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Diffusion Across Political Systems: The Global Spread of National Human Rights Institutions

*Thomas Pegram**

ABSTRACT

This article examines the proliferation of national human rights institutions (NHRIs) and seeks to explain the drivers of this institutional innovation across contrasting political regimes. This article suggests that the NHRI phenomenon can be attributed to increasingly sophisticated international organizational platforms and three distinct, but complementary, mechanisms of diffusion: (1) coercion, (2) acculturation, and (3) persuasion. The article argues that a powerful international process of diffusion is at work and NHRIs are no longer the exclusive preserve of liberal democratic regimes. Instead NHRIs have diffused to a wide range of political systems, subjecting these human rights institutions to new and often competing demands and expectations.

I. INTRODUCTION

A striking phenomenon of recent years is the spread of national human rights institutions (NHRIs) far beyond liberal democratic jurisdictions. Mandated to protect and promote citizens' human rights, NHRIs are established in

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countries across the globe, and in a wide range of political systems. The implantation of NHRIs in regions as diverse as Africa, Asia-Pacific, Latin America, and the Middle East contributes to a contemporary trend toward the diffusion of constitutional innovations across international boundaries and political systems with unpredictable consequences.¹

The NHRI offers a particularly compelling subject of analysis. Most political systems have established in law a variant of an NHRI, but not all of these political systems can be considered consolidated democracies. Instead, most adopting states present relatively hybrid forms of democracy, from those with a loose adherence to democratic constitutionalism, to even those states enduring dictatorships. In recent years, research on NHRIs has turned away from often highly positivist analyses toward taking a more political and multidisciplinary approach.² Among a myriad of issues raised by this nascent research agenda, it is increasingly apparent that the diffusion of an NHRI in any one instance cannot be considered in isolation from global antecedents and trends.

The diffusion of institutional forms has been most evident in norms relating to human rights. However, diffusion of institutional forms is also apparent in political democracy and regulatory practices. The global expansion of the NHRI template is a complex phenomenon, raising questions of diverse origins, and the impact of new institutional arrangements. This article restricts its attention primarily to the former concern. However, reflecting the difficulties inherent in discretely compartmentalizing process from outcome, this article engages with the idea that paths to reform may have an important bearing on the resulting configuration of new institutional forms. Such an observation is pertinent to discussion of new human rights bodies as a possible missing link in the transmission of international human rights norms and their implementation at the domestic level.

The diffusion of the NHRI follows a contagion logic in the sense that one instance of establishment appears to increase the probability of another such occurrence within a fairly circumscribed period of time. This results in spatial and temporal clustering of NHRIs. Rather than the notion of contagion, it is diffusion theory that offers the most promising theoretical avenue for explaining the spread of NHRIs. Strang defines diffusion as a “process where prior adoption of a trait or practice in a population alters the probability of adoption for remaining non-adopters.”³ Processes of international socializa-

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1. See HUMAN RIGHTS COMMISSIONS AND OMBUDSMAN OFFICES: NATIONAL EXPERIENCES THROUGHOUT THE WORLD (Kamal Hossain et al. eds., 2000).
 2. See LINDA C. REIF, *THE OMBUDSMAN, GOOD GOVERNANCE AND THE INTERNATIONAL HUMAN RIGHTS SYSTEM* (2004); see also JULIE A. MERTUS, *HUMAN RIGHTS MATTERS: LOCAL POLITICS AND NATIONAL HUMAN RIGHTS INSTITUTIONS* (2009); Fredrik Ugglå, *The Ombudsman in Latin America*, 36 J. LATIN AM. STUD. 423 (2004).
 3. David Strang, *Adding Social Structure to Diffusion Models: An Event History Framework*, 19 SOC. METHODS & RES. 324, 325 (1991).

tion, through the transmission of norms from organizational platforms at the international and regional level to individual states identified by Finnemore and Sikkink, are instructive when reflecting on an increasingly sophisticated normative framework governing NHRIs.⁴

The manner and degree to which wider normative forces shape the behavior of states within their wider regional or international social system is a matter of contention. Drawing on the work of Goodman and Jinks, this article emphasizes three classes of diffusion mechanism, leading to contrasting modes of diffusion, in order to explain the spread of the ombudsman: (1) coercion leading to compliance; (2) acculturation leading to conformity; and (3) persuasion leading to habituation.⁵ Each class of mechanism entails different actors, levels of analysis, and predictive assumptions concerning actor autonomy and behavior, without denying potential for overlap. The three distinct, but complementary, logics of diffusion will be contrasted in this article, with consideration of both rational and constructivist explanations. However, for the purposes of explaining diffusion of institutions such as NHRIs, coercion may be problematic—at least in its most simplistic form.

By observing the co-variation of NHRI diffusion globally and the correlation of institutional form, diffusion mechanism, and political regime, this article's analysis provides a useful platform from which to explore the interactions between these different internal and external dimensions of institutional transfer. The resulting distribution of NHRIs by regime types points to certain trends: a predominance of classical ombudsman in consolidated democracies, human rights ombudsmen in a range of hybrid democratic regimes, and the human rights commissions present in the widest range of political systems, from Denmark to Afghanistan and Iran. The fact that NHRIs have spread across so many different regimes is indicative of a powerful international diffusion process in play.

It has been argued that the establishments of new institutional forms within broader processes of transition to democracy result from a primarily domestic political process.⁶ Importantly, diffusion analysis recognizes the increasing potency of external agency in recent years. In the case of NHRIs, its historical spread and resulting structural configuration, with the possible exception of the Swedish paradigm of 1809, arose from the interaction between local political conditions and the international social system. In other words, the constellation of interests present in the domestic political realm has a bearing on the receptiveness of the adopting state to international

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4. See Martha Finnemore & Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 INT'L ORG. 887 (1998).
 5. See Ryan Goodman & Derek Jinks, *How to Influence States: Socialization and International Human Rights Law*, 54 DUKE L.J. 621, 630 (2004).
 6. See generally TRANSITIONS FROM AUTHORITARIAN RULE: LATIN AMERICA (Guillermo O'Donnell et al. eds., 1986).

context. In turn, the formulation of instruments of influence, combined or in isolation—be they coercive, acculturative, or persuasive—may be tailored to the attitudinal orientation of the target, reflecting the relative leverage of international platforms vis-à-vis domestic political forces. The complex domestic, regional, and international interaction of actors, arenas, and modalities of diffusion also helps to account for the unintended consequences often associated with NHRIs.

II. NATIONAL HUMAN RIGHTS INSTITUTIONS (NHRIS)

The contemporary departure point for discussion of NHRIs is the Paris Principles (Principles), devised in 1991 and adopted by the United Nations (UN) General Assembly in 1993.⁷ This document provides an internationally recognized standard for such institutions. As developed in the following section, the Principles reflect the codification of decades of intermittent attention to these entities. In formulating a generic configuration of NHRIs, the Principles pay particular attention to the formal independence, competence, mandate, and composition of the institution:

- Established in the national constitution or by law;
- Role of the institution is clearly specified and the mandate is as broad as possible;
- Pluralism in governing structures and independence of appointment procedures;
- Infrastructure commensurate to functions, with particular importance attached to the need for adequate funding;
- Ability to perform a monitoring, advisory and recommendation function on various matters relating to human rights;
- Institution relates to regional and international organizations;
- Requirement to promote public awareness, teaching and research on human rights; and
- The possibility that NHRIs possess quasi-jurisdictional functions, e.g., the handling of individual complaints or petitions on human rights grounds.

7. See *Principles Relating to the Status and Functioning of National Institutions for the Promotion and Protection of Human Rights*, adopted 20 Dec. 1993, G.A. Res. 48/134, U.N. GAOR, 48th Sess., U.N. Doc. A/RES/ 48/141 (1993); *Report of the International Workshop on National Institutions for the Promotion and Protection of Human Rights*, Comm'n on Hum. Rts., 48th Sess., Agenda Item 11(b), U.N. Doc. E/CN.4/1992/43 (1991).

The correct application of the NHRI label to institutions that fulfill the above criteria, to a greater or lesser extent, is a matter of debate. Recent surveys suggest that by 2003 there were approximately fifty-five national-level human rights ombudsmen worldwide,⁸ a significant increase from one survey's findings of only eight NHRIs in 1990.⁹ The UN-affiliated International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICCNI) identifies 119 NHRIs, with sixty-three fully accredited NHRIs in accordance with the Principles.¹⁰

Within the broad designation of NHRIs there exists considerable design variation across a range of dimensions. This article uses three paradigm models as its conceptual framework: the classical ombudsman, human rights commission, and human rights ombudsman.¹¹ Particular contestation surrounds the inclusion of the ombudsman form within this categorization, principally due to issues of composition and function.¹² It is argued here that such a judgment *a priori* fails to take into account the historical genealogy of NHRIs, variation in the composition of ombudsmen at all levels of personnel, and, fundamentally, the formal and *de facto* human rights function of classical ombudsmen recognized within various international standards as elaborated below.

A. The Classical Ombudsman

The historical genesis of NHRIs can be traced back to two distinct traditions, the ombudsman and the commission of inquiry.¹³ The classical Swedish model of the ombudsman is a single appointee elected by parliament and empowered to investigate, and prosecute if necessary, grievances of the citizenry against the public bureaucracy pertaining to legality and administrative fairness. Sweden, the original classical template, displays a structural

8. REIF, *supra* note 2, at 11.

9. MORTEN KJÆRUM, DANISH INST. FOR HUM. RTS., NATIONAL HUMAN RIGHTS INSTITUTIONS IMPLEMENTING HUMAN RIGHTS 5 (2003), available at <http://www.nhri.net/pdf/NHRI-Implementing%20human%20rights.pdf>.

10. *Report of the Second International Workshop on National Institutions for the Promotion and Protection of Human Rights*, U.N. ESCOR, Comm'n on Hum. Rts., 50th Sess., Agenda Item 11(b), U.N. Doc. E/CN.4/1994/45 (1993). The ICCNI was created in 1993 at the second international workshop on National Institutions for the Promotion and Protection of Human Rights held in Tunis. *Id.*

11. This article does not consider ombudsman-type institutions that operate in the private sector, at the sub-national level, or within highly restrictive mandates.

12. See Birgit Lindsnaes & Lone Lindholt, *National Human Rights Institutions: Standard Setting and Achievements*, in DANISH CENTRE FOR HUMAN RIGHTS, NATIONAL HUMAN RIGHTS INSTITUTIONS: ARTICLES AND WORKING PAPERS, 1, 2–3 (Birgit Lindsnaes et al. eds., 2001) [hereinafter DANISH CENTRE WORKING PAPERS].

13. INT'L COUNCIL ON HUM. RTS. POL'Y, PERFORMANCE & LEGITIMACY: NATIONAL HUMAN RIGHTS INSTITUTIONS 92 (2d ed. 2000).

configuration that qualifies it as an NHRI. Most notable is the institution's prosecutorial authority, and following a constitutional revision, an explicit mandate "to examine the observance of the human rights provisions in the Swedish Constitution by the administration."¹⁴

The Danish model is considered the modern paradigm ombudsman design, departing significantly from Swedish antecedents; prosecutorial authority is jettisoned along with reduced special powers and a formal mandate over administrative fairness, not legality. However, the office retains robust investigative powers, and while not formally ascribed a human rights mandate, in practice the office may perform a core human rights function, for example, in its oversight of persons deprived of liberty.¹⁵ The insertion of classical ombudsmen into an increasingly potent human rights normative framework is evident throughout Europe. Following Finland's revision of its constitution in 1995, the ombudsman was officially designated a human rights institution. The Norwegian office has also recently been given an express human rights mandate. The ombudsman of the Netherlands has also incorporated human rights norms into its resolutions.¹⁶

In 1962, New Zealand became the first commonwealth country to adopt the Danish ombudsman model. The UK, primarily due to its constitutional tradition of favoring political accountability and political control of power and the principle of ministerial responsibility to Parliament, deviated from the Danish model. In 1967 the UK created what is the most restrictive ombudsman model in terms of jurisdiction and mandate. Most striking is the limited access of the citizen to the institution, whereby the citizen's complaint must first be directed to a Member of Parliament (replicated only in the French model). It is the New Zealand adaptation of the Danish model, not the British exemplar, which remains popular within Western Europe and among commonwealth countries. Such emulation may also explain the frequent occurrence of multiple institutions—both a classical or human rights ombudsman and human rights commission—operating within a single jurisdiction, as opposed to the unitary hybrid agency predominant in Latin America and Central and Eastern Europe.¹⁷

14. REIF, *supra* note 2, at 6.

15. ASS'N FOR THE PREVENTION OF TORTURE, OPCAT COUNTRY STATUS RATIFICATION AND IMPLEMENTATION, at 150 (12 Apr. 2010). This has been recognized in its accreditation in 2004 as the national preventive mechanism under the Optional Protocol to the Convention Against Torture (OPCAT). *Id.*

16. Linda C. Reif, *Building Democratic Institutions: The Role of National Human Rights Institutions in Good Governance and Human Rights Protection*, 13 HARV. HUM. RTS. J. 1, 34 (2000).

17. *Id.* at 10. In the case of Ghana the ombudsman institution was fused into a national human rights commission established in 1992. See Lindsnaes & Lindholt, *supra* note 12, at 24.

B. The Human Rights Commission

Along with the classical ombudsman, commissions of inquiry have informed the contemporary configuration of NHRIs. The classical commission model is a body established by government, often for a finite period, to inquire into matters of public concern and to advise government on policy options.¹⁸ The contemporary human rights commission has an express human rights mandate, may be appointed by the executive or legislature, is composed of representatives from government and civil society with human rights expertise, and has a mandate that may encompass an advisory, research, educational, and investigative function. Early national human rights commissions were established as standing commissions to inquire into discrimination and equality.¹⁹ Contemporary European NHRIs have been described as operating like ongoing commissions of inquiry.²⁰

It is commonly claimed that human rights ombudsmen exist on a spectrum, with the classical administrative ombudsman at one end, and human rights commissions at the other.²¹ Similarly, in functional terms, a spectrum may be applied to human rights commissions: from those enjoying strong remedial powers to address individual complaints, to others that act as governmental advisory bodies or educational research institutes. Some NHRIs might be more accurately described as research institutes or consultative commissions with an advisory or promotional human rights mandate, as opposed to the investigative faculties required to perform a regulative function. Such a model can be found in France (created in 1948), Denmark (created in 1987), Germany (created in 2001), and Norway (created in 2005).²² In contrast, human rights commissions in Namibia (created in 1990) and Uganda (created in 1995) have prosecutorial or court-referral powers more akin to the Swedish variant of the ombudsman.²³ The broad range of models in this category reflects contrasting political contexts, in particular a variation in local existing democratic and human rights institutional frameworks.

18. Martin Bulmer, *Introduction*, in *SOCIAL RESEARCH AND ROYAL COMMISSIONS* 1, 1 (Martin Bulmer ed., 1980).

19. ANNE-ELINA POHJOLAINEN, *THE EVOLUTION OF NATIONAL HUMAN RIGHTS INSTITUTIONS: THE ROLE OF THE UNITED NATIONS* 16–17 (2006). These include the United Kingdom (created in 1976), Canada (created in 1978), New Zealand (created in 1978), and Australia (created in 1981). *Id.*

20. Christopher S. Elmendorf, *Advisory Counterparts to Constitutional Courts*, 4 *DUKE L.J.* 962 (2007).

21. REIF, *supra* note 2, at 8.

22. KJÆRUM *supra* note 9, at 8.

23. Marcus Topp, *Uganda: Human Rights Protection by the State in Uganda*, in *DANISH CENTRE WORKING PAPERS*, *supra* note 12, at 169, 192; see also Kofi Quashigah, *The Ghana Commission on Human Rights and Administrative Justice*, in *DANISH CENTRE WORKING PAPERS*, *supra* note 12, at 199, 205.

C. The Human Rights Ombudsman

Linda Reif defines the human rights ombudsman as an institution that expressly has been given or that in practice undertakes two roles: to protect and promote human rights and to monitor government administration.²⁴ The institution commonly reflects the classical ombudsman in its composition. This variant on the classical ombudsman model is elected by the legislature, has an express human rights mandate, combined with oversight over administrative fairness and legality and, on occasion, has a political accountability jurisdiction over issues such as corruption and electoral monitoring. The institution may also actively engage in human rights policy research, advice, documentation and educational activities. Investigative and court-referral powers are common within this group, although prosecutorial authority and jurisdiction over private entities and actors are rare.

The Portuguese *Provedor de Justiça* (1976), Spanish *Defensor del Pueblo* (1978), and Polish Commissioner for Civil Rights Protection (1987) were the first ombudsman models to incorporate human rights as an explicit standard of control. These three ombudsman models provided the basic configurative template for many contemporary NHRIs, especially in Central Europe, Eastern Europe, and Latin America.²⁵ The evolution of ombudsman design, from the classical to the human rights model, can be identified by three progressive “waves”:

1. The rule of law model (1809–1962).²⁶ The paradigmatic model of the first ombudsman framework is the Swedish ombudsman. This model has relatively powerful jurisdictional authority, including the ability to prosecute public officials, oversight over administrative fairness and legality, and faculties exceeding soft legal powers.
2. The basic model (1962–1976).²⁷ The spread of the ombudsman framework from Denmark to New Zealand introduced the institution to the Anglo-Saxon world. The paradigmatic and enduring basic model that emerges in the second wave is the Danish ombudsman. This model removes coercive prerogatives, retains extensive powers of examination, has a mandate on administrative fairness rather than legality, and enhances a mediation function.

24. Reif, *Building Democratic Institutions*, *supra* note 16, at 11.

25. EUROPEAN OMBUDSMAN-INSTITUTIONS: A COMPARATIVE LEGAL ANALYSIS REGARDING THE MULTIFACETED REALISATION OF AN IDEA 37–38 (Gabriele Kuckso-Stadlmayer ed., 2008).

26. *Id.* Other rule of law models in Europe include Austria, Bosnia and Herzegovina, Croatia, Czech Republic, Estonia, Finland, France, Latvia, Lithuania, Macedonia, Moldova, Montenegro, Poland, Portugal, Romania, Slovenia, and Spain. See *id.* at 62–64.

27. *Id.* Basic models found in Europe include Andorra, Belgium, Bulgaria, Cyprus, Denmark, Ireland, Iceland, Israel, Luxembourg, Malta, the Netherlands, Norway, and the UK. See *id.* at 61–62.

3. The human rights model (1976–1987). The inclusion of the office in the post-authoritarian contexts of Poland, Portugal, and Spain provided the template for the human rights model. These institutions have at their core a human rights protection mandate, exceed the soft powers of the basic model, and introduce human rights standards as a primary and explicit standard of control. However, the assignment of powers equivalent to the rule of law model varies.²⁸

The genealogy of the NHRIs outlined here provides the basic foundations for the eventual expansion of the institution's mandate. However, the evolution of the institution does not in practice adhere uniformly to any one discrete categorization. Rather, the eventual structural baseline of the institution reflects a dialogue between international and domestic forces as new institutional forms are subjected to political negotiation.

III. PROCESSES AND MECHANISMS OF NHRI DIFFUSION

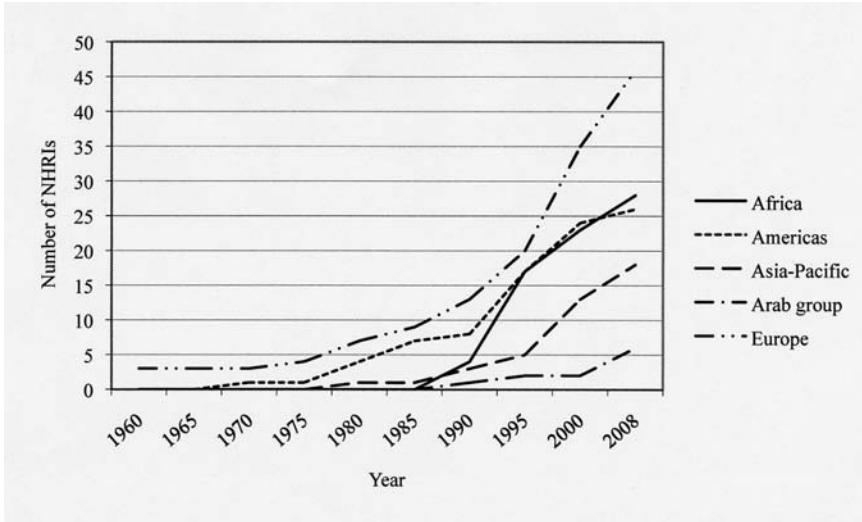
In work on the international dimensions of democratization, emphasis is placed on repeating clusters and sequences within and across regions, as well as the presence of what has been termed "neutral transmission mechanisms," such as accelerating flows of information especially within regional contexts.²⁹ More recently, in terms of predictive scope, recent statistical research suggests that once a norm is institutionalized, a strong predictor for whether an individual state will enact that norm is whether other states in its region have done so in the past five years.³⁰

The survey of the diffusion of 124 NHRIs in Graph 1.1 strongly suggests such a contagion effect, especially at the regional level with a wave phenomenon of varying intensity across regions. Europe provides the most constant curve, while all regions show a marked increase in the mid-1970s, with Africa and the Americas experiencing rapid acceleration from 1990 onwards. Interestingly, an incipient NHRI presence can also be found in Arab Group countries with human rights commissions established in Morocco (1990), Palestine (1993), Qatar (2002), Egypt (2003), Jordan (2006) and Saudi Arabia (2006).

28. *Id.* Human rights models also assigned "hard" powers commensurate with the rule of law model include the Czech Republic, Estonia, Latvia, Lithuania, Moldova, Poland, Portugal, Romania, Russia, and Slovakia. *See id.* at 61–65.

29. Laurence Whitehead, *Three International Dimensions of Democratization*, in *THE INTERNATIONAL DIMENSIONS OF DEMOCRATIZATION: EUROPE AND THE AMERICAS* 3, 6–7 (Laurence Whitehead ed., expanded ed. 2001).

30. Francisco O. Ramirez et al., *The Changing Logic of Political Citizenship: Cross-National Acquisition of Women's Suffrage Rights, 1890 to 1990*, 62 *AM. SOC. REV.* 735, 742 (1997).

Graph 1.1 *Regional proliferation of NHRIs 1960–2008*³¹

Source: NHRI population data collected from ICCNI and NHRI Forum: <http://www.nhri.net/>.

Initial expansion of the classical ombudsman model was confined to the Scandinavian countries, with large time-lags between Sweden in 1809, Finland in 1920, and Denmark in 1955. This process of contagion spans 146 years and is confined to a small cadre with clear regional and cultural affinities. The second wave transgressed Nordic frontiers with the establishment of the office in New Zealand in 1962—preceding that of Norway by one year—and introduced the ombudsman to the English-speaking world of the Commonwealth. A single human rights commission was established in France in 1948, predating its successor by thirty years. The third wave of the mid-1970s saw NHRIs begin to undergo a global expansion, with the emergence of human rights commissions and human rights ombudsmen. The third wave took on new momentum in the mid-1980s as NHRIs

31. Regional group designations follow membership of the Council of Europe (COE) (<http://www.coe.int/>), the Arab League (http://en.wikipedia.org/wiki/Arab_League), the African Union (<http://www.africa-union.org/>), the Organization of American States (<http://www.oas.org/>), and the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) (<http://www.unescap.org/>). The sample does not include non-regional members of ESCAP: France, the Netherlands, the UK, and the US. Additional NHRIs include: Andorra (included in COE group).

began to diffuse to a multiplying array of loosely democratic constitutional regimes throughout the Americas, Africa, Asia-Pacific, and the peripheries of Europe. The 1990s and 2000s witnessed a deceleration, but also witnessed the appearance of the institution in a growing number of highly unstable and authoritarian regimes.

IV. INTERNATIONAL ORGANIZATIONAL PLATFORMS AND NETWORKS

Cardenas argues that international organizations, especially the UN, have played a crucial role in creating and strengthening NHRIs by means of four mechanisms: standard setting, capacity building, network facilitating, and membership granting.³² The UN first referred to the need for NHRIs in the second session of the United Nations Economic and Social Council (ECOSOC) in 1946 and the institution received intermittent attention over the next forty years.³³ Despite the issuing of guidelines and statements regarding NHRIs, “during this initial phase, there were virtually no limitations on the definition of a national human rights institution.”³⁴ The 1991 Paris workshop galvanized a new interest in NHRIs and provided a concrete—if imperfect—structural basis for NHRIs through the Paris Principles.³⁵

The UN definition of NHRI still retains a lack of precision. A NHRI is variably defined as “a body which is established by a Government under the constitution, or by law or decree, the functions of which are specifically designed in terms of the promotion and protection of human rights,”³⁶ or, alternatively as, “a quasi-governmental or statutory institution with human rights in its mandate.”³⁷ As Reif notes, “[T]he UN recognizes that classical and human rights ombudsmen constitute [NHRIs], along with human rights commissions and specialized institutions.”³⁸

32. Sonia Cardenas, *Emerging Global Actors: The United Nations and National Human Rights Institutions*, 9 *GLOBAL GOV.* 23, 23 (2003).

33. See *Commission on Human Rights, adopted 21 June 1946*, ECOSOC Res. 2/9, U.N. ESCOR, 2d Sess., U.N. Doc. E/RES/9(II) (1946); *National Institutions for the Promotion and Protection of Human Rights, adopted 14 Dec. 1978*, G.A. Res. 33/46, U.N. GAOR, 33d Sess., 83d mtg., U.N. Doc. A/RES/33/46 (1978); *Declaration on the Right to Develop, adopted 4 Dec. 1986*, U.N. GAOR, 41st Sess., U.N. Doc A/RES/ 41/128 (1986).

34. Lindsnaes & Lindholt, *supra* note 12, at 8.

35. *Id.* The headline in the original Paris Principles, contained in the original report of the workshop reads quasi-judicial rather than quasi-judisdictional. See *id.* at 11, n.25.

36. U.N.CENTRE FOR HUM. RTS., NATIONAL HUMAN RIGHTS INSTITUTIONS: A HANDBOOK ON THE ESTABLISHMENT AND STRENGTHENING OF NATIONAL INSTITUTIONS FOR THE PROMOTION AND PROTECTION OF HUMAN RIGHTS 6 (1995).

37. See INT’L COUNCIL ON HUM. RTS. POL’Y, *supra* note 13, at 3.

38. REIF, *supra* note 2, at 94.

The exponential growth in NHRIs has led to sustained interest within UN structures, with regular pronouncements since 1991 by the UN General Assembly, Secretary General, and Commission on Human Rights, as well as by UN agencies such as the UN Development Programme.³⁹ The integration of NHRIs within the UN human rights machinery continues to evolve, most notably in the creation of an NHRI Unit within the Office of the High Commissioner for Human Rights (OHCHR), NHRI monitoring activity on state compliance with treaty body norms,⁴⁰ participation of ICCNI accredited institutions in the deliberations of the Human Rights Council (HRC), and, in particular, the newly established universal periodic review mechanism.

The UN may represent the most advanced organizational platform by which NHRIs have been diffused, but it is by no means the sole significant normative agent at the global level. The Commonwealth, the largest association of independent states after the UN, has also supported the creation of NHRIs with virtually every member state having established the institution, although the institutions vary greatly in their adherence to the Paris Principles. International financial institutions such as the International Monetary Fund (IMF) and the World Bank (WB) have also promoted the ombudsman institution under the auspices of “good governance,”⁴¹ a normative framework distinct from, even sometimes at odds with, the human rights framework espoused by the UN human rights mechanisms.⁴²

Furthermore, international non-state actors, such as Amnesty International and Human Rights Watch (HRW), have made efforts to incorporate an NHRI focus into their work.⁴³ The HRW report on the experience of African NHRIs placed a sometimes unwelcome spotlight on the many challenges that confront individual institutions at the domestic level, challenges often not captured by UN formal peer review mechanisms such as the ICCNI. Norm entrepreneurs need not necessarily be organizations. This discussion would not be complete without consideration of another category of norm entrepreneurs, namely, individual NHRI advocates. During the late 1950s and early 1960s, the prolific publications in English of Stephen Hurwitz and Alfred Bexelius,⁴⁴ the Danish and Swedish Ombudsmen, are widely credited

39. *Id.* at 97–99.

40. See AMREI MÜLLER & FRAUKE SEIDENSTICKER, GERMAN INST. FOR HUM. RTS., *THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS IN THE UNITED NATIONS TREATY BODY PROCESS* (2007).

41. See Nick Manning & J.D. Galligan, World Bank, *Using an Ombudsman to Oversee Public Officials*, 19 PREMNOTES (1999).

42. See Peter Uvin, *On High Moral Ground: The Incorporation of Human Rights by the Development Enterprise*, FLETCHER J. OF DEV. STUD., 1–11, 3 (2002).

43. See Amnesty Int'l, *National Human Rights Institutions: Amnesty International's Recommendations for Effective Protection and Promotion of Human Rights*, AI Index IOR 40/007/2001, 30 Sept. 2001; see also HUM. RTS. WATCH (HRW), *PROTECTORS OR PRETENDERS? GOVERNMENT HUMAN RIGHTS COMMISSIONS IN AFRICA* (2001).

44. See Alfred Bexelius, *The Swedish Institution of the Justitieombudsman*, 2 AM. J. COMP. L. 225–238 (1962); see also Stephan Hurwitz, *Control of the Administration in Denmark*:

with bringing the ombudsman to world attention and their names have duly entered ombudsman folklore. Within the NHRI community, key individuals have worked, often from within and across international organizations and academia, to champion these institutions throughout the world.

V. REGIONAL ORGANIZATIONAL PLATFORMS AND NETWORKS

Simmons has suggested that regional diffusion may play an important independent role in state compliance with international norms.⁴⁵ In the democratization literature, the hypothesis that regional organizations, such as the European Union (EU) and Organization of American States (OAS), can have an important role in transition to, and subsequent stabilizing of, democracy has been convincingly argued.⁴⁶ NHRI diffusion has occurred not only through organizational platforms but also via transnational networks, devised by NHRIs themselves. The transnational networks operate at the regional level to facilitate information exchange among offices, and also in some cases, to confer legitimacy in the form of peer review mechanisms of evaluation. The degree of NHRI interaction within different arenas varies from region to region.

The African human rights system has evolved over the past twenty-five years toward an established and potentially important arena for NHRI activity.⁴⁷ However, the regional system is the subject of sustained criticism for its inability to censure rights abuses by member states, as well as for procedural issues such as delays in determining cases.⁴⁸ NHRIs, however, have proliferated in Africa.⁴⁹ In 2009, thirty-two of the fifty-three members of the African Union (AU), or sixty percent of this regional group, have installed NHRIs with the most common model being the human rights commission.⁵⁰ Despite

The Danish Parliamentary Commissioner for Civil and Military Government Administration, 1958 J. INT. COMM'N JURISTS 224–43.

45. Beth Simmons, *Why Commit? Explaining State Acceptance of International Human Rights*, Weatherhead Center for International Affairs, Harvard University, 28 (2002), available at http://www.wcfia.harvard.edu/sites/default/files/752__SimmonsWhyCommit.pdf.
46. See JON C. PEVEHOUSE, *DEMOCRACY FROM ABOVE: REGIONAL ORGANIZATIONS AND DEMOCRATIZATION* (2005).
47. See OBIORA C. OKAFOR, *THE AFRICAN HUMAN RIGHTS SYSTEM: ACTIVIST FORCES AND INTERNATIONAL INSTITUTIONS* (2007). The regional human rights system in Africa is centered on the African Union (AU), the African Charter on Human and Peoples' Rights (ACHPR), and the regional human rights mechanisms, such as the African Commission on Human and Peoples' Rights, and the recently established African Court of Justice and Human Rights. *Id.*
48. Rachel Murray, *Recent Developments in the African Human Rights System 2007*, 8 HUM. RTS. L. REV. 356, 370 (2008).
49. See generally RACHEL MURRAY, *THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS AT THE INTERNATIONAL AND REGIONAL LEVELS: THE EXPERIENCE OF AFRICA* (2007).
50. Data compiled by the author from the Network of African National Rights Institutions (NANHRI), available at <http://www.nanhri.org/>, and from the African Union (see <http://www.africa-union.org/>).

this presence, participation by NHRIs in the African Human Rights Commission's work has thus far been minimal and not encouraged by member states.⁵¹ At the transnational level, the Network of African National Human Rights Institutions (NANHRI) was created in 2007 under the initiative of the Kenyan Commission, and replaced the largely defunct Coordinating Committee of African National Human Rights Institutions, established in 1996. Collaboration, information-sharing, and networking between NHRIs in Africa has been poor. The NANHRI proposal drafted in 2006 recognized these shortcomings.⁵²

The lack of an intergovernmental system for the protection of human rights in the Asia-Pacific region, and the unlikelihood of its robust materialization, has led commentators to suggest the advancement of human rights platforms at the sub-regional and national levels.⁵³ In the absence of a regional mechanism, it is perhaps unsurprising that the impetus for the creation of human rights commissions has emanated from international arenas. Of the fifty-three countries that comprise the Economic and Social Commission for Asia and the Pacific (ESCAP), twenty-seven regional members, or fifty-one percent of the membership, have established an NHRI of some kind.⁵⁴ The region displays high variation in types of institutions, from specialized quasi-ombudsmen agencies, such as the Taiwan Control Yuan, to the human rights commissions, classical and human rights ombudsmen.⁵⁵ The ICCNI currently recognizes fifteen institutions in the region as NHRIs, all with "status A" accreditation.⁵⁶

An alternative peer review mechanism is also available in the form of the transnational network of NHRIs, the Asia Pacific Forum (APF). The APF, created in 1996 with the support of the UN and spearheaded by the Australian Commission, is a membership organization that administers its own evaluation—according to the Paris Principles—of prospective and current members separate to, but in cooperation with, the ICCNI. The APF currently has fourteen members and three associate members, with one

51. MURRAY THE ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS, *supra* note 49, at 47–57.

52. KENYA NATIONAL COMMISSION OF HUMAN RIGHTS, PROJECT PROPOSAL: ESTABLISHMENT OF THE NETWORK AND THE SECRETARIAT OF AFRICAN NATIONAL HUMAN RIGHTS INSTITUTIONS 1–2 (2006), *available at* http://www.nhri.net/pdf/Project_proposal_Establishment_Network_of_African_NHRIs.pdf. "Such weaknesses highlight the need to improve the capacities of these institutions . . . Collaboration, information sharing, and networking among NHRI's in Africa has been poor. This may be explained largely by the absence of an effective structure to facilitate this." *Id.*

53. Kluwer Law Int'l, *National Human Rights Institutions: An Overview of the Asia Pacific Region*, 7 INT. J. MIN. & GR. RTS. 207, 258 (2000).

54. This does not include non-regional members such as France, the Netherlands, the UK, and the US. Data compiled by author from the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP), *available at* <http://www.unescap.org/> and NHRI Forum, *available at* <http://www.nhri.net/>.

55. REIF, *supra* note 2, at 243.

56. See ICCNI, National Institutions Accreditation Status as of January 2010, at 1–2, *available at* http://www.nhri.net/2009/Chart_of_the_Status_of_NIs_January_2010.pdf.

member, Fiji, suspended.⁵⁷ The APF is one of the most sophisticated NHRI regional networks in operation. It maintains a high level of integration with international forums, and is recognized as an important source of technical assistance for regional offices, and as such is able, up to a point, to push for greater compliance with the Paris Principles.⁵⁸

The Council of Europe is the principal human rights body in the region and exercises influence through various treaties and enforcement mechanisms.⁵⁹ The Council of Europe has been engaged in calling for the creation of NHRIs since the mid-1970s and twenty-six of the twenty-seven EU member states, or ninety-three percent, have established an NHRI.⁶⁰ This figure excludes Italy, which features multiple ombudsmen at the local level but no national entity.⁶¹ Europe has the greatest regional concentration of institutions, with the ICCNI recognizing twenty-seven accredited institutions, although this classification extends beyond member countries and includes the sub-national office of Northern Ireland.⁶²

The Council of Europe has also supported the European Group of NHRIs, a transnational network with forty-three member institutions. Of these forty-three members, twenty-four are from member countries, of which thirteen member institutions are fully accredited. While the European group may be the principal NHRI network, prominent sub-regional networks are also in operation. For instance, the *Eunomia* project launched by the office of the Greek Ombudsman, in conjunction with the Greek Government and Council of Europe in 2001, seeks to strengthen ombudsman offices in South

57. Andrew Byrnes et al., *Joining the Club: the Asia Pacific Forum of National Human Rights Institutions, the Paris Principles, and the Advancement of Human Rights Protection in the Region*, 14 AUST. J. HUM. RTS. 63, 85 (2008). The Fijian Commission was suspended by the APF following the military coup of December 2006 and the undermining of the independence and credibility of the body. *Id.*

58. *Id.* at 91.

59. See Kevin Boyle, *Europe: Council of Europe, OSCE and European Union*, in GUIDE TO INTERNATIONAL HUMAN RIGHTS PRACTICE 143 (Hurst Hannum ed., 2d ed. 2004). An extensive range of human rights are given legal status by the Convention on the Protection of Human Rights and Fundamental Freedoms, its Protocols, and The European Social Charter and its Protocols, and are enforceable through the European Court of Human Rights. *Id.*

60. See Council of Europe, Parliamentary Assembly, Rec. 757 (1975); Council of Europe, Committee of Ministers, Rec. No. R(85)13 of the Committee of Ministers to Member States on the Institution of the Ombudsman (adopted 23 Sept. 1985; Council of Europe, Committee of Ministers, Rec. No. R (97) 14, 30 Sept. 1997; Council of Europe, Committee of Ministers, Res. (99)50, adopted 7 May, 1999; See Committee of Ministers, Recommendation Rec(2004) 6 of the Committee of Ministers to Member States on the European Convention on the Improvement of Domestic Remedies, 12 May 2004, ¶ 5.

61. REIF, *supra* note 2, at 126.

62. Data compiled by author from the Council of Europe, available at <http://www.coe.int/>; NHRI Forum, available at <http://www.nhri.net/>.

Eastern Europe.⁶³ Despite these advances in networking among European NHRIs, one observer concluded that efforts to enhance cooperation have yielded only partial results: “the network of European NHRIs has almost no institutional support . . . has no geographical base and relies on the willingness of the European Coordinating Committee, which employs only one person (half time).”⁶⁴

Finally, the focus of international organization in the Americas is the Organization of American States (OAS), the Inter-American Commission of Human Rights and its enforcement arm, the Inter-American Court of Human Rights (IACHR). The Inter-American system has made significant advances in protecting human rights, especially since the demise of authoritarian governments throughout the region.⁶⁵ Outside of Europe, the Americas display the highest regional concentration of NHRIs, with twenty-six of thirty-five OAS members, or seventy-five percent, having established the institution.⁶⁶ The OAS has promoted the establishment of NHRIs in all member states since the mid-1990s.⁶⁷ In turn, NHRIs have made sporadic use of their power to submit petitions to the IACHR.⁶⁸ NHRI coordination has generally focused on regional platforms rather than the UN, reflecting prevalent geopolitical dynamics, particularly its strong ties to Spain. In turn, the UN has paid limited attention to NHRIs in the region.⁶⁹

Beyond the OAS, there is a plethora of regional and sub-regional peer networks operating in the Americas. Two prominent networks are the Ibero-American Federation of Ombudsmen (FIO) and the Inter-American Institute for Human Rights (IIDH). Originally, the IIDH was the technical secretariat of the FIO. However, the Spanish, upon assuming the presidency of FIO in 1999, successfully lobbied for the Secretariat to be moved to Spain. The resulting schism has had serious repercussions, with the Spanish-controlled FIO excluding all Caribbean ombudsmen, as well as those from the US

63. See <http://www.synigoros.gr/economia/>. Members include Albania, Bosnia and Herzegovina, Croatia, Greece, Kosovo, Bulgaria, and Montenegro. *Id.*

64. Gauthier de Beco, *Networks of European National Human Rights Institutions*, 14 *EUR. L. J.* 860, 872 (2008).

65. See Tom Farer, *The Rise of the Inter-American Human Rights Regime: No Longer a Unicorn, Not Yet an Ox*, 19 *HUM. RTS Q.* 510, (1997).

66. Data compiled by author from the Organization of American States, available at <http://www.oas.org/>; NHRI Forum, available at <http://www.nhri.net>.

67. See *Support for International Exchanges Among Ombudsmen*, adopted 5 June 1997, G.A. Res. 1505 (XXVII-0/97), U.N. GAOR, 7th Plenary Sess., U.N. Doc. AG/RES 1505 (XXVII-O/97) (1997); *Strengthening the Role of National Institutions For The Promotion and Protection of Human Rights in the Organization of American States*, adopted 3 June 2008, G.A. Res. 2421 (XXXVIII-O/08), U.N. GAOR, 4th Plenary Sess., U.N. Doc. AG/RES. 2421 (XXXVIII-O/08) (2008).

68. See REIF *supra* note 2, at 172–87.

69. POHJOLAINEN *supra* note 19, at 110.

and Canada (with the exception of Puerto Rico). In response, the IIDH has developed a parallel network.⁷⁰

VI. DIFFUSION BY COERCION

This article's analysis has explored a range of organizational platforms through which NHRI diffusion occurred. This section focuses on the mechanisms that shape the incentives, including the underlying preferences, of state actors as they decide whether to institute an NHRI. The underlying explanatory model of the majority of diffusion analysis is one focused on coercion and competition within the international system.⁷¹ Similarly, in the literature on democratization, a focus is placed on control, whereby the promotion of democracy by one country in another is levered by positive or negative sanctions. However, for the purposes of explaining diffusion of institutions such as the ombudsman, coercion is problematic and potentially does not apply to such phenomena, at least in its strict form. As a diffusion category, coercion lacks precision and is an over-simplification although it does, importantly, grant the possibility of explicit external agency.⁷²

An indirect relationship exists between the ombudsman and three arenas of foreign intervention: colonialism, democracy promotion, and post-conflict scenarios. Coercive policy transfer was a common feature of the colonial era, with significant transfers of legal codes, governing institutions, currencies, and bureaucratic structures from the center to the peripheral European colonies of Africa, Asia, and Latin America. In the post-colonial era, many former colonies continued to look toward countries of colonial, as well as cultural or regional, affinity for lessons on institution-building. Given the prevalence of the Westminster model of political institutions in former British colonies, it is not surprising to also find that many of the earliest ombudsmen outside Europe appear in Commonwealth countries.

The direct coercion of policy transfers, as occurred in Japan or Germany in the aftermath of World War II, is rare. However, recent events have seen a resurgence of such systemic engineering, most visibly in Afghanistan and Iraq. Democracy promotion is often associated with the projection abroad of institutions found within the US and the creation of new external arenas through which to project US interests.⁷³ Despite the absence of a national

70. Interview with Gonzalo Elizondo, former Director, Public Institutions, Instituto Interamericano de Derechos Humanos, in San José, Costa Rica (1 Sept. 2007).

71. See *THE GLOBAL DIFFUSION OF MARKETS AND DEMOCRACY* (Beth Simmons et al. eds., 2008).

72. It may gain nuance by introducing other depictions of power—such as the popular dichotomy between “hard” and “soft” power—but in terms of explaining the spread of the ombudsman it may be more appropriate to combine coercion with the concept of institutional façade.

73. *AMERICAN DEMOCRACY PROMOTION: IMPULSES, STRATEGIES, AND IMPACTS 5* (Michael Cox et al. eds., 2000).

level human rights ombudsman or commission in the US, this has not prevented the implantation of an NHRI, the High Commission for Human Rights, in Iraq in late 2008, and a human rights commission was installed in Afghanistan in 2002.⁷⁴ A similar dynamic of imposition by external actors can be observed in post-conflict scenarios. The following events have all encouraged the establishment or strengthening of NHRIs:

- The UN-sponsored peace agreement in El Salvador in 1992 (NHRI created in 1991);
- The Bosnia-Herzegovina Dayton Agreement and the Paris Peace Accords in 1995 (NHRI created in 1996);
- The Guatemala peace accords of 1996 (NHRI created in 1985);
- The Good Friday Agreement of Northern Ireland in 1998 (NHRI created in 1999);
- The Lomé Peace Agreement for Sierra Leone in 1999 (NHRI created in 2002);
- UN Transitional Administration of East Timor (UNTAET) in 1999 (NHRI created in 2002);
- UN Mission to Kosovo (UNMIK) in 1999 (NHRI created in 2000);
- The Bonn Agreement of Afghanistan in 2001 (NHRI created in 2002);
- UN Mission to the Democratic Republic of Congo (MONUC) in 1999 (NHRI created in 2002—and decommissioned in 2005);
- UN Assistance Mission for Iraq (UNAMI) in 2003 (NHRI created in 2008); and
- UN Mission in Sudan (UNMIS) and the Comprehensive Peace Agreement in 2005 (NHRI created in Southern Sudan in 2007).

These instances of common institutional forms have been imposed by coercive external agencies. Irrespective of political, institutional, historical or cultural conditions, a coercive dynamic—although normatively desirable in the minds of the architects—is in play, and the resulting function is highly unpredictable.

74. Lawson writes,

[A]fter decades of Baath Party rule, [Iraq's] own bureaucracy is politicized and corrupt. As a consequence, additional mechanisms will be needed to prevent and redress bureaucratic abuses. One such mechanism is that most Nordic of institutions, the ombudsman. Properly staffed offices of ombudsmen at the national and provincial levels would offer Iraqi citizens the opportunity to register their grievances and seek effective administrative redress. Moreover, the office of ombudsman has to date proved quite adaptable to countries without a history of such institutions.

Chappell Lawson, *How Best to Build Democracy: Laying a Foundation for the New Iraq*, 82 FOREIGN AFF. 206, 207–08 (2003).

Conditionality, a significant sub-category of coercion, is a more operational category that emphasizes degrees of external coercion through institutional channels. Conditionality refers to the use of coercion through specific conditions attached to the distribution of benefits to recipient countries, commonly administered by IFI and individual donor countries. For the concept of conditionality to have leverage, the specification of the obligations must be precise, and the enforcement method for non-compliance explicit. Conditionality, as it pertains to the adoption of NHRIs, is a limited terrain, given the peripheral nature of the institution, the limited material benefits such transmission implies, and the lack of a coercive mechanism in cases of non-compliance.⁷⁵ The ombudsman has received attention from the World Bank, often attached as a component part to judicial and administrative reform packages.⁷⁶ The institution can also be found in the harmonization programs that have accompanied the accession of new states into the European Union (EU). In the case of recent accession states such as Bulgaria, and candidate countries such as Croatia, the Former Yugoslav Republic of Macedonia, and Turkey, the establishment of the ombudsman is explicitly referred to in their respective harmonization packages.⁷⁷

VII. DIFFUSION BY ACCULTURATION

Richard Rose has identified a range of micro-processes including copying, emulation, hybridization, synthesis and inspiration in his work on policy transfer.⁷⁸ Zachery Elkins and Beth Simmons speak of “uncoordinated interdependence” and draw attention to the important distinction between adaptation to altered conditions and learning, the predominant benefit of the former, being the conferring of legitimacy or “cover from criticism.”⁷⁹ In work on constitutional convergence across states,⁸⁰ the importance of referent groups is clear. Goodman and Jinks define acculturation as “the general process by which actors adopt the beliefs and behavioral patterns of the

75. This is particularly true of human rights organizational platforms, such as the UN, which tend to favor an inclusive membership model that imposes a highly elastic conditionality, if any at all.

76. WORLD BANK, GOVERNANCE AND DEVELOPMENT 24 (1992); see also World Bank, *Fostering Institutions to Contain Corruption*, 24 PREMNOTES (1999).

77. See COMM'N OF THE EUR. CMTYS., CROATIA 2008 PROGRESS REPORT (2008); COMM'N OF THE EUR. CMTYS., THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA 2008 PROGRESS REPORT (2008); COMM'N OF THE EUR. CMTYS., TURKEY 2008 PROGRESS REPORT (2008).

78. Richard Rose, *What is Lesson-Drawing?* 11 J. PUB. POL'Y 3, 22 (1991).

79. Zachery Elkins & Beth Simmons, *On Waves, Clusters, and Diffusion: A Conceptual Framework*, 598 ANNALS AM. ACAD. POL. & SOC. SCI. 33, 39 (2005) (*emphasis added*).

80. Donald L. Horowitz, *Constitutional Design: Proposals Versus Process*, in THE ARCHITECTURE OF DEMOCRACY 15, 31 (Andrew Reynolds ed., 2002).

surrounding culture.”⁸¹ What all of these contributions share in common is a concern with the relationship of the actor to a reference group or wider social system. There is a propensity for institutional architects to emulate countries of colonial, cultural, or regional affinity, as well as the preferred institutions of dominant international actors.

Such a framework emphasizes indirect but material consequences, such as status maximization and reputation costs, to explain adaptation to altered conditions within the international or regional social system. This provides a useful process-oriented explanatory framework with which to evaluate the diffusion of NHRIs across time and space. The global diffusion of NHRIs, the spread of the institution, and lines of influence are highly suggestive of an acculturation mechanism, increasing in intensity post-1990. In keeping with the self-determination and relativist mantra of the cold war, the UN may have professed support for NHRIs, particularly with regard to the protection of minorities, but few states were willing to implement them throughout this era.⁸² The classical ombudsman diffused modestly in the 1960s and 1970s but the French human rights commission institution of 1948 remained a solitary figure for thirty years.

The challenge of state socialization is also marked throughout the 1980s. The appearance of the commission model in Togo and Benin in the latter half of the decade corresponded primarily to the perceived need of the ruling military elite to seek international legitimacy. However, in Benin, sustained pressure by the Benin Bar Association was also a factor in the appearance of the commission model.⁸³ The first commission in Asia, created in the Philippines in 1987, occurred during transition to democracy. The degree to which the institution emulates the international UN guidelines contained in the 1978 Geneva Principles is highly indicative. Such phenomena may be synonymous with the intermittent appearance of “demonstration democracies” in the developing world during the Cold War.⁸⁴

The viral contagion inducing the creation of domestic human rights instruments has also been evident among European human rights ombudsmen since the early 1970s. The Swedish ombudsman office was provided with an explicit human rights mandate in the constitutional revision of 1974. This was followed by the creation of the Iberian human rights ombudsman in Portugal (1976) and Spain (1978) in the wake of post-authoritarian transitions. The impetus for these innovative designs must be placed in the febrile

81. See Goodman & Jinks, *supra* note 5, at 626.

82. Human rights commissions created in Canada and New Zealand in 1978 were heavily influenced by the race relations commissions of the 1950s, described as “anti-discrimination commissions with a broad mandates.” See POHJOLAINEN *supra* note 19, at 45.

83. HWR, *supra* note 43, at 337.

84. See EDWARD S. HERMAN & FRANK BRODHEAD, DEMONSTRATION ELECTIONS: U.S.-STAGED ELECTIONS IN THE DOMINICAN REPUBLIC, VIETNAM, AND EL SALVADOR (1984).

context of early democratization, as in the case of Portugal, a highly charged human rights discourse, and the desire to emulate European institutions.⁸⁵ It is interesting to note that the other paradigm transition of Southern Europe, that of Greece in 1974, did not establish an ombudsman office until 1997. The human rights model was also replicated in Poland in 1987, two years before the first parliamentary elections. The Polish office provided an important “demonstration effect” for other countries in Eastern Europe, beginning with Croatia in 1990.⁸⁶

The institutional profusion of NHRIs in the 1990s is evident across all regions, even in the Arab world, with the creation of a number of human rights commissions in Morocco, Palestine, and Jordan during this decade. Growing leverage and sophistication of international organizational platforms, combined with domestic processes of economic and political opening, have provided the drivers for institutional implantation. They have also led to a general conformity, or isomorphism, across models within regional referent groups. Thus we see the Iberian human rights model largely dominant in Latin America (excluding North America and the Caribbean), the human rights commission prevailing in Africa and Asia-Pacific, and the Arabic world, and in Europe the human rights model throughout Eastern and South Eastern Europe.

This phenomenon has continued to a lesser extent into the twenty-first century, especially in the outer boundaries of Europe and among Arab countries. The continuing creation of offices in Arab countries, as well as in Central Asia and the Caucasus, including Egypt, Qatar, Jordan, and Kazakhstan, has been actively promoted by the Organization for Security and Co-operation in Europe (OSCE), with significant US funding.⁸⁷ The acceleration and deceleration of this wave of NHRI appears to bear out Philippe Schmitter’s assertion that the relevance of the international context may increase with each successive instance of diffusion.⁸⁸

To reiterate, the process of acculturation emphasizes the relational environment of the actor, not the content of the reform adopted. In this article’s discussion, little has been said of the process of internalization of new institutional forms that are critical to the stability and durability of NHRI reform. As Goodman and Jinks state, “the acculturation mechanism as such is neutral—under different conditions, it may yield normatively attractive,

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85. Walter C. Opello, Jr., *Portugal’s New Ombudsman: A Preliminary Evaluation*, 18 LUSO-BRAZILIAN REV. 239, 251 (1981).
 86. Evgeny Finkel, *Defending Rights, Promoting Democracy: The Institution of Ombudsman in Poland, Russia and Bulgaria*, 8 (Inst. Eur. Stud., Hebrew U. of Jerusalem, Working Paper No. 50, 2006).
 87. Richard N. Haass, *Toward Greater Democracy in the Muslim World*, 26 WASH. Q. 137, 147 (2003).
 88. Philippe C. Schmitter, *The Influence of the International Context upon the Choice of National Institutions and Policies in Neo-Democracies*, in THE INTERNATIONAL DIMENSIONS OF DEMOCRATIZATION, *supra* note 29, at 26, 39.

unattractive or ambiguous results.”⁸⁹ The state may adopt an NHRI largely as a response to altered conditions within its social system. However, the transmission of the policy to the domestic level, and the eventual content of that reform will be determined not only by international structural and normative scripts, but also by a broad range of internal political forces.

VIII. DIFFUSION BY PERSUASION

Persuasion orientates the analysis toward an internal explanatory model. The focus descends to the sub-national level with emphasis on the compatibility of underlying preferences within states, and the content or values attached to the diffusing policy. According to this logic, persuaded actors internalize new norms and rules of appropriate behavior, and redefine their interests and identities accordingly.⁹⁰ In the language of policy transfer, it is a process of learning where “[a]ctors internalize the principles and rationale of the reform when they accept and understand the need for reform, as well as the logic of the reform.”⁹¹ Theorists have argued that the process of transnational socialization may lead to the internalization of norms across international dimensions.⁹² This logic of diffusion places emphasis on the content of the norm and the receptiveness of the adopting country to the intrinsic values contained therein.

Implicit to the logic of this process of diffusion is the recognition that no two instances of adoption will follow the same logic of diffusion. Indeed, there is likely to be a “discount effect” as the rate of adoption increases. The underlying assumption that institutions are borne out of political contestation, and continue to be responsive to their political environment, suggests that the internalization of norms—as opposed to their initial diffusion—should not be conceived as a finite process with a standardized outcome or timescale. As such, the concatenation of international norms to the domestic level will always be partial. This is a dominant theme in the literature on democratization, with theorists marking a significant differentiation between instrumental (electoral democracy) and normatively desirable (liberal democracy) models of democracy. Diamond asserts that an incipient “democratic recession” is in motion partly due to a lack of internalization of democratic norms, especially in nascent democracies.⁹³

89. RYAN GOODMAN & DEREK JINKS, *SOCIALIZING STATES: PROMOTING HUMAN RIGHTS THROUGH INTERNATIONAL LAW* 22 (forthcoming 2010).

90. See Jeffrey T. Checkel, *Norms, Institutions, and National Identity in Contemporary Europe*, 43 *INT'L STUD. Q.* 84 (2002).

91. See Elkins & Simmons, *supra* note 79, at 48.

92. See Finnemore & Sikkink, *supra* note 4, at 895.

93. Larry Diamond, *The Democratic Rollback: The Resurgence of the Predatory State*, 87 *FOREIGN AFF.* 36, 36 (2008).

In the context of this article, persuasion is a unique category in the sense that it focuses on the outcome of diffusion as opposed to the process only. Persuasion does not neatly demarcate between the internal and external, but it ratchets up the complexity of interactions as international processes collide with domestic dynamics, thus generating new norms, demands, and expectations from below.⁹⁴ In the modern social system, as previously elaborated, international processes and platforms have exerted an important influence over the initial diffusion of institutional forms. However, to account for the experience of these institutions during the design phase, and subsequent to activation, requires consideration of a primarily internal explanatory model. The ability of an imported institution to transcend the constraints imposed by an initial logic of coercive façade, for example, and attain an internalized structural and normative authority unforeseen by its designers, is a key dimension to this study. New institutional forms have the ability to redistribute power, and as such, are likely to meet robust resistance, but may also open up new opportunities. As Alejandro Portes writes:

Institutional grafting takes place at the surface level of things and, as such, faces the potential opposition of a dual set of forces grounded in the deep structure of the receiving societies: those based on values and those based on power. . . . These plans do not necessarily backfire, but they can have a series of unexpected consequences.⁹⁵

New institutional forms are unlikely to endure or function well without the development of an internal platform of legitimacy among a variety of stakeholders. The notion of internalization is indicative of the need for some degree of persuasion or consent. Given the specialized institutional characteristics of the NHRI—in particular its lack of enforcement authority—consent is desirable and, in this respect, more relevant to its eventual function than compliance or conformity with international norms. This discussion moves the analysis beyond the scope of the present analysis of how norms diffuse among states toward questions of diffusion outcomes. More specifically, it emphasizes the role of domestic politics in understanding the ways in which diffused norms interact with domestic political forces to shape NHRI outcomes.

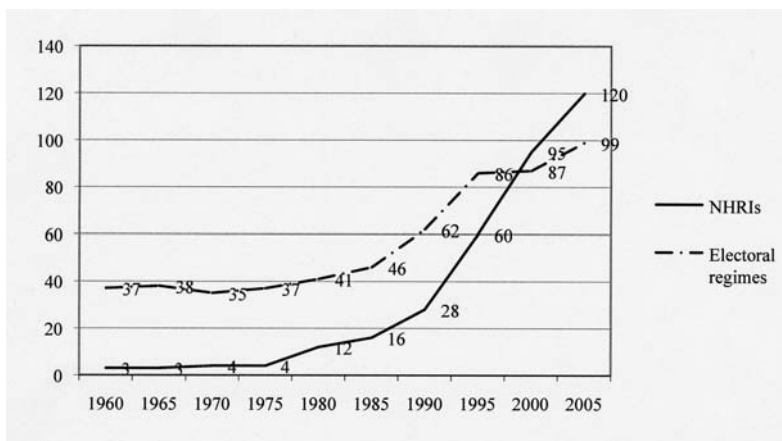
94. See Roberta Jamieson, *The Ombudsman: Learning From Other Cultures*, 25 OTTAWA L. REV. 629 (1993). The Swedish case may be the only example of internalization in perfect isolation, but even here the exposure of King Charles XII to similar institutions in the Ottoman Empire is said to have inspired his thinking. *Id.*

95. Alejandro Portes, *Institutions and Development: A Conceptual Reanalysis*, 32 POPULATION & DEV. REV. 233, 243 (2006).

IX. POLITICAL REGIMES AND NHRIS

Once the preserve of a small clique of Western countries, NHRIs are now a truly global phenomena established in a wide array of political regimes. As Graph 1.2 shows, according to Polity IV there were ninety-nine electoral democracies worldwide in 2005, while the number of one or more NHRIs written into law within a single jurisdiction totalled 120. The task of classifying political regimes by refining the classic procedural definition of democracy advanced by Dahl has preoccupied political scholars for decades.⁹⁶ A substantial literature exists on the many subtype classifications of regimes—including electoral, illiberal, limited, controlled, hybrid, semi-democratic, virtual, façade, and others—often drawing on primarily procedural criteria.⁹⁷

Graph 1.2 **Global growth of NHRIs and electoral regimes 1960–2005**

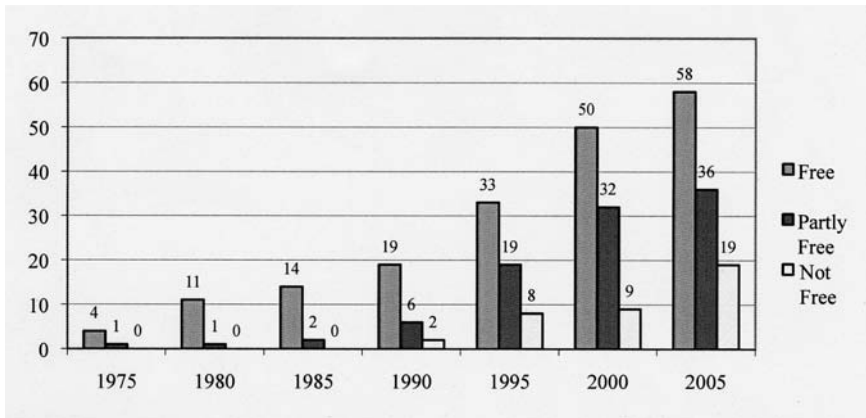


Source: NHR population data collected from ICCNI and NHR Forum: <http://www.nhri.net/>. Democratic regimes follows the number of nations scoring five or higher on the Polity IV scale 1960–2005.

96. See ROBERT A. DAHL, *POLYARCHY: PARTICIPATION AND OPPOSITION* (1971).

97. See David Collier & Steven Levitsky, *Democracy with Adjectives: Conceptual Innovation in Comparative Research*, 49 *WORLD POL.* 430 (1997).

Graph 1.3 NHRIs by Freedom House Political Regime Classification (1975–2005)



Source: NHRI population data collected from ICCNI and NHRI Forum: <http://www.nhri.net/>. Freedom House country data has been calculated to reflect regime change over time at five year intervals. Time series data is not available for Bermuda, Hong Kong, Kosovo, Palestine, Puerto Rico, and Saint Lucia.

The process of diffusing and activating new institutional forms is not immune from domestic political conditions. The objective of this section is to demonstrate that NHRIs have diffused to a wide range of political systems. In doing so, some of the obstacles posed to rights protection and promotion by novel local, political, institutional, historical and normative conditions are raised. For the sake of parsimony, the article proceeds by using one of the most widely used measures of democratization in the literature, the Freedom House “freedom in the world” regime classifications.⁹⁸ Using a seven-point ordinal measurement of ‘political liberties’ and ‘civil rights’ to survey 193 countries, Freedom House constructs a composite measurement for both categories to produce a three-fold classification of political regimes:⁹⁹

98. Similar to other measurements of democracy such as Polity IV and Polyarchy 1.2 (to which it is highly correlated), Freedom House departs from Dahl’s classic definition of democracy as well as the Universal Declaration of Human Rights. See Gretchen Casper & Claudiu Tufis, *Correlation Versus Interchangeability: The Limited Robustness of Empirical Findings on Democracy Using Highly Correlated Data Sets*, 11 POL. ANALYSIS 196 (2003).

99. For a full explanation of the survey methodology, see FREEDOM HOUSE, *FREEDOM IN THE WORLD 2007: THE ANNUAL SURVEY OF POLITICAL RIGHTS AND CIVIL LIBERTIES* 982–1001 (2007).

- Free (1.0 to 2.5)
- Partly Free (3.0 to 5.0)
- Not Free (5.5 to 7.0)

The Freedom House metric considers a range of measurements under the rubric of political liberties (electoral process, political pluralism, and functioning of government) and civil rights (freedom of expression and belief, associational and organizational rights, rule of law and personal autonomy, and individual rights).¹⁰⁰ Graph 1.3 provides an aggregate distribution of NHRIs by political regime type since 1975, and is adjusted for regime variation at five-year intervals. The graph reveals an increase in NHRIs within all political regime categories, most notably among partly free regimes since 1985. The number of NHRIs found in not free regimes has also doubled between 2000 and 2005.

The reliability of Freedom House data has been subjected to sustained scrutiny and the article recognizes—among a range of valid methodological concerns—the pitfalls of both a democratizing bias, and the cloaking of important differences between political regime types within these three very broad categories.¹⁰¹ However, for the purposes of the present discussion, the framework is sufficiently suggestive across space and time to broadly delineate NHRIs along the dimension of their political environments.

Unlike in earlier decades, it is increasingly difficult to equate NHRIs with free regimes or political systems that display a largely consolidated, stable, and comprehensive adherence to the principles of liberal democracy. Rather, NHRIs are becoming increasingly synonymous with a wide range of what may be termed hybrid democratic regimes. These loosely democratic constitutional regimes display a variation in terms of regime stability, rights observation, and adherence to democratic precepts, such as the rule of law and political accountability. The consequence of this contemporary trend is to endow NHRIs with an increasingly complex array of competing demands and expectations in international and domestic arenas. The neutrality of the normative scripts attached to the institution by organizational platforms, with their implicit teleology of value homogeneity, is increasingly contested by adoptive contexts.¹⁰²

100. For a comprehensive discussion of the Freedom House measurements and methodology see Joseph E. Ryan, *Survey Methodology*, 25 *FREEDOM REV.* 9, 10–11 (1994).

101. See Gerardo L. Munck & Jay Verkuilen, *Conceptualizing and Measuring Democracy: Evaluating Alternative Indices*, 35 *COMP. POL. ST.* 5, 14, 20–21 (2002).

102. Important differences across contexts cautions against the overtones of value homogeneity sometimes found in intra-regional practitioner material. See, e.g., QUÓRUM (REVISTA), LAS DEFENSORÍAS DEL PUEBLO Y LA PROTECCIÓN DE LOS DERECHOS HUMANOS 11 (2008).

Table 1.1
NHRI type and regime type following Freedom House classifications 2008

	<i>Political liberties average score</i>	<i>Civil rights average score</i>
Classical Ombudsmen (15 NHRIs)	1.2	1.2
Human Rights Ombudsmen (43 NHRIs)	2.7	2.8
Human Rights Commissions (63 NHRIs)	3.7	3.4

Source: Sample of 121 NHRIs from ICCNI and NHRI Forum: <http://www.nhri.net/>. Freedom House data from *Freedom in the World Survey 2008*.

Table 1.1 identifies a basic correlation between NHRI type and regime type. Despite the presence of all NHRI types in all three regime categories, the classical ombudsman continues to predominate in “free” regimes, increasingly operating in conjunction with a human rights commission model. The human rights ombudsman and commission are the NHRI of choice for many “partly free” regimes inspired by a confluence of international factors, the former especially prevalent in the post-authoritarian terrain of Eastern and Central Europe, and in Latin America. It appears the human rights commission is the standard template for those “not free” regimes to have established the institution. This could be due to the fact that the generic commission model is viewed as an advisory body (with no investigatory powers) while all human rights ombudsmen have investigatory powers.¹⁰³

X. NHRIS AND POLITICAL REGIMES IN 2008

In 2008 the Freedom House report surveyed 193 countries and fifteen related and disputed territories, resulting in ninety countries being classed as free, sixty countries as partly free, and forty-three countries as not free. Of the 193 countries, 121 countries were considered to qualify as electoral democracies, located somewhere in between the non-democratic and liberal polarities of the one to seven scale. Of the ninety countries rated free by Freedom House in 2008, sixty-three countries have established an NHRI. This group contains many political systems commonly associated with the first or second wave

103. I am grateful to Linda C. Reif for this observation. Email from Linda C. Reif, Prof. of Law, University of Alberta, to Thomas Pegrarn, Research Fellow, New York University School of Law (10 Mar. 2009, 18:25:00 EST) (on file with author).

of democracies, following Huntington's three wave metaphor.¹⁰⁴ The high political liberties and civil rights scores in this category are indicative of the enduring characteristics of many of these democracies. As stated earlier, the enduring classical model, or second generation of ombudsmen—found for the most part in democracies with the highest score on political and civil indicators—is particularly common to Western Europe.

Despite base line commonalities across regimes, this category of institution reveals considerable political, institutional, historical, and cultural diversity. The result of international diffusion has been to borrow institutional forms from established, highly-structured democracies, and extend them into a diverse group of political systems that nevertheless may be considered broadly stable, democratic, and governed by the rule of law. The structural and normative conditions commonly associated with the Western NHRI decisively part company from its diffused counterparts in at least three key areas. First, in countries where the state has traditionally neglected the institutional sphere of representative democracy, or actively perpetrated systematic and widespread human rights violations, an institution such as an NHRI may assume an additional resonance. Second, the NHRI has commonly developed in parliamentary systems, and the transplanting of the institution to a presidential setting introduces a destabilizing dynamic as the institution struggles to define its position in the political system. Third, this discussion raises the inherent problems associated with uprooting and transferring institutions intrinsic to a specific history and culture.

Of sixty countries rated partly free by Freedom House in 2008, thirty-nine countries have established a NHRI. All of these models can be located in the third generation of NHRIs dating from 1976. There is also increasing instability among regimes in this classification with scores fluctuating from three to six. NHRIs established in this setting confront a range of systemic challenges along political, civil, and institutional dimensions, such as executive dominance, weak rule of law, and the systematic violations of rights. Regimes considered partly free range from weak liberal democracies that enjoy limited political and civil rights, to those regimes where such rights are severely curtailed, but may still be considered electoral democracies. Political systems within this group range from those that display a high political liberties average over time—such as Bolivia, Ecuador, Sri Lanka and Venezuela—to others beset by internal conflict—Afghanistan, Sri Lanka, and Colombia—and fractious post-conflict situations, such as in Bosnia and Herzegovina.

This article does not discount the potential for NHRIs within this classification to be established, and subsequently contribute to processes of

104. See SAMUEL P. HUNTINGTON, *THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY* (1991).

rights protection and promotion, given that many of these countries may be considered basically free by Freedom House standards. However, these ranges of political systems are, for the most part, recently democratized and show variation over time. This may fundamentally impact the autonomy and institutionalization of new institutions. Further complications arise from the diversity of political systems—with presidential authority being particularly acute in many African and Latin American countries—legal systems—with the spread of the ombudsman to both civil and common law jurisdictions—and finally, cultural diversity, in cases as diverse as Ethiopia, Jordan, and Morocco.

Many of the institutions in this classification were instituted following the Paris Principles of 1991 and in turn contain an explicit human rights mandate in their title. The nomenclature of the office in all three classifications of regime is suggestive of the normative demands and expectations attached to the office. Beyond the title of Ombudsman, Mediator, and Commissioner found in Europe, the translation of the office to Africa, Asia-Pacific, Eastern Europe, and Latin America has resulted in titles as diverse as Protector, Defender, Prosecutor, Advocate, and in Andorra, “The Person Who Reasons In Favour of the Citizen.” Such assertive titles are a reflection of internal demand and expectations often driven by historically antagonistic relationships between state and citizen. However, the titles of the office can also be construed as responding to external incentives, such as the proliferation of human rights institutions accelerating rapidly post-1991, and in the cases of Tanzania and Mauritania, explicit reference to the World Bank maxims of good governance, poverty, and social inclusion.

Of forty-three countries rated not free by Freedom House in 2008, seventeen countries have established a NHRI. There is a surprisingly high number of human rights commissions in regimes that are considered not free, thus failing to meet the basic criteria for electoral democracy. Given the conditions under which these institutions operate, evaluating the manner of their diffusion and institutionalization can prove problematic. Practical challenges include access to reliable information, level of adversity confronted by the institution, and the likelihood that these institutions exist as little more than regime façades.

Scant literature exists on these cases, although some are formally recognized by the ICCNI—including Chad, Sudan, and Rwanda. The exception to this rule may be the Kosovo Ombudsperson, which has received some attention as a post-conflict protagonist in domestic and international debate.¹⁰⁵ Furthermore, the Human Rights Watch publication “Protectors or Pretenders” has provided a valuable and sobering assessment of the challenges

105. See Christopher P. M. Waters, ‘Kosovanizing’ the Ombudsperson: Implications for Kosovo and Peacekeeping, 15 INT’L. PEACEKEEPING 648 (2008).

confronted by many of these institutions in Africa. The report documents important signs of progress in the face of adversity, as well as highlighting inauspicious beginnings. As one extract on Togo reads:

In 1987, Yao Agboyibor and Aboudou Assouma represented Togo at the UN Commission on Human Rights. On their return from Geneva, they proposed the human rights commission to President Eyadema, largely as a means of “responding to the wishes of the international community,” according to Aboudou Assouma. President Eyadema responded positively. “I’m a soldier,” he reportedly told Assouma, “you tell me what to do.”¹⁰⁶

XI. NEGATIVE CASES: THE ABSENT INSTITUTION

Despite the prevalence of NHRIs across political, regional, and cultural jurisdictions there remain many countries that have not instituted a national level human rights instrument in accordance with the Paris Principles. Prominent among the twenty-seven countries classified as Free by Freedom House in 2008 that have not instituted an ombudsman or commission model at the national level are Brazil, Chile, and the US. In the Partly Free classification twenty-one countries, primarily in Africa and the Asia-Pacific, have not established an NHRI of some description. These include Mozambique, Comoros, Guinea-Bissau, Singapore, and Yemen. Only in the Not Free category do a majority of countries not have a national-level NHRI.¹⁰⁷ Countries such as China and Cuba are emblematic exceptions to the general expansion of the western liberal model.¹⁰⁸

It is not within the scope of this article to elaborate on why these states have resisted the international momentum behind NHRIs. Particularly intriguing are the few states that can be included at least loosely within, or aspiring to, the liberal internationalist social system. One can speculate on a number of potentially inhibiting factors. There may be a desire to remain unique or outside international norms. A “fatigue effect” may also be felt by a region saturated by these innovations. The existence of an existing institutional framework may be considered adequate to the task. Structural obstacles such as a federal system of governance has, in the case of Brazil and the US, led to the creation of ombudsman offices at the state, but not

106. See HRW, *supra* note 43, at 337.

107. Data by author compiled from NHRI Forum, *available at* <http://www.nhri.net>; Freedom House survey data for 2008, *available at* <http://www.freedomhouse.org>.

108. See DEBATING CUBAN EXCEPTIONALISM (Bert Hoffman & Laurence Whitehead eds., 2007); see also G. John Ikenberry, *The Rise of China and the Future of the West: Can the Liberal System Survive?*, 87 FOREIGN AFF. 23 (Jan./Feb. 2008).

at the national level.¹⁰⁹ There may be normative resistance at the regional or national level, whereby prevailing values are resistant, or even antithetical, to those associated with such institutions.

XII. CONCLUDING THOUGHTS

The findings of this article point not to absolutes, but rather to questions of degree. NHRIs assume distinct institutional forms, a spectrum commonly devised with reference to the inclusion of an explicit human rights mandate in the case of the classical ombudsman, and to the independence and breadth of powers built in to alternate human rights commissions. The historical origins of the institution, traced to nineteenth century antecedents of public commissions of inquiry and ombudsmen, provide a point of departure to explore competing demands and expectations placed on the institution. The commission model is imbued with an explicit political mandate connected to its role as an advisory body to government on matters of public policy. In contrast, the ombudsman is traditionally perceived as a technocratic administrative entity operating horizontally within the public structures—albeit, at least in the case of the Swedish model, one with teeth. Both entities derive a dual authority from their standing as government bodies as well as a vertical interaction with the citizenry. In turn, NHRIs have proven highly pliable to adapting to new political conditions. Interestingly, innovative adaptation of institutional form is not solely the preserve of recent NHRIs. Rather, it is observable, to varying degrees, from the reform of the classical model of Sweden to the enhanced judicial prerogatives of the Spanish model and prosecutorial authority of the Ugandan office.

With respect to drivers of institutional innovation, this article has identified a sophisticated array of organizational frameworks operating within the international social system. From the sporadic development of a NHRI normative framework within the UN and early ombudsman advocates of the Cold War era, NHRI diffusion is now harnessed by an increasingly sophisticated range of platforms, from international and regional governmental institutions, to international financial institutions and nongovernmental entities. In turn, the normative precision of NHRI form and function has been enhanced, most visibly in the form of the Paris Principles. The transmission of normative templates may initially be channeled through such organizational platforms. However, arguably the most significant recent advances of standard setting, capacity building, and network facilitating are occurring

109. It is interesting to note that even at the state level there are very few ombudsmen in the legislative-public sector arena in Brazil or the US. I am grateful to Linda C. Reif for this observation. See Reif email, *supra* note 103.

as much within regional NHRI peer networks as at the inter-governmental level. The APF offers a parallel standard setting mechanism in the Asia-Pacific to the ICCNI, with some success. In Latin America it is the FIO, not UN or OAS, which most closely coordinates the activity of NHRIs in the region. This reflects the strong regional and cultural affinity among these institutions and, at a practical level, the common challenges faced.

The genesis of NHRIs is acted upon by a confluence of factors, above all overlapping and interacting mechanisms of diffusion operating through organizational platforms. Diffusion theory provides a valuable point of departure for this analysis. The article draws on three broad categories of mechanisms in the literature: coercion, acculturation, and persuasion. Given the scope of the article, the objective has been to contrast these distinctive logics of diffusion, as opposed to extrapolating on the intricacies of any particular instance, or of the overall historical pattern. However, the findings suggest that the logic of diffusion in any one instance will differ to any other. The configuration of mechanisms, and the form of transmission they take, are likely to be informed by both domestic and, to a lesser extent, international conditions. Such a process suggests these mechanisms are not discrete categories easily amenable to empirical testing, but instead are prone to overlap, complementarities, and counteractions. In the case of NHRI diffusion, the article argues that coercion in its most simplistic form has limited utility in explaining their transmission, except possibly in situations of *extremis* such as post-conflict external intervention. Diffusion by acculturation and persuasion are more promising avenues of inquiry.

The co-variation of NHRI diffusion by regional clusters and circumscribed time frames strongly suggests an acculturation mechanism at work. However, the notion of acculturation as a neutral transmission mechanism must contend with the political negotiation that informs the outcome or establishment of the NHRI in the adopting state. This article has demonstrated that far from being a Western democratic phenomenon, the NHRI form can now be found in an eclectic range of regime types. While powerful countervailing domestic forces in more adverse contexts may effectively neuter some of these institutions at birth, others have emerged structurally intact and made important contributions to human rights protection and political accountability at the domestic level. Internal political forces may largely govern the outcome of the diffusion of new institutional forms across international boundaries. However, international context matters.