21

A regulatory perspective on the international human rights system

Hilary Charlesworth[1]

1. Introduction

Regulatory theory has paid little attention to international law, and international legal theory, in turn, has largely overlooked the field of regulation. Given that compliance and implementation are two constant anxieties in international law, this lack of engagement with regulatory theory is surprising.

In this chapter, I outline some insights that regulatory theory offers to one arena of international law: the protection of human rights. Despite its elaborate system of norms and institutions, human rights law often appears ineffective. International human rights scholars have tended to focus on law as the sole form of regulation in the field and they have paid little attention to other forms of human rights influence. This chapter first outlines the international human rights system and the disappointment it has generated. It sketches some explanations for the perceived failures of the system to affect behaviour and then introduces two aspects of regulatory scholarship that can enrich approaches to protecting human rights. I conclude by considering the value of the concept of responsive regulation to the field.

2. The international human rights system

The United Nations (UN) is home to the global human rights system. It comprises the Universal Declaration of Human Rights (1948) and nine 'core' human rights treaties, including two general treaties—the International Covenant on Economic, Social and Cultural Rights (ICESCR) (1966) and the International Covenant on Civil and Political Rights (ICCPR) (1966)—and treaties devoted to particular human rights and groups: for example, the Convention against Torture (1984) and the Convention on the Rights of Persons with Disabilities (2006). The human rights norms set out in these instruments include rights applicable to individuals and to groups. In short, there has been a 'cascade of norms' (Keck and Sikkink 1998) setting human rights standards over the past 60 years.

The UN human rights treaties have attracted widespread participation. All of the United Nations' 193 members are party to at least one of the nine core treaties, and 80 per cent of states have ratified four or more. The most widely accepted treaty is the Convention on the Rights of the Child, with 194 parties; the two covenants have 164 parties (ICESCR) and 168 parties (ICCPR). Compared with other treaty systems— such as environmental, arms control or resource treaties—these are impressive figures.

The UN human rights architecture is complex. All the human rights treaties require parties to implement the treaty provisions in their national legal systems. These obligations are overseen by a system of specialist committees, one for each treaty. The role of the human rights treaty bodies is to monitor the implementation of the treaties by states that have become parties to them, primarily through scrutiny and comment on periodic implementation reports submitted by state parties to the treaties. Political bodies are a second major feature of the UN human rights architecture—most notably, the Human Rights Council (HCR). The council, to which 47 states are elected as members for three-year terms, was established in 2006. Its role is to ensure the primacy of human rights within all aspects of UN work. A third element in the international human rights system is the Office of the UN High Commissioner for Human Rights (OHCHR), which is responsible for the promotion and coordination of human rights throughout the UN system, assisting the development of new norms, as well as taking preventive human rights action.

Three regional human rights systems exist, built around the European Convention on Human Rights (1950), the Inter-American Convention on Human Rights (1969) and the African Charter of Human and Peoples' Rights (1982). The Arab Charter on Human Rights (2004) and the Intergovernmental Commission on Human Rights (2009) of the Association of Southeast Asian Nations (ASEAN) are less-developed regional structures. These systems vary considerably in terms of the types of rights covered, the range of implementation mechanisms and the extent of regional participation that they have attracted.

On one level, then, the human rights system appears a success story of international law: the development of human rights norms and institutions at the international level is significant, as is the level of participation in the system. But the implementation of UN human rights obligations presents a less positive picture: it is partial, inconsistent and based on a haphazard system of shaming (Hafner-Burton 2008). States may legally commit themselves to human rights standards, but often this does not translate into human rights protection at the national level. Unlike the European, Inter-American and African systems, the UN system offers no judicial scrutiny of breaches of human rights treaties. The political organs of the United Nations are generally reluctant to take stronger measures, such as sanctions, in response to human rights abuses. There is widespread disregard for human rights norms; indeed, treaty participation at the global level does not appear to have a clear effect on the protection of human rights in a particular country. Human rights also have a precarious status *within* international institutions. For example, Darrow and Arbour (2009) have examined the way that UN operational activities in development take human rights into account, concluding that human rights have only an insecure and fragile influence on UN practice. A common complaint is that there are great gaps between human rights standards set out in treaties and human rights protection within states.

Scholars have charted the relationship between treaty acceptance and state behaviour, finding little correlation between the two (Hathaway 2007). Indeed, some studies show that ratification of human rights treaties is sometimes followed by increased violations of human rights (Hafner-Burton and Tsutui 2007). Hathaway argues that states gain legitimacy from treaty ratification, but lose little by failure to implement. Variations on this conclusion are that treaty participation improves human rights practices in democracies, but not necessarily otherwise

(Neumayer 2005; cf. Cole 2012). Overall, the political-science literature shows that international human rights law is like a smoke detector that stops working whenever a fire is large.

A typical prescription for improving the implementation of human rights principles relies on coerced rule compliance. An example is the sporadic campaign for a global human rights court to implement the human rights treaties when national systems fail to do so. In 2011, a Swiss Government–sponsored panel of eminent jurists called for a world court of human rights that would adjudicate complaints of human rights violations by both states and non-state actors and provide reparations to victims (Panel on Human Dignity 2011: 41). Another proposed remedy to strengthen the international human rights system is the erection of greater barriers to participation in the system for countries that fail to demonstrate genuine commitment to rights, making ratification of human rights treaties probationary for states, to discourage 'insincere ratifiers' (Hathaway 2002). The design or reform of monitoring institutions to improve compliance with human rights obligations is also a staple of the human rights literature. The work of the UN human rights treaty monitoring bodies is a popular focus as it is cumbersome and inefficient in many ways.

One problem with this concentration on institutional reform as the route to transforming the dismal empirical reality of human rights protection is the political context of the human rights system. Attempts to streamline institutions and processes are often thwarted by regional coalitions, determined to ensure that state sovereignty trumps human rights scrutiny. In the case of the Swiss-sponsored proposal for a world court, for example, the capacity of the five permanent members of the UN Security Council to veto enforcement of court rulings would undermine the court's work (Alston 2014: 204). More generally, giving priority to judicial mechanisms as a response to human rights violations overlooks the limited capacity of international courts to create local cultures of respect for human rights (Alston 2014: 210).

3. Regulatory theory

Regulatory theory offers different approaches to the problem of the weak implementation of human rights standards. It draws attention to how international human rights law shapes behaviour both inside and outside international institutions. The concept of regulation has been

described as 'the intentional activity of attempting to control, order or influence the behaviour of others' (Black 2002: 1). A more expansive account of regulation includes all forms of pressure to change the course of events, even the unintentional effects of agency (Parker et al. 2004: 2). Regulation thus goes beyond legal rules and mechanisms and also comprises political, social, economic and psychological pressures. Understood in this way, the notion of regulation is much broader than that used in the international law literature to mean governmental imposition of public obligations on private parties, such as the direct duties on individuals created by international criminal law (Cogan 2011).

The lack of dialogue between the fields of human rights and regulation relates perhaps to their differing traditions. The focus of human rights has been largely on individual claims to universally applicable rights against the state and their capacity to mobilise and promote social change. Regulatory scholarship, on the other hand, is often associated with a quest for efficiency and rational design of institutions (Morgan 2007). Bronwen Morgan summarises the popular perception that rights and regulation are antithetical as 'rights claims act as constraints on state discretion while regulation allows the state to flex its muscles' (Morgan 2007: 18). This dichotomy is rather simplistic, as Eve Darian-Smith and Colin Scott (2009) have pointed out in one of the rare studies of human rights and regulation. Human rights standards can be invoked by states in an instrumental way to increase their powers, as well as by individuals and groups to promote governmental reform. Equally, international regulatory institutions can both restrict state power and promote human rights.

My interest here, however, is not so much the relationship between the fields of human rights and regulation but how regulatory theory can inform human rights. Here, I identify two regulatory concepts that can enrich our understanding of how international human rights law works: networked governance and ritualism.

Governance through human rights networks

International relations realists often dismiss human rights law as idealistic waffle. This is understandable, given the assumptions of realist theory, which posit the centrality of one type of actor, states, and a single type of motivation, pursuit of interest. Realism is based on assessments of national interest from the vantage point of those with political and

military power; it discards the more diffuse evidence of what the weak are up to. On this analysis, human rights law, which gives priority to the interests of individuals and minorities, is unlikely to play a significant role in international relations. Regulatory theory, in contrast, draws attention to the multiplicity and complexity of both actors and motives in the international sphere, deploying the notion of regulatory webs of influence (Braithwaite and Drahos 2000: 550–63). It observes that, at the global level, each separate regulatory control tends to be weak, and strength comes through the weaving together of frail strands to form a web and its animation by networks. Savvy actors discern which strands they should tighten at what time to make the web effective (Braithwaite and Drahos 2000). The idea of governance through networks explains why it is sometimes possible for those in a weak position to prevail over the strong. Networked governance is organised from nodes of activity or interest; of course, not all the nodes in a network will have identical concerns or strategies and there may be deep tensions between them. The strength and success of a network, indeed, depend on the management of dissonance among nodes.

An example of the regulatory power of human rights networks is the achievement of independence of Timor-Leste in 2002 (Braithwaite et al. 2012). Timor-Leste was a Portuguese colony until 1975, when it was invaded by Indonesia and was incorporated as the 27th Indonesian province in 1976. Although there was some international disapproval of Indonesia's actions—expressed, for example, in resolutions of the UN Security Council and the General Assembly adopted between 1975 and 1982—as the years passed, the legitimacy of Timor's incorporation was widely accepted. The standard, realist analysis, promoted with some vigour by successive Australian governments, was that Indonesia's control of Timor should be accommodated as a 'fact on the ground' and that Indonesia's vast military and economic resources would make Timorese independence impossible.

The situation in Timor, however, was strongly resisted by a wide range of groups without much apparent influence or power, forming networks built on human rights claims, particularly the right to self-determination. There were highly organised resistance networks inside Timor, including guerrilla fighters and the *clandestinos* (civilian groups organised in cells), who formed links with the Catholic Church. The right of the Timorese to self-determination is also supported by networks across Indonesia, in the former colonial power, Portugal, and other Lusophone countries;

by networks of veterans in Australia who had fought in Timor during World War II; as well as by the webs created through the tenacious diplomacy of José Ramos-Horta at the United Nations. None of these groups stood in a hierarchical relationship to another, but, rather, they were nodes in a network.

In a surprising move in 1999, Indonesian president BJ Habibie agreed to allow a referendum on whether or not Timor should remain a part of Indonesia. Most Indonesians expected the referendum would confirm Timor's incorporation into Indonesia. However, the networks of Timorese resistance galvanised to make the most of this opportunity. Almost 80 per cent of the population voted for independence, sparking a violent backlash from the Indonesian army and its local supporters. Eventually, under pressure from various international networks, Indonesia agreed to the creation of a UN peacebuilding mission to help bring the country to independence, which was achieved in 2002.

Some accounts of the creation of Timor-Leste take a realist tack, emphasising the shifting positions of powerful states as the explanation for the successful move to independence. They give short shrift to the role of human rights networks in advocating for the recognition of Indonesian human rights abuses at the international level and the complex connections between local, regional and international people and groups working for Timor-Leste's independence.

The idea of networked governance, in contrast, emphasises the need for attention to the way that those with little political or military power can create networks, often slowly and tentatively, enrolling disparate, and sometimes much more significant, groups to work towards an inspiring ideal of freedom. Timor-Leste illustrates the complex array of connections that came together to allow a tiny country to reach independence and the skilful tugging at various strands in the regulatory web at different times to achieve self-determination.

The case of Timor-Leste illustrates not only the power of human rights networks, but also their capacity, if successful, to morph into authoritarian networks: 'the networked power that is a force for liberation quickly becomes one of oppression when the key node of the oppositional network absorbs the commanding heights of the state' (Braithwaite et al. 2012: 4). If there is no network formed to balance and contain newly achieved state power, such power will quickly corrupt. Indeed, the skills of networked resistance fighters are particularly suited to authoritarian

rule (Braithwaite et al. 2012: 5). One way of countering these tyrannical tendencies is through creating mechanisms that allow the separation of powers within a polity that can be mobilised by networks.

Human rights ritualism

Regulatory theorists have used the term 'ritualism' to describe a way of adapting to a normative order, building on sociologist Robert Merton's typology of five modes of individual adaptation to cultural values: conformity, innovation, ritualism, retreatism and rebellion (Merton 1968: 194). These modes also appear at the level of organisations and among collectives. All five modes are evident in responses to international human rights regulation, but ritualism is particularly pervasive. It can be defined as 'acceptance of institutionalised means for securing regulatory goals while losing all focus on achieving the goals or outcomes themselves' (Braithwaite et al. 2007: 7).

Detailed studies of regulatory ritualism have been conducted in various contexts, including taxation and aged care. For example, in a three-country study, Braithwaite et al. (2007) found that nursing home operators rarely actively resisted regulation. It is much more common for operators to avoid confrontation with regulators and to agree to the language and techniques of regulation—for example, by changing a policy. This strategy usually favours the preservation of the status quo both because regulators do not have sophisticated follow-up mechanisms and because the new plans or policies are observed in a perfunctory way.

A typology of responses to regulation that builds on Merton (1968) and that has resonance in the human rights field is that of 'motivational postures'. Valerie Braithwaite (2009: 77–9) identifies postures towards normative systems such as commitment, capitulation, disengagement, resistance and game-playing, noting that more than one posture could be held simultaneously by those being regulated. Commitment is the most likely to lead to the realisation of regulatory goals. Capitulation means a certain willingness to abide by obligations and a resigned acceptance of the legitimacy of a regulatory regime, in the absence of genuine commitment to the regime's goals. Disengagement entails rejection of the underlying legitimacy of a regulatory regime and a refusal to participate. Resistance involves the refusal to abide by particular obligations but acceptance (even if half-hearted) of the underlying legitimacy of a regulatory regime. Both capitulation and resistance can represent forms of ritualism.

The concept of regulatory ritualism captures an important feature of the international human rights system. The high ratification rates of human rights treaties illustrate the preparedness of UN member states to accept the institutionalised normative order. This may be a response to pressures from the international community—for example, ratification of human rights treaties may be a conduit for development assistance or newly independent countries may accept human rights treaties to signal their membership of the international community. Ratification is a relatively straightforward step, involving a formal bureaucratic process, but implementation is much more costly and complex.

Rights ritualism is a more common response than outright rejection of human rights standards and institutions (rebellion, to use Merton's term, or disengagement, in Valerie Braithwaite's typology). Ritualism is a technique of embracing the language of human rights precisely to deflect human rights scrutiny and to avoid accountability for human rights abuses, while at the same time gaining the positive reputational benefits or legitimacy associated with human rights commitments. This is well illustrated in Fleur Adcock's (2012) case study of the ritualism of state responses to the work of UN special rapporteurs on human rights. Practices of ritualism can include ratifying human rights treaties without implementing their provisions domestically, perfunctory reporting to international human rights bodies, failing to provide remedies for human rights breaches or to develop policy to prevent violations and, in some circumstances, invoking claims of culture to undermine international standards.

Take, for example, the Universal Periodic Review (UPR), a mechanism devised by the UN HRC. This involves all 193 UN members being subjected to human rights scrutiny every four and a half years. This is a significant step in international human rights scrutiny, undermining the sense that there are some countries with incorrigibly bad human rights records and some countries of impeccable human rights virtue.

The UPR was established in the founding resolution of the HRC (5/1), which declares the basis of the review to be the UN Charter and the Universal Declaration, along with any human rights treaties to which the state is a party and any voluntary commitments undertaken by the state in international forums. The UPR's purpose is an assessment of the human rights situation in each state in an 'objective, transparent, non-selective, constructive, non-confrontational and non-politicized manner' (HRC Res. 5/1). Three documents are central to the UPR: a national

report by the state (states are encouraged to consult with members of civil society before finalising their state report); a compilation of existing treaty body reports and any relevant reports from special rapporteurs prepared by the OHCHR; and a summary of 'credible and reliable' information received by the OHCHR from 'other stakeholders', such as NGOs.

The most dramatic aspect of the UPR is the 'interactive dialogue' with the state under review, conducted in public in Salle XX in the Palais des Nations in Geneva, in which the state presents its report and other states can question it and make recommendations. After the dialogue, a draft report is prepared. This is essentially a transcription of the recommendations made along with any immediate responses by the state. The state then has a short period to consider the recommendations and respond to them. The final act in this drama is when a compilation of these documents is forwarded to the whole HRC as its report, and this is formally accepted. At this session, the state under review can again make a presentation and states, national human rights institutions and NGOs can make observations. The UPR has completed its first full cycle and the second cycle will conclude in 2016.

The UPR process has generated a remarkable level of coordination and communication on human rights not only between states but also among states, other human rights mechanisms and civil society. But the UPR can also deflect or postpone human rights observance, providing fertile ground for ritualism. In the context of the UPR, ritualism can mean participation in the process of reports and meetings, and formal acceptance of recommendations, but an indifference to or reluctance about increasing the protection of human rights.

A question is whether ritualism can be transformed into conformity or commitment and what role the UPR can play in this. Taking a regulatory approach to the UPR allows us to identify some ways of countering human rights ritualism that go beyond the standard prescriptions of institutional reform or tougher enforcement mechanisms. For example, Cowan (2014) has suggested that the repetitive character of the UPR provides a less confrontational space in which difficult human rights issues can be raised. Using the notion of motivational postures, the UPR practice for African states has been analysed as a posture of capitulation that can give human rights norms some legitimacy (Bulto 2014). And civil society networks have used the UPR to publicise a state's progress in human rights protection (UPR Info 2014).

Some scholars have dismissed cooperative peer review in the context of human rights as a weak regulatory measure (for example, Neumeyer 2005: 926). However, although states may initially participate in cooperative regulatory regimes in a perfunctory manner, or even for reasons at odds with the stated purposes of the regime, they are sometimes drawn into more effective commitments simply through their representatives' direct experience of participation and a desire to claim virtue in implementation (Braithwaite and Drahos 2000: 555–6). There is some evidence of such a process at the UPR. For example, states often announce human rights initiatives prior to their review, and mission staff in Geneva display a marked willingness to engage with civil society throughout the review process (Schokman and Lynch 2014). Scrutiny mechanisms such as the UPR can discourage states from undermining the legitimacy gained initially by signing on to international human rights instruments (Cole 2012). It is also possible that involvement over time in a cooperative regime leads to an internalisation, or socialisation, by participants of the regime's goals (Goodman and Jinks 2004).

Along with recognition of the potential offered by self-regulation and peer review in certain contexts, the regulatory literature also offers the idea of continuous improvement. This focuses on incremental, constantly monitored steps, rather than great leaps forward. It can be achieved by moving from a culture of blame to a culture of learning—a move that is clearly envisaged by the UPR process, with its emphasis on peer review and the 'sharing of best human rights practices' (HRC Res 5/1, annex., 27 (b)). Even so, the regulatory literature highlights the need to guard against the process of continuous improvement itself becoming ritualised (Braithwaite et al. 2007: 207–8). This problem is evident in some aspects of the UPR's second cycle, where states have sometimes interpreted recommendations from the first cycle in very restrictive ways (UPR Info 2014).

4. Conclusion: Responsive human rights regulation

A sense of disappointment besets the field of human rights. Despite the inspirational norms and sophisticated architecture of the international human rights system, its weaknesses and failures to regulate human rights abuses are manifest. Indeed, there is an academic industry in announcements of the breakdowns or even the death of human rights (for example, Douzinas 2000; Hopgood 2013).

Regulatory theory offers a different and more optimistic perspective. Its focus is not so much the strength of the treaty texts, their formal methods of implementation or their impact on states who are parties to them, but rather on the way that human rights norms as expressed in the treaties can be mobilised by non-state actors to regulate states' and others' behaviour. In other words, regulatory theory is interested in a much broader range of influences than traditional legal tools and mechanisms. The potential of complex networks of third parties in galvanising international standards in the context of transnational environmental crime is explored in Julie Ayling's chapter in this collection (Chapter 29). Similarly, Susan Sell has chronicled the success of coalitions of activists and developing countries in changing the terms of the World Trade Organization's approaches to intellectual property in pharmaceuticals, shifting it from an issue of corporate property rights to one of public health (Sell 2003: 142–62).

Regulatory theory suggests the promise of networked governance of human rights, which enables the weak to mobilise human rights principles against oppression, challenging the realist disdain for human rights. Regulatory theory also draws attention to the role of networks in designing the architecture of human rights regulation. A good example of this is the influence of national and international disability coalitions in the drafting of the 2006 Convention of the Rights of Persons with Disabilities (Sabatello and Schulze 2013). A second feature of regulatory theory is its identification of types of behaviour, such as ritualism, which can undermine the protection of human rights. It suggests the value of self-regulation and peer regulation as effective means of countering ritualism in the human rights field, even in the absence of commitment among participants to the goals of a regulatory regime.

The concept of responsive regulation is valuable in achieving normative goals, such as human rights. The idea of responsive regulation—first developed in the context of business regulation—is built on pyramids of supports and pyramids of sanctions. The idea is to start by identifying the strengths of a particular system or actor, and then to expand them through building capacity (Braithwaite 2011: 480). Superlative forms of recognition sit at the tip of the support pyramid. Moving up the pyramid of supports encourages the growth of an actor's capacity to respond to problems. If particular problems are impervious to regulation through the provision of support, a pyramid of sanctions can be deployed. At its base are dialogue-based sanctions such as education and persuasion.

Increasingly tough measures apply moving up the sanctions pyramid, such as shaming, sanctions and, finally, even ejection from the system (Braithwaite 2011: 482). Escalating the severity of penalties takes place only when the previous step has manifestly failed.

A pyramid shape has a broad base reaching to a narrow tip, indicating progression from general ideas and concepts to highly specific ones. It embodies the regulatory insight that it is most efficient to start at the base of the pyramid and that, even in the most serious cases, escalation is necessary only when collaborative solutions or self-regulation fail. In Braithwaite's words:

> The pyramidal presumption of persuasion gives the cheaper, more respectful option a chance to work first. More costly punitive attempts at control are thus held in reserve for the minority of cases where persuasion fails. (Braithwaite 2011: 484)

This process also has the benefit of imbuing the pointy end of the sanctions pyramid with more legitimacy. As Kristina Murphy's chapter in this book (Chapter 3) shows, perceived procedural fairness increases the likelihood of compliance with a normative system.

Responsive regulation translates productively in the field of human rights, highlighting the value of persuasion, education and capacity building as the first steps to achieving compliance with human rights norms. The main principles of responsive regulation include flexibility, giving voice to stakeholders, engaging resisters with fairness, nurturing motivation, signalling but not threatening the possibility of escalation and enrolling powerful regulatory partners in networks (Braithwaite 2011). Thus, laggards may be willing to acknowledge problems complying with international human rights standards if they can see that this will protect them from more punitive forms of sanctions (Braithwaite 2011: 496). Other lessons from responsive regulation that are applicable to the international human rights system are the value of collaborative regulation, of an assumption that the regulatee has the capacity to change and of eliciting active responsibility (with passive responsibility as a fallback position) for human rights protection.

Theories of responsive regulation also point to the weak spots in the international human rights system. Braithwaite has pointed out that regulation works best when there is a firm commitment to escalation when dialogic-based sanctions do not work (Braithwaite 2011: 489). He notes the paradox that 'by having a capability to escalate to tough

enforcement, most regulation can be about collaborative capacity building' (Braithwaite 2011: 475). Such a capability is difficult to maintain in the international legal system, which is highly attuned to the distribution of political power and where imposition of formal sanctions is rare. However, as the Timor-Leste case shows, it is possible for networks of states, aid donors, business, the media and NGOs to create webs of informal sanctions in a regulatory pyramid of human rights. These can go from publicising human rights abuses to withdrawal of donor support to expulsion of a state from an international organisation (Braithwaite et al. 2012: Chapter 3).

Through the lens of responsive regulation, the UN HRC's UPR process can be seen as a partial success. It operates at the broad base of a regulatory pyramid of supports for human rights compliance but has the capacity, through peer review, to increase this support. As a pyramid of sanctions, it is, so far, less efficacious, with rather porous systems of scrutiny of implementation of recommendations and little risk of penalties for non-implementation (UPR Info 2014).

Perhaps the most important implication of regulatory theory for the international human rights system is the limitation of purely legal approaches to the protection of human rights. The concept of responsiveness suggests that the popular idea of a world human rights court as the answer to weak implementation of human rights standards is misguided. The goal of the international human rights system should, rather, be providing forms of access to justice for human rights violations that respond to particular contexts (Braithwaite and Parker 2004: 285). Legal norms and institutions may be of value in this project, but simply as strands in a regulatory web. They derive strength from being woven with other strands into a fabric of flexible regulation.

Further reading

Buhmann, K 2009. 'Regulating corporate social and human rights responsibilities at the UN plane: Institutionalising new forms of law and law-making approaches?', *Nordic Journal of International Law* 78(1): 1–52. doi.org/10.1163/157181009X397063.

Morgan, B and Seshadri, S 2014. 'Water rights between social activism and social enterprise', *Journal of Human Rights and the Environment* 5(1): 25–48. doi.org/10.4337/jhre.2014.01.02.

References

Adcock, F 2012. 'The UN Special Rapporteur on the rights of indigenous peoples and New Zealand: A study in compliance ritualism', *New Zealand Yearbook of International Law* 10: 97–120.

Alston, P 2014. 'Against a world court for human rights', *Ethics and International Affairs* 28(2): 197–212. doi.org/10.1017/S0892679414000215.

Black, J 2002. 'Critical reflections on regulation', *Australian Journal of Legal Philosophy* 27: 1–35.

Braithwaite, J 2011. 'The essence of responsive regulation', *University of British Columbia Law Review* 44 (3): 475–520.

Braithwaite, J, Charlesworth, H and Soares, A 2012. *Networked Governance of Freedom and Tyranny: Peace in Timor-Leste*. Canberra: ANU E Press.

Braithwaite, J and Drahos, P 2000. *Global Business Regulation*. Cambridge: Cambridge University Press.

Braithwaite, J, Makkai, T and Braithwaite, V 2007. *Regulating Aged Care.* London: Edward Elgar. doi.org/10.4337/9781847206855.

Braithwaite, J and Parker, C 2004. 'Conclusion', in C Parker, C Scott, N Lacey and J Braithwaite (eds), *Regulating Law.* Oxford: Oxford University Press, pp. 269–89. doi.org/10.1093/acprof:oso/9780199264070.003.0014.

Braithwaite, V 2009. *Defiance in Taxation and Governance.* London: Edward Elgar. doi.org/10.4337/9781848449077.

Bulto, T 2014. 'Africa's engagement with the Universal Periodic Review: Commitment or capitulation?', in H Charlesworth and E Larking (eds), *Human Rights and the Universal Periodic Review*. Cambridge: Cambridge University Press, pp. 235–55. doi.org/10.1017/CBO9781316091289.016.

Charlesworth, H and Larking, E (eds) 2014. *Human Rights and the Universal Periodic Review*. Cambridge: Cambridge University Press.

Cogan, JK 2011. 'The regulatory turn in international law', *Harvard International Law Journal* 52: 321–72.

Cole, WM 2012. 'Human rights as myth and ceremony? Re-evaluating the effectiveness of human rights treaties, 1981–2007', *American Journal of Sociology* 117(4): 1131–71 . doi.org/10.1086/662706.

Cowan, J 2014. 'The Universal Periodic Review as a public audit ritual', in H Charlesworth and E Larking (eds), *Human Rights and the Universal Periodic Review*. Cambridge: Cambridge University Press, pp. 42–62. doi.org/10.1017/CBO9781316091289.005.

Darien-Smith, E and Scott, C 2009. 'Regulation and human rights in socio-legal scholarship', *Law & Policy* 31(3): 271–81. doi.org/10.1111/j.1467-9930.2009.00305.x.

Darrow, M and Arbour, L 2009. 'The pillar of glass: Human rights in the development operations of the United Nations', *American Journal of International Law* 103: 446–501.

Douzinas, C 2000. *The End of Human Rights*. Oxford: Hart Publishing.

Goodman, R and Jinks, D 2004. 'How to influence states: Socialization and international human rights law', *Duke Law Journal* 54: 621–704.

Hafner-Burton, E 2008. 'Sticks and stones: Naming and shaming—The human rights enforcement problem', *International Organization* 62: 689–716. doi.org/10.1017/S0020818308080247.

Hafner-Burton, E and Tsutui, K 2007. 'Justice lost! The failure of international human rights law to matter where needed most', *Journal of Peace Research* 44(4): 407–25. doi.org/10.1177/0022343307078942.

Hathaway, O 2002. 'Do human rights treaties make a difference?', *Yale Law Journal* 111(8): 1935–2042. doi.org/10.2307/797642.

Hathaway, O 2007. 'Why do countries commit to human rights treaties?', *Journal of Conflict Resolution* 51(4): 588–621. doi.org/10.1177/0022002707303046.

Hopgood, S 2013. *The Endtimes of Human Rights*. Ithaca, NY: Cornell University Press.

Keck, M and Sikkink, K 1998. *Activists beyond Borders: Advocacy Networks in International Politics*. Ithaca, NY: Cornell University Press.

Merton, R 1968. *Social Theory and Social Structure*. New York: Free Press.

Morgan, B (ed.) 2007. *The Intersection of Rights and Regulation*. Aldershot, UK: Ashgate.

Neumeyer, E 2005. 'Do international human rights treaties improve respect for human rights?', *Journal of Conflict Resolution* 49: 925–53. doi.org/10.1177/0022002705281667.

Panel on Human Dignity 2011. *Protecting Dignity: An Agenda for Human Rights, 2011 Report.* Geneva: Geneva Academy of International Humanitarian Law and Human Rights. Available at: geneva-academy.ch/docs/publications/Panel-humanDignity_rapport2011.pdf.

Parker, C, Scott, C, Lacey, N and Braithwaite, J 2004. 'Introduction', in C Parker, C Scott, N Lacey and J Braithwaite (eds), *Regulating Law.* Oxford: Oxford University Press, pp. 1–12. doi.org/10.1093/acprof:oso/9780199264070.003.0001.

Sabatello, M and Schulze, M (eds) 2013. *Human Rights and Disability Advocacy*. Philadelphia: University of Pennsylvania Press.

Schokman, B and Lynch, P 2014. 'Effective NGO engagement with the Universal Periodic Review', in H Charlesworth and E Larking (eds), *Human Rights and the Universal Periodic Review*. Cambridge: Cambridge University Press, pp. 126–46. doi.org/10.1017/CBO9781316091289.010.

Sell, SK 2003. *Private Power, Public Law: The Globalization of Intellectual Property Rights*. Cambridge: Cambridge University Press. doi.org/10.1017/CBO9780511491665.

Universal Periodic Review (UPR) Info 2014. *Beyond Promises: The Impact of the UPR on the Ground*. Geneva: UPR Info.