

RECENT BOOKS ON INTERNATIONAL LAW

EDITED BY JEFFREY L. DUNOFF

REVIEW ESSAY

OPTIMISM IN INTERNATIONAL HUMAN RIGHTS LAW SCHOLARSHIP

By Başak Çalı*

The European Convention of Human Rights Regime: Reform of Immigration and Minority Policies from Afar. By Dia Anagnostou. Abingdon, UK; New York: Routledge, 2023. Pp. x, 239. Index.

Reframing Human Rights in a Turbulent Era. By Gráinne De Búrca. Oxford, UK: Oxford University Press, 2021. Pp. viii, 256. Index.

Litigating the Climate Emergency: How Human Rights, Courts, and Legal Mobilization Can Bolster Climate Action. Edited by César Rodríguez-Garavito. Cambridge, UK: Cambridge University Press, 2022. Pp. viii, 407. Index.

Transnational Lawmaking Coalitions for Human Rights. By Nina Reiners. Cambridge, UK: Cambridge University Press, 2021. Pp. xvi, 198. Index.

I. INTRODUCTION

As a field of practice, international human rights law (IHRL) is in constant motion. The four books under review explore the legal, political, and civic dynamics that continuously shape and reshape this vibrant area of law. In this Essay, I underscore two important trends in contemporary IHRL scholarship that these books highlight. First, these works share a strong emphasis on *agency*, understood as human action that makes a difference in the world,¹ be it the agency of individuals, domestic civil society organizations, transnational organizations, or courts. Highlighting agency, rather than overarching political, economic, and social structures, in turn shifts the attention from human rights law and doctrine “in the books” to an understanding of human rights law as a purposive and dynamic practice.

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¹ Here, I follow Giddens’s definition of agency. ANTONY GIDDENS, *THE CONSTITUTION OF SOCIETY: OUTLINE OF THE THEORY OF STRUCTURATION* (1986).

Second, the books use *experimental governance* as a key theoretical resource to understand the dynamism of IHRL and its actual or potential effects.² Experimental governance is a theoretical framework that seeks to explain norm making and norm implementation in multi-level institutional settings. It places a particular emphasis on the deliberative and dialogic nature of norm making and implementation in situations where actors have interdependent and non-hierarchical relationships.³ As such, experimentalist governance stands in contrast to theoretical frameworks that emphasize either local settings and actors, or top-down international institutions.

The dual emphasis on agency and experimentalism leads these books to openly embrace the dynamic nature of international human rights and offer largely optimistic accounts of the present and the future of international human rights law as a legal, political, and civic practice, notwithstanding strong internal and external criticisms of the field. While these books do much to illuminate significant trends in current IHRL scholarship, their approaches inevitably slight other important matters. Thus, while the focus on agency is a promising corrective to accounts of IHRL that are overly doctrinal, agency is necessarily exercised in concrete historical settings that shape the conditions for action and limit its consequences, and the books could profitably have devoted more attention to relevant structural factors. Moreover, while experimentalism is often an appropriate approach to a highly decentralized issue domain populated by multiple stakeholders across a range of sites, experimentalist governance is not always successful. The books could have spent more time identifying conditions that promote success or predict failure, as a sophisticated understanding of failure's causes and contexts can provide valuable knowledge to human rights activists. Yet these criticisms do not detract from the significance of the nuanced and innovative analyses found in these four important texts.

The remainder of this Essay proceeds in four parts. As IHRL encompasses a wide array of substantive topics and methodological approaches, I begin by providing an overview of each book's substantive focus and methodologies. Next, I analyze how each book addresses IHRL's dynamism as a field of normative practice. Third, I address the degree to which each book engages with and responds to long-standing critiques of IHRL offered by diverse scholarly, political, and civil society constituencies. I conclude with brief reflections on these books' collective contributions to illuminating the frontiers of IHRL scholarship, and what their shared understandings of IHRL as an experimental, interactive, and iterative empirical process reveal and what they obscure.

II. STARTING POINTS FOR THE STUDY OF INTERNATIONAL HUMAN RIGHTS LAW

As Susan Marks observed, "human rights are not one thing."⁴ This insight applies equally to IHRL. Multiple objects of study fall within the general banner of international human rights scholarship and diverse research methods can be employed to study these. For example, one

² On experimental governance, see generally Gráinne de Búrca, Robert O. Keohane & Charles F. Sabel, *New Modes of Pluralist Global Governance*, 45 NYU J. INT'L L. & POL. 723 (2013); Charles F. Sabel & Jonathan Zeitlin, *Experimentalist Governance*, in THE OXFORD HANDBOOK OF GOVERNANCE (David Levi Faur ed., 2012); Gráinne de Búrca, *Global Experimentalist Governance*, 44 BRIT. J. POL. 477 (2014); Gráinne de Búrca, *Human Rights Experimentalism*, 111 AJIL 277 (2017).

³ *Id.*

⁴ SUSAN MARKS, A FALSE TREE OF LIBERTY: HUMAN RIGHTS IN RADICAL THOUGHT 16 (2019).

can study IHRL by focusing on a single human right,⁵ the rights of specific groups,⁶ or human rights treaties in a particular region.⁷ International human rights law can be studied comparatively, where the comparator may be other branches of international law, variations in human rights treaty provisions and interpretation, or differences in and enforcement strategies and compliance rates across human rights regimes.⁸ International human rights is also characteristically open to interdisciplinary inquiries, drawing upon philosophy, history, political science, and anthropology, just to name a few. Significant interdisciplinary projects have explored the moral grounding⁹ and historical¹⁰ origins of IHRL, IHRL's real world impacts,¹¹ and the limits and politics of human rights law.¹²

The four books pursue different strategies in delimiting their object of study, as one might expect, given the multiple possibilities of engaging with IHRL as a multi-level object and site of inquiry.

Nina Reiners is Associate Professor of Human Rights and Social Sciences at University of Oslo's Faculty of Law. Her book, *Transnational Lawmaking Coalitions for Human Rights*,¹³ focuses on international human rights law making through the interpretation of UN human rights treaties. The book zooms in on a central *problématique* in IHRL, namely, the dynamic or evolutive interpretation of human rights treaties through general comments issued by UN human rights treaty bodies (UNTBs). Reiners further delimits her object of inquiry by analyzing the genesis and release of three General Comments on three different rights by three different UNTBs, namely, the UN Committee on Economic, Social and Cultural Rights' General Comment No. 15 on the right to water (Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights),¹⁴ the Human Rights Committee's General Comment No. 36 on the right to life,¹⁵ and the Committee on the Elimination of All Forms of Racial Discrimination's General Recommendation No. 35 on combatting racist

⁵ HEINER BIELEFELDT, NAZILA GHANEA & MICHAEL WIENER, *FREEDOM OF RELIGION OR BELIEF: AN INTERNATIONAL LAW COMMENTARY* (2016).

⁶ MARIE-BÉNÉDICTE DEMBOUR, *WHEN HUMANS BECOME MIGRANTS: STUDY OF THE EUROPEAN COURT OF HUMAN RIGHTS WITH AN INTER-AMERICAN COUNTERPOINT* (2015).

⁷ FRANS VILJOEN, *INTERNATIONAL HUMAN RIGHTS LAW IN AFRICA* (2d ed. 2012).

⁸ THE IMPACT OF INTERNATIONAL HUMAN RIGHTS LAW ON GENERAL INTERNATIONAL LAW (Menno T. Kamminga & Martin Scheinin eds., 2009); THE IMPACT OF THE UNITED NATIONS HUMAN RIGHTS TREATIES 20 YEARS ON (Frans Viljoen & Rachel Murray eds., 2024).

⁹ CHARLES R. BEITZ, *THE IDEA OF HUMAN RIGHTS* (2009); ALLEN BUCHANAN, *THE HEART OF HUMAN RIGHTS* (2013); KRISTIN HESSLER, *FEMINIST HUMAN RIGHTS: A POLITICAL APPROACH* (2023); Alain Zysset, *Charles Beitz' Idea of Human Rights and the Limits of Law*, 25 *CRITICAL REV. INT'L SOC. & POL. PHIL.* 87 (2022).

¹⁰ *REVISITING THE ORIGINS OF HUMAN RIGHTS* (Pamela Slotte & Miia Marika Halme-Tuomisari eds., 2015).

¹¹ SALLY ENGLE MERRY, *HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE* (2009); BETH A. SIMMONS, *MOBILIZING FOR HUMAN RIGHTS: INTERNATIONAL LAW IN DOMESTIC POLITICS* (2009); COURTNEY HILLEBRECHT, *SAVING THE INTERNATIONAL JUSTICE REGIME: BEYOND BACKLASH AGAINST INTERNATIONAL COURTS* (2021); Lynette Chua, *The Vernacular Mobilization of Human Rights in Myanmar's Sexual Orientation and Gender Identity Movement*, 49 *L. & SOC'Y REV.* 299 (2015).

¹² TONY EVANS, *THE POLITICS OF HUMAN RIGHTS: A GLOBAL PERSPECTIVE* (2d ed. 2005).

¹³ NINA REINERS, *TRANSNATIONAL LAWMAKING COALITIONS FOR HUMAN RIGHTS* (2021).

¹⁴ UN Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2002), *The Right to Water* (Arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), *adopted* Jan. 20, 2003.

¹⁵ Human Rights Committee, General Comment No. 36 (2019), Article 6: Right to Life, *adopted* Sept. 3, 2019, UN Doc. CCPR/C/GC/36.

hate speech.¹⁶ Methodologically, the book is interested not only in UNTBs, but also in civil society efforts to impact the drafting of these general comments. To do so, the book offers an empirical analysis of the conditions and circumstances under which individuals and groups gain participation, access, and, ultimately, influence over new interpretations of international human rights law, process tracing their impact on the drafting processes of general comments of UNTBs.

César Rodríguez-Garavito is Professor of Clinical Law and Chair of the Center for Human Rights and Global Justice at NYU School of Law. His edited volume, *Litigating the Climate Emergency: How Human Rights, Courts, and Legal Mobilization Can Bolster Climate Action*,¹⁷ is composed of twenty-two substantive chapters, written both by scholars and human rights practitioners. This book also addresses the making of international human rights law, but does so through a specific focus on telling the stories of those who seek to reinterpret human rights law in the context of the climate crisis. Rodríguez-Garavito's edited collection places a special emphasis on the role of legal mobilization by different groups before domestic, regional, and international courts and bodies and seeks to uncover the unfolding dynamics of human rights-based climate litigation. Unlike Reiners's book, Rodríguez-Garavito's volume reimagines human rights law in plural institutional sites, ranging from NGO offices to domestic and international courts. The book seeks to prompt a conversation among scholars and practitioners with the aim of contributing to understandings of the processes through which human rights are made and remade in the context of the climate crisis. Individual chapters focus on how human right law is made not only at the level of the United Nations human rights treaties, but also at the level of regional human rights courts,¹⁸ highlight domestic legal mobilization and the role of domestic courts, including constitutional and apex courts¹⁹ as well as lower level administrative courts,²⁰ and consider domestic litigation against private actors as sites for the repurposing of human rights in the context of the climate crisis.²¹ Furthermore, contributors to this volume focus on multiple international human rights, including both individual and collective rights, in particular rights of Indigenous peoples,²²

¹⁶ UN Committee on the Elimination of Racial Discrimination, General Recommendation No. 35 on Combating Racist Hate Speech, *adopted* Sept. 26, 2013, UN Doc. CERD/C/GC/35.

¹⁷ LITIGATING THE CLIMATE EMERGENCY: HOW HUMAN RIGHTS, COURTS, AND LEGAL MOBILIZATION CAN BOLSTER CLIMATE ACTION (César Rodríguez-Garavito ed., 2022).

¹⁸ César Rodríguez-Garavito, *Litigating the Climate Emergency: The Global Rise of Human Rights-Based Litigation for Climate Action*, in LITIGATING THE CLIMATE EMERGENCY, *supra* note 17.

¹⁹ See Victoria Adelmant, Philip Alston & Matthew Blainey, *Courts, Climate Action and Human Rights: Lessons from the Friends of the Irish Environment v. Ireland Case*, in LITIGATING THE CLIMATE EMERGENCY, *supra* note 17; Julia Mello Neiva & Gabriel Mantelli, *Is There a Brazilian Approach to Climate Litigation?: The Climate Crisis, Political Instability and Litigation Possibilities in Brazil*, in LITIGATING THE CLIMATE EMERGENCY, *supra* note 17; Arpitha Kodiveri, *Climate Change Litigation in India: Its Potential and Challenges*, in LITIGATING THE CLIMATE EMERGENCY, *supra* note 17; Waqqas Ahmad Mir, *Pakistan: A Good Story That Can Go Awry if Shortcomings Remain Unacknowledged*, in LITIGATING THE CLIMATE EMERGENCY, *supra* note 17.

²⁰ See Catalina Vallejo Piedrahíta & Siri Gløppen, *The Quest for Butterfly Climate Adjudication*, in LITIGATING THE CLIMATE EMERGENCY, *supra* note 17.

²¹ Richard Heede, *The Evolution of Corporate Accountability for Climate Change*, in LITIGATING THE CLIMATE EMERGENCY, *supra* note 17.

²² Michel Burger, Jessica Wentz & Daniel J. Metzger, *Climate Science and Human Rights: Using Attribution Science to Frame Government Mitigation and Adaptation Obligations*, in LITIGATING THE CLIMATE EMERGENCY, *supra* note 17.

and ranging from civil and political rights to economic, social, and cultural rights, to examine their use and impact in litigation over climate issues.²³

Gráinne de Búrca is Professor of Law at the European University Institute in Florence and on leave from New York University. Her book, *Reframing Human Rights in a Turbulent Era*,²⁴ takes the multi-level legal and extra-legal interactions for and around human rights as its key object of study. These interactions, according to de Búrca, underpin not only the making and remaking of international human rights law as a set of legal-normative propositions, but also its effectiveness, understood as tangible outcomes in the form of domestic social or political change. Significantly, these interactions, which typically involve contestation and struggle, are neither top-down nor bottom-up. Rather, they are multi-directional, involving both horizontal interactions between human rights movements and public institutions within specific domestic contexts, and vertical interactions between domestic actors and international institutions.²⁵

The delimitation of the object of study in this book is revealed through a diverse set of case studies. Different chapters analyze gender equality mobilization in Pakistan, the role of the Convention on the Rights of Persons with Disabilities in Argentina, and the mobilization for children's rights and reproductive rights in Ireland. A central focus throughout is the efficacy of international human rights in practice and over time. The book argues that this long *durée* account of IHRL's effectiveness better captures the dynamic practice of human rights across domestic and international levels as compared to a static snapshot of IHRL at a specific site at a certain point.

Dia Anagnostou is Associate Professor of Comparative Politics and International Governance, in the Department of Public Administration at Panteion University of Social Sciences, and Senior Research Fellow at the Hellenic Foundation of European and Foreign Policy (ELIAMEP) in Athens. She is currently a seconded national expert at the European Research Council Executive Agency. Her book, *The European Convention of Human Rights Regime Reform of Immigration and Minority Policies from Afar*,²⁶ focuses on one regional human rights system, that of the European Convention on Human Rights. Its focus, similar to de Búrca's book, is not static. Anagnostou's book explores the life cycle of the implementation of European Court of Human Rights (Court or ECtHR) judgments. This cycle starts with the human rights judgments issued by the Court and ends with the domestic consequences of these judgments, in close interaction with the political peer review process of the Council of Europe's Committee of Ministers, which is tasked with ensuring the implementation of human rights judgments. To explore this life cycle, the book focuses on the implementation of ECtHR judgments in two "hard cases" involving the rights of minorities and migrants. Specifically, Anagnostou traces the life cycle of judgments delivered in the context of challenges to Roma segregation in education in the Czech Republic, Croatia, Greece,

²³ Ashfaq Kalfan, *Litmus Tests as Tools for Tribunals to Assess State Human Rights Obligations to Reduce Greenhouse Gas Emissions*, in *LITIGATING THE CLIMATE EMERGENCY*, *supra* note 17.

²⁴ GRÁINNE DE BÚRCA, *REFRAMING HUMAN RIGHTS IN A TURBULENT ERA* (2021).

²⁵ *Id.* at 20.

²⁶ DIA ANAGNOSTOU, *THE EUROPEAN CONVENTION OF HUMAN RIGHTS REGIME: REFORM OF IMMIGRATION AND MINORITY POLICIES FROM AFAR* (2023).

and Hungary,²⁷ on the one hand, and judgments that concern immigration detention reform in Greece and in the European Union more generally, on the other.²⁸

Two common themes run through all the books: (1) a cross-cutting approach to international human rights law as a cluster of legal entitlements spread across a myriad of legal sources; and (2) a commitment to study human rights law in action.

In all of these studies more than one human right and more than one site is at play. In addition, the polycentric and dynamic aspects of international human rights law are evident in all four books. In Reiners's book, this dynamism is visible through the connections the book traces between individuals, NGOs, UNTBs, and governments. In Rodríguez-Garavito's volume, there is a special effort to explain how human rights-based climate litigation unfolds in domestic, regional, and international sites as well as through the use of multi-layered forms of law, domestic and international. Likewise, in de Búrca's and Anagnostou's books, the analysis centers on multi-level interactions between the domestic and international levels as well as actors situated in transnational spaces that straddle these levels. Collectively, these volumes, therefore, evidence the strong trend toward multi-level, multi-site, and multi-actor analysis in contemporary IHRL scholarship.

The four books also share a strong methodological commitment to the study of IHRL in action. None of the texts limit themselves to the analysis of "law in the books," underscoring the firm influence of the empirical turn in the study of international human rights law. Reiners's work focuses on the empirical development of international human rights law at the level of the United Nations. Even though the book examines General Comments of the United Nations Human Rights Treaty Bodies, the focus is not on their normative or doctrinal content, but on the interactions between the independent experts that serve on UNTBs and the advocacy networks and epistemic communities that seek to influence them, i.e., on the creation of transnational lawmaking coalitions and their efforts to shape the general comments of UN Human Rights Treaty Bodies. Anagnostou's book is interested in both the genesis and downstream effects of IHRL. She investigates both the reasons for and the effects of mobilizing international human rights law in Europe by transnational and domestic civil society organizations to protect rights for marginalized groups. Significantly, Anagnostou underlines that the law's interpretation through Court judgments and its subsequent effects are deeply entangled. In her account, legal mobilization by civil society organizations, refugees, and marginalized minority communities plays a dual role. First, these communities concretize the law through legal mobilization before the Court,²⁹ and then they use the judgments they help create to push for domestic as well as European level reform.

De Búrca's book offers a comprehensive analytical framework to understand how human rights law works in action. This framework is strongly informed by de Búrca's earlier work on

²⁷ *D.H. v. The Czech Republic*, App. No. 57325/00, Judgment (Eur. Ct. Hum. Rts. Nov. 13, 2007); *Oršuš and Others v. Croatia*, App. No. 15766/03, Judgment (Eur. Ct. Hum. Rts. Mar. 16, 2010); *Sampanis and Others v. Greece*, App. No. 32526/05, Judgment (Eur. Ct. Hum. Rts. June 5, 2008); *Horváth and Kiss v. Hungary*, App. No. 11146/11, Judgment (Eur. Ct. Hum. Rts. Jan. 29, 2013). See also ANAGNOSTOU, *supra* note 26, at 141–45, 154–57.

²⁸ ANAGNOSTOU, *supra* note 26, at 169–97.

²⁹ *Id.* at 7.

“experimental governance”³⁰ and “human rights experimentalism.”³¹ For her, law in action is iterative both as a matter of norm specification and as a matter of the law creating transformative effects in domestic settings. Significantly, de Búrca parts ways with earlier studies of experimental governance, which focused on “expert” or technocratic agents, and instead foregrounds social movements and civil society as significant actors in the circulation of human rights norms that enables their effects.³² Law in action also plays a prominent role in many of the individual chapters in Rodríguez-Garavito’s volume. For example, the chapter by Lisa Vanhala firmly locates the legal mobilization for human rights based climate litigation in the well-established literature that seeks to understand why individuals or groups turn to courts (rather than to other institutions) in order to make claims.³³ Elsewhere in the book, Jolene Lin and Jacqueline Peel ask who mobilizes behind climate litigation in the Global South and develop an inductive typology of litigator profiles including grassroots activists; hero litigators who are activist lawyers; litigators funded by grant making organizations and non-profit organizations; transnational litigators; and domestic prosecutors, government agencies, and domestic NGOs who seek to enforce local laws.³⁴ In addition, various chapters address the impact of domestic judicial and political cultures on the law’s ability to transform itself and offer remedies in the context of the climate crisis in a variety of national settings.³⁵

III. ADDRESSING THE DYNAMISM OF INTERNATIONAL HUMAN RIGHTS LAW

Regardless of the chosen scope and method, all IHRL researchers encounter a dynamic field of law and practice. This dynamism characterizes both the supply side of human rights law, i.e., legal and doctrinal sources, and the demand side, i.e., the ways in which communities and movements ascribe meaning to human rights in social and political practices as aspirational legal-normative ideals. A diverse group of domestic, transnational, and international norm entrepreneurs and norm interpreters help drive this dynamism, which is evidenced by the adoption of new global or regional human rights treaties,³⁶ a wide range of soft law instruments, including new and updated general comments and recommendations from UN Treaty Bodies³⁷ and advisory opinions,³⁸ as well as domestic constitutional law processes.³⁹ This widely

³⁰ De Búrca, Keohane & Sabel, *supra* note 2; de Búrca, *Global Experimentalist Governance*, *supra* note 2.

³¹ De Búrca, *Human Rights Experimentalism*, *supra* note 2.

³² *Id.*

³³ Lisa Vanhala, *The Social and Political Life of Climate Change Litigation: Mobilizing the Law to Address the Climate Crisis*, in *LITIGATING THE CLIMATE EMERGENCY*, *supra* note 17.

³⁴ Jolene Lin & Jacqueline Peel, *The Farmer or the Hero Litigator: Modes of Climate Litigation in the Global South*, in *LITIGATING THE CLIMATE EMERGENCY*, *supra* note 17.

³⁵ Adelman, Alston & Blainey, *supra* note 19; Neiva & Mantelli, *supra* note 19.

³⁶ UN Convention on the Rights of Persons with Disabilities, *entered into force* May 3, 2008, 2515 UNTS 44910.

³⁷ See *illustratively*, Committee on the Elimination of Discrimination Against Women, General Recommendation No. 37 (2018) on Gender-Related Dimensions of Disaster Risk Reduction in a Changing Climate, *adopted* Mar. 13, 2018, UN Doc. CEDAW/C/GC/37; General Comment No. 36, *supra* note 15.

³⁸ The Environment and Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R., (ser. A) No. 23 (Nov. 15, 2017).

³⁹ Maria Akchurin, *Constructing the Rights of Nature: Constitutional Reform, Mobilization, and Environmental Protection in Ecuador*, 40 L. & SOCIAL INQ. 937 (2015); Samantha Besson, *Human Rights as Transnational Constitutional Law*, in *HANDBOOK ON GLOBAL CONSTITUTIONALISM* (Anthony Lang & Antje Wiener eds., 2d ed. 2023).

dispersed activity leads human rights scholars to focus on multi-level, entangled, or conflicting interpretations of human rights law by different states, courts, and other bodies, and the consequences thereof.⁴⁰ Moreover, societal actors and scholars continuously call for recognition of new human rights, such as the right to a healthy environment,⁴¹ right to access the internet,⁴² or freedom from algorithmic discrimination,⁴³ in the context of new and emerging risks.⁴⁴

At their core, all four books directly address IHRL's dynamism. This dynamism is treated both as an empirical fact and an aspirational value of the practice of human rights law.

The dual function of IHRL's dynamism comes across most clearly in Rodríguez-Garavito's volume. Individual chapters emphasize the normative need for dynamic evolution of IHRL in the context of the climate crisis, not only as a matter of how existing rights should be interpreted,⁴⁵ but also in support of larger claims regarding systemic thinking about developing new rights and duties for states as well as corporations.⁴⁶ As one critic of this book has already observed, this volume, therefore, has both a scholarly orientation and an activist sensibility.⁴⁷

Rodríguez-Garavito's edited volume further stands out in its engagement with the study of "new human rights"⁴⁸ including, for example, the rights of future generations.⁴⁹ In addition, individual chapters in the book venture beyond the substantive interpretations of human rights and duties and call for interrogating paradigms of evidence and remedies in human rights law.⁵⁰ The book's overall goal, therefore, is to enable cross-learning among human rights litigators, civil society, and domestic and international judiciaries, all of whom are conceived as in a position to shape the law (understood broadly to encompass international human rights law, constitutional law, corporate law, and administrative law), by building a repertoire of insights into how human rights law can be mobilized and reframed for effective climate action.

Reiners is likewise interested in the articulation of new human rights, in particular the right to water. Her focus, however, is not on how best to structure normative arguments, narratives or frames that would underpin the recognition of new human rights. Instead, she is interested

⁴⁰ TOWARDS CONVERGENCE IN INTERNATIONAL HUMAN RIGHTS LAW (Carla Buckley, Alice Donald & Philip Leach eds., 2016); A FAREWELL TO FRAGMENTATION: REASSERTION AND CONVERGENCE IN INTERNATIONAL LAW (Mads Andenas & Eirik Bjørge eds., 2015); ELENA ABRUSCI, JUDICIAL CONVERGENCE AND FRAGMENTATION IN INTERNATIONAL HUMAN RIGHTS LAW (2022).

⁴¹ GA Res. 76/300, The Human Right to a Clean, Healthy and Sustainable Environment (July 28, 2022).

⁴² Başak Çalı, *The Case for the Right to Meaningful Access to Internet as a Human Right in International Law*, in THE CAMBRIDGE HANDBOOK OF NEW HUMAN RIGHTS: RECOGNITION, NOVELTY, RHETORIC (Andreas von Arnould, Kerstin von der Decken & Mart Susi eds., 2020).

⁴³ Monique Mann & Tobias Matzner, *Challenging Algorithmic Profiling: The Limits of Data Protection and Anti-discrimination in Responding to Emergent Discrimination*, 6 BIG DATA & SOC'Y 1 (2019).

⁴⁴ Yuval Shany, *Digital Rights and the Outer Limits of International Human Rights Law*, 24 GER. L.J. 461 (2023).

⁴⁵ Gerry Liston & Paul Kingsley Clark, *Climate Litigation Before International Tribunals: The Six Portuguese Youth v. 33 Governments of Europe Case Before the European Court of Human Rights*, in LITIGATING THE CLIMATE EMERGENCY, *supra* note 17.

⁴⁶ Joana Setzer, *The Impacts of High-Profile Litigation Against Major Fossil Fuel Companies*, in LITIGATING THE CLIMATE EMERGENCY, *supra* note 17.

⁴⁷ Benoit Mayer, *Can Rights-Based Litigation Bolster Climate Action?*, 13 CLIMATE L. 57 (2023).

⁴⁸ THE CAMBRIDGE HANDBOOK OF NEW HUMAN RIGHTS, *supra* note 42.

⁴⁹ LITIGATING THE CLIMATE EMERGENCY, *supra* note 17.

⁵⁰ Reinhold Gallmetzer, *Providing Evidence to Support Strategic Climate Enforcement and Litigation*, in LITIGATING THE CLIMATE EMERGENCY, *supra* note 17; Juan Auz, *Two Reputed Allies: Reconciling Climate Justice and Litigation in the Global South*, in LITIGATING THE CLIMATE EMERGENCY, *supra* note 17.

in explaining the agency of individuals as experts and in particular “the key role expert bodies and issue professionals—working informally and sans government-involvement at the boundaries of an [international organization]—play in the development of human rights law.”⁵¹ To do so, she explores how informal transnational lawmaking coalitions are able to gain entry to and exert influence on the making of IHRL by facilitating dynamic interpretations of existing rights by UNTBs. Reiners locates the influence of transnational lawmaking coalitions in an interactional perspective, underlining that the experts and civil society organizations that have access to the UN Human Rights Treaties are not engaged in international law making in a vacuum; instead they discharge these roles alongside governments and through institutional structures that are ultimately controlled by governments.⁵²

De Búrca’s book offers an altogether different account of IHRL’s dynamism. She sees international human rights law’s dynamism in the movement of a set of action guiding and correcting ideas travelling horizontally via the activism of human rights social movements and civil society to independent domestic institutions, namely courts, media, and agencies, as well as vertically to international human rights institutions and transnational networks.⁵³ It is this constant circulation of IHRL that leads to domestic human rights reform, understood as action leading to better protections of human rights by both state and private actors in domestic settings.⁵⁴ In this respect, de Búrca’s text is also in conversation with Rodríguez-Garavito’s volume. Both books underline the importance of interactions between domestic and international actors as key of understanding the dynamism of human rights law. Whilst Rodríguez-Garavito’s book is an invitation to increase these interactions, de Búrca views such interactions as central to explaining the effectiveness of human rights law in bringing about domestic reform.

Anagnostou also focuses on the dynamics of domestic human rights reform, but with specific focus on the utility of international human rights judgments in engendering wider human rights reforms at the domestic level. Like de Búrca, Anagnostou emphasizes the importance of feedback loops between domestic and transnational civil society organizations and between these organizations and the Council of Europe, with a focus on the latter’s institutional processes for monitoring the implementation of human rights judgments. In these iterative interactions, an international human rights judgment provides a trigger, mobilizing both domestic and transnational civil society and intergovernmental interactions between states through the Council of Europe’s peer review mechanism.⁵⁵ Significantly, in Anagnostou’s analysis, ECtHR judgments can engender human rights reforms not only at the domestic level, but also at the level of the European Union. She demonstrates this through analyzing the effects of the implementation of the *M.S.S. v. Greece and Belgium*, identifying the judgment and the advocacy surrounding its implementation as a “catalyst for change” at the EU level, prompting policy reforms on asylum and migration, in particular, its framework of returning migrants to the first state through which they entered the European Union.⁵⁶

⁵¹ REINERS, *supra* note 13, at 10.

⁵² *Id.* at 116–30.

⁵³ DE BÚRCA, *supra* note 24, at 45.

⁵⁴ *Id.*

⁵⁵ ANAGNOSTOU, *supra* note 26, at 197.

⁵⁶ *Id.* at 194–97.

IV. RESPONDING TO HUMAN RIGHTS LAW CRITIQUES

IHRL is an object of sustained external and internal critique in both scholarship and practice. External criticisms question whether international human rights law was ever, or is currently, normatively justified or desirable.⁵⁷ Internal criticisms claim that human rights laws can serve as sources of exclusion of the very subjects they aim to protect,⁵⁸ reproducing inequalities, and entrenching existing power relations.⁵⁹ A further strand of internal critique questions the legitimacy of international human rights law institutions, particularly in light of their distance from democratic decision making and their overreliance on legal solutions to complex political, social, and economic problems.⁶⁰ Others examine the causes and consequences of IHRL's waning power in global politics, highlighting backlash against human rights by both authoritarian and democratic states.⁶¹

The four books under review engage with and respond to these diverse critiques to varying degrees, ranging from seeking to fully counter them to not engaging with them at all. Of the four books, de Búrca's explicitly positions itself as a direct response to the scholarly critique of IHRL and the waning support for human rights due to the rise of authoritarian and illiberal governments and political movements. She specifically identifies five strands of criticism, namely: (1) the "elitism of institutionalised forms of international [human rights] practice";⁶² (2) the "overreach of human rights law";⁶³ (3) the cultural imperialist features of international human rights law;⁶⁴ (4) the lack of effective enforcement of international human rights;⁶⁵ and (5) the failure of international human rights to address economic inequality.⁶⁶

Her response to these diverse critiques of international human rights as a legal and political project underscores the continuous processes of transformative engagement with human rights by social movements, civil society activists, international and domestic institutions across the globe. Accordingly, for de Búrca, criticisms of the human rights practice do not fully account for why domestic social movements and civic actors across the world, including in repressive regimes, have not abandoned human rights, despite its weaknesses and deficiencies.⁶⁷ De Búrca claims that the scholarly criticisms have not produced the "end of human rights" and that the criticism-heavy scholarship (as she notes mostly written by scholars from

⁵⁷ Samuel Moyn, *A Powerless Companion: Human Rights in the Age of Neoliberalism*, 77 L. & CONTEMP. PROB. 147 (2015).

⁵⁸ Bhupinder Chimni, *Third World Approaches to International Law: A Manifesto*, 8 INT'L CMTY. L. REV. 3 (2006).

⁵⁹ MAKAU MUTUA, HUMAN RIGHTS: A POLITICAL AND CULTURAL CRITIQUE (2002).

⁶⁰ UN HUMAN RIGHTS TREATY BODIES: LAW AND LEGITIMACY (Helen Keller & Geir Ulfstein eds., 2012).

⁶¹ Ximena Soley & Silvia Steininger, *Parting Ways or Lashing Back? Withdrawals, Backlash and the Inter-American Court of Human Rights*, 14 INT'L J. L. CONTEXT 237 (2018); GERALD NEUMAN, HUMAN RIGHTS IN A TIME OF POPULISM: CHALLENGES AND RESPONSES (2020).

⁶² DE BÚRCA, *supra* note 24, at 4. This is with reference to, *inter alia*: MARTTI KOSKENNIEMI, THE POLITICS OF INTERNATIONAL LAW, Ch. 5 (2011) and David Kennedy, *International Human Rights Movement: Part of the Problem?*, 15 HARV. HUM. RTS. J. 101 (2002).

⁶³ *Id.* This is with reference to, *inter alia*, John Tasioulas, *Saving Human Rights from Human Rights Law*, 52 VAND. J. TRANSNAT'L L. 1167 (2019).

⁶⁴ *Id.* This is with reference to, *inter alia*: MUTUA, *supra* note 59.

⁶⁵ *Id.* This is with reference to: ERIC POSNER, THE TWILIGHT OF HUMAN RIGHTS LAW, Chs. 4–5 (2014).

⁶⁶ *Id.* This is with reference to: SAMUEL MOYN, NOT ENOUGH: HUMAN RIGHTS IN AN UNEQUAL WORLD (2018).

⁶⁷ DE BÚRCA, *supra* note 24, at 4.

the Global North)⁶⁸ does not pay adequate attention to individuals and groups that regularly invoke human rights discourse as they fight for social, environmental, Indigenous, and other movements in diverse domestic settings around the globe. De Búrca takes an additional step and argues that the “plural, dispersed and even fragmented nature” of the international human rights system is not only a key practical driver of domestic human rights reforms, but also better understood as a strength rather than a weakness.⁶⁹ Plural sites and dynamic institutions not only offer multiple access points for human rights movements and organizations, but also are capable of compensating for the sites and institutions that fail to respond adequately to old as well as new challenges.⁷⁰ De Búrca argues that these pluralistic features will also be key to addressing the rise of political illiberalism, digitalization, the climate crisis, the COVID-19 pandemic, and rising inequalities.⁷¹

Reiners’s book engages with the critique that highlights the allegedly elitist nature of institutionalized human rights practices. Reiners acknowledges that the informal influence of human rights professionals in the formation of UNTB general comments lacks democratic or representational credentials, thus raising questions about the legitimacy of such informal law making.⁷² This critique is exacerbated by the fact that only a very small number of individuals have informal privileged access to the UN human rights treaty regime.⁷³ Reiners stops short, however, of joining those who view this elitist influence as a major shortcoming. First, she argues that these individuals do not displace states, or their central role in international human rights law making and implementation. She notes that states possess ample means to impact UNTBs, including through elections of their members, budgetary allocations, and responses to UNTB statements. Moreover, she emphasizes that UNTBs retain ultimate authority to decide whether to adopt a general comment. Their informal interactions with individual experts, therefore, are better conceived as processes of learning, rather than as undue influence by a handful of elite professionals.⁷⁴

In contrast, scholarly criticisms of international human rights law as a legal and political project do not receive attention in Anagnostou’s book or in Rodríguez-Garavito’s volume. Anagnostou, for example, carefully traces the role of international NGOs in mobilizing for Roma rights, including the European Roma Rights Centre, Amnesty International, and Open Society Justice Initiative, and their subsequent role in the implementation of human rights judgments. She demonstrates the active role these organizations play in monitoring the implementation of human rights judgments through written submissions to the Council of Europe’s Committee of Ministers.⁷⁵ Her evaluation of international civil society involvement is broadly positive. Anagnostou finds that the involvement of these international actors allows the European human rights system and domestic laws and policies to be more responsive to the rights of marginalized groups and results in a “profound transformation” of the supervisory mechanisms of the European human rights system.⁷⁶ There is therefore no emphasis on the

⁶⁸ *Id.* at 2.

⁶⁹ *Id.* at 202.

⁷⁰ *Id.* at 203.

⁷¹ *Id.* at 183–224.

⁷² REINERS, *supra* note 13, at 135–36.

⁷³ *Id.* at 135.

⁷⁴ *Id.* at 136.

⁷⁵ ANAGNOSTOU, *supra* note 26, at 161.

⁷⁶ *Id.* at 160.

elitist features of transnational human rights actors, or concern over them occupying too much “space” at the expense of resource-limited domestic civil society organizations. Rodríguez-Garavito’s volume similarly finds the transformative potential of civil society involvement in advancing human rights-based climate litigation as praiseworthy, and indeed some of the book’s authors work for or lead international civil society organizations. The use of human rights to push for meaningful action to combat the climate crisis in legal proceedings is not viewed as an elitist intervention. Instead, the emphasis is placed on commonalities among social movements in the Global North and the Global South, which creates opportunities for building transnational coalitions and of providing multiplier effects to tackle the climate crisis through international human rights law.

V. OPTIMISM AND INTERNATIONAL HUMAN RIGHTS LAW PRACTICE

Read together, these four books offer an optimistic assessment of international human rights law practice, treating the dynamic circulation of ideas and the polycentric character of international human rights institutions as a strength of this legal, political, and civic practice. Criticism of international human rights law’s inability to alter structural inequalities, be they in the field of climate justice or other domains, are countered primarily by emphasizing the agency of actors involved in human rights struggles, be they domestic activists, transnational lawmaking coalitions, courts, or international institutions and the overall commonalities that bring these groups together in promoting human rights. These works, therefore, support a conceptualization of human rights actors exercising a form of “protean power,”⁷⁷ nimbly and creatively able to shape outcomes under conditions of uncertainty.

The books under review further emphasize the inseparability of legal knowledge from the agency of the actors creating this knowledge. This emphasis also allows these books to transcend some of the well-worn dichotomies found in the study of IHRL (and also the study of public international law). The studies overcome, for example, the distinctions between formalism and informality, the “international” and the “local,” individual and collective rights, in terms of the sources, interpretation, effects, or telos of human rights law. Instead, the books provide a blended approach, viewing these apparent dichotomies as defining the ends of a continuum and not as neatly separable in making sense of IHRL as a dynamic field of agency-driven practice. Through purposive action by individuals, domestic, and international civil society, ideas and doctrines travel horizontally from one domestic setting to another and vertically from domestic to international sites.

These agency-focused accounts are further enriched through explicit or implicit engagement with experimental governance. Experimental governance clearly emerges as an overarching theoretical resource in the books by de Búrca, Reiners, and Anagnostou. In its celebration of diverse and multi-level strategies to use human rights law to tackle the climate crisis, the arguments in Rodríguez-Garavito’s volume are also consistent with the logics of experimental governance. In these books, experimental governance emerges as an apt framework of analysis for human rights law because of the attention this theoretical framework pays to continuous interactions, incrementalism, and cross- and multi-level feedback loops

⁷⁷ On protean power, see *PROTEAN POWER: EXPLORING THE UNCERTAIN AND UNEXPECTED IN WORLD POLITICS* (Peter Katzenstein & Lucia A. Seybert eds., 2018). On protean power in the context of rights, see Chris Reuss Smit, *Protean Power and Revolutions in Rights*, in *PROTEAN POWER*, *supra*.

between non-hierarchically positioned actors and institutions. In de Búrca's book, in particular, experimental governance also emerges as a response to critics of international human rights, underscoring that human rights law is about ongoing interaction and contestation among multiple actors, generating learning, renovation, and innovation. de Búrca invites the critics to be part of this enterprise, instead of critiquing it from an external perspective.

The importance of agency and interactional processes, which sit at the heart of experimental governance, means that the books conceive their relationship with the normativity of international human rights as mediated, subject to ongoing revisions through interventions by human rights actors. In line with the experimentalist governance literature, normativity is treated as amenable to change and emerges from deliberation amongst multiple actors. Domestic, transnational, and international actors are all part of this deliberative process of human rights rulemaking and implementation. These processes, of course, are in line with the pragmatist philosophical underpinnings of experimental governance, captured by the mantra that "knowing the world as inseparable from agency within it."⁷⁸

A central question prompted by reading these works together is whether they adequately address the shortcomings of agency-centered accounts of international human rights law against the backdrop of international human rights critiques. This question arises for two distinct reasons. First, whilst these books privilege agency in the long-standing agency or structure debate when assessing how broader social change can occur in society, they do not clearly address the role of the structural limitations of such agency in IHRL practice.⁷⁹ These four books emphasize that mobilizing for and with human rights in international, transnational, and domestic spaces matters, not only in the context of international human rights making and remaking, but also in how international human rights law brings about renovation and change. Yet human agency inevitably occurs within structures that limit potential strategies and constrain potential outcomes. The books do not offer overarching and robust responses to those who ultimately view international human rights law as a feeble legal and political project, primarily because of the limits of agency. Rather, the books invite attention to detail and offer practice-informed and contextual arguments about the power of agency and international human rights law.

Second, none of the books focus on what may be conceptualized as "well-intentioned, but not well-thought out" or "complacent" or "bad faith" exercises of agency by individuals, civic organizations, international organizations, or states in the human rights space.⁸⁰ Whilst there

⁷⁸ Catherine Legg and Christopher Hookway, *Pragmatism*, in THE STANFORD ENCYCLOPEDIA OF PHILOSOPHY (Edward N. Zalta & Uri Nodelman eds., 2021), at <https://plato.stanford.edu/archives/sum2021/entries/pragmatism>.

⁷⁹ For a conceptualization of the structural limitations of human rights as "multiple intersecting planes of capitalist accumulation and realisation," see Robin Blackburn, *Reclaiming Human Rights*, 69 NEW LEFT REV. 126 (2011).

⁸⁰ A new generation of human rights law scholarship has turned its focus on this question. See generally Rebecca Sanders, *Norm Spoiling: Undermining the International Women's Rights Agenda*, 94 INT'L AFF. 271 (2018), Gráinne de Búrca and Katharine G. Young, *The (Mis)Appropriation of Human Rights by the New Global Right: An Introduction to the Symposium*, 21 INT'L J. CONST. L. 205 (2023), Kristina Stoeckl, *Traditional Values, Family, Homeschooling: The Role of Russia and the Russian Orthodox Church in Transnational Moral Conservative Networks and Their Efforts at Reshaping Human Rights*, 21 INT'L J. CONST. L. 224 (2023), Başak Çalı & Esra Demir-Gürsel, *Continuity and Change in Human Rights Appropriation: The Case of Turkey*, 21 INT'L J. CONST. L. 266 (2023), Kapyra Kaoma, *The Interaction of Human Rights and Religion in Africa's Sexuality Politics*, 21 INT'L J. CONST. L. 339 (2023).

is measured caution as to how much can be achieved through the active exercise of agency and recognition that exclusionary and regressive practices and outcomes cannot always be prevented,⁸¹ this may not adequately respond to criticisms concerning the overreliance on “agency for good” position commonly found in international human rights law scholarship, and that these works represent. These books, read together, do not offer an analytical account of the proliferation of what may be termed as “bad faith agency” in international human rights law and practice. Nonetheless, these books are important reading for everyone who would like to explore the arguments for cautious optimism about the future of international human rights law in terms of both its doctrinal renovation and its real-world effectiveness.

⁸¹ DE BÚRCA, *supra* note 24, at 219; ANAGNOSTOU, *supra* note 26, at 160–63, 196.