

Making Laws Rule: The Case for an Institutional Approach

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Literature

Political Economy:

Institutions

- Helmke & Levitsky (2006)
- Knight, (1992)
- North (1990)
- Scharpf (1997)

International Law:

Compliance Theory

- Chayes & Chayes (1995)
- Fisher (1981)
- Franck (1988)
- Keohane (1988, 2005)
- Koh (1996, 1997, 1998)

Socio-Legal Methodology:

Labour Rights Monitoring

- Cingranelli & Richards (2004)
- Kucera et al (2007)
- National Research Council (2004)

Methodology

Figure 1: Shows worker rights protection scores based on Cingranelli-Richards Human Rights Database of content analysis of US State Department and Amnesty International Reports

Figure 2: Shows the Case Study methodology of content analysis using multiple sources to enable institutional and compliance mapping and analysis

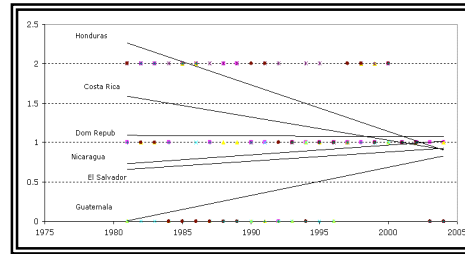


Figure 1. Worker Rights Protection 1981-2004 - Cingranelli Richards Human Rights Database

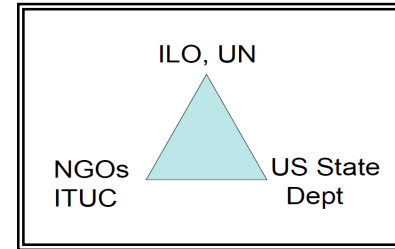


Figure 2. Case Study Methodology

Abstract

In many countries, there is a persistent disparity between the rules defining labour rights and the reality of labour practices: a rule-reality gap. This paper presents an institutional approach to understanding why labour rights protections succeed or fail. It argues that compliance theory from international law is the best tool to guide institutional reform of labour protections.

Borrowing from comparative political economy, the paper examines labour institutions, the so-called 'rules of the game' comprised of rules, norms and actual behaviours. Using this institutional framework, it identifies combinations of problems in labour rights protection. For example, norms may exist that contradict written rules. Alternatively, a written rule may contradict its normative goal and thereby undermine it. Even well written rules may not be effectively enforced. Additionally, formal labour rights institutions interact with informal institutions such as corruption, and in the face of weak formal institutions, they may prevail in structuring social behaviour. Finally, institutions beyond the labour sphere, such as immigration institutions, also impact on labour protections.

Based on the understanding that institutions reinforce and contribute to labour rights violations, the paper presents an approach to labour rights compliance founded on Harold Koh's transnational compliance theory. Compliance theory is well suited to institutional approaches because it, like institution theory, treats norms, rules and behaviours as critical components in achieving change and compliance. The paper contends that, to be successful, interventions must be integrated, multiple and mutually reinforcing, creating circumstances where actors adopt norm-based behaviours because they have been internalized.

An Institutional Approach to Compliance Theory

Obstacles	Description	Institutional Theory Explanation	Compliance Theory Intervention	Effect
Text	Laws are poorly written	Rules are ambiguous or contradictory - sanctions are ineffective	Legislative internalization of international rules	Align domestic rules and sanctions with international norms
Interpretation	Well-written laws are interpreted poorly by courts	Defections from rules are formally supported and legitimized	Judicial internalization of international rules enacted in domestic law	Align interpretations of domestic rules and sanctions with international norms
Enforcement	Well-written and faithfully interpreted rules are poorly enforced	Defections from rules are tolerated becoming <i>de facto</i> social conventions	Political internalization of enforcement intended by international rules	Align enforcement of domestic rules with international norms
Social Norms	Well-written and faithfully interpreted and enforced rules are undermined by non-supportive social norms	Formal institutions are undermined by informal institutions - Actors pursue socially-legitimate behaviors counter to formal institutions	Social internalization of legitimacy of norms underlying rules	Align social norms with domestic rules by enhancing the normative legitimacy of the rules
Social Conventions	Well-written and faithfully interpreted and enforced rules are undermined by social conventions	Formal institutions are undermined by informal institutions - Actors pursue "expected" but not socially-approved behaviors counter to formal institutions	Social internalization of legitimacy of norms underlying rules	Align social conventions with domestic rules by challenging them and enhancing the normative legitimacy of the rules
Other Institutions	Well-written and faithfully interpreted and enforced rules are undermined by other institutions	Institutions undermine (or reinforce) each other - Institutional hierarchies and complementarities	Enmeshment and linking of issues ensuring institutional hierarchy in line with international rules	Align multiple institutions to create hierarchies intentionally reinforcing compliance outcomes



Figure 3. http://www.lib.utexas.edu/maps/americas/centralamerica_pol97.pdf

Core Labour Rights

- Freedom of Association and Collective Bargaining
- Elimination of Forced Labour
- Elimination of Discrimination
- Abolition of Child Labour

The Case Study

Why Core Labour Rights?

- Universality
- Comparability
- Improved availability of evidence

Why DR-CAFTA Countries?

- Regional coherence: identity/history
- Shared institutions: economic, social and employment
- Distinctive regional divides: HDI and income

Why Now?

- DR-CAFTA replaces CBI and GSP
- Labour rights agenda in Inter-American System
- Newly influential transnational migrants

Diagnostic Assessments: Illustrations

- 1. Formal Institutions:** Large categories of workers, such as domestic workers, are excluded from rules limiting work time, creating *de facto* forced labour. Essentially, the exceptions swallow the rule. (Costa Rica)
- 2. Interactions between Formal and Informal Institutions:** Rules protect workers organizing a union only after the union registers with the government. Social conventions undermine this protection when employers purchase from corrupt labour inspectors lists of union supporters and fire them before they can register. (Honduras)
- 3. Interactions between Different Sets of Institutions:** Citizenship and race institutions interfere with labour rights protection of Haitian and Haitian-descended workers despite their explicit protection in the Labour Code. (Dominican Republic)
- 4. Ambiguities in ILO Conventions:** Employers agree to engage in collective bargaining with unions only on the condition that unions forgo nationally-established work-time limits. (Guatemala)

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