School of Law and a Fellow of the Strauss Center for National Security Law and Policy at the University of Texas at Austin. He is also the founder and Director of the Rule of Law in Wartime Program at Texas. He has been a Visiting Professor at Harvard Law School and the University of Chicago Law School. Prior to entering the legal academy, he clerked for Judge William C. Canby, Jr. of the U.S. Court of Appeals for the Ninth Circuit and worked in the Prosecutor's Office of the International Criminal Tribunal for the Former Yugoslavia. He has also worked as Senior Legal Advisor and United Nations Representative for the South Asia Human Rights Documentation Centre in India; and served in the delegation of the International Service for Human Rights at the Rome conference for the establishment of a permanent International Criminal Court. Since 2006, he has been a member of the U.S. Secretary of State's Advisory Committee on International Law. His research focuses on the law of armed conflict, national security law, and interdisciplinary approaches to international human rights law. His writings appeared in many leading law journals including: the Harvard Law Review, the Yale Law Journal, the Harvard Journal of International Law, the American Journal of International Law, the European Journal of International Law, the Stanford Law Review, and the Duke Law Journal. He is also author of Socializing States: Promoting Human Rights through International Law (Oxford University Press, forthcoming 2008) (with

Ryan Goodman), International Humanitarian Law (Oxford University Press, forthcoming 2009) (with Ryan Goodman), The Rules of War: The Geneva Conventions in the Age of Terror (forthcoming Oxford University Press 2008); and The Role of Domestic Courts in Treaty Enforcement: A Comparative Study (forthcoming Cambridge University Press 2008) (co-edited with David Sloss).

Andrew K. Woods is a Lecturer on Law and Rita E. Hauser Human Rights Fellow at Harvard Law School, where he received a J.D. His work focuses on the role of culture and media, broadly defined, in human rights advocacy. His recent projects include: an interdisciplinary set of workshops on creative human rights promotion (humanrightsandmedia.com); GOOD Magazine, where he edits essays (goodmagazine.com); and a web-archive of soldier stories, which hopes to encourage self-reflection by giving state-agents a human voice (soon to be at www.soldiertestimony.org). He is a Gates Scholar at Cambridge University.