The Justice Cascade: How Human Rights Prosecutions are Changing World Politics


On 10 October 1998, former Chilean dictator General Augusto Pinochet was indicted by a Spanish court for numerous human rights violations committed during his military rule. It was an event that set history in a new direction not only because the case involved the head of the military dictatorship that ruled Chile between 1973 and 1990, but also because it was the first time that European judges had decided to apply the principle of universal jurisdiction, declaring themselves competent to judge crimes committed by former heads of state, despite local amnesty laws passed by military junta. The trial of Pinochet shook the long standing normalisation of national amnesia and immunity from prosecution for dictators, former head of states. It has opened the door to re-examining the brutal past and culture of immunity in many other countries that experienced dictatorships. As Kathryn Sikkink argues, in her new book The Justice Cascade: How Human Rights Prosecutions are Changing World Politics, the "Pinochet case galvanized lawyers around the world, as it made them aware of the possibilities of prosecutions."

Sikkink examines the significant and controversial new trend of holding political leaders criminally accountable for human rights violations by relating an important theoretical story of “norm emergence and norm effects” (p.260). For centuries, states and state officials were effectively immune from prosecution for human rights violations in both domestic and foreign courts. However, this has changed in recent decades as a result of a series of shifts in international legal standards and practice. Now former or even sitting heads of state (such as Slobodan Milosevic from Yugoslavia or Charles Taylor from Liberia, who were both indicted for war crimes) are being brought before national and international courts or tribunals. The argument that Sikkink makes regarding accountability is that, prior to WWII, a Sovereign Immunity Model was upheld that implied that a state and state officials would not be held accountable for past human rights violations. However, after WWII, the first instances of Individual Criminal Accountability occurred through the Nuremberg trials and the Tokyo trials, creating important precedents. However, in that era, it was only considered possible to hold state officials accountable if they had been defeated in war.

After WWII, states established an international human rights system through the UN that provided a mechanism for state accountability, but individuals, including state officials, were never held accountable themselves. Although states could be held accountable for gross human rights violations, it was only in the mid-1970s and early 1980s that the first trials
addressing individual accountability since Nuremberg took place. However, unlike Nuremberg, these trials were not emanating out of a military victory, but rather, occurred in countries such as Greece, Portugal and Argentina, and involved sovereign states holding their own officials accountable.

Sikkink analyses three levels of individual accountability: international prosecutions (tribunals set up the UN, or hybrid tribunals such as the ICC, ICTY or ICTR); foreign or transnational prosecutions (conducted in a single country for human rights abuses committed in another country, for example, Pinochet in the UK, or Scilingo in Spain; and domestic prosecutions (conducted in a single country for human rights abuses committed in that country).

Sikkink shows how, in just three decades, state leaders in Latin America, Europe, and Africa have lost immunity from accountability for the human rights violations they committed. Her central argument, supported by ground-breaking quantitative research, is that human rights trials have had a positive influence in terms of decreasing such crimes over the last few decades. These trials, according to Sikkink, also serve as a powerful political tool. They reinforce rule of law and send a message that no one can be above the law. She defines the “justice cascade” as the rise and spread of a set of ideas and norms that have enabled the process by which human rights trials have spread from country to country, fuelled by the support of domestic politics, international agencies and local civil society organisations. According to Sikkink, “justice cascade” implies not only that such crimes are wrong, but that perpetrators of such crimes “should be held accountable and punished, regardless they are state officials” (p. 255). She argues that the “justice cascade” was largely due to the unflagging efforts of human rights activists in Europe and Latin America. This shift is affecting the behaviour of political leaders worldwide and may change the face of global politics as we know it.

Sikkink’s proposal is well supported by empirical evidence and her significant research into the long traditions of these trials convincingly argues that the “justice cascade” is not an innovative phenomenon but a continuing and enlightened progress. Still one may ask how some or many countries (in Southern Europe, former Soviet Union or Latin America) have effectively transitioned from totalitarian governments and military dictatorships to democracy without such trials. This issue is not tackled by Sikkink. Nonetheless, The Justice Cascade is a thoughtful and thorough account of the evolution of human rights trials against former heads of state and government officials, and fills a significant gap in international law literature.
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