

THE SPIRAL MODEL OF SOCIALISATION OF HUMAN RIGHTS NORMS REVISITED

The struggle against the blanket ban on
therapeutic abortion in Nicaragua 2006-2010

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ABSTRACT

The purpose of this study has been to test the spiral model of socialisation of human rights norms into domestic legislation and practice. The empirical test case is Nicaragua where the parliament voted to repeal the legal therapeutic abortion exemption, present in legislation from the early 19th century, from the criminal code in October 2006, only about a week before the 2006 general elections and for electoral motives. The term therapeutic abortion refers to interruptions of pregnancy in cases where the pregnancy puts in danger the woman's life and in cases where an interrupted pregnancy widens the choice of curative medical treatments for the woman that would put in danger the life of the embryo/foetus. The objective is to see how the spiral model fits into this empirical case concerning women's rights in the sphere of reproduction and reproductive rights. Particular emphasis has been placed on studying the role of development cooperation donors present in Nicaragua as transnational agencies, and their relations to civil society organisations and the government; this aspect of the 'affair' of therapeutic abortion has not been studied previously.

According to the spiral model of socialisation of human rights norms, transnational contacts are instrumental for bringing about change. The model is based on the idea that domestic opposition forces bypass the national state and through their transnational contacts are able to exercise pressure on the domestic government both 'from below' and 'from above'. In this process, instrumental rationality evolves into argumentative rationality through discursive devices such as persuasion, naming and shaming and, finally, with dialogue. The phases of the spiral are repression when the spiral starts, denial when human rights norms and their universality may be denied by the government which appeals to another value in international law, national sovereignty. The third phase is tactical concessions when the repressive government starts making concessions but gets self-entrapped in its own discourse on human rights. The following phases, not yet relevant in this empirical case would be prescriptive status and rule-consistent behaviour. Because the case is about the reversal of an existing situation (backlash situation), the phase of repression is situated at the point when the backlash happened.

Additional notions used in the study are world time and 'double discourse', a typically Latin American situation where there is a breach between repressive official attitudes and policies, and private behaviour recurring to a wide range of liberties in contradiction with law.

Nicaragua has signed all major international and regional human rights treaties, and has issued a standing invitation to special procedures. The Nicaraguan constitution guarantees total equality between women and men, and the violations of international treaties can be brought to domestic courts of justice. According to civil society organisation, national and international, the total abortion ban violates women's right to life and health, and to health care and privacy. A conservative estimate about the number of victims of the new criminal code is that over one hundred women have died because they were denied medical treatment because of medical personnel's fear of harming the foetus and being prosecuted for abortion even in cases when the pregnancy is interrupted unintentionally. The ban on therapeutic abortion is also an issue of social inequality, as it affects mostly poor women.

The Nicaraguan women's and feminist movements have wide contacts with international non-governmental organisations and universities since the Sandinista time in 1980's, and have been able to activate networks very efficiently. Unconstitutionality motions and *amicus curiae*

briefs have been presented at the domestic Supreme Court of Justice and the case of therapeutic abortion has been taken in to instances of regional and United Nations treaty bodies and the Human Rights Council. Donors originally pressured the political establishment to postpone the vote after the elections but in vain. Later due to the repression against women's organisation and the political opposition, donors support civil society organisation but also the government in an attitude which is perceived by NGOs as ambivalent or lacking courage. Sweden and Denmark have announced a phasing out of development aid to Nicaragua, at least partially due to the ban on therapeutic abortion. The new criminal code with a blanket ban on abortion has been criticised by the periodic reviews of CEDAW, ICCPR, ICESCR, CAT and the UPR of the Human Rights Council.

On an empirical level, the spiral model has not progressed from the phase of denial and there are only some indications that a phase of tactical concessions may be settling in, in the form of the system of double discourse. The spiral seems to go in a circle where repression, denial and, perhaps, concessions co-exist. The reasons for this situation are several. The situation of democracy in Nicaragua is blocked due to political deals between major politicians; there is no independent judiciary, no impartial electoral system and increasingly little space for political opposition. The domestic opposition is too weak because all major political parties and the economic elite is against therapeutic abortion. Religious influence is strong, and the ban on the therapeutic exemption from the criminal code marked the political rise of what has been called an anti-feminist backlash, promoted also for personal reasons of the presidential couple. A further factor is that the Nicaragua of Pres. Daniel Ortega is unconditionally supported by Venezuela and Hugo Chávez. Nicaragua has ceased to consider the international community of human rights respecting nations as its group of reference and identification.

On a more theoretical level, the single most important reason for the blocked spiral is the notion of issue characteristics. In questions of reproductive rights and particularly abortion, it is difficult to construct unified opposition to the therapeutic abortion ban. Tactical concessions, assuming that the phase is settling in, do not have the same impact on the strength of domestic opposition nor are tactical concessions as easy as in cases of grave political repression: in abortions, if one permits one, it is difficult to justify why not to permit others. Exposure of the double discourse system may also lead to restraining individual, though illegal, choices. In legal argumentation, strongly invested in by the domestic opposition, there is another particularity which makes dialogue difficult. The hortative nature of Latin American criminal codes with thick normative contents makes that the issue is not regarded as a technical or public health matter but rather as a clash between two contradictory world views. World time may also play a role: in times of increasing religious fundamentalism, Nicaragua can become a forerunner in limiting women's reproductive and other rights. For all these reasons it can be said that the spiral model is better suited to cases of grave violations of human rights than to struggles for women's reproductive rights.

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