

HR: Commitment & Compliance

(exercise)

With what or when did human rights arrive to your country?

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

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

- 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’

- (recommended reading: Montgomery and Kennedy: dilemmas of implementation and promotion)

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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

The 'Rights Revolution' in the US

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)

The ‘Rights Revolution’ in the US

Limitations of judge-centred explanations:

- 1925: only from this year does the supreme court judges gain discretionary powers (“docket control”, though still 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

“Rights culture”: American individualism?

- Ways of framing disputes and 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 (the ‘democratic deficit’ of bureaucratic government)

The ‘Rights Revolution’ in the US

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 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

The 'Rights Revolution' in the US

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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Promoting human rights from below: fighting child prostitution in Thailand

- local knowledge v universalising treaty texts
- UN: an agent of globalisation
- NGO activists: the experts in the global language of HR treaties
- the Convention on the Rights of the Child:
 - ‘a child means every human being below the age of 18 years’
 - fixing the boundaries of childhood and setting the parameters of an acceptable childhood

Compare: ‘It is the duty of every person to aid, support and protect his children and it is the duty of children to honour their parents always, and to aid, support and protect them when they need it.’

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Promoting human rights from below: fighting child prostitution in Thailand

- CRC Art 34: ‘State parties undertake to protect the child from all forms of sexual exploitation and abuse’
- Living in Ban Nua
 - A poor and unrooted community
 - Kinship, filial duty and social obligations extremely important
 - Prostitution pays five times more than begging
 - All children between 10 and 15 ‘have guests’
 - Total denial of psychological and physical damage

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Promoting human rights from below: fighting child prostitution in Thailand

- CRC: 'the best interest of the child' and 'due weight to views of the child'
- No welfare state, no social security safety net
- Parents emphasise own understandings and rationalisations; unable to see the selling of their children in a wider political (and medicinal) context
- Outside activists unable to appreciate children's role in household context and Art 34 discourages them from doing so
- Who can make an informed decision? What to do?