

HR: Commitment & Compliance

Epp; Simmons; Risse, Ropp & Sikkink (RRS): Examples of the study of HR in the social sciences:

- understanding global variation (advances and retreats)
- exploring the conditions for successful compliance or implementation
- aiding implementation and promotion

- Risse, Ropp and Sikkink:
 - explaining global variation in HR commitment & compliance
 - ‘socialisation’ of international HR norms into domestic practice: a theory of stages and mechanisms

- Simmons: uncovering the mechanisms of commitment and compliance
 - treaties as ‘commitment devices’

- Epp: uncovering the sources of and conditions for compliance (the ‘Rights Revolution’)
 - overlooked condition: the need for a ‘support structure’

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Epp: “the Rights Revolution”

US supreme court agenda in 1933: 9 % civil rights and liberties; in 1971: 65 %

How did it happen? Standard explanations:

1. Constitutional guarantees of individual rights (an entrenched bill of rights) and judicial independence (incl. job security)
2. Leadership from activist judges who practice judicial review
3. Rights consciousness or ‘rights culture’
 (“Natural Lockean liberals” or “contract thinking”)

Necessary, but not sufficient: The support structure explanation provides the missing element.

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A support structure for legal mobilisation provides the factors necessary for producing a ‘rights revolution’

- Widespread and sustained litigation
 - Rights-advocacy lawyers
 - Rights-advocacy organisations
 - Sources of financing
 - A critical mass of cases percolating through the legal system
- Well-organised law firms (‘repeat players’)
 - Free legal aid
- Willing and able lawyers
 - Composition of national legal profession: diverse, sophisticated and recognised as such

These factors preceded and supported the ‘Rights Revolution’ in the US

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The ‘Rights Revolution’ in the US (the story of growing from 9 % to 65 in 38 years):

Limitations of constitution-centred explanations:

- Vast expansion in powers of central government
- Great broadening and deepening of the meaning of individual rights
 - ‘language of rights’ widespread in US since ca 1850
 - Freedom of speech litigation since ca 1917
 - Criminal procedure litigation since around 1920-30
- A result of sustained litigation (rather than constitutional guarantees or activist judges)

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The ‘Rights Revolution’ in the US (the story of growing from 9 % to 65 in 38 years):

Limitations of judge-centred explanations:

- 1925: supreme court judges gain discretionary powers (“docket control”, though subject to a set of threshold requirements) and soon after the Court dedicates increasing attention to major disputes over public policies
- 1953-68: “Warren Court” liberals rule the agenda, however
- The shift is the result of ‘percolation mechanisms’
- And a marked increase in relevant caseload

The ‘Rights Revolution’ in the US (the story of growing from 9 % to 65 in 38 years):

“Rights culture”: American individualism?

- Ways of framing social relations
- Popular perceptions of problem and problem-solving
- Politics of balance in a federal state
- Growth of individual-level checks on the administrative process (bureaucratic government)

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The ‘Rights Revolution’ in the US (the story of growing from 9 % to 65 in 38 years):

The development of a support structure:

- The “managerial revolution”
 - Big law firms and systematic litigation rise from the need for controlling big business and the needs of big business itself (test cases, class action, etc.)
- An “associational revolution“: interest groups go from being loose associations to becoming professional organisations
- Interest groups and others (including ‘free’ legal aid) sponsor litigation to further their cause

The ‘Rights Revolution’ in the US (the story of growing from 9 % to 65 in 38 years):

The development of a support structure:

- A transformation of the legal profession
 - 1872: 15 firms with more than 15 lawyer, in 1924; 1,000
 - 1880-1915: from apprenticeship-trained lawyers to law school-trained practitioners and the establishment of unions
 - 1920-onwards: cultural diversification of lawyers’ profession (jews, catholics, blacks), from ca 1970 also women

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The ‘Rights Revolution’ in the US (the story of growing from 9 % to 65 in 38 years):

The development of a support structure:

- Bigger and more diverse sources of financing:
 - Private foundations
 - Churches, NGOs: ACLU, NAACP, etc
 - Government:
 - 1939: Civil Rights Section in Federal Justice Dep’t: test cases to combat lynchings, police brutality, racial segregation, etc.
 - 1965: legal services program in all states
- A steady stream of criminal appeals

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Simmons: the how's and why's of a 'widespread revolution'

- Challenge: to explain success of HR mobilisation and the associated acceptance of limitations in sovereignty
- exploring linkages between treaty law and domestic practices and focuses on the domestic impact of ratifying treaties
- placing herself in the theoretical tensions between realists and constructivists in political science, claims that a focus on international space as such is insufficient (“a domestic politics theory of treaty compliance”)
- The argument: The ratification of HR treaties provides a political opening for rights demanders; it heightens the chances of successful social mobilisation; the most significant effect is in less stable, transitioning cases
 - Constructivist premise: HR law adds commitment to norm; law become symbols for political mobilisation and liberation (the Helsinki effect)

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Simmons: the how's and why's of a 'widespread revolution'

- Treaties are international 'commitment devices' (*pacta sunt servanda*)
 - 2009: 3,000 multilateral and 27,000 bilateral treaties in existence
 - they require domestic ratification
 - ex-ante costs (political costs of not ratifying) are higher than ex-post costs (violations)
 - they are reciprocal (joint gains)
 - they build moral capital (reputation-building)
 - they have a capacity for clarity
- But they also build domestic implementation mechanisms through
- (1) An ability to affect/alter elite-initiated agendas
 - they strengthen the executive in presidential systems
 - authoritative texts reduce the range of options for politicians

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Simmons: the how's and why's of a 'widespread revolution'

Treaties strengthen domestic implementation mechanisms through

- (2) enabling (strategic) litigation
 - they provide interpretative guidance
 - they open the field for strategic litigation and cause lawyers (and NGOs)
 - they facilitate the work of rights organisations and –coalitions
 - they legitimise the work of rights activist organisations and individuals
 - they strengthen political strategies of liberation/democratisation
- (3) enabling social mobilisation (cf. social mobilisation theory)
 - they provide rallying points; litigation is highly visible
 - they reframe political struggles: they articulate social and political aspirations as “rights gaps”
 - they pre-commit governments and bring more allies
 - they increase the value placed on the rights claimed and the likelihood of success (creating a window of opportunity for political entrepreneurship exploiting underlying discontent)