

Recent Publications

Sonia Cardenas *The chains of justice. The global rise of state institutions for human rights*

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Since their formal creation in the 1940s, national human rights institutions (NHRIs) have moved very rapidly from the fringes to occupy a prominent space in human rights discourse. International human rights standards are important for securing and sustaining human dignity and, therefore, need to find concrete expression at the domestic level to be relevant. This goal inspired the United Nations (UN) to encourage states to consider the desirability of establishing NHRIs to advance the domestic promotion and protection of human rights. The desire of the UN in this regard has since been realised with the global proliferation of these institutions. The story about the emergence and remarkable diffusion of NHRIs across the globe is what Cardenas relays in her book *Chains of justice. The global rise of state institutions for human rights*.

Although the literature on NHRIs is impressive, Cardenas asserts that these institutions are still very much understudied. As an addition to the existing literature, Cardenas blends historical and legal perspectives to provide a highly informative account of the origin of NHRIs and the factors that influence states to concede to establishing these institutions even if they do not believe in their necessity. Therefore, for Cardenas, in addition to unravelling the intricate motives behind the creation of NHRIs by states in the face of widespread and continuing violations of human rights, the book seeks to fulfil three basic objectives: to offer a new perspective into the origins and influence of NHRIs; to instigate critical reflections about these institutions; as well as to contribute to the expanding discourse and debates on 'human rights, global diffusion, and state institutions'.

The book, which consists of 11 chapters, can be divided into three broad parts. The first part, which consists of the first four chapters, discusses the historiography of NHRIs, including their origin, design

and the motivations that influence states to create NHRIs. The second part, which spans the fifth to ninth chapters, presents specific case studies on trends of diffusion of NHRIs in different geographical regions, including Africa, the Americas, the Asia Pacific, as well as Europe. The third part, consisting of the last two chapters, digresses from the established central theme to consider practical criteria for assessing the effectiveness of NHRIs.

Cardenas starts off by depicting NHRIs as 'chains of justice' to signify and underscore their strategic importance as institutional mechanisms through which ordinary people can realise their quest for social justice and human rights from the state. However, she also posits that 'chains that connect can also be shackles of oppression', implying that NHRIs can be hurdles in the way of the effective realisation of human rights, especially when they are inactive or even become aligned with the state as instruments for social control in a democratic disguise. The book's dominant theme centers around the basic question: Why would states of every description, including the ones with poor human rights records, accede to the creation of NHRIs? Cardenas raises three puzzles from which she conceptualises basic answers to this question. She presents elaborate arguments on the historical, social, legal and political interplays or tendencies that inspire or influence states to voluntarily subject themselves to horizontal accountability through the creation of NHRIs within the logic of self-restraining states. The puzzles, which revolve around the concepts of institutional creation, institutional design and institutional influence, constitute the core of her critical exposition in the book.

Taking on the first issue of institutional creation, Cardenas takes the reader along a journey in time and space. She traces the evolution of NHRIs, from the period immediately after World War II to the present, and argues that it took over four decades, from the 1940s, for NHRIs to evolve from an emerging norm before crystallising in the 1960s. The Paris Principles were adopted in the 1990s as minimum standards to regulate the establishment and operation of these institutions. Since then, she concludes that NHRIs have not only diffused globally, but have further consolidated to what and where they are presently as free-standing agents in the international human rights system. However, she also adds nuances to the historical narrative with the argument that the concept of NHRIs is not an altogether original one, but mutations of other institutions that not only predate their existence, but also shape their design and functions. In this regard, she considers ombudsman agencies, government enquiry commissions, interracial bodies of the United States of America and international human rights institutions, such as the UN Human Rights Council, as the pathfinders or precursors to the NHRIs model.

Turning to the basic question regarding the reasons why states create NHRIs, Cardenas first uses the Roman god, Janus, as a metaphor to deconstruct the motivation of states and their hypocritical attitude towards human rights generally before advancing

three factors crafted under an ideological template that stands out as common reasons for the creation of NHRIs across the world. She contends that states are by their very nature 'Janus-faced' when it comes to the promotion and protection of human rights, being both preservers and violators of human rights. However, states do face periods of 'norm ambiguities', where the gap between international human rights standards and their human rights records and practices create serious tensions that call their human rights commitment into question. This ultimately compels them to create NHRIs, either by voluntary action or through pressure from existing norm diffusing agents. She argues that the three norm ambiguities that inexorably lead to the creation of NHRIs are the following: during times when states are making or designing new constitutions or post-conflict peace agreements (regulatory moments); when states are acting in response to or in compliance with external treaty obligations; and during periods of systemic abuse of human rights that make the appeasement of local and international critics highly desirable. Cardenas insinuates that the creation of most, if not all, of the existing NHRIs across the globe is causally linked to the influence of at least one of these three factors of normative ambiguity, a proposition she proceeds to prove, and convincingly too, with a descriptive, analytical and empirical analysis in the chapters on regional case studies.

While focusing on the reasons for the global diffusion of NHRIs, Cardenas again posits that this is a product of 'strategic emulation', whereby states strive to retain regulatory authority and power through appropriate institutional mechanisms that suit their strategic and social circumstances which, in this case, are NHRIs. Strategic emulation, she emphasises, 'is a fact of international and political life, no more, no less'. As a deliberate effort to establish this point, Cardenas extensively reviews the evolutionary history of NHRIs in over 159 countries, including countries that are still resisting the pressure to establish these institutions. She identifies regional trends in and the incentives for institutional creation and design, as well as the identifiable patterns of diffusion across time and space.

Interestingly, as the reader rambles through the numerous arguments the book offers on the interconnectivity between the concept of strategic emulation and the global diffusion of NHRIs, he or she is introduced to new vocabularies or even new forms for categorising NHRIs, such as trendsetters; early adopters; NHRIs created during regulatory moments; NHRIs motivated by appeasements; peace or post-conflict agreements; millennial leaders; latecomers; reluctant institutionalists; and rejectionist states. Apart from reinforcing the truth in some of the existing narratives on these institutions, the regional case studies reveal unchained thinking on theoretical assumptions that are often taken for granted. For instance, Cardenas discloses for the first time that the Republic of Benin was the first country in 1970 to establish a NHRI in Africa, a position and an achievement hitherto ascribed to Togo in some of the existing literature.

The book's penultimate chapter contributes ingeniously to the debate on assessing the effectiveness of NHRIs. Most often scholars have no clear parameters for assessing the performance of particular NHRIs and thus rush to conclusions that are not evidence-based. For instance, for some commentators, an NHRI is ineffective simply because it is not seen to be highly critical of the state or it is deficient in some relevant aspects of the Paris Principles. As Cardenas convincingly argues, an assessment of the effectiveness of NHRIs that does not focus on what they have done or are doing to achieve their basic purpose is incomplete. Since effectiveness is a measure of outcome and possible impact, it sounds more appropriate, as Cardenas proposes, to conceptualise the effectiveness of NHRIs in terms of their functions and in relation to each of the multiple activities they undertake across the various stages of accountability. This situation is dependent on the constancy of other important dynamics, such as institutional leadership, resource availability, institutional accessibility, and the domestic legal status of human rights. As she argues, expecting systemic impact to result directly from the individual complaints that they resolve is more often a losing proposition just as too much responsibilities could lead to unintended disappointments.

On balance, in *The chains of justice*, Cardenas achieves her objectives. Arguably, while there are several accounts of the historical origin, development and diffusion of NHRIs, none is as clearly and comprehensively penetrating as *The chains of justice*. Apart from being highly enlightening, the book, in my view, shapes and enlivens intellectual discourse on many issues in relation to NHRIs, including the reasons behind their global diffusion and why states create particular types of institutions to suit their social and political circumstances, even though NHRIs generally look the same in institutional design and functions. As well as the originality of the ideas she espouses, Cardenas's other strong points are in the depth of her research, the sheer volume of empirical evidence she uses to support her narratives and the simplicity of presentation that makes the book an interesting read for anyone in multi-disciplinary studies interested in a historical account of NHRIs. Arguably, some of the 'new' issues and arguments the book elaborately advances are not only thought-provoking but, as she predicted, will continue to generate further interest and scholarship for some time to come.

However, like every other good book, there are deficiencies that need to be corrected in subsequent editions. Certainly, the claim on page 35 of the book that Africa has only 28 NHRIs as of 2014 is not correct. Presently, Africa has over 40 NHRIs, which the case study on Africa (chapter five) correctly captures. Also NHRIs are presented on page 65 of the book as institutions created to 'implement' international human rights standards domestically. It is my humble view that this is contentious. Arguably, NHRIs do not bear any responsibility to implement human rights. Besides a lack of institutional capability, the legal duty to implement human rights

rests, inextricably, with states and not with NHRIs. The principal responsibility of NHRIs is to advance, facilitate or assist the state to implement human rights.

Furthermore, the description on page 71 of the book of NHRIs as 'principal' or 'agent' in relation to their composite mandate to protect and promote human rights, respectively, is confusing. The confusion is especially glaring when the social or legal perspective into which the principal and agency relationship feeds is not explained but left to the reader to figure out. Thus, there is a need to provide further explanations to clarify how, and in what way, NHRIs can play roles, either as 'principals' or as 'agents' in relation to the nature or type of function they perform.

Still further, on page 360 the book raises a fundamental point that NHRIs are not doing enough to challenge the material conditions that perpetuate social and economic injustice across the world, but unsatisfactorily terminates the argument on it in a few lines. The role of NHRIs in advancing states' accountability for social and economic rights implementation is a contemporary issue that deserves fuller consideration in a book of this nature.

Overall, *Chains of justice. The global rise of state institutions for human rights* is a very comprehensive, well-researched and valuable book that fills a gap in the existing literature on the evolution, creation and global diffusion of NHRIs. No doubt, the book will be very useful to a variety of readers, especially those interested in the history, and the role and relevance of NHRIs, such as human rights scholars, practitioners, professionals and students.