

**Have You No Shame? Hypocrisy, Punishment, and Weak Actor Influence  
in International Politics**

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## **Have You No Shame? Hypocrisy, Punishment, and Weak Actor Influence in International Politics**

In December 2007, the world witnessed a peculiar break in diplomatic decorum during the waning days of the climate change negotiations then underway in Bali, Indonesia. Following expression of resistance to some of the final wording of the text of the so-called “Bali Action Plan,” the United States (U.S.) delegation was showered with boos and hisses from the floor.<sup>1</sup> Kevin Conrad, representative for the small island nation of Papua New Guinea—one of the frontline states whose existence could be threatened by rising seas and increasingly volatile weather—then made an impassioned plea before the assembled body. Alluding to recent remarks made by the chairman of the White House Council on Environmental Quality (CEQ) about the importance of U.S. leadership on the issue of climate change, Conrad offered this rebuke: “We seek your leadership.... But if for some reason you are not willing to lead, leave it to the rest of us. Please, get out of the way.”<sup>2</sup>

What made Conrad’s intervention unusual its brusqueness. Moreover, the very public opprobrium he directed against the U.S. government was amplified by thousands of activists and members of the media, who were also present in Bali and eye-witnesses to this diplomatic dressing down.<sup>3</sup> Within minutes of Conrad’s outburst, the head of the U.S. negotiating team, Paula Dobriansky reversed course and announced that the U.S. would support the agreement after all. So what happened? Was this episode merely a dramatic, but inconsequential, interlude in a long series of climate negotiations? Or, had the disconnect between the Americans’ ostensible professions of concern about climate change and their actual behavior created a

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<sup>1</sup> While the Bush administration had acknowledged that climate change was a threat, over the course of two weeks of negotiations, its delegation had consistently opposed language in the Plan for new medium-run, legally binding emissions targets.

<sup>2</sup> (Fuller and Revkin, 2007). CEQ Chairman James Connaughton had said, “We will lead, we will continue to lead. But leadership also requires others to fall in line and follow.”

<sup>3</sup> (Revkin, 2008).

moment of vulnerability upon which weaker countries and non-state actors were able to successfully seize and exploit?

We should neither overstate this incident's significance nor should we dismiss it.<sup>4</sup> At heart, it was simply political theater: Conrad was playing a role, as were the Americans. Nonetheless, the U.S. clearly preferred the role of protagonist over that of climate villain, and the episode itself is instructive. The norms-laden political attack launched by the weak actors in this case underscores a recurring vulnerability strong actors face when they profess one principle, but act according to another. As Arthur Schlesinger, Jr. has noted, "Standards solemnly declared, even if unobserved, live on to supply ammunition to those who thereafter demand observance."<sup>5</sup>

Schlesinger's statement is perhaps not surprising. After all, it is now widely understood that one way relatively weak actors compensate for material deficiencies is by harnessing the power of norms to shame their more powerful counterparts. Nevertheless, the mechanisms and conditions under which such efforts will be successful remains markedly less well understood. Moreover, because most studies of norms tend to focus on their beneficial effects and on the socially positive objectives their wielders promote, an entire subset of shaming efforts is generally neglected; namely, those attempts undertaken by weak actors whose aims are anything but altruistic in intent or benign in effect. Yet, such attempts are not only relatively common, but also have arguably been growing more successful over time. So when and why does weak actor shaming work?

The conventional wisdom, proffered in both the media and in much of the international relations literature, suggests successful shaming is often a direct and specific reaction to public exposure of hypocrisy; the underlying assumption being that revelation of incongruent speech

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<sup>4</sup> Behind the scenes, the U.S. received reassurances from Australia and South Africa that the final language of the Bali Action Plan would require developing countries to undertake climate commitments as well (Müller, 2008).

<sup>5</sup> (Schlesinger Jr., 1979).

and behavior is sufficient to alter political outcomes. Public exposure relies on two potentially weak (and often difficult to disentangle) mechanisms: (1) individual, psychological feelings of humiliation, dishonor, and disgrace; and (2) concerns about social standing in the wider community.<sup>6</sup> However, when actions are costly, publicity alone has historically rarely been independently sufficient to alter political outcomes in complex decision-making environments. Nevertheless, gaps between word and deed are not inconsequential. Their existence, we argue, creates permissive conditions that enable weak actors and their supporters to leverage material/political sources of power (read costs) that they would otherwise have been deterred from deploying.<sup>7</sup>

In some studies, these broader costs—which liberal theorists refer to as “reputational costs”—are also grouped under the rubric of the “politics of shame.”<sup>8</sup> However, in everyday language, shaming is more narrowly defined as public exposure, or commonly, “naming and shaming.”<sup>9</sup> Thus, we contend, what is sometimes bundled under a single causal mechanism of shaming actually comprises multiple discrete non-violent, coercive bargaining mechanisms encompassing the imposition of both shame *and* (the threat of) pain. As such, effective coercion demands more than simply naming and shaming; instead it demands what we’ll refer to as “shaming and taming.”

Using a comparative case study approach, this article addresses lacunae in the shaming and norms literature, by specifying a generalizable explanation of successful “shaming and taming” by weak actors, both in the service of altruistic and more nakedly self-serving, power

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<sup>6</sup> Schimmelfennig suggests these are the two mechanisms by which shaming can affect political outcomes, though he notes they are difficult to distinguish in practice (Schimmelfennig, 2001: 66).

<sup>7</sup> In the Bali case, the Europeans threatened to boycott an upcoming meeting of major economies on the topic of climate change, a widely-publicized Bush Administration initiative.

<sup>8</sup> See (Lebovic and Voeten, 2006).

<sup>9</sup> (Hafner-Burton, Forthcoming). Schimmelfennig, similarly, defines shaming as “public exposure of illegitimate goals and behavior” (Schimmelfennig, 2001: 64).

political goals. Specifically, we posit that relatively weak state and non-state actors can exercise effective political leverage against their more powerful, principally liberal democratic, counterparts when they can both *shame* them by exposing the gap between their words and deeds and *tame* them by imposing, or credibly threatening to impose, concrete material/political costs. In short, when employed in conjunction with a capacity to directly or indirectly inflict material pain, exposure of hypocrisy can act as a force multiplier that allows weak actors to “punch above their weight” and influence the behavior of actors normally outside their ambit.

The remainder of this article proceeds as follows. First, we outline the mechanisms behind shaming and taming, their relationship to naming and shaming, and the conditions under which weak actors can successfully employ them. Second, we identify two key variables—namely, rhetorical entrapment and political mobilization—that affect the vulnerability of actors to this form of coercion, specify why these two have particular explanatory power, and develop hypotheses to explain the conditions under which it will succeed and fail. Third, we illustrate our explanation in action in a variety of contexts, through case studies of the West German response to East German migration/refugee crises of the mid-1980s, French negotiations surrounding the International Criminal Court (ICC) in the mid-late 1990s, and the Bush administration’s policies on HIV/AIDS and intellectual property rights between 2001 and the present. We conclude by spelling out the contributions of this research for a more systematic understanding of weak actor influence.

## **I. Shaming and Taming**

Weak actors can pursue a variety of strategies to attempt to offset the myriad capabilities-related advantages possessed by their more powerful counterparts. However, the strategic use of norms can be particularly attractive because their traditional capabilities offer stronger actors

neither special advantages nor particularly strong defenses against this tactic. This is not to suggest that weak actors necessarily lack recourse to more traditional methods of influence. Indeed, some—such as insurgents at war with their governments and small states that find themselves in conflicts with great powers—may successfully compensate for their relative material inferiority, through the use of creative and asymmetric tactics or the possession of greater resolve.<sup>10</sup>

However, we are more interested in exploring a different set of methods and cases; namely, those of weak actors—including non-state advocacy movements and small states—who lack either the intent to use violence, or the requisite capabilities to inflict unacceptable damage on their stronger adversaries through its use. This does not mean these actors have no coercive means.<sup>11</sup> However, these means are rarely independently sufficient to enable weak actors to achieve their political ends. As a result, these actors often exploit the power of norms to enlist allies, to shame or browbeat adversaries, and/or exploit political conflict between those in favor and opposed to adherence to the norms in question.

The strategic use of rhetoric by advocates (i.e., “framing”) is one effective strategy by which weak actors are able to exercise influence and induce states to embrace new policy commitments inspired by norms.<sup>12</sup> Another is the exploitation of targets’ own rhetoric as a tool to reduce their political maneuver room, to limit their policy alternatives and to raise the costs of non-compliance. Framing and shaming strategies use similar tools in very different ways, but they also share in common the clever use of norms to support their interests—sometimes directly, sometimes indirectly—with reference to shared standards of legitimacy and

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<sup>10</sup> (Mack, 1975; Arreguin-Toft, 2005; Pape, 2005).

<sup>11</sup> Some may engage in demonstrations and protest activity, including civil disobedience, which may materially affect political outcomes. Moreover, even many civil society organizations in the advocacy sector, while comparatively weaker than other non-state actors such as corporations, still possess considerable resources.

<sup>12</sup> (Sell and Prakash, 2004).

appropriateness. In both cases, success relies on the use of norms to affect behavioral change and “to modify the collective outcome that would have resulted from constellations of power and interests alone.”<sup>13</sup> While framing strategies seek to appeal to strong actors’ better angels and reward them for what weak actors consider to be appropriate behavior, shaming relies on censure of strong actors for discrepant behavior and incomplete compliance. For example, while weak actors are rarely powerful enough to alter election outcomes, they can materially affect politicians’ images and reputations through praise and shame. Weak actors may also use normative appeals strategically to build alliances, irrespective of whether they believe the substance of such appeals.<sup>14</sup>

Several mechanisms have been posited to explain how shaming operates. In the constructivist literature, shaming functions in two ways, both related to what Lebovic and Voeten term “social conformity.”<sup>15</sup> Shaming functions to discipline actors to community standards of appropriate roles and conduct or, in other words, to community norms. As suggested above, actors may react to public exposure of illegitimate behavior, either because of genuine feelings of shame or because of concerns about their social standing in the broader community. In the former, norms have what Elster calls a “grip on the mind” and when violations are exposed, this can trigger feelings of “guilt, anxiety, embarrassment, and shame.” Shame functions as an individual’s “internal sanction,” independent of the reactions of other people.<sup>16</sup> In the latter, actors conform because of concerns about their standing in, and ostracism from, communities whose approval they value.

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<sup>13</sup> (Schimmelfennig, 2001: 48).

<sup>14</sup> See, for instance, (Bob, 2005).

<sup>15</sup> (Lebovic and Voeten, 2006).

<sup>16</sup> (Elster, 1989: 99, 131).

In Schimmelfennig's work on EU enlargement, shaming affects leaders' legitimacy, which functions, for weakly socialized actors, as an "external institutional resource and constraint." Domestically, once actors open the door to norms, they get "entangled" in an argumentative mode that provides weaker actors handles they can grasp and exploit to their advantage.<sup>17</sup> Although his model is more rationalist in bent, shaming still functions through effects on leaders' "standing" and "reputation" in the broader community.<sup>18</sup> However, when weak actors move in a coercive direction, neither is usually sufficient to change strong actor behavior, particularly when what is demanded is costly. As such, even Schimmelfennig's account may not fully specify the degree of pressure weak actors need to bring to bear to move these regimes.<sup>19</sup>

Lebovic and Voeten have identified a third mechanism as part of the politics of shame. Shaming efforts may also have an effect on an actor's "reputation."<sup>20</sup> Here, reputation has a distinct meaning, different from the way constructivists use the term. For constructivists, reputational concerns are not purely instrumental; how actors regard one another has value as an end in itself. In liberal theory, a reputation is a function of past behavior. Actors may infer how others will act in the future based on their past behavior. If a party fails to fulfill expectations, then others can punish the non-cooperative actor by imposing "reputational costs," observed as a loss of a stream of benefits from future cooperation or, at the very least, more costly/less attractive terms for concluded agreements.<sup>21</sup>

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<sup>17</sup> (Risse, Ropp and Sikkink, 1999: 16).

<sup>18</sup> (Schimmelfennig, 2001).

<sup>19</sup> See for instance, (Hafner-Burton, 2005). Franklin also finds that countries with "greater ties to the outside world, and hence more to lose" tend to be more responsive to shaming efforts (Franklin, 2008).

<sup>20</sup> (Lebovic and Voeten, 2006: 868).

<sup>21</sup> (Simmons, 1998; Guzman, 2002; Tomz, 2007).

Lebovic and Voeten imply that public shaming works through effects on both social standing and reputation, which they suggest are difficult to disentangle.<sup>22</sup> Thus, with Schimmelfennig's observation, we have three mechanisms—individual guilt, social pressure, and reputational costs—that are difficult to distinguish, all potentially grouped under the politics of shame. Rather than bundle these motivations, we think it prudent to retain the distinction between shaming and the imposition of material costs. Risse et al. acknowledge them as distinct when they write “shaming is usually reinforced by material sanctions of some sort...”<sup>23</sup> However, we still require an understanding of how these mechanisms relate to each other.

Keck and Sikkink, for example, describe exposure of hypocrisy as “embarrassing,” initially suggesting that publicity alone can be sufficient to induce policy change.<sup>24</sup> They recognize that governments respond to weak actors for different reasons and are not all equally vulnerable; some are more susceptible to material pressure and some care more about their “international image.”<sup>25</sup> Proponents of “the spiral model” suggest shaming for states can sometimes be “sufficiently disturbing for their international legitimacy or their domestic legitimacy that they are willing to make human rights concessions.”<sup>26</sup> At the same time, they note that for human rights standards the arc of motivation changes over time, beginning “almost always” with “instrumentally or strategically motivated adaptation to growing domestic and transnational pressure.” As attitudes become internalized, actors become socialized to accept norms.<sup>27</sup>

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<sup>22</sup> (Lebovic and Voeten, 2006: 869).

<sup>23</sup> (Risse, Ropp and Sikkink, 1999: 27).

<sup>24</sup> For examples in this genre, see (Keck and Sikkink, 1998: 24).

<sup>25</sup> (Keck and Sikkink, 1998: 28-29, 208). See also (Risse, Ropp and Sikkink, 1999: 24).

<sup>26</sup> (Risse, Ropp and Sikkink, 1999: 27).

<sup>27</sup> (Risse, Ropp and Sikkink, 1999: 10).

Keck and Sikkink suggest countries that “aspire to belong to a normative community of nations” that are “actively trying to raise their status” will prove most vulnerable to these socializing pressures.<sup>28</sup> But, ironically, already being part of a community in good standing would make a country less vulnerable to shaming via socialization. Moreover, accounts of shaming often focus on regimes where power is concentrated in the hands of single (or a few) individuals. As Checkel has argued, those regimes are most likely to respond to mechanisms of influence that rely on changing individual minds.<sup>29</sup> Even research that examines which policies are most responsive to shaming efforts tends to focus on developing countries and undemocratic regimes.<sup>30</sup> But, does shaming of advanced, industrialized countries—arguably, the world’s most powerful—function the same way? Should we believe, for instance, that as actors become socialized, material pressure becomes less important? In regimes with more veto players—typical of many advanced industrialized countries—attempts to shame would require greater diffusion across a more diverse set of actors. Thus, individual guilt and social conformity are likely to be less powerful than reputation. That said, reputational costs alone will likely be insufficient, particularly if what weak actors seek is difficult or costly. As Guzman notes, reputational costs are likely to be modest: “Faced with a matter of great importance, therefore, even the most severe reputational sanction is unlikely to affect state behavior.”<sup>31</sup>

However, when the strong make themselves rhetorically vulnerable by publicly committing to one policy position and then undertaking another, normatively incompatible, one, weak actors are afforded a temporal opening to magnify and escalate reputational costs, by

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<sup>28</sup> (Keck and Sikkink, 1998: 29). Downs and Jones make a similar point suggesting new states, smaller states, and states with new regimes will most likely be sensitive to reputational considerations (Downs and Jones, 2002: S112).

<sup>29</sup> (Checkel, 1999: 90).

<sup>30</sup> (Hafner-Burton, Forthcoming). Even though her dataset includes advanced industrialized countries, her illustrations are mostly developing countries.

<sup>31</sup> (Guzman, 2002: 1884).

concomitantly damaging their standing in the community. In short, as we discuss in greater detail below, hypocrisy creates a permissive context for weak actors to both publicize strong actor duplicity *and* leverage material punishment. Without such credibility gaps, weak actors would lack justification to impose those twin costs and potentially invite reprisals from the powerful. Once entrapped, however, such reprisals become far more difficult to undertake. As suggested above, we call this process of non-violent coercive bargaining, “shaming and taming.”

## **II. Structural Sources of Target Vulnerability**

Nevertheless, not all targets are equally vulnerable to this form of coercive influence. As Keck and Sikkink note, leaders vary in the degree to which they care about their reputation; therefore, those attuned to international opinion will be far more responsive than those who are not. The problem with this formulation is how to operationalize leaders’ concerns about reputation independent of their later behavior. So how else might we determine the relative vulnerability of different targets? We look at the intersection of two variables: (1) degree of rhetorical entrapment; and (2) levels of interest group mobilization.

### *Degree of Rhetorical Entrapment*

Weak actors may be aided by the rhetorical proclivities of leaders. Some leaders are prone—generally, or on specific issues—to make themselves particularly vulnerable to the imposition of “hypocrisy costs.” Hypocrisy costs are defined as “those symbolic political costs that arise when there exists a real (or perceived) disparity between a professed commitment to (liberal) values and/or international norms, and demonstrated actions that contravene such a

commitment.”<sup>32</sup> They are “operationalized” in a manner akin to what human rights network advocates call “accountability politics,” which is to say “once a government has publicly committed itself to a principle...networks can use those positions, and their command of information, to expose the distance between discourse and practice.”<sup>33</sup> Following similar formulations by Schimmelfennig and Risse et al., we refer to this as the degree of rhetorical entrapment.<sup>34</sup>

Why would leaders make rhetorical commitments that could come back to haunt them? One reason is to expand their political options at home. Actors may hope their words will generate votes or offer them other political advantages during a campaign or some other moment. A candidate may, for instance, seek to draw a distinction between himself and his competitors, distinctions for which he may be later held to account. Another incentive is acquisition of international acclaim and praise, which may be of value in and of itself for leaders concerned about status, or may be instrumentally valuable in creating political space at home for a leader to pursue other ends. Leaders at international meetings like G-8 summits, for instance, are susceptible to competitive promise-making, or what Levy has called “tote-board diplomacy.”<sup>35</sup> Because many such normative commitments are aspirational rather than juridical, leaders may hope to derive the reputational benefit of positive media through their actions without necessarily fearing being held to account for incomplete compliance. In other cases, leaders may assume that it is better to make short-run promises in the interest of realizing their goals and worry about the potential consequences later, confident that they will find a way to

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<sup>32</sup> Author. Hypocrisy costs might be thought of as a subset of audience costs as developed by James Fearon; however, the predictions to which they give rise (*vis-a-vis* democracies) are contrary to those of audience cost arguments (Fearon, 1997).

<sup>33</sup> (Keck and Sikkink, 1998: 24).

<sup>34</sup> (Risse, Ropp and Sikkink, 1999; Schimmelfennig, 2001).

<sup>35</sup> See (Levy, 1993).

blame inaction on either “the nature of the system,” another branch of government, or their political opponents.

John Mearsheimer has written that the U.S., for instance, is a realist polity that talks a good game in defense of liberal norms. Thus, policymakers—to be consistent with the country’s liberal values—dress up policies pursued to aggrandize the national interest in universalist liberal rhetoric.<sup>36</sup> However, in so doing, leaders may actually set the stage for having to make good on those rhetorical claims. Rhetorical entrapment on normative grounds is similar to the “blowback” leaders sometimes face when they inflate the nature of security threats for the purposes of securing domestic support. Sometimes, they find it difficult to back down having aroused the passions of their domestic polities.<sup>37</sup> Moreover, even if individual politicians have not made rhetorically problematic statements, they may nevertheless be vulnerable, based on the actions (or historical positions) of their country’s previous leaders.

Whether leaders resort to the use of lofty rhetoric for instrumental reasons, or whether they actually espouse the values they articulate, is immaterial. In either case, leaders who employ normatively positive rhetoric may be called to account if their actions fail to comport with their articulated commitments. This kind of public exposure is embarrassing to many governments, which may try to save face by closing that distance, or by making the gap disappear altogether by changing their behavior, often in ways that redound to the benefit of those weak actors seeking to influence target behavior. Highlighting such disparities can further reduce leaders’ policy options (or in game theory terms, narrow their “win-sets”) making concession to weak actors’ demands more attractive.<sup>38</sup>

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<sup>36</sup> (Mearsheimer, 2003).

<sup>37</sup> (Snyder, 1991; Kupchan, 1994).

<sup>38</sup> Author. For cross-national evidence of the problematic consequences of hypocrisy for politicians, see (Dezenhall, 2007; Dezenhall and Weber, 2007; Mancuso, Atkinson, Blais, Greene and Nevitte, 2007).

We can simplify by dichotomizing. Target leaders either face a *high* or *low* degree of rhetorical entrapment, as captured by the discrepancy between the behavior that norm adherence prescribes and their actual behavior. Our first hypothesis is therefore as follows:

H1: All else being equal, weak actors will be more likely to succeed when the degree of rhetorical entrapment of their adversaries is *high*.

### *The Balance of Interest Group Mobilization*

Not all weak actors are equally well placed to punish stronger ones for hypocrisy. Here again, we need a way to operationalize interest group capacities to impose costs, independent of the behavior we are judging. We attempt to do so by examining the balance of interest group mobilization. Where groups are highly mobilized, we posit they are able to impose high costs on strong actors, even if comparatively weaker, or only ephemerally.

Local mobilization is likely to be most important; domestic interest groups are often best placed to call strong actors on the carpet for their hypocrisy, as they have tighter ties to local politicians and may be able to muster specific resources upon which to exact maximum political damage. Domestic actors also serve as intermediaries between foreigners and national policymakers. They are often the transmission mechanism for weak actor demands.<sup>39</sup> Weak actors make appeals that may offend powerful domestic interests and/or may be attractive to them. Although the exact composition of these groups will vary depending upon the norm(s) and the issues in play, loosely speaking, groups can be divided into those who support norm adherence and those who oppose it.

Some issues tend to lead to mobilization on both sides—i.e., both in favor of norm acceptance/adherence and opposed to it (e.g., abortion). Other situations may lead to opponents

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<sup>39</sup> (Keohane and Milner, 1996).

of norm adherence or acceptance being more mobilized than norm supporters.<sup>40</sup> The converse is also possible, as is the possibility that neither group will mobilize. (However, cases of non-mobilization are not particularly interesting.) Put simply, there are three possibilities: domestic mobilization (1) *favors supporters* of the norm, (2) supporters and opponents are *both mobilized* and can impose high political costs, and third, (3) mobilization *favors opponents* of the norm.

This observation leads us to our second hypothesis, namely:

H2: All else being equal, weak actors will be more successful when domestic mobilization *favors norm supporters*.

Though domestic mobilization is a more influential mechanism than international peer or NGO pressure, under some conditions, international interest groups may matter greatly. For example, in the context of the EU, there has been a greater degree of sovereignty transfer than in other realms of global governance. With repeated interactions and deeply enmeshed decision-making over many arenas of public life, European states are especially attuned to the reactions of their peers and the potential for reciprocity, both positive and negative, for continued cooperation or for failure to support an “EU consensus.” Interest groups can rally sympathetic members or the Commission itself to focus on laggards. Similarly, in realms like international trade, decision-makers—and particularly, meeting hosts—may be heavily vested in holding successful negotiations, empowering other states and advocates to have influence over them.

### *The Intersection of Entrapment and Mobilization*

In the real world, different targets will face different degrees of rhetorical entrapment, coupled with different levels of interest group mobilization. Some will face high rhetoric

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<sup>40</sup> Norm supporters and weak actors need not be synonymous. For example, Bertrand Aristide was able to exploit pro- and anti-Haitian immigrant groups in the U.S. to coerce President Clinton into reinstalling him in Port-au-Prince in 1994.

entrapment with mobilization favoring norm opponents. Others will face low entrapment with mobilization favoring norm supporters. When we intersect the two variables, there are six possible permutations: [Table I here].

From this configuration, we derive additional hypotheses.

H3: Weak actors will be most likely to achieve their objectives when *norm supporters* are mobilized and the degree of rhetorical entrapment is *high* (Cell I).

H4: Weak actors will be least likely to achieve their objectives when *norm opponents* are mobilized and the degree of rhetorical entrapment is *low* (Cell VI).

As rhetorical entrapment increases (south to north) and as mobilization favors supporters (east to west), the probability that weak actors' shaming and taming efforts will succeed increases. In between Cell VI and Cell I, there are a number of less determinate possibilities. Cell II presents an interesting division between interest groups *highly mobilized* on both the pro and con sides and a *high degree* of rhetorical entrapment.

Norms scholars frequently argue that the multiplicity of voices and political pressures in decentralized states like the U.S. make such states permeable to interest group pressure but harder to change.<sup>41</sup> However, this relative invulnerability tends to hold only when interests are diffuse and the costs of inaction low. Just as often, however, the pluralistic nature of policymaking in liberal democracies can actually serve as a force multiplier for weak actors, by allowing them to manipulate the policy options and alternatives available to the target leadership. The fact that international actors may exploit others' competing domestic interests for their own bargaining advantage has long been recognized as has the significance of the dynamic, intertwined, and sometimes synergistic connections between what happens on the domestic and international levels during bargaining games.<sup>42</sup> However, traditional two-level analyses treat as

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<sup>41</sup> (Risse-Kappen, 1991).

<sup>42</sup> (Schelling, 1960; Ilk , 1964; Putnam, 1988).

axiomatic the assumption that—at least on the international level—both parties are trying to reach a negotiated settlement, albeit one that is most beneficial to them. Similarly, the domestic level of the game is usually viewed as simply a post-hoc ratification process of the “real” international game.<sup>43</sup> However, this is not necessarily the case.

Instead of seeking a mutually beneficial agreement, weak actors on the international level may attempt to persuade their reluctant more powerful counterparts to concede to demands to which they are *ex ante* opposed. More specifically, weak actors can attempt to influence target behavior on the international level by exploiting the existence of an heterogeneity of interests—i.e., pro- and anti-norm adherence—on the target’s domestic level. They may do so by leveraging the (often inherent) contradictions between target states’ normative commitments and the reluctance of many of their citizens to adhere to them. In other words, weak actors gamble that targets will choose to concede to their demands rather than suffer the expected political costs associated with trying to simultaneously satisfy two mutually exclusive—but often very vocal—constituencies.

As suggested above, this is possible because any actual or potential norms-driven crisis will tend to divide societies into at least two camps: pro-adherence and anti-adherence. Those in the pro-adherence camp will tend to embrace the idea that their governments should do the normatively appropriate, thing, while those opposed will generally be reluctant to bear the expected costs associated with norm adherence and/or they might simply be opposed for personal belief-centered reasons. The fundamental quandary for targets is that it is impossible to satisfy the competing interests of both camps simultaneously. Under such conditions, concession to a weak actor’s (or actors’) demands, in exchange for making an escalating crisis simply disappear, may begin to look attractive. From this discussion, we derive a fifth hypothesis,

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<sup>43</sup> See (Dupont, 1994).

namely:

H5: Where domestic supporters and opponents of norm adherence are both highly mobilized, *high* rhetorical entrapment can significantly increase the leverage of weak actors and likewise, their probability of successfully achieving their goals.

#### **IV. Case Studies**

Below we demonstrate the broad explanatory range of our framework, across three distinct policy domains and three different national contexts. Specifically, we examine: political battles over migrant and refugee rights in (then West) Germany; advocacy for the International Criminal Court and French accession to the Court; and U.S. policy over HIV/AIDS and intellectual property rights. In addition to cases of what are perceived to be altruistic actors pursuing the provision of public goods (the ICC and HIV/AIDS drugs), we also include a case of a more self-consciously, self-interested actor (East Germany and migration). We deliberately chose tough cases for our theory, in which *ex ante* opposition to the demands of weak actors was likely, and to further test its robustness, we also tracked within-case variation, focusing on changes over time.

##### *The 1983-1986 East-West German Migration Crises*

The exploitation of refugee and migration crises has proven a relatively effective way for weak actors to use norms to influence the behavior of stronger counterparts. Consistent with the theory outlined above, coercion can be effective because any given crisis will tend to divide societies into pro- and anti-admittance (and, correspondingly, norm adherent and opponent) camps. A wide variety of international norms and codified agreements protecting those displaced under duress exist. These include the 1948 Universal Declaration of Human Rights—which guarantees the right to leave one’s home country—and the 1951 Refugee Convention and the

1967 Protocol—which guarantee the right of *non-refoulement*, a prohibition against returning the displaced who have a “well-founded fear of persecution.” The existence of these agreements, and the norms they embody, serve to materially constrain the options available to signatory governments, and thus make these states—however powerful—more vulnerable to weak actor pressure. This is especially true for those leaders who rely on liberal rhetoric for their own political gain (e.g., we’ll “embrace and protect” those who “vote with their feet”) and to discredit their adversaries.

In the early 1980s, the East German (GDR) government, led by Erich Honecker, began placing “travel services” advertisements throughout the Middle East and South Asia, promising “comfortable flights” to East Berlin and “quick and smooth transit” into the West.<sup>44</sup> This wasn’t false advertising. Under the scheme, would-be asylum seekers from Third World nations could fly to East Berlin’s Schoenefeld Airport on Soviet bloc airlines and, once there, be granted transit visas that allowed them to enter West Berlin unimpeded. For although machine gun-toting East German guards forbade East Europeans to board subways headed for West Berlin, it made no effort to stop travelers from elsewhere. Those on the other side could not legally stop them, either. As one U.S. diplomat put it at the time: “Unless you’re an East German, the Berlin Wall is permeable, since we’re obligated by the Four-Power pact to maintain an open border.”<sup>45</sup> Coupled with the provisions of Article 16 of the West German Constitution—which entitled all those fleeing political persecution protection—this diplomatic loophole meant the Federal Republic of Germany (FRG) quickly became the destination of choice for hundreds of thousands of asylum seekers from the Middle East, Africa and South Asia. This was exactly Honecker’s intent.

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<sup>44</sup> (Collitt, 1986; Pond, 1986a).

<sup>45</sup> (Heinrich, 1986).

The East German president anticipated that West Berlin and West German refugee reception facilities and judicial systems would prove incapable of coping with such large numbers of asylum seekers.<sup>46</sup> This, he anticipated, would generate great consternation and political conflict within the FRG, which would only evaporate with concession to East German demands (and the end of the crisis). That said, the precise nature of these demands remains a matter of some debate. It has been argued that Honecker aimed to pressure the FRG to: 1) establish new rules of entry that would tacitly recognize the East German state;<sup>47</sup> 2) provide him with additional hard currency and other financial aid;<sup>48</sup> 3) offer further technical aid and assistance;<sup>49</sup> 4) change its constitution to discourage further immigration from the East;<sup>50</sup> and/or 5) simply to get the West Berlin government to negotiate directly with East Germany over the asylum issue and thereby recognize its authority in Berlin.<sup>51</sup> All of these objectives were articulated at different times. However, whatever the scope and extent of Honecker's objectives, most observers agree that—despite initial FRG resistance—in the end, he got much of what he sought.

It likewise appears that Honecker recognized he would be “normatively” aided in his efforts by three self-reinforcing factors: 1) the nature of the FRG Constitution; 2) the existence of codified, refugee-protecting norms; and 3) the high level of rhetorical entrapment that the West German leadership routinely exposed itself as part of its Cold War policy of explicitly welcoming those fleeing political violence and persecution.<sup>52</sup> According to Cheryl Benard, countries like West Germany routinely placed themselves in rhetorical and normative binds. They very much wanted

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<sup>46</sup> (Loescher, 1992).

<sup>47</sup> (Weiner, 1995).

<sup>48</sup> (Loescher, 1992).

<sup>49</sup> (Tagliabue, 1986).

<sup>50</sup> (Tagliabue, 1986).

<sup>51</sup> (Pond, 1986b).

<sup>52</sup> (Loescher, 1992; Briggs, 1996).

to “contrast favorably with the communist countries” and to “present life in the West in the best possible light.” “On the other hand, they did “not want to encourage more refugees to come,” as they “would never be genuinely welcomed.” Yet, at the same time, “one d[id]n’t want to appear inhospitable or callous.”<sup>53</sup> In short, while West Germany was rhetorically on the hook regarding would-be asylum seekers, it was likewise keen to avoid having to “put its money where its mouth was,” so to speak. Thus even before the crisis commenced, the FRG found itself in Cell I of Table I—highly vulnerable to weak actor demands.

The East Germans explicitly banked on their ability to exploit these inherent contradictions, according to diplomats and officials on both sides of the border. As one official candidly put it in the midst of the crisis, “They say they’ve got a liberal, free society over there. Let them prove it!”<sup>54</sup> An observer on the western side likewise acknowledged: “As West Germans become angry and start to say rude things about all these black and brown abusers of the right of asylum, it enables West Germany to be depicted as ‘racialist.’”<sup>55</sup>

Perhaps unsurprisingly, the gambit worked. The number of asylum seekers in West Germany rose precipitously, climbing 109 percent between 1984 and 1985. By the following year, nearly half of all of the displaced in Western Europe were seeking asylum in the FRG, and between 700 and 1,000 refugees per week were pouring into West Berlin from the Eastern sector.<sup>56</sup> Refugee fatigue rapidly set in. Opinion polls showed growing disaffection with the way the issue was being handled, and mobilization amongst those opposed to asylum-seeker admission steadily grew. In August 1986, for example, 72 percent of West Germans said their country was too

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<sup>53</sup> (Benard, 1986).

<sup>54</sup> (Cornwell, 1986; Johnson, 1986).

<sup>55</sup> (Johnson, 1986).

<sup>56</sup> (“Refugee rebuke”, 1986; Joppke, 1999).

generous to refugees—up from 40 percent from the outset of the crisis in 1983.<sup>57</sup> This prompted calls for tighter controls from politicians, many of whom were campaigning for parliamentary seats in the upcoming January 1987 election.

The issue was a contentious one at the local level, too. Community protests were widespread and popular. For instance, in the northern community of Monchneversdorf, citizens formed a human barricade to prevent the construction of refugee housing. They received letters and telegrams from all over the FRG congratulating them on their actions and urging them to continue.<sup>58</sup> Numerous refugee camps were firebombed, and many asylum seekers, beaten or killed.

The inflow also divided the sitting government's center-right coalition, with the centrist Free Democrats resisting demands from some of Chancellor Helmut Kohl's Christian Democrats for legislation that would soften the right to political asylum enshrined in the Constitution.<sup>59</sup> The more conservative members of Kohl's coalition, especially the Christian Social Party of Bavaria's Franz Josef Strauss demanded that the Constitution be amended to eliminate or modify the article that guaranteed refuge. The Christian Democratic Party itself split, with moderates arguing that the asylum clause was intentionally written into the Constitution in 1949 because of "Germany's horrible record of persecution" during the Third Reich.<sup>60</sup> And because a constitutional amendment required a two-thirds majority in parliament, it had no chance of passage in a country where reputational concerns about its Nazi past still loomed large.

Still, it was quickly recognized that something had to be done to bring the crisis to a close. While the FRG had been vulnerable to hypocrisy costs from the outset, during the period in which only norms supporters were mobilized, the leadership was able to absorb a large number of the

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<sup>57</sup> (Poole, 1986).

<sup>58</sup> (Markham, 1987).

<sup>59</sup> ("Bonn Feeling", 1986).

<sup>60</sup> (Joppke, 1999).

asylum seekers. However, once both the pro- and anti-norm sides mobilized—and the government found itself firmly in Cell II—with no end of the crisis in sight, continued resistance to Honecker’s demands was no longer viewed as viable. This was particularly true because although only 16-17 percent of those seeking asylum actually received it, 70 percent of asylum seekers remained in-country anyway. The growing size and visibility of this group added further urgency to demands to find a solution.

After a series of high-level meetings, in September 1986, the GDR agreed not to allow passengers arriving at Schonefeld Airport in East Berlin to pass through without valid entry visas for their country of destination, and the East German source of the crisis came to an end. In exchange, many hundreds of millions of dollars of additional financial aid were transferred from west to east, and a variety of other concessions were granted, including a substantial increase in interest-free credit for trade between Bonn and East Berlin.<sup>61</sup> The FRG also approved two agreements East Germany had “insistently sought” for some time, but which Bonn had been resisting: one was an accord on environmental aid, under which Bonn agreed to help pay to clean up East German industrial pollution, and the second, a technology transfer agreement, which resulted in long-sought technical and scientific cooperation.<sup>62</sup> East Germany may have also successfully used the crisis “to gain certain leverage” in their diplomatic relations with Moscow.<sup>63</sup>

Since Honecker was ousted in 1989, and soon thereafter East Germany was reunited with its western neighbor, these successes were without question short-lived. Even so, through a well-orchestrated coupling of shame and pain, Honecker was able to successfully exert pressure on his much stronger cross-border counterparts and achieve many of his articulated goals.

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<sup>61</sup> (Tagliabue, 1986).

<sup>62</sup> (Flow, 1985).

<sup>63</sup> (Svec, 1986).

### *France's Accession to the International Criminal Court*

We observe a similar effort by human rights groups to impose shame and leverage pain on the French on their stance on the International Criminal Court. After the “international community” failed to confront ethnic cleansing in the former Yugoslavia or staunch the genocide in Rwanda in the 1990s, ad hoc tribunals were created to punish the perpetrators. The high start-up costs associated with those courts, coupled with rising advocacy from civil society, hastened the demand for a permanent court to bring future killers to justice and deter other would-be violators of human rights. While originally a state-driven project, the International Criminal Court (ICC) received broad support by activists from the human rights and legal communities, who joined together under the loose Coalition for the International Criminal Court (CICC). The Court was backed by a group of so-called “like-minded states” that included Canada, most member states of the EU, and a number of developing countries. In 1998, efforts to create an ICC culminated in negotiations in Italy with the Rome Statute of the International Criminal Court. Like climate change, the ICC became highly contentious between the U.S. and Europe, particularly after the election of George W. Bush, but trouble was brewing long before then. At issue was the jurisdiction of the Court and its ability to prosecute genocide, crimes against humanity, and war crimes.

With large deployments around the world, the U.S. military was intensely worried about politically-inspired tribunals, wherein its soldiers would be hauled into court and punished for unpopular U.S. interventions, maybe even under false pretexts. Like the U.S., both the U.K. and France had relatively significant military deployments compared to other states in the international system.<sup>64</sup> Whereas their British counterparts believed fears about the Court were manageable, both the French and American military establishments were deeply opposed to the

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<sup>64</sup> Contact the authors for comparative data.

Court. However, France ultimately was able to ratify the Rome Statute, while the U.S. openly campaigned against it. What accounts for this difference?

In France, the situation in 1996 and through mid-1997 was largely similar to the dynamics in the U.S. Members of the French military establishment were as worried about being called before the Court as were the Americans. Though the French had helped lead the effort to create the International Criminal Tribunal for the former Yugoslavia (ICTY), it had left a bitter aftertaste. French enthusiasm for global justice cooled after its troops were implicated in having possibly trained the Hutu militias involved in the Rwandan genocide. The French military, having also observed Dutch peacekeepers cross-examined about their role in the Srebrenica massacre, were determined not to have to testify at the ICTY.

In preparatory meetings for the ICC in August 1996, France proposed a very narrow basis of jurisdiction for the Court, requiring the “triple consent” of the nationality of the accused, the nationality of the victim, and the state of location of the crime all agree before the Court would have jurisdiction.<sup>65</sup> Norm opponents clearly had the upper hand in this phase of the negotiations. President Chirac was deeply concerned about the proposed Court. He himself had served in the French military in Algeria and understood that soldiers could be sent on difficult, even unsavory, missions. Nonetheless, he had made some statements about human rights around which supporters of the Court could mobilize. For example, in 1995, apologizing for French collaboration with the Nazis on deportations in World War II, Chirac said, “France, the nation of light and human rights, land of welcome and asylum, accomplished the irreparable.... Betraying its word, it delivered its dependents to their executioners.”<sup>66</sup> While this language did not create high rhetorical entrapment for Chirac, these statements and the country’s historic attachment to

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<sup>65</sup> (Eftekhari, 2001).

<sup>66</sup> (Ganley, 1995).

human rights put it close to the threshold between high and low entrapment. Thus, during this period France was likely between Cells III and VI in Table I.

In June 1997, the French national elections brought the Socialists into power, with Lionel Jospin as the new Prime Minister. This led to a period of cohabitation, with Chirac still controlling the presidency. The president in France typically has wide discretion over foreign policy, as the sole veto player over policy, but with cohabitation, he also had to respect Jospin's position or risk a political crisis. A crisis could be politically-damaging; cohabitation had been associated with such crises and was deeply unpopular with the French public. The Socialists were more favorably inclined to support the Court. In September 1997, Hubert Védrine, the new Socialist foreign minister, gave Court supporters plenty of reason to think the new government would be on their side, or at least shame-able:

To ensure the lasting settlement of conflicts, consciences have to be assuaged and justice needs to be done to put an end to the endless cycle of revenge. The perpetrators of the most serious crimes must be tried impartially.... This is why France supports the action of the international criminal tribunals for the former Yugoslavia and Rwanda, and hopes that the forthcoming conference on an international criminal court will be a success.<sup>67</sup>

Védrine also had some reservations. He worried about potential trade-offs between peace and justice, that prosecuting malefactors might be counter-productive to conflict resolution. He also worried that proponents were overselling the deterrent value of the Court.<sup>68</sup> As he later explained, they were favorable to the Court, but uncomfortable with huge expectations that existed about the Court and wanted to disabuse people of "illusions" that it would solve all conflicts.<sup>69</sup>

Here, the incorporation of the Socialists served more to balance the interest groups. Instead of having a strong military establishment demanding that France reject the Court, France

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<sup>67</sup> (Védrine, 1997).

<sup>68</sup> (Védrine and Moïsi, 2001).

<sup>69</sup> (Védrine, 2007).

now had another player willing to support the Court. Given Védrine's personal skepticism, the precise source of French favorability to the Court is unclear. French human rights organizations, like *La Fédération Internationale des Droits de l'Homme* (FIDH), were supportive of course, but despite being vocal, internationally-focused French civil society is extremely weak. Nonetheless, international and French human rights groups, including Amnesty International-France and FIDH, appealed to the country's human rights tradition to soften up its approach to the ICC. *Le Monde* and other papers were also quite supportive, which created an additional source of pressure. The public was perceived to be in favor, although not especially active or informed. Perhaps more important was the mobilization and support among France's European partners.

Prominent Europeans, including Louise Arbour, Chief Prosecutor for the two ad hoc tribunals, and Emma Bonino, the EU Human Rights Commissioner, appealed directly to French decision-makers and the public to change the country's stance on the ICC. In December 1997, mobilization seemed to have swung back in the direction of the military; the French Defense Minister, Alain Richard, described the ad hoc tribunal for Yugoslavia as a "show trial" and suggested French soldiers would not testify. Within days, Arbour went directly to the French press to criticize Richard; she suggested that Bosnian war criminals felt protected in the French sector of the country.<sup>70</sup>

In March 1998, in the face of this criticism, Védrine announced that French soldiers would be allowed to testify after all at the ICTY. By the opening of the Rome negotiations in June, the French abandoned their demand for triple consent for ICC jurisdiction. Just as the Rome negotiations were getting started, Prime Minister Jospin further raised the rhetorical stakes in a June 1998 interview in New York:

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<sup>70</sup> (Trueheart, 1997).

On this issue, in agreement with President Chirac, we have shifted France's stance from the one I found when I took office. I believe people would have had difficulty understanding why France, fifty years after the adoption of the Universal Declaration of Human Rights, at the instigation of Professor Cassin, wasn't taking a leading position.<sup>71</sup>

France's isolation within Europe was quite important and arguably more influential than domestic lobbying from human rights groups. As former French Foreign Minister Védérine told us, if the French had not signed on, "It wouldn't have had any political impact. It would have had a psychological impact and impact on image" but there would have been no resignations. This was an "important" but not a "vital" issue for France.<sup>72</sup>

Marc Perrin du Brichambaut, the lead French negotiator during the Rome negotiations, acknowledged that, "NGOs were a major lobbying force to be reckoned with" at the Rome meetings. He added, "We were completely isolated in the European Union. The British were putting a lot of pressure." While Jospin and Védérine were not keen on the negotiations, they "understood they couldn't look bad."<sup>73</sup> A Foreign Ministry official explained the consequences of bucking the views of France's European partners. Because France is working together with other EU countries on so many issues, he argued, if one's country goes against the European consensus, it loses standing, influence, and credit on other close issues like the Balkans and human rights.<sup>74</sup> Eftekhari made a strong case for European disapproval as decisive, highlighting criticism of the French position in the press from Emma Bonino, then German Foreign Minister Klaus Kinkel, and Gijs de Vries, president of the liberal group in the European parliament.<sup>75</sup>

Faced with strong opposition by the French military and defense establishment and countervailing pressure from their European partners and NGOs, the French government sought

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<sup>71</sup> (Jospin, 1998).

<sup>72</sup> (Védérine, 2007).

<sup>73</sup> (Brichambaut, 2007).

<sup>74</sup> (French Foreign Ministry Official, 2007).

<sup>75</sup> (Eftekhari, 2001: 1045-1046).

a way out through concessions that would allow them to join the Court but insulate French soldiers from some areas of potential jurisdiction. By the end of the Rome negotiations, the French secured a provision that allowed them to opt-out for seven-years from the war crimes provisions of the Court. This move was enough to give the pro-Court forces in the government in the Foreign Ministry (and Justice Ministries) sufficient leverage to obtain permission to sign the treaty on July 18, 1998. Thereafter, ratification, including a modification of the country's constitution, was a relatively painless process. Thus, in terms of Table I, the French moved from the threshold between high and low entrapment to high entrapment. At the same time, mobilization shifted west from clearly favoring opponents towards mobilization on both sides. Thus, France moved from the boundary between Cell III and VI towards Cell II, and, correspondingly, shifted its behavior more in line with campaigners' demands.

#### *AIDS, Intellectual Property Rights (IPR), and the United States*

We find still further evidence for our framework in the 2001 Doha trade negotiations. This case pitted well-connected and wealthy pharmaceutical companies (and their affluent state benefactors) against poor countries (and their activist supporters around the world), in their bid to obtain affordable anti-retroviral (ARV) drugs and reduce costly intellectual property protections. While evidence suggests that the Clinton Administration shifted its policies on HIV/AIDS drugs and intellectual property rights in response to NGO assertions of hypocrisy, subsequent behavior by George W. Bush's administration offers still clearer evidence of a policy change facilitated by shame coupled with pain. Bush, first as a "compassionate conservative" candidate and later as President, acknowledged that AIDS was an enormous problem for developing countries and pledged to do all he could to fight the epidemic—a position publicly proffered by many in his administration. In September 2000, then candidate Bush, in a

questionnaire to a physicians group, said, “I fervently hope a cure for this horrible disease is found, and if elected president I commit to do my part to combat this urgent health problem.”<sup>76</sup> Secretary of State Colin Powell put the U.S. in a tighter policy bind on drug prices during an April 2001 trip to Kenya during which he announced that he was “moved by [its] plea for the United States... to do what we can to get the treatment costs down to the lowest possible costs so that we can make them more widely available.”<sup>77</sup> In a June 2001 address before the U.N. Special Assembly on AIDS, Powell reiterated U.S. concerns: “President Bush joins Secretary General Annan in the conviction that AIDS is so immense in its scope and profound in its impact that it compels new thinking and concerted action.”<sup>78</sup> However, while the U.S. “primed the pump,” these statements alone did not rhetorically entrap the administration.

Instead what was critical was how the administration’s statements on AIDS and ARVs contradicted subsequent actions regarding pharmaceutical intellectual property rights and U.S. acquisitions of the drug Cipro. When Bush assumed office, his administration adopted a position similar to Clinton’s pharmaceutical policy, i.e., generally supportive of intellectual property rights but wary of allowing disputes over public health to derail trade liberalization.<sup>79</sup> Then, in April 2001, the Bush Administration sought to reach a less adversarial accommodation with the Brazilians over a lingering dispute over IPR and pharmaceuticals. Despite that effort, the U.S. still aggressively sought to undermine wider efforts to privilege public health concerns over IPR. For example, in the spring 2001 meetings of the World Health Assembly (WHA), an advisory group to the World Health Organization, as well as the 2001 U.N. General Assembly meeting,

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<sup>76</sup> (International Association of Physicians in AIDS Care, 2000).

<sup>77</sup> (Blomfield, 2007).

<sup>78</sup> (CNN, 2001).

<sup>79</sup> After taking office, the Administration announced it would not rescind Clinton’s executive order that the U.S. would refrain from challenging sub-Saharan African countries over IPR and pharmaceuticals, for instance.

the administration successfully watered down language in official documents to minimize the support for bulk drug purchases and the use of generics.<sup>80</sup>

However, the U.S. had less success in the November 2001 WTO ministerial in Doha. In the aftermath of September 11<sup>th</sup>, the U.S. was faced with an anthrax scare, in which spores were disseminated via the mail. To deal with the crisis, the U.S. government decided to stockpile Cipro, a powerful antibiotic produced by German pharmaceutical company, Bayer. Tommy Thompson, then U.S. Secretary of Health and Human Services, threatened to suspend Bayer's patent unless it lowered its prices.<sup>81</sup>

Activists seized on Thompson's move to undermine the U.S negotiating position—and the interests of pharmaceutical IPR enthusiasts—in Doha, where developing countries and their activist allies sought an explicit public health exemption from WTO intellectual property rights rules. Paulo Teixeira, director of Brazil's anti-AIDS program, criticized the U.S. action on Cipro and opposition to the public health exception: “They are doing exactly what we did. It is inconsistent to then oppose making that an option on a global level.”<sup>82</sup> Nelson Ndirangu, a Kenyan delegate to the WTO, made a similar point, “If the U.S. can tell Bayer: ‘Reduce the price—or else,’ why can't Kenya tell” pharmaceuticals companies like GlaxoSmithKline the same thing?<sup>83</sup> France's trade secretary, Francois Huwart, acknowledged the problem created by U.S. actions: “The developing countries could legitimately have the impression that double standards are in place.”<sup>84</sup> An advisor to Brazil's health minister acknowledged the Cipro case's significance: “Tommy Thompson may not know it, but he became our ally when he threatened that patent. He did what he thought was in the best interest of his country. Why can't others do

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<sup>80</sup> (Nullis, 2001).

<sup>81</sup> (Blustein, 2001; Devereaux, Lawrence and Watkins, 2006).

<sup>82</sup> (Kahn, 2001).

<sup>83</sup> (Kaiser Family Foundation, 2001a).

<sup>84</sup> (Mortished, 2001).

the same?”<sup>85</sup> NGO advocates also seized upon the apparent hypocrisy. Oxfam and Doctors Without Borders declared: “It shows that these governments will act to make drugs cheap when it’s in their interest. But when the rest of the world is ill, it is profits that come first.”<sup>86</sup> James Love of the Consumer Project on Technology made a similar argument: “The Cipro thing was timely. When the U.S. did not like the price of a medicine, we were very fast to say we might override patent rights. When Brazil did the same thing (for AIDS drugs), they were savaged.”<sup>87</sup>

At first, the Bush administration claimed the public health exception was unnecessary, that countries already had the right to seek compulsory licenses of pharmaceuticals in times of a declared national emergency. This was insufficient to allay developing country fears of legal action; moreover, that exception was limited to production for national markets, so generic drug producers like Brazil and India would not be free to make ARVs for export to even poorer countries. Sensitive to criticism of its seemingly hypocritical stance, U.S. Trade Representative Bob Zoellick proposed some concessions. He suggested a ten-year extension—from 2006 to 2016—for the least developed countries to implement the full WTO Trade-Related Intellectual Property Rights (TRIPS) agenda. He also proposed a five-year moratorium on WTO challenges of sub-Saharan African violations of TRIPS to fight AIDS. However, neither developing countries nor NGOs were satisfied by these concessions, and developing countries threatened to scuttle the rest of the Doha agenda on agricultural trade and services.

After much discussion, the administration relented, and in combination with other governments, allowed the Doha Declaration on public health to be approved.<sup>88</sup> This permitted countries to grant compulsory licenses to firms to produce generic drugs for public health

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<sup>85</sup> (Agovino, 2001).

<sup>86</sup> (Kaiser Family Foundation, 2001b).

<sup>87</sup> (Russell, 2001).

<sup>88</sup> (WTO, 2001). Another account that emphasizes the role of weak actors comes from (Odell and Sell, 2006).

purposes. However, the exception only opened the door for countries like Brazil and India that had sufficient industrial capacity to produce drugs. A decision on the rights of importing nations was deferred and ultimately settled in 2003.

Skeptics might argue that NGO criticism was not all that consequential. For instance, Daniel Drezner has argued that the influence of non-state actors and global civil society (GCS) is often over-stated. On the Doha health exception, he cited conversations with USTR officials: “GCS activity had no direct effect on the United States; multiple USTR officials have refuted the notion that they felt pressure to cut a deal because of NGO activities.” At the same time, however, he has acknowledged the Cipro case “caused negotiating difficulties for the United States” and that NGOs and developing countries temporarily seized an open “policy window” to get the public health exception. This view was largely supported by a former senior official in the State Department who was active in the negotiation of the Doha health exception. He viewed U.S. actions on Cipro as a “background factor” that had “some impact” on the negotiations, noting that it had a prominence in the minds of other countries’ negotiators—particularly in sub-Saharan Africa where actors were less certain what they could legitimately do under TRIPS to protect public health.<sup>89</sup> Drezner, however, suggested activists and poor countries got what they wanted only because the context made it hard for rich countries to forum shift, creating a momentary bargaining advantage: Doha was important to the great powers in light of the recent terrorist attacks and the previous failure at Seattle. Because countries like the U.S. subsequently sought to claw back control of IPR through bilateral efforts to reach TRIPS-plus agreements, the case does not follow Finnemore and Sikkink’s norms life cycle, where a norm reaches a tipping point and is thereafter adhered to by a wider group of states.<sup>90</sup>

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<sup>89</sup> (Former State Department Official, 2008).

<sup>90</sup> (Drezner, 2007).

However, this interpretation treats the role of NGO influence too monotonically. As is true in other realms of negotiation, bargaining and coercion—by actors both weak and powerful—tactical successes are sometimes followed by subsequent setbacks. As Sell and Prakash argue, “success in influencing policy processes lies not in claimed moral superiority of the agenda but in the network’s superior abilities to create and make the most of political opportunities by exploiting a crisis, constructing a problem, mobilizing a coalition, and grafting its agenda onto policy debates.”<sup>91</sup> NGO influence was not a consequence of norms diffusion, whereby the administration became convinced of the “moral rectitude” of the NGO position; rather, its Cipro decision clearly denied the Bush administration of the rhetorical resources “to craft a legitimate rebuttal.”<sup>92</sup> Thus, faced with high rhetorical entrapment and mobilization on both sides of this normatively-laden issue, the U.S.’s policy options were reduced, and the weak actors (poor countries and activists) achieved more of their objectives than would seemingly have been possible prior to U.S. actions on Cipro.

Moreover, the 2001 Doha negotiations were not an outlier in an otherwise seamless pattern of the strong and moneyed getting their way. While it is true the great powers later sought stronger bilateral agreements on IPR, the WTO later extended the public health exception to importers in August 2003.<sup>93</sup> Moreover, in his 2003 State of the Union address, President Bush upped the rhetorical ante by committing to \$15bn over five years for emergency AIDS relief. Had the administration not followed through, Bush would have been vulnerable not only to liberal advocates but also to core supporters in the evangelical community who had become

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<sup>91</sup> (Sell and Prakash, 2004: 149).

<sup>92</sup> (Krebs and Jackson, 2007).

<sup>93</sup> There is some debate over whether or not this actually advanced developing countries’ interests; Drahos suggests the complexity of the 2003 agreement actually undermined them (Drahos, 2007).

mobilized on global AIDS.<sup>94</sup>

Consequently, the U.S. government has remained vulnerable to external critique: its AIDS treatment program has been criticized for relying on high cost namebrand ARVs. In response, program architects have responded, first by providing a fast-track approval process for generics, and second by increasingly purchasing generic drugs as part of the U.S. government's bilateral program.<sup>95</sup> Pharmaceuticals companies, in an effort to restore their badly tarnished reputations, have also negotiated agreements with the Clinton Foundation to reduce the price of AIDS drugs.

In terms of our theory, when the TRIPS agenda was first negotiated in 1995, only pharmaceutical companies were mobilized, and politicians had not made significant statements about public health that would have made them rhetorically vulnerable (moving into Cell VI in Table I). By the time of the 2001 Doha negotiations, the administration was rhetorically entrapped by a combination of its statements on HIV/AIDS and recent actions against Bayer. With both pharmaceuticals companies and a variety of pro-access activists organized, a propitious set of circumstances was created for developing countries to get the public health exception in 2001 (Cell II). In the aftermath of Doha, with the immediacy of U.S. actions on Cipro diminished, U.S. vulnerability was somewhat attenuated. At the same time, however, it became harder for advocates to sustain their mobilization as the fora moved to bilateral negotiations (a movement southeast in our typology).

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<sup>94</sup> For example, Franklin Graham, son of Billy Graham and head of the relief charity Samaritan's Purse, organized a 2002 conference of 800 evangelicals on the subject of HIV/AIDS called Prescription for Hope. The conference featured a tearful and apologetic Senator Jesse Helms as a keynote speaker.

<sup>95</sup> In fiscal year 2007, 73% of all PEPFAR-financed ARV drugs, including 93% of all drugs financed by its new supply chain management system, were generic (by volume) (Office of the United States Global AIDS Coordinator, 2008).

## Conclusions

We applied our theory to three cases of shaming and taming, with different combinations of variables. We witnessed instances in which weak actors were unlikely to have their demands met, where strong actors refrained from rhetorical entrapment and where opponents were highly mobilized. We observed other cases when they were more likely to get what they wanted, based on high entrapment and mobilization by both pro and anti-norm forces. Through within-case variation, we were also able to demonstrate how leadership shifts often set in motion changes in rhetoric and mobilization, contributing to dramatic changes in the fortunes of different interest groups. Our approach is thus applicable to a wide range of cases, including both high and low politics, and to diverse national contexts. Here, we explored immigration, security, and trade, and examined cases within (then West) Germany, France, and the U.S.

In the migration case, Honecker was able to foment FRG opposition to asylum seekers and the policies that protected them, and consequently extract a variety of concessions on totally unrelated issues. In the ICC case, we saw weak actors gain ground in France after Chirac was forced to share power with the Socialists and the EU pressed the issue. In the HIV/AIDS case, the Bush administration found that its actions on Cipro and Bayer undermined its bargaining stance on IPR and pharmaceuticals in the 2001 Doha round. In all three cases, weak actors (Honecker, human rights groups, and poor countries/development NGOs) were able to impose, threaten, or leverage credible punishment (streams of migrants, withheld EU cooperation, and an aborted trade round) that effectively buttressed symbolic shaming efforts.

We have been able to demonstrate, with relatively few variables, how vulnerable different targets can be to this brand of unconventional influence. This can be informative for both the weak and the strong. Weak actors should seek to get strong actors to make promises,

even if they initially are incapable of holding them to those promises; at least, they will have a hook for future use. For their part, strong actors (and this would include major multinational corporations) should be careful about making promises they know they cannot keep, as they can reduce their subsequent room for maneuver, if weak actors can mobilize around those promises.<sup>96</sup>

Both weak and strong actors should likewise think beyond promises to potential adversaries. Since the dynamics we describe are fluid, one lesson is for third parties to pit norm supporters and opponents against each other. Another lesson is for supporters to de-mobilize opponents by co-opting them or moderating their demands. Finally, greater attention to the landscape of interests should alert strong actors to moments in which they might feel trapped into undertaking actions they would otherwise eschew; in those instances, they should refrain from using rhetoric that reinforces their vulnerability and try to temper expectations. Nonetheless, we expect our advice to be ignored, offering us ample opportunity to apply our argument to a new set of cases.

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<sup>96</sup> The British energy company BP, for instance, has been the subject of extensive criticism for failing to uphold many of its environmentally-progressive, green policies, particularly with respect to upkeep of the Alaskan pipeline.

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