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Published in:
Newsletter - School of Human Rights Research

Citation for published version (APA):

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Realizing rights: signs of a promising romance between human rights law and sociology

It is far too early to speak of a full-fledged love affair but there are definitely telling signs of a mutual interest between human rights law on the one hand and the sociology of rights on the other. The reasons are clear: after decades of strong emphasis on standard-setting and institutionalization human rights scholarship has sunk its teeth into issues of enforcement. Inspired by – amongst others - the coming about of the ICC and the strides in the field of socio-economic rights there is a notable emphasis on “realizing rights”, human rights impact assessments and issues like access to justice. Sociologists, on the other hand, have let go of their initial disdain for the individualist, normative human rights discourse in the face of the rise of rights as, in Ignatieff’s words, one of the main languages of globalization.

Of course, the field on which the rapprochement between the two disciplines takes place is vast, and covers scholarship ranging from large-scale quantitative surveys on rights realization to anthropological fieldwork on rights discourse with Bolivian ngo’s. What all these studies have in common, however, is their departure from the normative assumption of the universality of rights, as a given, in exchange for a more empirical interest in the universalization of rights, as a process. In looking into this process of universalization there appear to be seven dimensions which, in conjunction, can serve as indicators of the realization of rights: the institutional, the cognitive, the affective, the discursive, the mobilizing, the constitutive and the realizing dimension.

The institutional dimension is still within the realm of classic human rights research. It looks into, amongst others, the ratification of treaties, their enactment within the domestic context, and their interpretation by national and international courts. The International Law in Domestic Courts database is an interesting example here. In addition, there is an increase in research on those institutions put in place to monitor compliance with international human rights; from public protectors to national human rights institutes to specialized bodies like Commissions on Equal Treatment.

Where social scientists step in is, for instance, in looking into the cognitive dimension. What do the people at large, and specific groups like the police, the judiciary and educators know about the concept and the contents of particular human rights instruments? Research by the Dutch chapter of the FIDH, for instance, pointed at a lack of knowledge of human rights in the Netherlands, as did more recent research by the author. In a similar vein, Victor Gedzie, a PhD student at the ISS, points at the lack of knowledge of women’s rights as one of the main reasons for discrimination in succession cases in Ghana.

Closely related to this, social scientists have also developed an interest in the affective dimension of human rights, which encompasses support for a wide variety of rights. Scholars like An Na’im have pointed out how rights discourse is accepted more easily if it resonates with religious and cultural traditions. Merry, in this context, has written about the importance of the “vernacularization” of rights and the role of “translators” in this process. The rapidly expanding field of transitional justice also relies strongly on quantitative and qualitative research that maps out the support for trials, truth commissions and traditional mechanisms in a given context.

Another element to be distinguished is the discursive dimension, which looks into the degree to which social problems are framed in rights discourse. Whereas a woman seeking access to land in a setting in which communal tenure prevails would traditionally base her claim upon a particular version of customary or religious law, she will increasingly also refer to her lack of land as a rights violation. Robins, to give another example, describes the discursive strategies of people suffering from hiv/aids in South Africa and how rights talk has become the main avenue of social activism in this field. Of course, political scientists like Glendon have, in an early stage, pointed at the limits of making public policy on the basis of – particularly – claims to individual rights.

The mobilizing dimension zooms in on the degree to which, and the way in which, rights are actually mobilized, by individuals or
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The constitutive dimension of human rights covers a concern with the intended and unintended effects of rights discourse with global unequal power relations. To what extent does rights talk amplify certain voices and silence others? What are the limits to rights-based identities and subjectivities? To give one example; the increase in recognition of indigenous rights has in some cases given rise to ethnogenesis, to the creation of cultural groups instead of their mere recognition. Whilst this might be necessary in order to gain access to natural resources, this does not always strengthen – for one – the position of women within a given community.

A final interest is the extent to which the aims embodied in human rights legislation are actually realized. Here human rights lawyers come into the picture again, with an interest in evaluation reports, the findings of treaty monitoring bodies and shadow reports. Nevertheless, it is in explaining why certain rights do (partially) get realized, and others not, that it is so important to understand the other dimensions and the structural conditions which shape them. It is for this reason that it is to be hoped that the advances between human rights law and sociology move beyond a mere amorous flirtation towards a full-fledged relationship.

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No cognac served, yet a great academic opportunity

The first meeting with the unofficial dissertation reading committee is supposed to be a great happening, I was told; a first (tiny) milestone in a four or five year process. Unlike some (humorously) requests, however, the cognac found itself in the kitchen, and stayed there during the whole two-hour gathering. For me, the meeting was more of a celebration of the professors’ commitment to my project, than a salute to progress. And with a dissertation reading committee composed of international relations expert Duco Hellema, foreign policy and human rights specialists Peter Bachr and Peter Malcontent, and UN-human rights authorities Cees Flinterman and Theo van Boven, this is probably not a strange thought.

The tone and setting of the committee meeting were very informal, and the general qualifications for my ‘little piece of art’ encouraging. Moreover, I had the feeling that the professors really liked my project as they had read the first chapter carefully, and asked well-thought and stimulating questions. Lucky me! It is definitely a lot easier to write about a positive performance interview than about a negative one. The most important question being raised, and the topic of a long but very interesting discussion, had to do with the selection of the cases. As indicated in the September 2008 Newsletter, in my project the relationship between the Netherlands and European Union foreign policy in the field of human rights is the central theme. Cases are being selected in the United Nations Human Rights Council’s predecessor; the Commission on Human Rights (1946-2006). With this, every professor seemed to have his own preference; for scientific reasons, or, in the case of Flinterman and Van Boven, because of personal UN-experience. Unlike the criteria formulated in my first chapter and the theoretical and methodological starting points for case research as laid out in, for example, Liphart (1971) or George and Bennett (2005), there were still lots of possibilities, and we discussed the pros and cons of most of them.

The second topic of discussion I want to recall had to do with the relevance and reputation of the research. According to Baehr, it is very important to construct a status questionis with regard to a project, and to indicate the additional value of the research for all major and associated fields. Hereby, one should not only know what has been written (my idea), but also what is going to be published in the future. Subsequently, one should claim his or her niche by letting the important (international) professors know one is working on this topic.

The last question I want to recall has to do with this single medium. Flinterman asked me to write a report of the committee meeting for the Newsletter, and after considering the request for a couple of seconds, I agreed. Some of you might think; why do we have to read about his progress? Is this Newsletter material? For me, the reason for writing this article has nothing to do with myself or my project. This piece of writing should be conceived as an ode to the fascinating format of the reading committee. Unfortunately, not every PhD-student knows about the possibility of organizing an informal reading committee, and some might not know about the advantages. Therefore, I would like to give you some information about this subject, and point out that my first experiences with the committee were very good. Basically, I am giving four arguments: First of all, the professors in the reading committee represent different approaches and expertise. The character of my project is interdisciplinary, and having the committee can help in addressing and contributing to all major fields. Furthermore, having the committee offers you the opportunity to stay up to date on the academic development within all sectors. The second argument is related to this; the professors can bring in dissenting opinions, and can provide you with new arguments, interesting cases, or documents to study.

Third, for me, during the meeting, questions were raised about issues I did not think of, or about matters that were actually part of my first chapter, but that might have been a bit unclear to those who are not directly involved in the project. After a couple of months at SIM, it seems to me, it is hard to project oneself as the famous ‘interested newspaper reader’ who loves to read the book, but knows nothing or very little about the specific subject. Also the daily supervisor probably already knows too much about the subject, or maybe he has become, or is going to get, overly familiar with your way of reasoning. An ‘outsider’ can take this role more easily, and can indicate some intrinsic vagueness, or methodological problems you did not see at this point. Finally, the reading committee meeting is the