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The Impact of the Inter-American Human Rights System beyond Latin America

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Global human rights governance is at a critical juncture. International politics has turned distinctly hostile to human rights. Major powers in the current multi-polar world have embraced a transactional and anti-liberal foreign policy, with little salience given to human rights concerns. The European Union is consumed with disintegrating and nationalistic forces on its own continent, with the so-called populist resurgence underpinning a political vision that is overtly anti-rights. The international human rights regime appears powerless when confronted with entrenched rights-abusive regimes. Even in some scholarly Ivory Towers the international human rights project is dismissed as elitist, rigid and inflexibly imposing a universalising morality at the expense of local customs and standards of behaviour.[2] Confronted with dramatic global inequalities and accelerating climate emergencies, international human rights are criticised for offering little, or no, practical assistance in efforts to bring about a more just and equal world for people, and for being underpinned by minimalist ambitions of the possibilities of a different, more sustainable and just world.[3]

It is precisely in relation to these overlapping political, socio-economic and intellectual challenges that I hope to offer in this chapter a partial corrective to the disparate gloomy assessments of the present state and possible future trajectories of international human rights. I will do so through a series of reflections on the contributions of the Inter-American Human Rights System (IAHRS) to the theory and practice of global human rights governance. More specifically, the chapter highlights three areas of contributions. First, by adopting a historical perspective on the institutional development of the IAHRS, we are reminded of the global and interconnected character of the evolution of the modern international human rights regime. Far from a straightforward narrative of the international human rights as a result of Western imposition, the origins and early developments of the IAHRS demonstrate the central protagonism of the Global South in the emergence and consolidation of global human rights governance. Second, the IAHRS has played a central role in the normative construction and evolving interpretations of international human rights standards. Third, the IAHRS has made important contributions to the theory and practice of human rights governance as an exemplar of how international law and institutions can advance the realisation of rights even

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[2] Stephen Hopgood, *The Endtimes of Human Rights* (Ithaca, NY: Cornell University Press, 2013).

[3] Samuel Moyn, *Not Enough: Human Rights in an Unequal World* (Harvard: Harvard University Press, 2018).

in the absence of robust enforcement mechanisms and in often inhospitable political conditions.

These distinct contributions of the IAHRS are often overlooked in discussions of the evolution and impact of international human rights. This is partly due to the relative marginalisation of regional systems in much human rights scholarship. And partly it is due to the historical side-lining of the 'Global South' from the history of the modern international human rights regime. The combined result is often a distinct sense of distortion in the analysis of international human rights, whether past, present or future. It is therefore important not just for the IAHRS, but for international human rights more broadly, to better understand how the IAHRS fits within and has contributed to the development of global human rights governance.

I. The IAHRS and the Origins of Global Human Rights Governance

Since its origins, the IAHRS has been a central part of the modern international human rights regime. The American Declaration of the Rights and Duties of Man (ADHR) from April 1948 predates the adoption of the Universal Declaration of Human Rights (UDHR) in December that year. More significantly, however, these founding documents of the modern international human rights regime were shaped by similar influences prevailing in the world historical moment in which they were created. In particular, as has been widely documented, there was significant Latin American protagonism in the origins of the modern international human rights regime. As a result, there was notable cross-fertilisation and interactions between the regional and global regimes that left their imprint on both the institutional design and substantive contents of global human rights governance.

Support for democracy and human rights has historically figured prominently on the regional agenda in the Americas. Regional cooperation initiatives have often derived their legitimating rationales from the idea that the universal recognition of fundamental rights is a necessary condition for international life and the establishment of democratic societies. Such regional developments tended to reflect national developments through which newly independent republics adopted constitutions incorporating an ambitious range of rights principles and protections.[4] This is certainly not to deny the politically contested character of regional understandings of human rights. Regional rights traditions in the Americas encompass multiple strands of thought and political practice ranging from liberal definitions of individual rights as inherent and inalienable, to those associated with a socialised rights tradition, most notably expressed in the 1917 Mexican Constitution.[5] Moreover, regional rights traditions have developed in a distinctly transnational context since the outset. For example, in her recent book, Sikkink highlights the role of the Chilean jurist Alejandro Álvarez, the Chilean professor of international law, a founding member of the American Institute of International Law, and subsequently a judge at the International Court of Justice (1946-1955). As early as 1917, Álvarez proposed the idea of the international rights of the individual to the American Institute of International Law; an idea that was subsequently adopted by his peers in the burgeoning transnational legal epistemic communities at the time. In short, the 1948 adoption of the founding Charter of the Organization of American States (OAS) as well as the accompanying ADHR both need to be seen in the light of over a century

[4] Paolo G. Carozza, 'From Conquest to Constitutions: Retrieving a Latin American Tradition of the Idea of Human Rights', *Human Rights Quarterly* 25, no. 2 (2003): 281–313.
[5] Greg Grandin, 'The Liberal Traditions in the Americas: Rights, Sovereignty, and the Origins of Liberal Multilateralism', *The American Historical Review* 117, no. 1 (1 February 2012): 68–91.

of Inter-American and transnational relations that shaped the norms and principles enshrined in these foundational documents.[6]

It is also important to note Latin American protagonism in pushing for an explicit human rights mandate for the United Nations.[7] When the great powers convened at Dumbarton Oaks (August-October 1944), they were manifestly reluctant to include human rights in the draft UN Charter. In contrast, at the Inter-American Conference on Problems of War and Peace at the Chapultepec Castle in Mexico City in February 1945, Latin American countries endorsed a report prepared by the Inter-American Juridical Committee that called for a full range of rights to be included in the UN Charter. Forsythe, for example, highlights that "a small number of Latin states in the 1940s tried to exert moral leadership in support of precise legal obligations and a capacity for regional action on human rights. This handful of Latin states - Panama, Uruguay, Brazil, Mexico, the Dominican Republic, Cuba, and Venezuela - also pushed for binding human rights commitments at the San Francisco conference which led to the establishment of the United Nations."[8] Moreover, at the San Francisco conference (April-June 1945), which led to the adoption of the UN Charter, the twenty Latin American countries participating constituted not only the largest regional grouping but also the most important voting bloc. As each part of the Charter required a two-third majority to pass, Latin American countries were instrumental in ensuring that the UN Charter eventually contained seven references to human rights, including listing the promotion of human rights as one of the basic purposes of the UN.

Latin American lawyers and diplomats also contributed to the expansion of the modern human rights canon. The ADHR's directory of a wide range of rights proved influential in shaping the incorporation of social and economic rights into the UDHR. This combined attention to civil and political *as well as* economic and social rights reflected the often eclectic mix of socialist, liberal, and Catholic traditions that had characterised Latin American intellectual thought and constitutional practice since the era of independence. Moreover, while the ADHR's attention to human duties was eventually not reflected in the UDHR, its insistence on the 'right to justice' (drawing from Latin American *amparo* laws) was translated into the UDHR's Article 8. The role of the Pan-American feminist movement was also significant,[9] reflecting burgeoning transnational influences. Several prominent Latin American women delegates, such as Brazil's Bertha Lutz, Dominican Republic's Minerva Bernardino and Chile's Ana Figueroa, played instrumental roles in advocating for the inclusion of equal rights for women and men in the UDHR, as well as the use of explicit language calling for the defence of the rights of women.

In addition to their insistence on a full range of rights, including socio-economic rights, Latin American government representatives also drew on rich regional political debates concerning the scope of legitimate international intervention in the domestic affairs of states. This was arguably most notable at the 1945 Inter-American Conference on Problems of War and Peace when the Inter-American Juridical Committee was requested to draft a human rights

[6] Louise Fawcett, 'The Origins and Development of Regional Ideas in the Americas' in Louise Fawcett and Mónica Serrano, eds., *Regionalism and Governance in the Americas: Continental Drift* (Basingstoke: Palgrave Macmillan, 2005).
[7] Mary Ann Glendon, 'The Forgotten Crucible: The Latin American Influence on the Universal Human Rights Idea', *Harvard Human Rights Journal* 16 (2003): 13.
[8] David Forsythe, 'Human Rights, the United States and the Organizations of American States', *Human Rights Quarterly* 13 (1991): 75–76.
[9] Katherine M. Marino, *Feminism for the Americas: The Making of an International Human Rights Movement* (UNC Press Books, 2019).

declaration. The Conference discussed the 'Larreta Proposal', after the Uruguayan Minister of Foreign Affairs, Eduardo Rodriguez Larreta, which proposed to suspend or restrict the principle of non-intervention in the internal affairs of another country and called for multilateral action to defend democracy and human rights. Larreta argued that the principles of sovereignty and non-intervention could be misused to shield abusive governments, and that non-intervention had to be 'harmonized' with other foundational principles of the Inter-American System, most notably the protection of fundamental human rights. While the proposal was never formally approved, it reflected a willingness to lobby for intrusive human rights mandates for regional institutions and foreshadowed more contemporary notions of conditional sovereignty and global duties to intervene in response to mass atrocities.[10] Similarly, the notion of popular sovereignty also figured prominently in debates concerning the right of people to self-government. The 1948 Bogotá Conference adopted a resolution on the 'Preservation and Defence of Democracy in America', and governments agreeing to the resolution resolved to take any necessary measures to ensure that "the free and sovereign right of their peoples to govern themselves in accordance with their domestic aspirations" would not be violated.

It should be recognised, however, that while many of the states participating in the simultaneous construction of the IAHRS and the UN system endorsed human rights in principle, they remained reluctant to accept any precise legal obligations that could legitimate international action to enforce these principles. For example, as documented by Forsythe: "[i]n 1948, only six of twenty-one states, not including the United States, wanted the American Declaration to be part of the OAS Charter and hence binding international law. And only eight of twenty voting states, again not including the United States, wanted a binding convention on human rights."[11] That is, while the American Declaration provided a wide-ranging directory of rights it was clearly not intended to be binding on signatory states.[12] Moreover, given the historical circumstances of regional power disparity in which American states were formed, certain principles – most notably self-determination, the right to independence, and freedom from intervention – came to guide their attempts of regional cooperation. Indeed, the emergence of the IAHRS vividly illustrates the challenges inherent in the tensions between human rights promotion, on the one hand, and concerns about intervention, on the other, in a regional context of long-standing power asymmetries.[13]

Nonetheless, the key point to note is that the early development of IAHRS simultaneously nourished and was shaped by the flourishing of human rights ideas and debates in the years leading up to and following the parallel adoptions in 1948 of the American Declaration and the Universal Declaration, respectively. The inclusion of human rights language in the founding text of the UN, with distinct Latin American contributions and influences, channelled the history of post-war global governance, with implications beyond the confines of the international human rights regime, such as in contemporary debates, for example, concerning the notion of the Responsibility to Protect. Recognising the interrelated genesis of the UN and IAHRS regimes is part and parcel of ongoing efforts to bring to light the role of the 'Global South' in the origins and early development of the international human rights regime. Latin American lawyers, diplomats and activists were key protagonists in shaping the

[10] Tom Long and Max Paul Friedman, 'The Promise of Precommitment in Democracy and Human Rights: The Hopeful, Forgotten Failure of the Larreta Doctrine', *Perspectives on Politics*, undefined/ed, 1–16.
[11] Forsythe, 'Human Rights, the United States and the Organizations of American States', 77.
[12] Thomas Buergenthal and Dinah Shelton, *Protecting Human Rights in the Americas: Cases and Materials* (Strasbourg: International Institute of Human Rights, 1995). p.39.
[13] Andrew Hurrell, 'Security in Latin America', *International Affairs* 74, no. 3 (1998): 531.

emergence of global human rights governance. These contributions are not only significant as a matter of historical accuracy. They also offer an important corrective to prevailing critiques of human rights as created and imposed by powerful countries of the Global North. The institutional origins of the IAHRS offer an important reminder that some of the central ideas of the modern international human rights did not originate in the Global North. Rather, while not denying the pivotal role of great powers in the design of the post-war international order, human rights principles and law emerged to a very significant extent from the Global South and from Latin America in particular.[14] Equally significant for the purposes of this chapter, these institutional origins also point to a distinctly regional story underpinning the development of the modern international human rights regime. Clearly, the emergence of human rights as part of regional governance structure in the Americas is not a simple story of hegemonic imposition. Rather, this resulted from of lengthy and complex transnational history of interaction between external and local political forces and ideas about political organisation. Recognising this early institutional history of the contributions from the 'Global South' has important implications for thinking about the present as well as possible future trajectories of global human rights politics.

II. The IAHRS and International Human Rights Standards

A second major contribution of the IAHRS to global human rights governance is evident in its role as a human rights standard-setter. The IAHRS has been at the forefront of normative developments in international human rights law, in the process contributing to progressive legal and institutional change. Both the Commission and the Court perform crucial functions in the development of human rights standards. Specifically, the Court has developed progressive human rights jurisprudence through its rulings, while the Commission contributes to the development of soft law though its thematic reports, as well as adoption of policy guidelines. This section summarises four particularly distinctive and illustrative areas of international human rights law in which the IAHRS has been a prominent norm protagonist, with significant ramifications including beyond its region.

First, the System's distinctive approach to transitional justice (TJ) and reparations to victims of mass atrocity has had a particularly significant set of influences on global legal and policy developments. The IAHRS's dealings with TJ have given rise to a broad set of state obligations. In particular, the IAHRS has played a particularly prominent role in the strengthening of anti-impunity norms, confirming that states have an international obligation to ensure accountability for human rights violations, establish the truth, and repair harms in the aftermath of mass atrocity.[15] The System has also engaged in expansive interpretations of states' international obligations, in the process drawing on, as well contributing to, the development of international criminal law. For example, the IACtHR has argued that forced disappearances are prohibited by *jus cogens*, and also declared them a continuous crime. These normative and legal developments have exerted important influences on judicial and legal changes in a range of Latin American countries, which, in turn, have facilitated ongoing criminal prosecutions of perpetrators of violations of the past in the region.[16] But the IAHRS

[14] Kathryn Sikkink, *Evidence for Hope: Making Human Rights Work in the 21st Century* (Princeton University Press, 2019), 56.
[15] Diego Rodriguez-Pinzon, 'The Inter-American Human Rights System and Transitional Processes', in *Transitional Jurisprudence and the ECHR: Justice, Politics and Rights*, ed. Antoine Buyse and Michael Hamilton (Cambridge: Cambridge University Press, 2011).
[16] Ezequiel A. Gonzáles-Ocantos, *Shifting Legal Visions: Judicial Change and Human Rights Trials in Latin America* (New York: Cambridge University Press, 2016).

has also been instrumental force in the global shift "away from a state's general duty to guarantee rights and toward the victim's individual right to have the government investigate and punish."[17] Most prominently, the IACtHR's rulings on amnesty laws have widened the space for judicial proceedings against alleged human rights violators in national courts, and the Court's amnesty jurisprudence has influenced accountability pressures beyond the region.[18] In the process, the System has developed a victim-oriented jurisprudence and practice, emphasising the right to effective judicial remedy – i.e. right to a fair trial and judicial protection – in other words, access to justice, as well as an increasingly comprehensive, integral and 'holistic' set of reparation policies.[19] The IACtHR's policies of reparations now span from monetary compensation to victims, symbolic reparations (e.g. memorials), to demands for state reforms and criminal prosecutions of individual perpetrators. Moreover, the IACtHR's activist remedial regime has led it to restrict the scope of state discretion regarding remedies, and to boost its institutional efforts to monitor state implementation.[20] As a result, the IAHRS's TJ-related jurisprudence emphasising criminal accountability, the right to individual judicial redress, the right to truth and comprehensive reparations, have had significant normative influences on global TJ policy and law. For example, at the normative and jurisprudential level, globally recognised human rights norms such as forced disappearances, the right to truth, and the right to identity, can be traced back to efforts by Latin American human rights actors, supported by the IAHRS, to confront pervasive violations in the region.[21]

Second, the IAHRS has been at the forefront of international efforts at reconceptualising gender-based violence, not least since the 1994 adoption of Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Belém do Pará Convention). The System's approach to violence against women (VAW) has had significant impact by defining the concept of femicide, expanding the scope of state obligations and adopting a gender perspective on reparations. The IAHRS has been particularly robust in highlighting the discriminatory character of violence against women, including rape. Since the mid-1990s, on the basis of the serious effects and the irreparable damage caused, the IAHRS has qualified rape as torture under international law. In addition to the moral and psychological suffering caused by rape, the IACtHR has also highlighted the serious social and cultural effects such violations can have on the victims, particularly, but not exclusively, in terms of the relationship between the victim and her community. Moreover, the Court has addressed the specifically targeted character of violence against women in the context of armed conflict. Most noteworthy, arguably, has been the IAHRS's conceptualisation of VAW

[17] Alexandra Huneeus, 'International Criminal Law by Other Means: The Quasi-Criminal Jurisdiction of the Human Rights Courts', *American Journal of International Law* 107, no. 1 (January 2013): 8.
[18] Louise Mallinder, 'The End of Amnesty or Regional Overreach? Interpreting the Erosion of South America's Amnesty Laws', *International and Comparative Law Quarterly* 65, no. 3 (July 2016): 645–80; Christina Binder, 'The Prohibition of Amnesties by the Inter-American Court of Human Rights', ed. Armin von Bogdandy and Ingo Venzke, *German Law Journal* 12, no. 5 (2011); Gerald L Neuman, 'The External Reception of Inter-American Human Rights Law', *Quebec Journal of International Law*, 2011, 99-.
[19] Clara Sandoval, 'Two Steps Forward, One Step Back: Reflections on the Jurisprudential Turn of the Inter-American Court of Human Rights on Domestic Reparation Programmes', *The International Journal of Human Rights* 22, no. 9 (21 October 2018): 1192–1208.
[20] Alexandra Huneeus, 'Reforming the State from Afar: Structural Reform Litigation at the Human Rights Courts', *Yale Journal of International Law* 40, no. 1 (2015).
[21] Reed Brody and Felipe Gonzalez, 'Nunca Mas: An Analysis of International Instruments on "Disappearances"', *Human Rights Quarterly* 19, no. 2 (1 May 1997): 365–405; Ariel E Dulitzky, 'The Latin-American Flavor of Enforced Disappearances', *Chicago Journal of International Law* 19, no. 2 (2019): 423–89; Thomas M. Antkowiak, 'Truth as Right and Remedy in International Human Rights Experience', *Michigan Journal of International Law* 23 (2002 2001): 977–1014.

as ‘femicide’. The 2009 ruling by the IACtHR in the so-called ‘Cotton Field’ cases is a landmark in the judicial struggle against gender-based violence. The Cotton Field cases – concerning the murder of women in Ciudad Juárez, Mexico - highlighted the discriminatory character of lethal violence against women, the social context in which such violence takes place, and the special vulnerability of the victims. The Court stressed the gender-based nature of the disappearances and killings and that they took place in the context of a structural discrimination of women, which extended to the Mexican authorities distinct lack of adequate response to the cases that left them in a pervasive state of impunity. In addition, the IAHRS has held that states have a responsibility to not only investigate, adjudicate and sanction crimes of VAW, but also to act with due diligence to prevent such crimes, including when the direct perpetrators are private actors, such as in cases of domestic violence. The IACtHR has elaborated on the specific aspects of states’ positive obligations to investigate instances of gender-based violence and to comprehensively assess the conditions that prevent women from accessing justice in contexts of widespread impunity. It is also worth noting how the IACtHR has increasingly developed what some observers refer to as a ‘holistic gender approach’ to reparations.[22] This generally refers both to the ways that the Court identifies relevant facts, violations and victims in the cases before it, and to the extent that it adopts appropriately gender-sensitive reparations measures, including remedies that aim at transforming the sexual hierarchies at the root of gender-based violence and discriminatory practices.

A third example of innovative IAHRS jurisprudence is the concept of the right to a dignified life (*vida digna*), which also illustrates the potential of the IAHRS to feed into global human rights debates.[23] As highlighted in the previous section, the ADHR includes a full range of rights, encompassing civil and political, as well as economic, social and cultural rights. However, in transforming the ADHR’s provisions into legally binding obligations in the American Convention, OAS member states clearly prioritised the former over the latter. Despite the adoption of the San Salvador Protocol in 1988, much of the IAHRS caseload and institutional attention have primarily focused on civil and political rights. Historically, these normative priorities reflected the political and ideological context of the regional Cold War in the Americas during which the IAHRS was institutionally consolidated.[24] The relative marginalisation of socio-economic rights notwithstanding, the pervasive realities of poverty and material inequalities in the region have still left their mark on the IAHRS’s activities and caseload. Most notably, the IACtHR has advanced a particularly innovative understanding of the centrality of a range of social rights for human welfare. The IACtHR’s jurisprudence on the right to life includes the notion of a ‘dignified and decent existence’, which necessarily encompasses the obligation to ensure basic economic, social, and cultural rights.[25] This interpretation of the fundamental right to life advanced by the Court emphasises the right of

[22] Ruth Rubio-Martin and Clara Sandoval, ‘Engendering the Reparations Jurisprudence of the Inter-American Court of Human Rights: The Promise of the Cotton Field Judgment’, *Human Rights Quarterly* 33 (2011): 1062–91.
[23] Thomas M Antkowiak, ‘A “Dignified Life” and the Resurgence of Social Rights’, *Northwestern Journal of Human Rights* 18, no. 1 (2020).
[24] Par Engstrom, ‘The Inter-American Human Rights System and US-Latin American Relations’, in *Cooperation and Hegemony in US-Latin American Relations: Revisiting the Western Hemisphere Idea*, ed. Juan Pablo Scarfi and Andrew R. Tillman, Studies of the Americas (New York: Palgrave Macmillan US, 2016), 209–47. Patrick William Kelly, *Sovereign Emergencies: Latin America and the Making of Global Human Rights Politics* (Cambridge: Cambridge University Press, 2018).
[25] Jo M. Pasqualucci, ‘The Right to a Dignified Life (Vida Digna): The Integration of Economic and Social Rights with Civil and Political Rights in the Inter-American Human Rights System’, *Hastings International and Comparative Law Review* 31 (2008): 1–32.

individuals and groups not to be prevented from having access to the material conditions that guarantee a dignified life. This jurisprudential interpretation is in line with what some would call "the indivisibility and interdependence of rights approach".[26] Similarly, the Court has interpreted the fundamental civil rights notions of equal protection and non-discrimination in conjunction with a range of socio-economic rights to include the right to social security, the right to a healthy environment, as well as access rights to basic public services. In short, the Court's notion of a dignified life consists of an integrated understanding of the protection of rights and follows from its engagement with the lived realities of people in the region, in particular traditionally vulnerable and marginalised groups. As an illustration of the normative diffusion of the IACtHR's jurisprudence in this regard, it should be noted that the concept of the right to dignified life was recently recognised by the UN Human Rights Committee in its General Comment No. 36 on the right to life; considered by some as a significant breakthrough in efforts to promote the justiciability of socio-economic rights.[27] The IACtHR's recent jurisprudential turn has also lent additional support to advocates for the justiciability of socio-economic rights, with an increasing number of its rulings recognising the direct justiciability of American Convention Article 26.[28] These are all potentially significant developments for global efforts to promote the international justiciability of socio-economic rights.

Fourth, the IAHRS has also been in the vanguard of the international development of indigenous rights. Since the adoption of the landmark ruling in the case of the Mayagna (Sumo) Awas Tingni community, the IACtHR has developed extensive indigenous rights jurisprudence. The IAHRS has recognised the notion of collective rights of indigenous communities to ancestral lands and natural resources on the basis of their importance for the distinct cultural identities of these communities. By interpreting the right to property (Article 21 of the American Convention) to include a right to communal property of indigenous people, the IAHRS has essentially advanced a communitarian understanding of human rights. Moreover, the IACtHR has recognised the right of indigenous communities to consultation and participation in all matters that could directly affect them. The IACtHR has argued that the right to free, prior and informed consent to any administrative or legal measure affecting the livelihoods of indigenous people is directly related to the general state obligation to guarantee the free and full exercise of Convention rights. As such, states have duties to take positive measures to promote and protect indigenous rights. In addition, the IACtHR has generally adopted a broad interpretation of these rights and state duties to include the protection of the right of members of indigenous communities to enjoy their own culture and traditional practices. The Court has argued that the rationale for these special protections of indigenous communities is to protect traditional ways of life, customs and beliefs, distinct cultural identities, and distinctive social and economic structures. In short, the IACtHR has highlighted the importance of the effective protection and preservation of the physical and cultural survival of indigenous peoples through the protection of their cultural diversity. The Court has argued that the value of cultural diversity expands the scope of protection of Convention rights, most notably the right to property, in order to protect indigenous peoples' specific rights. These jurisprudential developments notwithstanding, there have been

[26] Mónica Feria Tinta, 'Justiciability of Economic, Social, and Cultural Rights in the Inter-American System of Protection of Human Rights: Beyond Traditional Paradigms and Notions', *Human Rights Quarterly* 29, no. 2 (2007): 431–59.

[27] Lucy McKernan and Bret Thiele, 'UN Human Rights Committee Brings New Vitality to the Right to Life', *OpenGlobalRights* (blog), 13 February 2019, https://www.openglobalrights.org/un-human-rights-committee-brings-new-vitality-to-the-right-to-life/.

[28] Daniel Cerqueira, 'Jurisprudencia de la Corte IDH en casos sobre DESCA: entre lo retorico y lo impredecible', *Justicia en las Américas* (blog), 7 January 2020, https://dplfblog.com/2020/01/07/jurisprudencia-de-la-corte-idh-en-casos-sobre-desca-entre-lo-retorico-y-lo-impredecible/.

recurrent tensions between, on the one hand, the preservation of cultural identity and traditional values of indigenous peoples through the protection of their right to lands and natural resources, and, on the other hand, economic development projects and extractive industries, in particular. There have also been critiques of the Court's tendency to connect indigenous rights to the right of property.[29] Moreover, for some, indigenous rights claims raise questions regarding the applicability of universal conceptualizations of individual rights as advanced in the liberal tradition that has tended to dominate the evolution of the modern international human rights regime, including the development of the IAHRS. Nonetheless, the IAHRS's expansive and path-breaking jurisprudence on indigenous rights – most notably the notion of collective land rights – has stimulated practices of cross-regional judicial dialogue with other regional human rights systems, particularly with the African human rights system.[30]

Overall, the IAHRS's normative contributions to global human rights are extensive and go beyond these illustrative examples. The IAHRS has institutionally responded to the changing human rights landscape in its region in ways that underline the potential of normative and institutional change and adaptation in human rights governance. In its practice, the IAHRS has shifted from its focus on TJ-related human rights challenges towards dealing with issues related to structural and ongoing violence. Whether it is gender violence committed by police and security forces or indigenous groups' rights to ancestral lands, the IAHRS' emphasis on accountability, victims' rights, and reparations, builds on its decades-long engagement with TJ. The IAHRS is increasingly ambitious not only in terms of the types of human rights challenges it deals with, but also in terms of what it demands from states. The IAHRS is pushing the normative boundaries of international human rights, not least beyond the liberal minimalist definitions of human rights (most clearly illustrated in the System's indigenous rights jurisprudence) as well as in its continually evolving and expanding interpretation of the scope of state obligations (manifested, e.g., with respect to cases of femicide and its incipient engagement with environmental rights standards). As a result, through the diffusion of its normative contributions the IAHRS has emerged as a central actor in global human rights governance. Hence, while it is true that the IAHRS has adopted global common human rights scripts and adapted them according to its regional circumstances[31], the System has also significantly contributed to the evolution of global human rights standards in multiple ways; some of which were outlined in this section.

III. The IAHRS and Transnationalized Human Rights Implementation

As illustrated in the previous section, the IAHRS has undergone significant normative and institutional changes since its creation. Most notably, the IAHRS has developed highly transnationalized structures of regional human rights governance. As I have documented

[29] Thomas M. Antkowiak, 'Rights, Resources, and Rhetoric: Indigenous Peoples and the Inter-American Court', *University of Pennsylvania Journal of International Law* 35 (2014 2013): 113–88.
[30] Mauro Barelli, 'The Interplay Between Global and Regional Human Rights Systems in the Construction of the Indigenous Rights Regime', *Human Rights Quarterly* 32, no. 4 (2010): 951–79; Jérémie Gilbert, 'Indigenous Peoples' Human Rights in Africa: The Pragmatic Revolution of the African Commission on Human and Peoples' Rights', *International & Comparative Law Quarterly* 60, no. 1 (January 2011): 245–70; Lucy Claridge, 'The Approach to UNDRIP within the African Regional Human Rights System', *The International Journal of Human Rights* 23, no. 1–2 (7 February 2019): 267–80.
[31] Alexandra Huneeus and Mikael Rask Madsen, 'Between Universalism and Regional Law and Politics: A Comparative History of the American, European, and African Human Rights Systems', *International Journal of Constitutional Law* 16, no. 1 (12 May 2018): 136–60.

elsewhere[32], three features of the trend towards the transnationalization of the IAHRS in recent decades are particularly significant: (i) as already noted in the previous section, the expansion and increased intrusiveness of regional human rights norms and legal standards; (ii) the increased pluralism of actors and stakeholders engaging with the System; and (iii) the consolidation of decentralised implementation structures. This section elaborates on the significance of the latter two features of the contemporary IAHRS: the multiplicity of actors interacting with the System and its evolving practices of decentralised modalities of human rights implementation. In a nutshell, the patterns of institutional change that the IAHRS has undergone are significant not only for the System itself, but also for the theory and practice of global human rights governance more broadly, particularly in light of persistent state resistance to human rights and the absence of robust and authoritative political enforcement structures.

The IAHRS has developed over the years from a 'classical' intergovernmental regime into a transnational political space with a far-reaching human rights mandate. The system has emerged, from its roots as a government-run diplomatic entity with a vaguely defined mandate to promote respect for human rights in the region, as a legal regime formally empowering citizens to challenge their own governments' human rights records. An independent regional human rights court and an autonomous commission are regularly judging whether regional states are in compliance with their international human rights obligations. The access of individuals and human rights organizations to the IAHRS has strengthened over time as the System has become increasingly judicialized with a procedural focus on legal argumentation and the generation of regional human rights jurisprudence. Undeniably, these are all fundamental institutional changes hardly envisaged by the state representatives responsible for the initial creation of the IAHRS. The gradual erosion of state control over the IAHRS is clearly uneven and patchy, as the continuing reliance of the IAHRS on U.S. funding unequivocally illustrates. Nonetheless, the System has developed an increasingly extensive set of human rights norms and practices that legitimate international concern for the general welfare of individuals and action regarding internal human rights practices of states.[33]

The IAHRS has also developed important accountability functions. Both the Commission and the Court regularly monitor and evaluate states' human rights performance. In the process, the IAHRS has established itself as an important advocacy actor in its own right. The Commission has developed a set of tools in addition to individual cases that range from public diplomacy in the form of press releases, public hearings, onsite visits, interim measures (precautionary mechanisms), to behind the scenes negotiations with state officials and individual petitioners (through so-called friendly settlement proceedings). Moreover, the IAHRS performs an important indirect advocacy role by providing a platform for human rights NGOs; some of which have been very adept at integrating the IAHRS into their domestic and transnational advocacy strategies.[34] Admittedly, these are weak accountability mechanisms when exclusively seen from a top-down enforcement perspective. There are no

[32] Par Engstrom and Andrew Hurrell, 'Why the Human Rights Regime in the Americas Matters', in *Human Rights Regimes in the Americas*, ed. Mónica Serrano and Vesselin Popovski (United Nations University Press, 2010).
[33] David Harris, 'Regional Protection of Human Rights: The Inter-American Achievement' in David Harris and Stephen Livingstone, eds., *The Inter-American Human Rights System* (Oxford: Clarendon Press, 1998).
[34] Par Engstrom and Peter Low, 'Mobilising the Inter-American Human Rights System: Regional Litigation and Domestic Human Rights Impact in Latin America', in *The Inter-American Human Rights System: Impact Beyond Compliance*, ed. Par Engstrom (Springer International Publishing, 2019), 23–58.

enforcement mechanisms in place to hold states responsible for implementation to account. For example, there is no clearly mandated political compliance mechanism, as assumed by the Committee of Ministers in the European human rights system. Nonetheless, the IAHRS amply illustrates how accountability can operate through various channels, including primarily domestic accountability mechanisms. Most notably, the set of accountability functions provided by the IAHRS demonstrate how the System has become increasingly inserted into domestic policy and legislative debates on specific human rights issues across the region.

The normative and institutional evolution of the IAHRS has led to an increased interaction between the IAHRS and domestic political processes and national legal orders. The internalization of IAHRS mechanisms and norms in domestic political and legal systems has significantly altered the character of human rights implementation. Human rights implementation has traditionally been dominated by the political branches of government and largely controlled by the Executive and the Ministry of Foreign Affairs in particular. Although these entities remain central to state compliance with IAHRS rulings and decisions, a broader range of actors are now involved in implementation processes, accentuating the shift towards decentralised human rights enforcement. As I have examined in more detail elsewhere[35], the IAHRS affects and shapes political relationships in relation to three main set of actors.

First, the IAHRS provides opportunities for domestic and transnational human rights actors to bring pressure for change in their domestic political and legal systems. The use of the IAHRS by human rights organisations across the region has increased dramatically in recent decades. Human rights groups use the IAHRS to expose systemic human rights violations; to negotiate with state institutions; to frame social and political debates on the basis of IAHRS norms and jurisprudence; to promote the interests of vulnerable groups; to boost human rights litigation before domestic courts; and to strengthen regional human rights networks through the use of the IAHRS in strategic supranational litigation. While the capacity of actors to access and to mobilize the IAHRS is highly unequal, organised civil society has become the lifeblood of the IAHRS. The availability of the IAHRS for human rights groups has the potential to strengthen the domestic position of those groups that engage with the system, particularly when faced with resistance and obstacles at home. Moreover, at various critical conjunctures the System has found allies in regional human rights movements. It needs to be recognised, however, that from efforts to hold perpetrators to account for gender violence in Mexico to mobilisation around LGBT or land rights in Brazil, human rights groups face regular harassment, political vilification, and violence. In the face of these realities, the IAHRS's often slow-moving procedures are of little direct help. The IAHRS has attempted to respond to these realities by developing specific institutional mechanisms aimed at human rights defenders such as the use of precautionary measures (*medidas cautelares*) to respond quickly to situations of acute risks. This illustrates that human rights actors tend not to remain passive recipients of international human rights norms and there are important feedback mechanisms as these actors influence the development of international norms and institutions.

Second, with the expansion of international human rights standards, domestic court systems have come to play increasingly prominent roles as arenas of human rights implementation. In the countries of the IAHRS, as in many other states, a wide range of human rights treaties and

[35] Par Engstrom, 'Reconceptualising the Impact of the Inter-American Human Rights System', *Revista Direito e Práxis* 8, no. 2 (June 2017): 1250–85.

conventions have become embedded in domestic legal systems.[36] The constitutional incorporation of international human rights treaties has made domestic courts key actors with a potential to activate human rights treaties and interpret international norms in light of domestic conditions.[37] While there is significant variation not just in the effective enforcement of human rights within domestic legal systems but also in the willingness and ability of judges to engage in the transnational legal culture of human rights, domestic judges have become important political actors that shape the ways in which international human rights are applied domestically. Moreover, the IAHRS has been an active participant in these efforts at activating domestic judiciaries as enforcers of regional norms and standards. A unique aspect of the IACtHR's relationship with domestic judiciaries is the doctrine of conventionality control, which says that all state actors must review laws under the American Convention, and not apply laws found to be in violation of it. Through this doctrine, the Court seeks to enlist all state actors in monitoring compliance with the Convention, as interpreted by the Court. Hence, the Inter-American Court has sought to expand the role of domestic judiciaries in enforcing the American Convention and the rulings of the Court itself. Conventionality control has the potential to extend the shadow of the Court far beyond its relatively small docket. In so doing, however, it also seeks to harmonise judicial interpretations of the American Convention. This has led some legal scholars to argue that the IACtHR has been transformed into a 'supranational human rights constitutional court', whose role it is to standardise the interpretation of rights enshrined in the American Convention. While some legal scholars have quite sharply criticised the Court's attempts to extend its authority[38], on the grounds of both its alleged limited effectiveness and shaky legitimacy, regional jurisprudential interaction and legal dialogues have intensified in recent years.[39] There has also been an incipient yet increasing trend towards extra-regional judicial dialogues.[40] It is clearly the case that regional human rights systems, including the IAHRS, operate in a fertile environment of interlegality characterised by a plurality of domestic and international legal and judicial systems. This provides ample scope for judicial dialogue and exchange, as evidenced, for example, in rapidly evolving human rights jurisprudence on issues such as sexual orientation rights and the applicability of amnesties; both areas where the IAHRS has made significant normative contributions.

Third, the domestic internalization of IAHRS mechanisms and norms has also shifted the ways in which the System engages with the state. With the IAHRS no longer primarily concerned with "naming and shaming" repressive authoritarian regimes, it engages with a variety of at least nominally democratic regimes through a (quasi)judicial process that assumes at least partially responsive state institutions. This broader point underlines the potential of state actors and institutions to act as 'compliance constituencies' and conduits of domestic implementation linking international human rights norms to domestic political and legal institutions and actors. Different state institutions are now engaged with the System,

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[36] Armin von Bogdandy et al., *Transformative Constitutionalism in Latin America: The Emergence of a New Ius Commune* (Oxford University Press, 2017).

[37] Marcelo Torelly, 'Transnational Legal Process and Fundamental Rights in Latin America: How Does the Inter-American Human Rights System Reshape Domestic Constitutional Rights?', in *Law and Policy in Latin America: Transforming Courts, Institutions, and Rights*, ed. Pedro Fortes et al., (London: Palgrave Macmillan UK, 2017), 21–38.

[38] Jorge Contesse, 'Contestation and Deference in the Inter-American Human Rights System Subsidiarity in Global Governance', *Law and Contemporary Problems* 79 (2016): 123–46.

[39] Ezequiel Gonzalez-Ocantos, 'Communicative Entrepreneurs: The Case of the Inter-American Court of Human Rights' Dialogue with National Judges', *International Studies Quarterly* 62, no. 4 (1 December 2018): 737–50.

[40] Neuman, 'The External Reception of Inter-American Human Rights Law'.

which has led to the 'disaggregation' of the relationship between countries and the IAHRS. This increasingly means that states no longer interacts with the system solely through their respective Ministry of Foreign Affairs, but also through a number of different institutional channels including Ministries of Justice, *Ministerios Públicos*, as well as sub-national authorities. The IACHR's friendly settlement procedures, for example, are frequently used to facilitate negotiations between different state institutions and petitioners. Also, due to the IACtHR's creative remedial regime, the Court frequently issues orders that require action from state actors other than the executive. The impact of the IAHRS on public policy formulation and implementation is to a large extent a function of its embedment, or institutionalisation, in state institutions, and whether the state has effectively organized its institutions in ways that provide effective remedies for human rights violations. Interestingly, a more strategic vision of the IAHRS appears to be increasingly recognised within some state bureaucracies across Latin America. State prosecutors' offices in several countries (e.g. Argentina and Brazil) have created dedicated human rights units to actively petition the Inter-American Commission. Few Latin American states, however, have formal institutional mechanisms in place to ensure consistent implementation of IAHRS' decisions and recommendations. The IAHRS can provide, nonetheless, a political space for discussion and negotiation between the key actors involved in human rights reforms (including different parts of the state); it provides an authoritative set of norms and standards to regulate the specific issue-area subject to the reforms; and it adds an additional layer of political pressure, momentum and urgency to the resolution of human rights problems.

In short, these illustrations of the transnational dynamics of human rights implementation in the context of the IAHRS offer important insights into how international law and institutions might operate against the odds and when confronted with inhospitable conditions. It is precisely in this way that the IAHRS stands out as an exemplar of contemporary human rights governance. The IAHRS is able to exert influence on human rights outcomes from a position of relative weakness. The System has limited leverage and highly inadequate resources at its disposal, particularly when considered in relation to the scale of the multiple human rights challenges it confronts. It has no consistent backing from powerful states and there are no formal sanction mechanisms underpinning the System's rulings and decisions. The IAHRS is disconnected from regional political and economic governance structures. There is no equivalent of EU accession incentives in the Americas. Moreover, the regional context in which the IAHRS operates displays limited normative convergence around values of human rights and democracy. Civil society spaces are restricted in many places and there are both material and political obstacles to the construction of influential epistemic communities that could support the System when most needed.

Despite these significant limitations and institutional obstacles to effective human rights implementation, the IAHRS has continually evolved and developed innovative mechanisms to seek to remedy its inherent enforcement deficits. As such, the IAHRS has the potential to offer human rights scholarship and advocacy significant insights into how human rights may continue to matter even in adverse political circumstances. Indeed, in some important ways global human rights politics has started to increasingly resemble the political conditions in which the IAHRS emerged, developed and currently operates. While the politics surrounding the IAHRS demonstrates that sustained human rights activism has strengthened processes of socialization in many societies, rule-consistent behaviour as predicted by earlier human rights

scholarship has quite clearly not materialised.[41] This should draw our attention to the continuing political contestation of human rights in the Americas as well as elsewhere. The domestic impact of international human rights norms is invariably mediated by their broader norm salience in local contexts.[42] This reminds us of the risks of the reification of the 'the lens of rule-compliance' to the detriment of advancing knowledge on local understandings of international human rights.[43] As Howse and Teitel argue: "Interpretation is pervasively determinative of what happens to legal rules when they are out in the world; and yet 'compliance' studies begin with the notion that to look at effects, we start with an assumed stable and agreed meaning to a rule, and whether it is complied with or obeyed, so understood".[44] In a global context of human rights contention, in other words, the IAHRS offers an important reminder that resistance has tended to be the norm in the history of international human rights. It is therefore important to recognise that the IAHRS, as part of a complex institutional network of international human rights institution, provides a crucial exemplar of how international human rights institutions can still make a difference, even in a world of increasing hostility to both the idea and practice of human rights.

IV. Human Rights Futures: A World of Regions and Experimental Governance

The central message of this chapter is that the IAHRS offers crucial insights into the past, present and potential future of global human rights governance. From its origins as a declaratory regime governed by states, the institutional evolution of the IAHRS into a transnational human rights system has been remarkable. And yet, there has never been anything inevitable in how the IAHRS has developed over the years. The present context of multiple and interlocking political challenges facing the System is clearly a powerful reminder in this regard. Such challenges notwithstanding, the IAHRS also demonstrates that human rights institutions are more resilient than what may be immediately apparent. Against this background, and in lieu of a conventional conclusion, I would like to end this chapter with some reflections on what possible futures of global human rights might look like when informed by the varied experiences of the IAHRS.

The first point to note is that regional systems have emerged as central actors in global governance as well as pivotal for the future of international human rights. After all, it is precisely in the regional systems where much – if not most – of the human rights action takes place. As this chapter illustrates, this has been the case since the birth of modern international human rights. This is also one of the main reasons why regional human rights systems are crucial for understanding future human rights trajectories. However, for most of the currently dominant critiques of human rights – whether Hopgood's 'endtimes' narrative, Posner's 'twilight' diagnosis, or Moyn's insufficiency thesis – the focus is nearly exclusively on *global* accounts of human rights.[45] These accounts tend to marginalise, or entirely ignore, regional systems with their attention turned to the UN-based system, the role of Western

[41] Thomas Risse-Kappen, Steve C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change*, Cambridge Studies in International Relations 66 (New York: Cambridge University Press, 1999).
[42] Mark Goodale and Sally Engle Merry, eds., *The Practice of Human Rights Tracking Law between the Global and the Local*, Cambridge Studies in Law and Society (Cambridge: Cambridge University Press, 2007).
[43] Par Engstrom, ed., *The Inter-American Human Rights System: Impact beyond Compliance* (London: Palgrave Macmillan, 2019).
[44] Robert Howse and Ruti Teitel, 'Beyond Compliance: Rethinking Why International Law Really Matters: Beyond Compliance', *Global Policy* 1, no. 2 (May 2010): 135.
[45] Hopgood, *The Endtimes of Human Rights*; Eric Posner, *The Twilight of Human Rights Law* (Oxford: Oxford University Press, 2014); Moyn, *Not Enough: Human Rights in an Unequal World*.

states and the human rights politics of global NGOs. Their emphasis is almost exclusively on the role of the 'West' in the genesis, historical development and future of human rights law, institutions, and policy. As a result, with the ongoing sovereigntist and nationalist turn in the politics of the U.S. and Europe these scholarly accounts forecast the imminent demise of human rights. And yet, while not dismissing the central role of the U.S. and the nominally liberal West in the development of international human rights, its history and future is more plural and diverse than these accounts claim. As this chapter highlights, other actors than Western governments have been the central protagonists in international human rights law, policy and practice. And they are likely to continue playing that role, with or without U.S and European leadership.

Moreover, regional perspectives on human rights tell us something important about institutional resilience even in adverse geopolitical contexts. The IAHRS is exemplary of the fact that human rights have never been a consensus project. Its institutional history is ripe with conflict and resistance to ambitious human rights norms and practices. The System also amply illustrates the potential of institutional expansion of human rights in a historically unstable region of the world. It offers an example of institutional survival despite dramatic adverse shifts in politics. Put differently, the case of the IAHRS offers insights into processes of institutional adaptation and resilience in illiberal and/or hostile political contexts.

As I have argued elsewhere[46], the IAHRS is institutionally more resilient than generalized human rights 'end-times' narratives suggest. After all, despite the rise of anti-rights politics in its region, human rights norms developed by the IAHRS remain formally embedded in national constitutions and domestic legislation. The formal embedment of human rights norms in domestic law provides crucial opportunities for individuals and groups to claim, define, and struggle over human rights. The institutional 'stickiness' of the IAHRS is particularly noteworthy when compared to global human rights institutions. As this chapter highlights, the IAHRS is regularly engaged in dense interactions with domestic courts and state bureaucracies, becoming far more deeply embedded in national systems than the UN system. This domestic institutionalisation of regional human rights also highlights some persistent intriguing puzzles. The IAHRS is subjected to chronic underfunding, it is generally perceived to be characterised by an ongoing compliance crisis, and is facing strident resistance, or even backlash. And yet, the demands on the IAHRS are ever increasing. A steadily rising number of cases are submitted to the Inter-American Commission. There are indications that more national high courts in the region are more consistently engaging with the jurisprudence of the Inter-American Court. Furthermore, even backlash could be understood as a specific response to the increasing impact or relevance of the IAHRS – after all, why spend much political capital and attention on an irrelevant international human rights institution?

Similarly, regional systems are also important alternatives to the universal systems increasingly under strain. The UN human rights system is currently rocked by yet another budget crisis, which has led to the reduction, for example, of the monitoring activities of the UN treaty bodies. In the case of the International Criminal Court (ICC), it is subject to increasing strident criticisms, including from many human rights advocates who despair at the ICC's perceived lack of bite and double standards. From this perspective, regional systems may appear as quite attractive options to pursue human rights accountability. This is

[46] Par Engstrom, 'Between Hope and Despair: Progress and Resilience in the Inter-American Human Rights System', *AJIL Unbound* 113 (2019): 370–74.

particularly the case in regional contexts characterised by widespread and persistent impunity, including for gross and systematic human rights violations. It is therefore striking that the ICC is subject to such sustained political and scholarly attention, despite its limited reach and its narrow case-load. Indeed, the IAHRS has developed what Huneeus refers to as a quasi-criminal jurisdiction pushing states to prosecute human rights criminals in domestic courts.[47] The IAHRS offers, in this sense, an important alternative to international criminal justice strategies that requires more attention.

In short, a fuller recognition of the regional character of global human rights is both analytically and normatively essential. In the first instance, it captures something empirically important about how global human rights governance actually works. The IAHRS and other regional human rights systems are part of a global network of human rights governance. There are important, yet still poorly understood, interactive effects, institutional feedback loops, and structural complementarity between existing institutional mechanisms. There are reasons to expect that the potential impact of human rights standards and institutions is greatest when they are deployed in a coordinated fashion. For example, specific rulings or awareness-raising activities can generate human rights change in and by themselves, but their impact may be amplified if they occur within the context of a broad and coordinated strategy. In many human rights areas there are a plethora of instruments that may range from international treaties, special rapporteurships conducting in-country visits, individual petition mechanisms and litigation opportunities, as well as international court rulings. Where used strategically and in tandem, the mechanisms can be mutually reinforcing and can augment the impact of one another. Impact is likely to be more limited, on the other hand, when mechanisms are used in isolation.

A more diffused, multi-layered and networked global human rights politics is also normatively desirable, as captured, for example, in experimentalist approaches to human rights governance.[48] It is clearly the case that international human rights institutions need to develop more sustained and collaborative relationships with a range of relevant stakeholders and actors at the local level, not least in order to strengthen the likelihood of effective and sustainable human rights implementation. The multifaceted contributions of the IAHRS outlined in this chapter point to the crucial role that the System has played in the development of global human rights governance. All human rights institutions share similar sets of challenges, whether limited state compliance with rulings and decisions, states seeking to reduce institutional mandates and undermine their legitimacy, or increasing case backlogs combined with increasingly squeezed resources. Despite the many political, institutional, and legal differences between the various human rights systems, there are important insights to be gained from any given institution to inform approaches and practices elsewhere. It is precisely in this respect that the IAHRS stands as an exemplar of the highly imperfect, often messy and contested, yet impactful and deeply meaningful human rights politics, especially for the many people who continue to struggle for the realisation of their rights.

[47] Huneeus, 'International Criminal Law by Other Means'.
[48] Gráinne de Búrca, 'Human Rights Experimentalism', *American Journal of International Law* 111, no. 2 (April 2017): 277–316.